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

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**FORM 8-K/A**  
(Amendment No. 1)

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**CURRENT REPORT**  
Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

**January 28, 2008**  
Date of Report (Date of earliest event reported)

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**Harrah's Entertainment, Inc.**

(Exact name of registrant as specified in its charter)

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**Delaware**  
(State of Incorporation)

**001-10410**  
(Commission File Number)

**62-1411755**  
(IRS Employer  
Identification Number)

**One Caesars Palace Drive**  
**Las Vegas, Nevada 89109**  
(Address of principal executive offices) (Zip Code)

**(702) 407-6000**  
(Registrant's telephone number, including area code)

**N/A**  
(Former Name or Former Address, if Changed Since Last Report)

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Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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## INTRODUCTORY NOTE

On February 1, 2008, Harrah's Entertainment, Inc. ("Harrah's") filed a Current Report on Form 8-K (the "Report") with the Securities and Exchange Commission to report the completion of its merger with Hamlet Merger Inc., a Delaware corporation, pursuant to the Agreement and Plan of Merger, dated as of December 19, 2006, by and among Hamlet Holdings LLC, a Delaware limited liability company, Hamlet Merger Inc. and Harrah's. This Amendment No. 1 to the Current Report on Form 8-K/A amends Items 1.01, 5.02 and 9.01 of the Report to include certain additional exhibits.

### **Section 1 – Registrant's Business and Operations**

#### **Item 1.01 Entry into a Material Definitive Agreement**

##### 1. Senior Secured Credit Facilities

Copies of the Credit Agreement and the Guaranty and Pledge Agreement are attached as Exhibits 10.1 and 10.2, respectively, to this Current Report on Form 8-K/A and are incorporated herein by reference.

##### 2. Senior Unsecured Interim Loan Agreement

A copy of the Senior Unsecured Interim Loan Agreement is attached as Exhibit 10.3 to this Current Report on Form 8-K/A and is incorporated herein by reference.

##### 3. Entry into Secured Real Estate Loans

Copies of the Loan Agreement and each of the First through Ninth Mezzanine Loan Agreements are attached as Exhibits 10.4 to 10.13, respectively, to this Current Report on Form 8-K/A and are incorporated herein by reference.

##### 4. Stockholders' Agreement

A copy of the Stockholders' Agreement is attached as Exhibit 10.14 to this Current Report on Form 8-K/A and is incorporated herein by reference.

##### 5. Sponsors Services Agreement

A copy of the Services Agreement is attached as Exhibit 10.15 to this Current Report on Form 8-K/A and is incorporated herein by reference.

##### 6. Management Investor Rights Agreement

A copy of the Management Investor Rights Agreement is attached as Exhibit 10.16 to this Current Report on Form 8-K/A and is incorporated herein by reference.

## Section 5 – Corporate Governance and Management

### **Item 5.02 Departure of Directors or Principal Officers; Election of Directors; Appointment of Principal Officers; Compensatory Arrangements of Certain Officers**

#### **3. Gary W. Loveman Employment Agreement**

A copy of the Employment Agreement is attached as Exhibit 10.17 to this Current Report on Form 8-K/A and is incorporated herein by reference.

#### **4. Gary W. Loveman Stock Option Rollover Agreement**

A copy of the Rollover Agreement is attached as Exhibit 10.18 to this Current Report on Form 8-K/A and is incorporated herein by reference.

## Section 9 – Financial Statements and Exhibits

### **Item 9.01 Financial Statements and Exhibits**

(d) Exhibits.

<b><u>Exhibit No.</u></b>	<b><u>Description</u></b>
10.1	Credit Agreement, dated as of January 28, 2008, by and among Hamlet Merger Inc., Harrah's Operating Company, Inc., as Borrower, the Lenders party thereto from time to time, Bank of America, N.A., as Administrative Agent and Collateral Agent, Deutsche Bank AG New York Branch, as Syndication Agent, and Citibank, N.A., Credit Suisse, Cayman Islands Branch, JPMorgan Chase Bank, N.A., Merrill Lynch, Pierce, Fenner & Smith Incorporated, Goldman Sachs Credit Partners L.P., Morgan Stanley Senior Funding, Inc. and Bear Stearns Corporate Lending, Inc., as Co-Documentation Agents
10.2	Guaranty and Pledge Agreement, dated as of January 28, 2008, made by Hamlet Merger Inc. in favor of Bank of America, N.A., as Administrative Agent and Collateral Agent
10.3	Senior Unsecured Interim Loan Agreement, dated as of January 28, 2008, by and among Harrah's Operating Company, Inc., as Borrower, the Lenders party thereto from time to time, Citibank, N.A., as Administrative Agent, Deutsche Bank AG New York Branch, as Syndication Agent, Banc of America Bridge LLC, Credit Suisse, Cayman Islands Branch, JPMorgan Chase Bank, N.A., and Merrill Lynch Capital Corporation, as Co-Documentation Agents, Citigroup Global Markets Inc., Deutsche Bank Securities, Inc., Banc of America Securities LLC, Credit Suisse Securities (USA) LLC, J.P. Morgan Securities Inc. and Merrill Lynch, Pierce, Fenner & Smith Incorporated, as Joint Bookrunners and Citigroup Global Markets Inc. and Deutsche Bank Securities Inc., as Joint Lead Arrangers

<u>Exhibit No.</u>	<u>Description</u>
10.4	Loan Agreement, dated as of January 28, 2008, by and among Harrah's Las Vegas Propco, LLC, Harrah's Atlantic City Propco, LLC, Tahoe Propco, LLC, Rio Propco, LLC, Flamingo Las Vegas Propco, LLC and Showboat Propco, LLC, as Borrowers, and JPMorgan Chase Bank, N.A., as Lender
10.5	First Mezzanine Loan Agreement, dated as of January 28, 2008, by and among Harrah's Las Vegas Mezz 1, LLC, Harrah's Atlantic City Mezz 1, LLC, Tahoe Mezz 1, LLC, Rio Mezz 1, LLC, Flamingo Las Vegas Mezz 1, LLC and Showboat Atlantic City Mezz 1, LLC, as Borrowers, and JPMorgan Chase Bank, N.A., as Lender
10.6	Second Mezzanine Loan Agreement, dated as of January 28, 2008, by and among Harrah's Las Vegas Mezz 2, LLC, Harrah's Atlantic City Mezz 2, LLC, Tahoe Mezz 2, LLC, Rio Mezz 2, LLC, Flamingo Las Vegas Mezz 2, LLC and Showboat Atlantic City Mezz 2, LLC, as Borrowers, and JPMorgan Chase Bank, N.A., as Lender
10.7	Third Mezzanine Loan Agreement, dated as of January 28, 2008, by and among Harrah's Las Vegas Mezz 3, LLC, Harrah's Atlantic City Mezz 3, LLC, Tahoe Mezz 3, LLC, Rio Mezz 3, LLC, Flamingo Las Vegas Mezz 3, LLC and Showboat Atlantic City Mezz 3, LLC, as Borrowers, and JPMorgan Chase Bank, N.A., as Lender
10.8	Fourth Mezzanine Loan Agreement, dated as of January 28, 2008, by and among Harrah's Las Vegas Mezz 4, LLC, Harrah's Atlantic City Mezz 4, LLC, Tahoe Mezz 4, LLC, Rio Mezz 4, LLC, Flamingo Las Vegas Mezz 4, LLC and Showboat Atlantic City Mezz 4, LLC, as Borrowers, and JPMorgan Chase Bank, N.A., as Lender
10.9	Fifth Mezzanine Loan Agreement, dated as of January 28, 2008, by and among Harrah's Las Vegas Mezz 5, LLC, Harrah's Atlantic City Mezz 5, LLC, Tahoe Mezz 5, LLC, Rio Mezz 5, LLC, Flamingo Las Vegas Mezz 5, LLC and Showboat Atlantic City Mezz 5, LLC, as Borrowers, and JPMorgan Chase Bank, N.A., as Lender
10.10	Sixth Mezzanine Loan Agreement, dated as of January 28, 2008, by and among Harrah's Las Vegas Mezz 6, LLC, Harrah's Atlantic City Mezz 6, LLC, Tahoe Mezz 6, LLC, Rio Mezz 6, LLC, Flamingo Las Vegas Mezz 6, LLC and Showboat Atlantic City Mezz 6, LLC, as Borrowers, and JPMorgan Chase Bank, N.A., as Lender
10.11	Seventh Mezzanine Loan Agreement, dated as of January 28, 2008, by and among Harrah's Las Vegas Mezz 7, LLC, Harrah's Atlantic City Mezz 7, LLC, Tahoe Mezz 7, LLC, Rio Mezz 7, LLC, Flamingo Las Vegas Mezz 7, LLC and Showboat Atlantic City Mezz 7, LLC, as Borrowers, and JPMorgan Chase Bank, N.A., as Lender

<u>Exhibit No.</u>	<u>Description</u>
10.12	Eighth Mezzanine Loan Agreement, dated as of January 28, 2008, by and among Harrah's Las Vegas Mezz 8, LLC, Harrah's Atlantic City Mezz 8, LLC, Tahoe Mezz 8, LLC, Rio Mezz 8, LLC, Flamingo Las Vegas Mezz 8, LLC and Showboat Atlantic City Mezz 8, LLC, as Borrowers, and JPMorgan Chase Bank, N.A., as Lender
10.13	Ninth Mezzanine Loan Agreement, dated as of January 28, 2008, by and among Harrah's Las Vegas Mezz 9, LLC, Harrah's Atlantic City Mezz 9, LLC, Tahoe Mezz 9, LLC, Rio Mezz 9, LLC, Flamingo Las Vegas Mezz 9, LLC and Showboat Atlantic City Mezz 9, LLC, as Borrowers, and JPMorgan Chase Bank, N.A., as Lender
10.14	Stockholders' Agreement, dated as of January 28, 2008, by and among Apollo Hamlet Holdings, LLC, Apollo Hamlet Holdings B, LLC, TPG Hamlet Holdings, LLC, TPG Hamlet Holdings B, LLC, Co-Invest Hamlet Holdings, Series LLC, Co-Invest Hamlet Holdings B, LLC, Hamlet Holdings LLC and Harrah's Entertainment, Inc., and, solely with respect to Sections 3.01 and 6.07, Apollo Investment Fund VI, L.P. and TPG V Hamlet AIV, L.P.
10.15	Services Agreement, dated as of January 28, 2008, by and among Harrah's Entertainment, Inc., Apollo Management VI, L.P., Apollo Alternative Assets, L.P. and TPG Capital, L.P.
10.16	Management Investor Rights Agreement, dated as of January 28, 2008, by and among Harrah's Entertainment, Inc., Apollo Hamlet Holdings, LLC, Apollo Hamlet Holdings B, LLC, TPG Hamlet Holdings, LLC, TPG Hamlet Holdings B, LLC, Hamlet Holdings LLC and the stockholders that are parties thereto (incorporated by reference to Exhibit 4.2 to Harrah's Entertainment, Inc.'s Registration Statement on Form S-8 filed January 31, 2008)
10.17	Employment Agreement, dated as of January 28, 2008, by and between Harrah's Entertainment, Inc. and Gary W. Loveman
10.18	Rollover Option Agreement, dated as of January 28, 2008, by and between Harrah's Entertainment, Inc. and Gary W. Loveman

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

HARRAH'S ENTERTAINMENT, INC.

Date: February 7, 2008

By: /s/ Michael D. Cohen

Michael D. Cohen  
Vice President, Associate General Counsel  
and Corporate Secretary

## EXHIBIT INDEX

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Revolving Facility CUSIP# - 413626AJ1  
Term B-1 Facility CUSIP# - 413626AK8  
Term B-2 Facility CUSIP# - 413626AL6  
Term B-3 Facility CUSIP# - 413626AM4

\$9,250,000,000

CREDIT AGREEMENT

Dated as of January 28, 2008,

Among

HAMLET MERGER INC. (to be merged on the Closing Date with and into  
HARRAH'S ENTERTAINMENT, INC.),

HARRAH'S OPERATING COMPANY, INC.,  
as Borrower,

THE LENDERS PARTY HERETO,

BANK OF AMERICA, N.A.,  
as Administrative Agent and Collateral Agent,

DEUTSCHE BANK AG NEW YORK BRANCH,  
as Syndication Agent,

CITIBANK, N.A.,  
CREDIT SUISSE, CAYMAN ISLANDS BRANCH,  
JPMORGAN CHASE BANK, N.A.,  
MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED,  
GOLDMAN SACHS CREDIT PARTNERS L.P.,  
MORGAN STANLEY SENIOR FUNDING, INC.

and  
BEAR STEARNS CORPORATE LENDING, INC.,  
as Co-Documentation Agents,

BANC OF AMERICA SECURITIES LLC,  
CITIGROUP GLOBAL MARKETS INC.,  
CREDIT SUISSE SECURITIES (USA) LLC,  
DEUTSCHE BANK SECURITIES, INC.,  
J.P. MORGAN SECURITIES INC.

and  
MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED,  
as Joint Bookrunners,

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BANC OF AMERICA SECURITIES LLC  
and  
DEUTSCHE BANK SECURITIES INC.,  
as Co-Lead Arrangers

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Schedule 6.07	Transactions with Affiliates
Schedule 9.01	Notice Information

CREDIT AGREEMENT dated as of January 28, 2008 (this “Agreement”), among HAMLET MERGER INC., a Delaware corporation (“Merger Inc.”, with references to “Holdings” herein being to Merger Inc., prior to the Merger, and to the Company, following the Merger), HARRAH’S OPERATING COMPANY, INC., a Delaware corporation (the “Borrower”), the LENDERS party hereto from time to time, BANK OF AMERICA, N.A., as administrative agent and collateral agent for the Lenders, DEUTSCHE BANK AG NEW YORK BRANCH, as syndication agent (in such capacity, the “Syndication Agent”), and CITIBANK, N.A., CREDIT SUISSE, CAYMAN ISLANDS BRANCH, JPMORGAN CHASE BANK, N.A., MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED, GOLDMAN SACHS CREDIT PARTNERS L.P., MORGAN STANLEY SENIOR FUNDING, INC. and BEAR STEARNS CORPORATE LENDING, INC., as co-documentation agents (in such capacities, the “Documentation Agents”).

WHEREAS, Apollo Management VI, L.P. and other affiliated co-investment partnerships (collectively, “Apollo”) and TPG Partners V, L.P. and other affiliated co-investment partnerships (collectively, “TPG”) have indirectly formed Merger Inc. for the purpose of entering into that certain Agreement and Plan of Merger by and among Hamlet Holdings LLC (“Parent”), Merger Inc., and Harrah’s Entertainment, Inc., a Delaware corporation (the “Company”), dated as of December 19, 2006 (as amended or supplemented as of the date hereof, the “Merger Agreement”), pursuant to which Merger Inc. will merge (the “Merger”) with and into the Company, with (i) the Company surviving as a Wholly-Owned Subsidiary of Parent and (ii) the Company assuming by operation of law all of the Obligations of Merger Inc. under this Agreement and the other Loan Documents; and

WHEREAS, in connection with the consummation of the Merger, the Borrower has requested the Lenders to extend credit in the form of (a) Term B-1 Loans on the Closing Date, in an aggregate principal amount not in excess of \$2,250,000,000, (b) Term B-2 Loans on the Closing Date, in an aggregate principal amount not in excess of \$3,000,000,000, (c) Term B-3 Loans on the Closing Date, in an aggregate principal amount not in excess of \$2,000,000,000 and (d) Revolving Facility Loans, Swingline Loans and Letters of Credit at any time and from time to time prior to the Revolving Facility Maturity Date, in an aggregate Outstanding Amount at any time not in excess of \$2,000,000,000;

NOW, THEREFORE, the Lenders are willing to extend such credit to the Borrower on the terms and subject to the conditions set forth herein. Accordingly, the parties hereto agree as follows:

ARTICLE I  
Definitions

SECTION 1.01 Defined Terms. As used in this Agreement, the following terms shall have the meanings specified below:

“ABR” shall mean, for any day, a fluctuating rate per annum equal to the higher of (a) the Federal Funds Rate plus 1/2 of 1% and (b) the rate of interest in effect for such day as announced from time to time by Bank of America as its “prime rate”. The “prime rate” is a rate

set by Bank of America based upon various factors including Bank of America's costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such rate announced by Bank of America shall take effect at the opening of business on the day specified in the public announcement of such change.

"ABR Borrowing" shall mean a Borrowing comprised of ABR Loans.

"ABR Loan" shall mean any ABR Term Loan, ABR Revolving Loan or Swingline Loan.

"ABR Revolving Facility Borrowing" shall mean a Borrowing comprised of ABR Revolving Loans.

"ABR Revolving Loan" shall mean any Revolving Facility Loan bearing interest at a rate determined by reference to the ABR in accordance with the provisions of Article II.

"ABR Term Loan" shall mean any Term Loan bearing interest at a rate determined by reference to the ABR in accordance with the provisions of Article II.

"Accepting Lender" shall have the meaning assigned to such term in Section 2.11(e).

"Act of Terrorism" shall mean an act of any person directed towards the overthrowing or influencing of any government de jure or de facto, or the inducement of fear in or the disruption of the economic system of any society, by force or by violence, including (i) the hijacking or destruction of any conveyance (including an aircraft, vessel, or vehicle), transportation infrastructure or building, (ii) the seizing or detaining, and threatening to kill, injure, or continue to detain, or the assassination of, another individual, (iii) the use of any (a) biological agent, chemical agent, or nuclear weapon or device, or (b) explosive or firearm, with intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial damage to property and (iv) a credible threat, attempt, or conspiracy to do any of the foregoing.

"Additional Mortgage" shall have the meaning assigned to such term in Section 5.10(c)(i).

"Additional Ship Mortgage" shall have the meaning assigned to such term in Section 5.10(c)(ii).

"Adjustment Date" shall have the meaning assigned to such term in the definition of "Pricing Grid."

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

“Administrative Agent Fees” shall have the meaning assigned to such term in Section 2.12(c).

“Administrative Agent’s Office” means, with respect to any currency, the Administrative Agent’s address and, as appropriate, account as set forth on Schedule 9.01 with respect to such currency, or such other address or account with respect to such currency as the Administrative Agent may from time to time notify to the Borrower and the Lenders.

“Administrative Questionnaire” shall mean an Administrative Questionnaire in a form supplied by the Administrative Agent.

“Affiliate” shall mean, when used with respect to a specified person, another person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the person specified.

“Agent Parties” shall have the meaning assigned to such term in Section 9.17.

“Agents” shall mean the Administrative Agent, the Collateral Agent, the Syndication Agent and the Documentation Agents.

“Agreement” shall have the meaning assigned to such term in the introductory paragraph of this Agreement.

“Alternative Currency” means each of Euro, Sterling and each other currency (other than Dollars) that is approved in accordance with Section 1.05.

“Alternative Currency Equivalent” means, at any time, with respect to any amount denominated in Dollars, the equivalent amount thereof in the applicable Alternative Currency as determined by the Administrative Agent or the L/C Issuer, as the case may be, at such time on the basis of the Spot Rate (determined in respect of the most recent Revaluation Date) for the purchase of such Alternative Currency with Dollars.

“Alternative Currency Sublimit” means an amount equal to the lesser of the then effective amount of the aggregate Revolving Facility Commitments and \$1,125,000,000. The Alternative Currency Sublimit is part of, and not in addition to, the Revolving Facility Commitments.

“Apollo” shall have the meaning assigned to such term in the first recital hereto.

“Applicable Commitment Fee” shall mean for any day 0.50% per annum; provided, that on and after the first Adjustment Date occurring after delivery of the financial statements and certificates required by Section 5.04 upon the completion of one full fiscal quarter of the Borrower after the Closing Date, the Applicable Commitment Fee will be determined pursuant to the Pricing Grid.

“Applicable Margin” shall mean for any day (i) with respect to any Term B-1 Loan, Term B-2 Loan or Term B-3 Loan, 3.00 % per annum in the case of any Eurocurrency

Loan and 2.00% per annum in the case of any ABR Loan, (ii) with respect to any Revolving Facility Loan, 3.00% per annum in the case of any Eurocurrency Loan and 2.00% per annum in the case of any ABR Loan and (iii) with respect to Swingline Loans, 1.50% per annum; provided, that on and after the first Adjustment Date occurring after delivery of the financial statements and certificates required by Section 5.04 upon the completion of one full fiscal quarter of the Borrower after the Closing Date, the Applicable Margin with respect to Loans will be determined pursuant to the Pricing Grid.

“Applicable Premium” shall mean, as of any date upon which a prepayment is payable pursuant to Section 2.11(a)(ii), the present value at such date, computed using a discount rate equal to the Treasury Rate plus 50 basis points, of all interest that would accrue (assuming the Borrower had selected consecutive three-month Interest Periods) on the applicable Repaid Term B-3 Loans from such date to the date which is three years following the Closing Date, computed using the Eurocurrency Rate for an Interest Period of three months commencing on such date plus the Applicable Margin in effect on such date for Term B-3 Loans that are Eurocurrency Term Loans.

“Applicable Time” means, with respect to any borrowings and payments in any Alternative Currency, the local time in the place of settlement for such Alternative Currency as may be determined by the Administrative Agent or the L/C Issuer, as the case may be, to be necessary for timely settlement on the relevant date in accordance with normal banking procedures in the place of payment.

“Approved Fund” shall have the meaning assigned to such term in Section 9.04(b).

“Arrangers” shall mean Banc of America Securities LLC, Citigroup Global Markets Inc., Credit Suisse Securities (USA) LLC, Deutsche Bank Securities Inc., J.P. Morgan Securities Inc. and Merrill Lynch, Pierce, Fenner & Smith Incorporated.

“Asset Sale” shall mean any loss, damage, destruction or condemnation of, or any sale, transfer or other disposition (including any sale and leaseback of assets and any mortgage or lease of Real Property) to any person of any asset or assets of the Borrower or any Subsidiary.

“Assignee” shall have the meaning assigned to such term in Section 9.04(b).

“Assignment and Acceptance” shall mean an assignment and acceptance entered into by a Lender and an Assignee, and accepted by the Administrative Agent and the Borrower (if required by Section 9.04), in the form of Exhibit A or such other form as shall be approved by the Administrative Agent and reasonably satisfactory to the Borrower.

“Auto-Extension Letter of Credit” shall have the meaning assigned to such term in Section 2.05(b).

“Auto-Reinstatement Letter of Credit” shall have the meaning assigned to such term in Section 2.05(b).

“Availability Period” shall mean the period from and including the Closing Date to but excluding the earlier of the Revolving Facility Maturity Date and, in the case of each of the Revolving Facility Loans, Revolving Facility Borrowings, Swingline Loans, Swingline Borrowings and Letters of Credit, the date of termination of the Revolving Facility Commitments.

“Available Unused Commitment” shall mean, with respect to a Revolving Facility Lender at any time, an amount equal to the amount by which (a) the Revolving Facility Commitment of such Revolving Facility Lender at such time exceeds (b) the Revolving Facility Credit Exposure of such Revolving Facility Lender at such time.

“Bank of America” means Bank of America, N.A. and its successors.

“Board” shall mean the Board of Governors of the Federal Reserve System of the United States of America.

“Board of Directors” shall mean, as to any person, the board of directors or other governing body of such person, or if such person is owned or managed by a single entity, the board of directors or other governing body of such entity.

“Borrower” shall have the meaning assigned to such term in the introductory paragraph of this Agreement.

“Borrower Qualified IPO” shall mean an underwritten public offering of Equity Interests of the Borrower constituting a Qualified IPO.

“Borrowing” shall mean a group of Loans of a single Type in a single currency under a single Facility and made on a single date and, in the case of Eurocurrency Loans, as to which a single Interest Period is in effect.

“Borrowing Minimum” shall mean \$10,000,000 except, in the case of Swingline Loans, \$500,000.

“Borrowing Multiple” shall mean \$1,000,000 except, in the case of Swingline Loans, \$100,000.

“Borrowing Request” shall mean a request by a Borrower in accordance with the terms of Section 2.03 and substantially in the form of Exhibit C-1.

“Budget” shall have the meaning assigned to such term in Section 5.04(e).

“Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the laws of, or are in fact closed in, the state where the Administrative Agent’s Office with respect to Loans denominated in Dollars is located and:

(a) if such day relates to any interest rate settings as to a Eurocurrency Loan denominated in Dollars, any fundings, disbursements, settlements and payments in Dollars in respect of any such Eurocurrency Loan, or any other dealings in Dollars to be carried out pursuant to this Agreement in respect of any such Eurocurrency Loan, means any such day on which dealings in deposits in Dollars are conducted by and between banks in the London interbank eurodollar market;

(b) if such day relates to any interest rate settings as to a Eurocurrency Loan denominated in Euro, any fundings, disbursements, settlements and payments in Euro in respect of any such Eurocurrency Loan, or any other dealings in Euro to be carried out pursuant to this Agreement in respect of any such Eurocurrency Loan, means a TARGET Day;

(c) if such day relates to any interest rate settings as to a Eurocurrency Loan denominated in a currency other than Dollars or Euro, means any such day on which dealings in deposits in the relevant currency are conducted by and between banks in the London or other applicable offshore interbank market for such currency; and

(d) if such day relates to any fundings, disbursements, settlements and payments in a currency other than Dollars or Euro in respect of a Eurocurrency Loan denominated in a currency other than Dollars or Euro, or any other dealings in any currency other than Dollars or Euro to be carried out pursuant to this Agreement in respect of any such Eurocurrency Loan (other than any interest rate settings), means any such day on which banks are open for foreign exchange business in the principal financial center of the country of such currency.

“Capital Expenditures” shall mean, for any person in respect of any period, (a) the aggregate of all expenditures (whether paid in cash or accrued as liabilities and including in all events amounts expended or capitalized under Capital Lease Obligations) incurred by such person during such period that, in accordance with GAAP, are or should be included in “additions to property, plant or equipment” or similar items reflected in the statement of cash flows of such person and (b) Capitalized Software Expenditures.

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

“Capitalized Software Expenditures” shall mean, for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities) by a person during such period in respect of licensed or purchased software or internally developed software and software enhancements that, in accordance with GAAP, are or are required to be reflected as capitalized costs on the consolidated balance sheet of such person and its subsidiaries.

“Cash Collateralize” shall have the meaning assigned to such term in Section 2.05(g).

“Cash Interest Expense” shall mean, with respect to the Borrower and the Subsidiaries on a consolidated basis for any period, Interest Expense for such period, less the sum of, without duplication, (a) pay in kind Interest Expense or other non-cash Interest Expense (including as a result of the effects of purchase accounting), (b) to the extent included in Interest Expense, the amortization of any debt issuance costs, commissions, financing fees paid by, or on behalf of, the Borrower or any Subsidiary, including such fees paid in connection with the Transactions or upon entering into a Permitted Receivables Financing, and the expensing of any bridge, commitment or other financing fees, including those paid in connection with the Transactions, or upon entering into a Permitted Receivables Financing or any amendment of this Agreement and (c) the amortization of debt discounts, if any, or fees in respect of Swap Agreements.

A “Change in Control” shall be deemed to occur if:

(a) at any time, a “change of control” (or similar event) shall occur under the Senior Unsecured Notes Indenture, the Interim Loan Agreement, the Senior Notes Indenture or any Permitted Refinancing Indebtedness in respect thereof that constitutes Material Indebtedness; or

(b) any combination of Permitted Holders in the aggregate shall fail to have the power, directly or indirectly, to vote or direct the voting of Equity Interests representing at least a majority of the ordinary voting power for the election of directors of the Borrower; *provided* that the occurrence of the foregoing event shall not be deemed a Change of Control if,

(i) at any time prior to a Qualified IPO, (A) any combination of Permitted Holders in the aggregate otherwise have the right, directly or indirectly, to designate a majority of the Board of Directors of the Borrower at such time or (B) any combination of Permitted Holders in the aggregate own, directly or indirectly, a majority of the ordinary voting Equity Interests of the Borrower at such time; provided that the Sponsors have beneficial ownership of more than 50% of the total voting power of the Borrower, or

(ii) at any time upon or after a Qualified IPO, (A) no person or “group” (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act as in effect on the Closing Date), other than any combination of the Permitted Holders, shall have acquired beneficial ownership of more than the greater of (x) 35% on a fully diluted basis of the voting Equity Interests of the Borrower and (y) the percentage owned, directly or indirectly, in the aggregate by the Permitted Holders on a fully diluted basis of the voting Equity Interests of the Borrower and (B) during each period of twelve (12) consecutive months, a majority of the seats (other than vacant seats) on the Board of Directors of the Borrower shall be occupied by persons who were either (1) nominated by the Board of

Directors of the Borrower or a Permitted Holder, (2) appointed by directors so nominated or (3) appointed by a Permitted Holder.

“Change in Law” shall mean (a) the adoption of any law, rule or regulation after the Closing Date, (b) any change in law, rule or regulation or in the interpretation or application thereof by any Governmental Authority after the Closing Date or (c) compliance by any Lender or L/C Issuer (or, for purposes of Section 2.15(b), by any lending office of such Lender or by such Lender’s or L/C Issuer’s holding company, if any) with any written request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the Closing Date.

“Charges” shall have the meaning assigned to such term in Section 9.09.

“Class” when used in reference to any Loan or Borrowing, shall refer to whether such Loan, or the Loans comprising such Borrowing, are Revolving Facility Loans, Term B-1 Loans, Term B-2 Loans, Term B-3 Loans, Incremental Term Loans or Swingline Loans and, when used in reference to any Commitment, refers to whether such Commitment is a Revolving Facility Commitment, a Term B-1 Loan Commitment, a Term B-2 Loan Commitment, a Term B-3 Loan Commitment, an Incremental Term Loan Commitment or a Swingline Commitment.

“Closing Date” shall mean January 28, 2008.

“Code” shall mean the Internal Revenue Code of 1986, as amended from time to time and the regulations promulgated and rulings issued thereunder.

“Co-Lead Arrangers” shall mean Bank of America Securities LLC and Deutsche Bank Securities Inc., in their capacities as co-lead arrangers.

“Collateral” shall mean all the “Collateral” (or equivalent term) as defined in any Security Document and shall also include the Mortgaged Properties, Mortgaged Vessels and all other property that is subject to any Lien in favor of the Collateral Agent for the benefit of the Secured Parties pursuant to any Security Documents.

“Collateral Agent” means Bank of America in its capacity as collateral agent under the Security Documents, or any successor collateral agent.

“Collateral Agreement” shall mean the Collateral Agreement, as amended, supplemented or otherwise modified from time to time, in the form of Exhibit E, among the Borrower, each Subsidiary Loan Party and the Collateral Agent.

“Collateral Requirement” shall mean the requirement that (in each case subject to Section 5.10(g)):

(a) on the Closing Date, the Collateral Agent shall have received (x) from the Borrower and each Subsidiary Loan Party, a counterpart of the Collateral Agreement duly executed and delivered on behalf of such person and (y) from Holdings, a

counterpart of the Guaranty and Pledge Agreement duly executed and delivered on behalf of Holdings;

(b) on the Closing Date, (i) the Collateral Agent shall have received (A) a pledge of all the issued and outstanding Equity Interests of (x) the Borrower and (y) each Domestic Subsidiary (other than Subsidiaries listed on Schedule 1.01A) owned on the Closing Date directly by the Borrower or any Subsidiary Loan Party and (B) a pledge of 65% of the outstanding voting Equity Interests and 100% of the outstanding non-voting Equity Interests of each “first tier” Wholly-Owned Foreign Subsidiary directly owned by the Borrower or any Subsidiary Loan Party on the Closing Date (other than Subsidiaries listed on Schedule 1.01A) and (ii) the Collateral Agent shall have received all certificates or other instruments (if any) representing such Equity Interests, together with stock powers or other instruments of transfer with respect thereto endorsed in blank;

(c)(i) on the Closing Date and at all times thereafter, all Indebtedness of the Borrower and each Subsidiary having, in the case of each instance of Indebtedness, an aggregate principal amount in excess of \$15.0 million (other than (A) intercompany current liabilities in connection with the cash management operations of the Borrower and its Subsidiaries or (B) to the extent that a pledge of such promissory note or instrument would violate applicable law) that is owing to the Borrower or a Subsidiary Loan Party shall be evidenced by a promissory note or an instrument and shall have been pledged pursuant to the Collateral Agreement (or other applicable Security Document as reasonably required by the Collateral Agent), and (ii) the Collateral Agent shall have received all such promissory notes or instruments, together with note powers or other instruments of transfer with respect thereto endorsed in blank;

(d) in the case of any person that becomes a Subsidiary Loan Party after the Closing Date, subject to Section 5.10(g), the Collateral Agent shall have received a supplement to the Collateral Agreement, in the form specified therein, duly executed and delivered on behalf of such Subsidiary Loan Party;

(e) after the Closing Date, (i) all the outstanding Equity Interests of (A) any person that becomes a Subsidiary Loan Party after the Closing Date and (B) subject to Section 5.10(g), all the Equity Interests that are acquired by the Borrower or a Subsidiary Loan Party after the Closing Date (including, without limitation, the Equity Interests of any Special Purpose Receivables Subsidiary established after the Closing Date), shall have been pledged pursuant to the Collateral Agreement; provided, that in no event shall more than 65% of the issued and outstanding voting Equity Interests of any “first tier” Foreign Subsidiary directly owned by the Borrower or such Subsidiary Loan Party be pledged to secure the Obligations, and in no event shall any of the issued and outstanding Equity Interests of any Foreign Subsidiary that is not a “first tier” Foreign Subsidiary of the Borrower or a Subsidiary Loan Party be pledged to secure the Obligations, and (ii) the Collateral Agent shall have received all certificates or other instruments (if any) representing such Equity Interests, together with stock powers or other instruments of transfer with respect thereto endorsed in blank;

(f) on the Closing Date and at all times thereafter, except as otherwise contemplated by any Security Document, all documents and instruments, including Uniform Commercial Code financing statements, required by law or reasonably requested by the Collateral Agent to be filed, registered or recorded to create the Liens intended to be created by the Security Documents (in each case, including any supplements thereto) and perfect such Liens to the extent required by, and with the priority required by, the Security Documents, shall have been filed, registered or recorded or delivered to the Collateral Agent for filing, registration or the recording concurrently with, or promptly following, the execution and delivery of each such Security Document;

(g) on the Closing Date and after the Closing Date (solely to the extent required by Sections 5.10(c), 5.10(d) or 5.11), the Collateral Agent shall have received (i) counterparts of each Mortgage to be entered into with respect to each Mortgaged Property set forth on Schedule 1.01B and each Mortgaged Property acquired after the Closing Date and mortgaged pursuant to Sections 5.10(c), 5.10(d) and 5.11 duly executed and delivered by the record owner of such Mortgaged Property and suitable for recording or filing and (ii) such other documents including, but not limited to, any consents, agreements and confirmations of third parties, as the Collateral Agent may reasonably request with respect to any such Mortgage or Mortgaged Property;

(h) on the Closing Date and after the Closing Date (solely to the extent required by Sections 5.10(c) or 5.10(d)), the Collateral Agent shall have received, with respect to each Mortgaged Vessel set forth on Schedule 1.01J and each Replacement Vessel or Documented Vessel acquired after the Closing Date and mortgaged pursuant to Sections 5.10(c) and 5.10(d), (i) a Ship Mortgage granting to the Collateral Agent for the benefit of the Secured Parties a valid, binding and enforceable first preferred ship mortgage on such Mortgaged Vessel under Chapter 313 of Title 46 of the United States Code subject only to Permitted Liens, executed and delivered by a duly authorized officer of the appropriate Loan Party, in each case, together with an Earnings Assignment and an Insurance Assignment as to such Mortgaged Vessel, together with such certificates, affidavits and instruments as shall be reasonably required in connection with filing or recordation thereof and to grant a Lien on each such Mortgaged Vessel, (ii) an abstract of title and/or certificate of ownership issued by the NVDC evidencing that the Mortgaged Vessel is not subject to any other recorded Liens other than Permitted Liens, and (iii) evidence that the Mortgaged Vessel is insured in accordance with the provisions of its Ship Mortgage and all requirements of its Ship Mortgage in respect of such insurance have been fulfilled (including, without limitation, letters of undertaking from the insurance brokers, confirmations of notices of assignment, notices of cancellation and loss payable clauses reasonably acceptable to the Collateral Agent);

(i) on the Closing Date and after the Closing Date (solely to the extent required by Sections 5.10(c), 5.10(d) or 5.11), the Collateral Agent shall have received (i) a policy or policies or marked-up unconditional binder of title insurance, as applicable, paid for by the Borrower or its Subsidiaries or a Parent Entity, issued by a nationally recognized title insurance company insuring the Lien of each Mortgage to be entered into on the Closing Date or thereafter in accordance with Sections 5.10(c), 5.10(d) and 5.11 as

a valid first Lien on the Mortgaged Property described therein, free of any other Liens except Permitted Liens, together with such customary endorsements (including zoning endorsements where reasonably appropriate and available), coinsurance and reinsurance as the Collateral Agent may reasonably request, and with respect to any such property located in a state in which a zoning endorsement is not available, a zoning compliance letter from the applicable municipality in a form reasonably acceptable to the Collateral Agent, and (ii) a survey of each Mortgaged Property (including all improvements, easements and other customary matters thereon reasonably required by the Collateral Agent), as applicable, for which all necessary fees (where applicable) have been paid (such surveys, collectively, the “Surveys”). Such Surveys shall be certified to Borrower, Collateral Agent and the title insurance company, and shall meet minimum standard detail requirements for ALTA/ACSM Land Title Surveys in all material respects and shall be sufficient and satisfactory to the title insurance company so as to enable the title insurance company to issue coverage over all general survey exceptions and to issue all endorsements reasonably requested by Collateral Agent. All such Surveys shall be dated (or redated) not earlier than six months prior to the date of delivery thereof (unless otherwise acceptable to the title insurance company issuing the title insurance);

(j) on the Closing Date and after the Closing Date (solely to the extent required by Sections 5.10(c) or 5.10(d)), the Collateral Agent shall have received a policy or policies or marked-up unconditional binders of title insurance, as applicable, paid for by the Borrower or its Subsidiaries or a Parent Entity, issued by a nationally recognized title insurance company insuring the Lien of each Ship Mortgage to be entered into on the Closing Date or thereafter in accordance with Sections 5.01(c), 5.01(d) and 5.11 as a valid first preferred mortgage Lien on the Mortgaged Vessel described therein within the meaning of Chapter 313 of Title 46 of the United States Code, and, alternatively, as a Lien perfected under the UCC, free of any other Lien except Permitted Liens and any Ship Mortgage, together with such customary endorsements coinsurance and reinsurance as the Collateral Agent may reasonably request;

(k) on the Closing Date, the Collateral Agent shall have received evidence of the insurance required by the terms of this Agreement and the Mortgages;

(l) except as otherwise contemplated by this Agreement or any Security Document, each Loan Party shall have obtained all consents and approvals required to be obtained by it in connection with (i) the execution and delivery of all Security Documents (or supplements thereto) to which it is a party and the granting by it of the Liens thereunder and (ii) the performance of its obligations thereunder; and

(m) after the Closing Date, the Collateral Agent shall have received (i) such other Security Documents as may be required to be delivered pursuant to Sections 5.10 and 5.11, and (ii) upon reasonable request by the Collateral Agent, evidence of compliance with any other requirements of Sections 5.10 and 5.11.

“Commitment Fee” shall have the meaning assigned to such term in Section 2.12(a).

“Commitments” shall mean (a) with respect to any Lender, such Lender’s Revolving Facility Commitment (including any Incremental Revolving Facility Commitment), Term B-1 Loan Commitment, Term B-2 Loan Commitment, Term B-3 Loan Commitment and Incremental Term Loan Commitment and (b) with respect to any Swingline Lender, its Swingline Commitment.

“Company” shall have the meaning assigned to such term in the first recital hereto.

“Conduit Lender” shall mean any special purpose corporation organized and administered by any Lender for the purpose of making Loans otherwise required to be made by such Lender and designated by such Lender in a written instrument; provided, that the designation by any Lender of a Conduit Lender shall not relieve the designating Lender of any of its obligations to fund a Loan under this Agreement if, for any reason, its Conduit Lender fails to fund any such Loan, and the designating Lender (and not the Conduit Lender) shall have the sole right and responsibility to deliver all consents and waivers required or requested under this Agreement with respect to its Conduit Lender; provided, further, that no Conduit Lender shall (a) be entitled to receive any greater amount pursuant to Section 2.15, 2.16, 2.17 or 9.05 than the designating Lender would have been entitled to receive in respect of the extensions of credit made by such Conduit Lender or (b) be deemed to have any Commitment.

“Consolidated Debt” at any date shall mean the sum of (without duplication) all Indebtedness (other than letters of credit or bank guarantees, to the extent undrawn) consisting of Capital Lease Obligations, Indebtedness for borrowed money and Disqualified Stock of the Borrower and the Subsidiaries determined on a consolidated basis on such date.

“Consolidated Net Income” shall mean, with respect to any person for any period, the aggregate of the Net Income of such person and its subsidiaries for such period, on a consolidated basis; provided, however, that, without duplication,

(i) any net after tax extraordinary, nonrecurring or unusual gains or losses or income or expense or charge (less all fees and expenses relating thereto) including, without limitation, any severance, relocation or other restructuring expenses, any expenses related to any reconstruction, decommissioning, recommissioning or reconfiguration of fixed assets for alternative uses, fees, expenses or charges relating to facilities closing costs, curtailments or modifications to pension and post-retirement employee benefit plans, excess pension charges, acquisition integration costs, facilities opening costs, project start-up costs, business optimization costs, signing, retention or completion bonuses, and expenses or charges related to any offering of Equity Interests or debt securities of Borrower, Holdings or any Parent Entity, any Investment, acquisition, disposition, recapitalization or issuance, repayment, refinancing, amendment or modification of Indebtedness (in each case, whether or not successful), and any fees, expenses, charges or change in control payments related to the Transactions and the Post-Closing CMBS Transaction (including any transition-related expenses incurred before, on or after the Closing Date), in each case, shall be excluded,

(ii) any net after-tax income or loss from disposed, abandoned, transferred, closed or discontinued operations and any net after-tax gain or loss on disposal of disposed, abandoned, transferred, closed or discontinued operations shall be excluded,

(iii) any net after-tax gain or loss (less all fees and expenses or charges relating thereto) attributable to business dispositions or asset dispositions other than in the ordinary course of business (as determined in good faith by the management of the Borrower) shall be excluded,

(iv) any net after-tax income or loss (less all fees and expenses or charges relating thereto) attributable to the early extinguishment of indebtedness, Swap Agreements or other derivative instruments shall be excluded,

(v) (A) the Net Income for such period of any person that is not a subsidiary of such person, or is an Unrestricted Subsidiary or a Qualified Non-Recourse Subsidiary or that is accounted for by the equity method of accounting, shall be included only to the extent of the amount of dividends or distributions or other payments paid in cash (or to the extent converted into cash) to the referent person or a subsidiary thereof (other than an Unrestricted Subsidiary or a Qualified Non-Recourse Subsidiary of such referent person) in respect of such period and (B) the Net Income for such period shall include any ordinary course dividend, distribution or other payment in cash received from any person in excess of the amounts included in clause (A),

(vi) Consolidated Net Income for such period shall not include the cumulative effect of a change in accounting principles during such period,

(vii) effects of purchase accounting adjustments (including the effects of such adjustments pushed down to such person and its Subsidiaries) in component amounts required or permitted by GAAP, resulting from the application of purchase accounting in relation to the Transactions or any consummated acquisition or the amortization or write-off of any amounts thereof, net of taxes, shall be excluded,

(viii) any impairment charges or asset write-offs, in each case pursuant to GAAP, and the amortization of intangibles arising pursuant to GAAP, shall be excluded,

(ix) any non-cash compensation charge or expenses realized or resulting from stock option plans, employee benefit plans or post-employment benefit plans, or grants or sales of stock, stock appreciation or similar rights, stock options, restricted stock, preferred stock or other rights shall be excluded,

(x) accruals and reserves that are established or adjusted within twelve months after the Closing Date and that are so required to be established or adjusted in accordance with GAAP or as a result of adoption or modification of accounting policies shall be excluded,

(xi) non-cash gains, losses, income and expenses resulting from fair value accounting required by the applicable standard under GAAP and related interpretations shall be excluded,

(xii) any currency translation gains and losses related to currency remeasurements of Indebtedness, and any net loss or gain resulting from Swap Agreements for currency exchange risk, shall be excluded,

(xiii) (i) the non-cash portion of "straight-line" rent expense shall be excluded and (ii) the cash portion of "straight-line" rent expense which exceeds the amount expensed in respect of such rent expense shall be included,

(xiv) to the extent covered by insurance and actually reimbursed, or, so long as such person has made a determination that there exists reasonable evidence that such amount will in fact be reimbursed by the insurer and only to the extent that such amount is (i) not denied by the applicable carrier in writing within 180 days and (ii) in fact reimbursed within 365 days of the date of such evidence (with a deduction for any amount so added back to the extent not so reimbursed within 365 days), expenses with respect to liability or casualty events or business interruption shall be excluded,

(xv) without duplication, an amount equal to the amount of distributions actually made to any parent or equity holder of such person in respect of such period in accordance with Section 6.06(b)(y) shall be included as though such amounts had been paid as income taxes directly by such person for such period, and

(xvi) non-cash charges for deferred tax asset valuation allowances shall be excluded.

"Consolidated Total Assets" shall mean, as of any date, the total assets of the Borrower and the consolidated Subsidiaries without giving effect to any amortization of the amount of intangible assets since the Closing Date, determined in accordance with GAAP, as set forth on the consolidated balance sheet of the Borrower as of such date.

"Control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person, whether through the ownership of voting securities, by contract or otherwise, and "Controlling" and "Controlled" shall have meanings correlative thereto.

"Covenant Resumption Date" shall have the meaning assigned to such term in the definition of "Covenant Suspension Period".

"Covenant Suspension Period" shall mean the period commencing on the date of any Qualifying Act of Terrorism and continuing until (and including) the last day of the second full fiscal quarter following the fiscal quarter in which the Qualifying Act of Terrorism occurs; provided, however, that if a separate and distinct Qualifying Act of Terrorism occurs during any Covenant Suspension Period, such Covenant Suspension Period shall continue until (and including) the last day of the second full fiscal quarter following the fiscal quarter in which such

subsequent Qualifying Act of Terrorism shall occur. Notwithstanding the foregoing, the Borrower may, in its sole discretion, elect that any Covenant Suspension Period end on any date prior to the date that such Covenant Suspension Period would otherwise end absent such election. The first day following the end of the Covenant Suspension Period is the "Covenant Resumption Date".

"Credit Event" shall have the meaning assigned to such term in Article IV.

"Cumulative Credit" shall mean, at any date, an amount, not less than zero in the aggregate, determined on a cumulative basis equal to, without duplication (and without duplication of amounts that otherwise increased the amount available for Investments pursuant to Section 6.04):

(a) \$400 million, plus:

(b) an amount (which amount shall not be less than zero) equal to 50% of the Consolidated Net Income of the Borrower for the period (taken as one accounting period) from January 1, 2008 to the end of the Borrower's most recently ended fiscal quarter for which internal financial statements are available at such date, plus

(c) the aggregate amount of proceeds received after the Closing Date and prior to such time that would have constituted Net Proceeds pursuant to clause (a) of the definition thereof except for the operation of clause (x), (y) or (z) of the second proviso thereof (the "Below Threshold Asset Sale Proceeds"), plus

(d) the cumulative amount of proceeds (including cash and the fair market value (as determined in good faith by the Borrower) of property other than cash) from the sale of Equity Interests of Holdings or any Parent Entity after the Closing Date and on or prior to such time (including upon exercise of warrants or options) which proceeds have been contributed as common equity to the capital of the Borrower and common Equity Interests of the Borrower issued upon conversion of Indebtedness of the Borrower or any Subsidiary owed to a person other than the Borrower or a Subsidiary not previously applied for a purpose other than use in the Cumulative Credit; provided, that this clause (d) shall exclude Permitted Cure Securities and the proceeds thereof, sales of Equity Interests financed as contemplated by Section 6.04(e), proceeds of Equity Interests used to make Investments pursuant to Section 6.04(bb), proceeds of Equity Interests used to make a Restricted Payment in reliance on clause (x) of the proviso to Section 6.06(c) and any amounts used to finance the payments or distributions in respect of any Junior Financing pursuant to Section 6.09(b)(i)(D), plus

(e) 100% of the aggregate amount of contributions to the common capital of the Borrower received in cash (and the fair market value (as determined in good faith by the Borrower) of property other than cash) after the Closing Date (subject to the same exclusions as are applicable to clause (d) above), plus

(f) 100% of the aggregate principal amount of any Indebtedness (including the liquidation preference or maximum fixed repurchase price, as the case may be, of any Disqualified Stock) of Borrower or any Subsidiary thereof issued after the Closing Date (other

than Indebtedness issued to a Subsidiary), which has been converted into or exchanged for Equity Interests (other than Disqualified Stock) in the Borrower, Holdings or any Parent Entity, plus

(g) 100% of the aggregate amount received by the Borrower or any Subsidiary in cash (and the fair market value (as determined in good faith by the Borrower) of property other than cash received by the Borrower or any Subsidiary) after the Closing Date from:

(A) the sale (other than to the Borrower or any Subsidiary) of the Equity Interests of an Unrestricted Subsidiary, or

(B) any dividend or other distribution by an Unrestricted Subsidiary, plus

(h) in the event any Unrestricted Subsidiary has been redesignated as a Subsidiary or has been merged, consolidated or amalgamated with or into, or transfers or conveys its assets to, or is liquidated into, the Borrower or any Subsidiary, the fair market value (as determined in good faith by the Borrower) of the Investments of the Borrower or any Subsidiary in such Unrestricted Subsidiary at the time of such redesignation, combination or transfer (or of the assets transferred or conveyed, as applicable), plus

(i) an amount equal to any returns (including dividends, interest, distributions, returns of principal, profits on sale, repayments, income and similar amounts) actually received by the Borrower or any Subsidiary in respect of any Investments made pursuant to Section 6.04(j), minus

(j) any amounts thereof used to make Investments pursuant to Section 6.04(j)(ii) after the Closing Date prior to such time, minus

(k) any amounts thereof used to make Restricted Payments pursuant to Section 6.06(e) after the Closing Date prior to such time, minus

(l) any amounts thereof used to make payments or distributions in respect of Junior Financings pursuant to Section 6.09(b)(i)(F), minus

(m) an amount equal to (if such amount is a positive number) (1) the sum of (A) investments (valued at the time of the making thereof and without giving effect to any write-downs or write-offs thereof) made after the Closing Date by the Borrower or any Subsidiary Loan Party pursuant to clause (i) of Section 6.04(b) in Subsidiaries that are not Subsidiary Loan Parties, plus (B) net intercompany loans made after the Closing Date by the Borrower or any Subsidiary Loan Party to Subsidiaries that are not Subsidiary Loan Parties pursuant to clause (ii) of Section 6.04(b), plus (C) Guarantees after the Closing Date by the Borrower or any Subsidiary Loan Party of Indebtedness of Subsidiaries that are not Subsidiary Loan Parties pursuant to clause (iii) of Section 6.04(b) minus (2) \$1,000,000,000 (plus any return of capital actually received by the respective investors in respect of investments theretofore made by them pursuant to Section 6.04(b)); minus

(n) the amount of dividends paid pursuant to Section 6.06(h).

provided, however, for purposes of Section 6.06(e), the calculation of the Cumulative Credit shall not include any Below Threshold Asset Sale Proceeds except to the extent they are used as contemplated in clauses (j) and (l) above.

“Cure Amount” shall have the meaning assigned to such term in Section 7.03.

“Cure Right” shall have the meaning assigned to such term in Section 7.03.

“Current Assets” shall mean, with respect to the Borrower and the Subsidiaries on a consolidated basis at any date of determination, the sum of (a) all assets (other than cash and Permitted Investments or other cash equivalents) that would, in accordance with GAAP, be classified on a consolidated balance sheet of the Borrower and the Subsidiaries as current assets at such date of determination, other than amounts related to current or deferred Taxes based on income or profits, and (b) in the event that a Permitted Receivables Financing is accounted for off balance sheet, (x) gross accounts receivable comprising part of the Receivables Assets subject to such Permitted Receivables Financing less (y) collections against the amounts sold pursuant to clause (x).

“Current Liabilities” shall mean, with respect to the Borrower and the Subsidiaries on a consolidated basis at any date of determination, all liabilities that would, in accordance with GAAP, be classified on a consolidated balance sheet of the Borrower and the Subsidiaries as current liabilities at such date of determination, other than (a) the current portion of any Indebtedness, (b) accruals of Interest Expense (excluding Interest Expense that is due and unpaid), (c) accruals for current or deferred Taxes based on income or profits, (d) accruals, if any, of transaction costs resulting from the Transactions, (e) accruals of any costs or expenses related to (i) severance or termination of employees prior to the Closing Date or (ii) bonuses, pension and other post-retirement benefit obligations, and (f) accruals for add-backs to EBITDA included in clauses (a)(iv) through (a)(vi) of the definition of such term.

“Debt Service” shall mean, with respect to the Borrower and the Subsidiaries on a consolidated basis for any period, Cash Interest Expense of the Borrower and the Subsidiaries for such period plus scheduled principal amortization of Consolidated Debt of the Borrower and the Subsidiaries for such period.

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

“Declined Proceeds” shall have the meaning assigned to such term in Section 2.11(e).

“Default” shall mean any event or condition which, but for the giving of notice, lapse of time or both would constitute an Event of Default.

“Defaulting Lender” shall mean any Lender with respect to which a Lender Default is in effect.

“Designated Non-Cash Consideration” shall mean the fair market value (as determined in good faith by the Borrower) of non-cash consideration received by the Borrower or one of its Subsidiaries in connection with an Asset Sale that is so designated as Designated Non-Cash Consideration pursuant to a certificate of a Responsible Officer, setting forth the basis of such valuation, less the amount of cash or cash equivalents received in connection with a subsequent sale of such Designated Non-Cash Consideration.

“Disinterested Director” shall mean, with respect to any person and transaction, a member of the Board of Directors of such person who does not have any material direct or indirect financial interest in or with respect to such transaction.

“Disqualification” means, with respect to any Lender:

- (a) the failure of that person timely to file pursuant to applicable Gaming Laws:
  - (i) any application requested of that person by any Gaming Authority in connection with any licensing required of that person as a lender to the Borrower; or
  - (ii) any required application or other papers in connection with determination of the suitability of that person as a lender to the Borrower;
- (b) the withdrawal by that person (except where requested or permitted by the Gaming Authority) of any such application or other required papers;
- (c) any finding by a Gaming Authority that there is reasonable cause to believe that such person may be found unqualified or unsuitable; or
- (d) any final determination by a Gaming Authority pursuant to applicable Gaming Laws:
  - (i) that such person is “unsuitable” as a lender to the Borrower;
  - (ii) that such person shall be “disqualified” as a lender to the Borrower; or
  - (iii) denying the issuance to that person of any license or other approval required under applicable Gaming Laws to be held by all lenders to the Borrower.

“Disqualified Stock” shall mean, with respect to any person, any Equity Interests of such person that, by its terms (or by the terms of any security or other Equity Interests into which it is convertible or for which it is redeemable or exchangeable), or upon the happening of any event or condition (a) matures or is mandatorily redeemable (other than solely for Qualified

Equity Interests), pursuant to a sinking fund obligation or otherwise (except as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior repayment in full of the Loans and all other Obligations that are accrued and payable and the termination of the Commitments), (b) is redeemable at the option of the holder thereof (other than solely for Qualified Equity Interests), in whole or in part, (c) provides for the scheduled payments of dividends in cash or (d) at the option of the holders thereof, is or becomes convertible into or exchangeable for Indebtedness or any other Equity Interests that would constitute Disqualified Stock, in each case, prior to the date that is ninety-one (91) days after the earlier of (x) the Term Facility Maturity Date and (y) the date on which the Loans and all other Obligations that are accrued and payable are repaid in full and the Commitments are terminated; provided, however, that only the portion of the Equity Interests that so mature or are mandatorily redeemable, are so convertible or exchangeable or are so redeemable at the option of the holder thereof prior to such date shall be deemed to be Disqualified Stock; provided further, however, that if such Equity Interests are issued to any employee or to any plan for the benefit of employees of the Borrower or the Subsidiaries or by any such plan to such employees, such Equity Interests shall not constitute Disqualified Stock solely because they may be required to be repurchased by the Borrower in order to satisfy applicable statutory or regulatory obligations or as a result of such employee's termination, death or disability; provided further, however, that any class of Equity Interests of such person that by its terms authorizes such person to satisfy its obligations thereunder by delivery of Equity Interests that are not Disqualified Stock shall not be deemed to be Disqualified Stock.

"Documentation Agents" shall have the meaning assigned to such term in the introductory paragraph of this Agreement.

"Documented Vessel" shall mean any Vessel which has a current and valid certificate of documentation issued by the NVDC or which is required by 46 C.F.R. § 67.7 to be documented as a vessel of the United States with the NVDC.

"Dollar Equivalent" means, at any time, (a) with respect to any amount denominated in Dollars, such amount, and (b) with respect to any amount denominated in any Alternative Currency, the equivalent amount thereof in Dollars as determined by the Administrative Agent or the L/C Issuer, as the case may be, at such time on the basis of the Spot Rate (determined in respect of the most recent Revaluation Date) for the purchase of Dollars with such Alternative Currency.

"Dollars" or "\$" shall mean lawful money of the United States of America.

"Domestic Subsidiary" shall mean any Subsidiary that is not a Foreign Subsidiary.

"Earnings Assignment" shall mean, with respect to each Mortgaged Vessel, an Assignment of Earnings, Charterparties and Requisition Compensation substantially in the form of Exhibit E-3 (with such changes as are reasonably consented to by the Collateral Agent to account for local law matters) made by the applicable Loan Party in favor of the Collateral Agent

for the benefit of the Secured Parties, as the same may be amended, supplemented or otherwise modified from time to time.

“EBITDA” shall mean, with respect to the Borrower and the Subsidiaries on a consolidated basis for any period, the Consolidated Net Income of the Borrower and the Subsidiaries for such period plus (a) the sum of (in each case without duplication and to the extent the respective amounts described in subclauses (i) through (xi) of this clause (a) otherwise reduced such Consolidated Net Income for the respective period for which EBITDA is being determined):

(i) provision for Taxes based on income, profits or capital of the Borrower and the Subsidiaries for such period, including, without limitation, state, franchise and similar taxes and foreign withholding taxes (including penalties and interest related to taxes or arising from tax examinations),

(ii) Interest Expense (and to the extent not included in Interest Expense, (x) all cash dividend payments (excluding items eliminated in consolidation) on any series of preferred stock or Disqualified Capital Stock and (y) costs of surety bonds in connection with financing activities) of the Borrower and the Subsidiaries for such period (net of interest income of the Borrower and its Subsidiaries for such period),

(iii) depreciation and amortization expenses of the Borrower and the Subsidiaries for such period including, without limitation, the amortization of intangible assets, deferred financing fees and Capitalized Software Expenditures and amortization of unrecognized prior service costs and actuarial gains and losses related to pensions and other post-employment benefits,

(iv) any expenses or charges (other than depreciation or amortization expense as described in the preceding clause (iii)) related to any issuance of Equity Interests, Investment, acquisition, disposition, recapitalization or the incurrence, modification or repayment of Indebtedness permitted to be incurred by this Agreement (including a refinancing thereof) (whether or not successful), including (w) such fees, expenses or charges related to the offering of the Senior Unsecured Notes, the Senior Notes, the Interim Loan Facility and the Obligations, (x) any amendment or other modification of the Obligations or other Indebtedness, (y) any “additional interest” with respect to the Senior Unsecured Notes or the Senior Notes and (z) commissions, discounts, yield and other fees and charges (including any interest expense) related to any Permitted Receivables Financing,

(v) business optimization expenses and other restructuring charges or reserves (which, for the avoidance of doubt, shall include, without limitation, the effect of inventory optimization programs, facility closure, facility consolidations, retention, severance, systems establishment costs, contract termination costs, future lease commitments and excess pension charges),

(vi) any other non-cash charges; provided, that, for purposes of this subclause (vi) of this clause (a), any non-cash charges or losses shall be treated as cash charges or losses in any subsequent period during which cash disbursements attributable thereto are made

(but excluding, for the avoidance of doubt, amortization of a prepaid cash item that was paid in a prior period),

(vii) the amount of management, consulting, monitoring, transaction and advisory fees and related expenses paid to any Sponsor (or any accruals related to such fees and related expenses) during such period; provided, that such amount shall not exceed in any four quarter period the sum of (i) the greater of \$30.0 million and 1.0% of EBITDA for such four quarter period, plus (ii) the amount of deferred fees (to the extent such fees would otherwise have been permitted to be included in clause (i) if paid, but were not included in such clause (i)), plus (iii) 1.0% of the value of transactions permitted hereunder and entered into by the Borrower or any of the Subsidiaries with respect to which any Sponsor provides any of the aforementioned types of services,

(viii) the amount of loss on sale of receivables and related assets to a Special Purpose Receivables Subsidiary in connection with a Permitted Receivables Financing,

(ix) any costs or expense incurred pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement or any stock subscription or shareholder agreement, to the extent that such cost or expenses are funded with cash proceeds contributed to the capital of the Borrower or a Subsidiary Loan Party solely to the extent that such net cash proceeds are excluded from the calculation of the Cumulative Credit,

(x) any deductions (less any additions) attributable to minority interests except, in each case, to the extent of cash paid or received, and

(xi) Pre-Opening Expenses,

minus (b) the sum of (without duplication and to the extent the amounts described in this clause (b) increased such Consolidated Net Income for the respective period for which EBITDA is being determined) non-cash items increasing Consolidated Net Income of the Borrower and the Subsidiaries for such period (but excluding any such items (A) in respect of which cash was received in a prior period or will be received in a future period or (B) which represent the reversal of any accrual of, or cash reserve for, anticipated cash charges that reduced EBITDA in any prior period).

For purposes of determining EBITDA under this Agreement, EBITDA for the fiscal quarter ended September 30, 2007 shall be deemed to be \$580.0 million, EBITDA for the fiscal quarter ended June 30, 2007 shall be deemed to be \$518.0 million, EBITDA for the fiscal quarter ended March 31, 2007 shall be deemed to be \$509.0 million, and EBITDA for the fiscal quarter ended December 31, 2006 shall be deemed to be \$416.0 million.

“EMU” means the economic and monetary union in accordance with the Treaty of Rome 1957, as amended by the Single European Act 1986, the Maastricht Treaty of 1992 and the Amsterdam Treaty of 1998.

“EMU Legislation” means the legislative measures of the European Council for the introduction of, changeover to or operation of a single or unified European currency.

“environment” shall mean ambient and indoor air, surface water and groundwater (including potable water, navigable water and wetlands), the land surface or subsurface strata, natural resources such as flora and fauna, the workplace or as otherwise defined in any Environmental Law.

“Environmental Laws” shall mean all applicable laws (including common law), rules, regulations, codes, ordinances, orders, decrees or judgments, promulgated or entered into by any Governmental Authority, relating in any way to the environment, preservation or reclamation of natural resources, the generation, management, Release or threatened Release of, or exposure to, any Hazardous Material or to occupational health and safety matters (to the extent relating to the environment or Hazardous Materials).

“Equity Contribution” shall mean, in connection with the consummation of the Merger, the purchase or contribution by the Permitted Holders and the Investors, directly or indirectly, of cash equity or rollover equity to or of Holdings or any Parent Entity in an aggregate amount of not less than 17.5% of the pro forma total consolidated capitalization of Holdings on the Closing Date.

“Equity Interests” of any person shall mean any and all shares, interests, rights to purchase or otherwise acquire, warrants, options, participations or other equivalents of or interests in (however designated) equity or ownership of such person, including any preferred stock, any limited or general partnership interest and any limited liability company membership interest, and any securities or other rights or interests convertible into or exchangeable for any of the foregoing.

“ERISA” shall mean the Employee Retirement Income Security Act of 1974, as the same may be amended from time to time and any final regulations promulgated and the rulings issued thereunder.

“ERISA Affiliate” shall mean any trade or business (whether or not incorporated) that, together with the Borrower or a Subsidiary, is treated as a single employer under Section 414(b) or (c) of the Code, or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

“ERISA Event” shall mean (a) any Reportable Event or the requirements of Section 4043(b) of ERISA apply with respect to a Plan; (b) the existence with respect to any Plan of an “accumulated funding deficiency” (as defined in Section 412 of the Code or Section 302 of ERISA), whether or not waived; (c) the filing pursuant to Section 412(d) of the Code or Section 303(d) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan, the failure to make by its due date a required installment under Section 412(m) of the Code with respect to any Plan or the failure to make any required contribution to a Multiemployer Plan; (d) the incurrence by the Borrower, a Subsidiary or any ERISA Affiliate of any liability under Title IV of ERISA with respect to the termination of any Plan or Multiemployer Plan; (e) the receipt by the Borrower, a Subsidiary or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or to appoint a trustee to administer any Plan under Section 4042 of ERISA;

(f) the incurrence by the Borrower, a Subsidiary or any ERISA Affiliate of any liability with respect to the withdrawal or partial withdrawal from any Plan or Multiemployer Plan; (g) the receipt by the Borrower, a Subsidiary or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from the Borrower, a Subsidiary or any ERISA Affiliate of any notice, concerning the impending imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA; (h) the conditions for imposition of a lien under Section 302(f) of ERISA shall have been met with respect to any Plan; or (i) the adoption of an amendment to a Plan requiring the provision of security to such Plan pursuant to Section 307 of ERISA.

“Euro” means the lawful currency of the Participating Member States introduced in accordance with the EMU Legislation.

“Eurocurrency Borrowing” shall mean a Borrowing comprised of Eurocurrency Loans.

“Eurocurrency Loan” shall mean any Eurocurrency Term Loan or Eurocurrency Revolving Loan.

“Eurocurrency Rate” means, for any Interest Period with respect to a Eurocurrency Loan, the rate per annum equal to the British Bankers Association LIBOR Rate (“BBA LIBOR”), as published by Reuters (or other commercially available source providing quotations of BBA LIBOR as designated by the Administrative Agent from time to time) at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period, for deposits in the relevant currency (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period. If such rate is not available at such time for any reason, then the “Eurocurrency Rate” for such Interest Period shall be the rate per annum determined by the Administrative Agent to be the rate at which deposits in the relevant currency for delivery on the first day of such Interest Period in Same Day Funds in the approximate amount of the Eurocurrency Loan being made, continued or converted by Bank of America and with a term equivalent to such Interest Period would be offered by Bank of America’s London Branch (or other Bank of America branch or Affiliate) to major banks in the London or other offshore interbank market for such currency at their request at approximately 11:00 a.m. (London time) two Business Days prior to the commencement of such Interest Period.

“Eurocurrency Revolving Facility Borrowing” shall mean a Borrowing comprised of Eurocurrency Revolving Loans.

“Eurocurrency Revolving Loan” shall mean any Revolving Facility Loan bearing interest at a rate determined by reference to the Eurocurrency Rate in accordance with the provisions of Article II.

“Eurocurrency Term Loan” shall mean any Term Loan bearing interest at a rate determined by reference to the Eurocurrency Rate in accordance with the provisions of Article II.

“Event of Default” shall have the meaning assigned to such term in Section 7.01.

“**Excess Cash Flow**” shall mean, with respect to the Borrower and its Subsidiaries on a consolidated basis for any Excess Cash Flow Period, EBITDA of the Borrower and its Subsidiaries on a consolidated basis for such Excess Cash Flow Period, minus, without duplication,

(a) Debt Service for such Excess Cash Flow Period,

(b) the amount of any voluntary prepayment permitted hereunder of term Indebtedness during such Excess Cash Flow Period (other than any voluntary prepayment of the Loans, which shall be the subject of Section 2.11(c)), so long as the amount of such prepayment is not already reflected in Debt Service,

(c) (i) Capital Expenditures by the Borrower and the Subsidiaries on a consolidated basis during such Excess Cash Flow Period that are paid in cash (to the extent permitted under this Agreement) and (ii) the aggregate consideration paid in cash during the Excess Cash Flow Period in respect of Permitted Business Acquisitions and other Investments permitted hereunder less any amounts received in respect thereof as a return of capital,

(d) Capital Expenditures or Permitted Business Acquisitions that the Borrower or any Subsidiary shall, during such Excess Cash Flow Period, become obligated to make in cash but that are not made during such Excess Cash Flow Period (to the extent permitted under this Agreement); provided, that (i) the Borrower shall deliver a certificate to the Administrative Agent not later than 90 days after the end of such Excess Cash Flow Period, signed by a Responsible Officer of the Borrower and certifying that such Capital Expenditures and the delivery of the related equipment or Permitted Business Acquisitions will be made in cash in the following Excess Cash Flow Period, and (ii) any amount so deducted shall not be deducted again in a subsequent Excess Cash Flow Period,

(e) Taxes paid in cash by the Borrower and its Subsidiaries on a consolidated basis during such Excess Cash Flow Period or that will be paid within six months after the close of such Excess Cash Flow Period; provided, that with respect to any such amounts to be paid after the close of such Excess Cash Flow Period, (i) any amount so deducted shall not be deducted again in a subsequent Excess Cash Flow Period, and (ii) appropriate reserves shall have been established in accordance with GAAP,

(f) an amount equal to any increase in Working Capital of the Borrower and its Subsidiaries for such Excess Cash Flow Period,

(g) cash expenditures made in respect of Swap Agreements during such Excess Cash Flow Period, to the extent not reflected in the computation of EBITDA or Interest Expense,

(h) permitted Restricted Payments made in cash by the Borrower during such Excess Cash Flow Period and permitted Restricted Payments made by any Subsidiary to any person other than the Borrower or any of the Subsidiaries during such Excess Cash Flow Period, in each case in accordance with Section 6.06 (other than Section 6.06(e), except to the

extent such Restricted Payments were financed with internally generated cash flow of the Borrower or any Subsidiary),

(i) amounts paid in cash during such Excess Cash Flow Period on account of (A) items that were accounted for as non-cash reductions of Net Income in determining Consolidated Net Income or as non-cash reductions of Consolidated Net Income in determining EBITDA of the Borrower and its Subsidiaries in a prior Excess Cash Flow Period and (B) reserves or accruals established in purchase accounting,

(j) to the extent not deducted in the computation of Net Proceeds in respect of any asset disposition or condemnation giving rise thereto, the amount of any mandatory prepayment of Indebtedness (other than Indebtedness created hereunder or under any other Loan Document), together with any interest, premium or penalties required to be paid (and actually paid) in connection therewith, and

(k) the amount related to items that were added to or not deducted from Net Income in calculating Consolidated Net Income or were added to or not deducted from Consolidated Net Income in calculating EBITDA to the extent such items represented a cash payment (which had not reduced Excess Cash Flow upon the accrual thereof in a prior Excess Cash Flow Period), or an accrual for a cash payment, by the Borrower and its Subsidiaries or did not represent cash received by the Borrower and its Subsidiaries, in each case on a consolidated basis during such Excess Cash Flow Period,

plus, without duplication,

(l) an amount equal to any decrease in Working Capital for such Excess Cash Flow Period,

(m) all amounts referred to in clauses (b), (c) and (d) above to the extent funded with the proceeds of the issuance or the incurrence of Indebtedness (including Capital Lease Obligations and purchase money Indebtedness, but excluding, solely as relating to Capital Expenditures, proceeds of Revolving Facility Loans), the sale or issuance of any Equity Interests (including any capital contributions) and any loss, damage, destruction or condemnation of, or any sale, transfer or other disposition (including any sale and leaseback of assets and any mortgage or lease of Real Property) to any person of any asset or assets, in each case to the extent there is a corresponding deduction from Excess Cash Flow above,

(n) to the extent any permitted Capital Expenditures referred to in clause (d) above and the delivery of the related equipment do not occur in the following Excess Cash Flow Period of the Borrower specified in the certificate of the Borrower provided pursuant to clause (d) above, the amount of such Capital Expenditures or Permitted Business Acquisitions that were not so made in such following Excess Cash Flow Period,

(o) cash payments received in respect of Swap Agreements during such Excess Cash Flow Period to the extent (i) not included in the computation of EBITDA or (ii) such payments do not reduce Cash Interest Expense,

(p) any extraordinary or nonrecurring gain realized in cash during such Excess Cash Flow Period (except to the extent such gain consists of Net Proceeds subject to Section 2.11(b)),

(q) to the extent deducted in the computation of EBITDA, cash interest income, and

(r) the amount related to items that were deducted from or not added to Net Income in connection with calculating Consolidated Net Income or were deducted from or not added to Consolidated Net Income in calculating EBITDA to the extent either (i) such items represented cash received by the Borrower or any Subsidiary or (ii) such items do not represent cash paid by the Borrower or any Subsidiary, in each case on a consolidated basis during such Excess Cash Flow Period.

“Excess Cash Flow Period” shall mean each fiscal year of the Borrower, commencing with the fiscal year of the Borrower ending on December 31, 2009.

“Exchange Act” means the Securities Exchange Act of 1934, as amended.

“Excluded Indebtedness” shall mean all Indebtedness not incurred in violation of Section 6.01.

“Excluded Taxes” shall mean, with respect to the Administrative Agent, any Lender, any L/C Issuer or any other recipient of any payment to be made by or on account of any obligation of the Borrower hereunder, (a) income taxes imposed on (or measured by) its net income (or franchise taxes imposed in lieu of net income taxes) by the United States of America (or any state or locality thereof) or the jurisdiction under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable lending office is located or any other jurisdiction as a result of such recipient engaging in a trade or business in such jurisdiction for tax purposes (other than a trade or business deemed to arise by virtue of entering into this Agreement, any other Loan Document or any of the transactions contemplated under such documents), (b) any branch profits tax or any similar tax that is imposed by any jurisdiction described in clause (a) above, and (c) in the case of a Lender making a Loan to the Borrower, any withholding tax (including any backup withholding tax) imposed by the United States federal government (or a jurisdiction as a result of such Lender being organized or having its principal office or applicable lending office in such jurisdiction or as a result of such Lender engaging in a trade or business in such jurisdiction for tax purposes (other than a trade or business deemed to arise by virtue of entering into this Agreement, any other Loan Document or any of the transactions contemplated under such documents)) that (x) is in effect and would apply to amounts payable hereunder to such Lender at the time such Lender becomes a party to such Loan to the Borrower (or designates a new lending office, except to the extent that such Lender (or its assignor, if any) was entitled, at the time of designation of a new lending office (or assignment), to receive additional amounts from a Loan Party with respect to such withholding tax pursuant to Section 2.17(a) or Section 2.17(c)) or (y) is attributable to such Lender’s failure to comply with Section 2.17(e) or Section 2.17(f) with respect to such Loan.

“Existing Letters of Credit” means those letters of credit issued and outstanding as of the date hereof and set forth on Schedule 1.01C.

“Facility” shall mean the respective facility and commitments utilized in making Loans and credit extensions hereunder, it being understood that as of the date of this Agreement there are four Facilities, i.e., the Term B-1 Facility, the Term B-2 Facility, the Term B-3 Facility and the Revolving Facility (and no Incremental Term Facility), and thereafter, may include any Incremental Term Facility.

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

“Fee Letter” shall mean that certain Fee Letter dated December 19, 2006, as amended, by and among Parent and Bank of America, N.A., Banc of America Bridge LLC, Banc of America Securities LLC, Citigroup Global Markets Inc., Credit Suisse, Cayman Islands Branch, Credit Suisse Securities (USA) LLC, Deutsche Bank AG New York Branch, Deutsche Bank AG Cayman Islands Branch, Deutsche Bank Securities Inc., JPMorgan Chase Bank, N.A., J.P. Morgan Securities Inc., Merrill Lynch Capital Corporation and Merrill Lynch, Pierce, Fenner & Smith Incorporated.

“Fees” shall mean the Commitment Fees, the L/C Participation Fees, the L/C Issuer Fees and the Administrative Agent Fees.

“Financial Officer” of any person shall mean the Chief Financial Officer, principal accounting officer, Treasurer, Assistant Treasurer or Controller of such person.

“Financial Performance Covenant” shall mean the covenant of the Borrower set forth in Section 6.10.

“Foreign Lender” shall mean any Lender that is not a “U.S. Person” as defined by Section 7701(a)(30) of the Code.

“Foreign Subsidiary” shall mean any Subsidiary that is incorporated or organized under the laws of any jurisdiction other than the United States of America, any State thereof or the District of Columbia.

“GAAP” shall mean generally accepted accounting principles in effect from time to time in the United States, applied on a consistent basis, subject to the provisions of Section 1.02; provided that any reference to the application of GAAP in Sections 3.13(b), 3.20,

5.03, 5.07 and 6.02(e) to a Foreign Subsidiary (and not as a consolidated Subsidiary of the Borrower) shall mean generally accepted accounting principles in effect from time to time in the jurisdiction of organization of such Foreign Subsidiary.

“Gaming Authority” means, in any jurisdiction in which the Borrower or any of its subsidiaries manages or conducts any casino, gaming business or activities, the applicable gaming board, commission, or other governmental gaming regulatory body or agency which (a) has, or may at any time after the Closing Date have, jurisdiction over the gaming activities at the Property or any successor to such authority or (b) is, or may at any time after the Closing Date be, responsible for interpreting, administering and enforcing the Gaming Laws.

“Gaming Laws” means all applicable constitutions, treaties, laws, rates, regulations and orders and statutes pursuant to which any Gaming Authority possesses regulatory, licensing or permit authority over gaming, gambling or casino activities and all rules, rulings, orders, ordinances, regulations of any Gaming Authority applicable to the gambling, casino, gaming businesses or activities of the Borrower or any of its subsidiaries in any jurisdiction, as in effect from time to time, including the policies, interpretations and administration thereof by the Gaming Authorities.

“Governmental Authority” shall mean any federal, state, local or foreign court or governmental agency, authority, instrumentality or regulatory or legislative body.

“Guarantee” of or by any person (the “guarantor”) shall mean (a) any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other monetary obligation payable or performable by another person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or (iv) entered into for the purpose of assuring in any other manner the holders of such Indebtedness or other obligation of the payment thereof or to protect such holders against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of the guarantor securing any Indebtedness (or any existing right, contingent or otherwise, of the holder of Indebtedness to be secured by such a Lien) of any other person, whether or not such Indebtedness or other obligation is assumed by the guarantor; provided, however, the term “Guarantee” shall not include endorsements for deposit or collection in the ordinary course of business or customary and reasonable indemnity obligations in effect on the Closing Date or entered into in connection with any acquisition or disposition of assets permitted by this Agreement (other than such obligations with respect to Indebtedness). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the Indebtedness in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming such person is required to perform thereunder) as determined by such person in good faith.

“guarantor” shall have the meaning assigned to such term in the definition of the term “Guarantee.”

“Guaranty and Pledge Agreement” shall mean the Guaranty and Pledge Agreement, as amended, supplemented or otherwise modified from time to time, in the form of Exhibit G, among Holdings and the Collateral Agent.

“Hazardous Materials” shall mean all pollutants, contaminants, wastes, chemicals, materials, substances and constituents, including, without limitation, explosive or radioactive substances or petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls or radon gas, of any nature subject to regulation or which can give rise to liability under any Environmental Law.

“Holdings” shall have the meaning assigned to such term in the introductory paragraph of this Agreement.

“Honor Date” shall have the meaning assigned to such term in Section 2.05(c)(i).

“Immaterial Subsidiary” shall mean any subsidiary that (a) did not, as of the last day of the fiscal quarter of the Borrower most recently ended, have assets with a value in excess of 1.0% of the Consolidated Total Assets or revenues representing in excess of 1.0% of total revenues of the Borrower and the Subsidiaries on a consolidated basis as of such date and (b) taken together with all Immaterial Subsidiaries as of the last day of the fiscal quarter of the Borrower most recently ended, did not have assets with a value in excess of 5.0% of Consolidated Total Assets or revenues representing in excess of 5.0% of total revenues of the Borrower and the Subsidiaries on a consolidated basis as of such date.

“Increased Amount Date” shall have the meaning assigned to such term in Section 2.21(a).

“Incremental Amount” shall mean, at any time, the excess, if any, of (a) \$1,750,000,000 over (b) the aggregate amount of all Incremental Term Loan Commitments and Incremental Revolving Facility Commitments established prior to such time pursuant to Section 2.21.

“Incremental Assumption Agreement” shall mean an Incremental Assumption Agreement among the Borrower, the Administrative Agent and one or more Incremental Term Lenders and/or Incremental Revolving Facility Lenders entered into pursuant to Section 2.21.

“Incremental Revolving Facility Commitment” shall mean any increased or incremental Revolving Facility Commitment provided pursuant to Section 2.21.

“Incremental Revolving Facility Lender” shall mean a Lender with a Revolving Facility Commitment or an outstanding Revolving Facility Loan as a result of an Incremental Revolving Facility Commitment.

“Incremental Term Borrowing” shall mean a Borrowing comprised of Incremental Term Loans.

“Incremental Term Facility” shall mean the Incremental Term Loan Commitments and the Incremental Term Loans made hereunder.

“Incremental Term Facility Maturity Date” shall mean, with respect to any series or tranche of Incremental Term Loans established pursuant to an Incremental Assumption Agreement, the maturity date for such series or tranche as set forth in such Incremental Assumption Agreement.

“Incremental Term Lender” shall mean a Lender with an Incremental Term Loan Commitment or an outstanding Incremental Term Loan.

“Incremental Term Loan Commitment” shall mean the commitment of any Lender, established pursuant to Section 2.21, to make Incremental Term Loans to the Borrower.

“Incremental Term Loan Installment Date” shall have, with respect to any series or tranche of Incremental Term Loans established pursuant to an Incremental Assumption Agreement, the meaning assigned to such term in Section 2.10(a)(iv).

“Incremental Term Loans” shall mean Term Loans made by one or more Lenders to the Borrower pursuant to Section 2.01(c). Incremental Term Loans may be made in the form of additional Term B-1 Loans, Term B-2 Loans, and Term B-3 Loans or, to the extent permitted by Section 2.21 and provided for in the relevant Incremental Assumption Agreement, Other Term Loans.

“Indebtedness” of any person shall mean, if and to the extent (other than with respect to clause (h) below) the same would constitute indebtedness or a liability in accordance with GAAP, without duplication, (a) all obligations of such person for borrowed money, (b) all obligations of such person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such person issued or assumed as the deferred purchase price of property or services (other than such obligations accrued in the ordinary course), to the extent the same would be required to be shown as a long-term liability on a balance sheet prepared in accordance with GAAP, (d) all Capital Lease Obligations of such person, (e) all net payments that such person would have to make in the event of an early termination, on the date Indebtedness of such person is being determined, in respect of outstanding Swap Agreements, (f) the principal component of all obligations, contingent or otherwise, of such person as an account party in respect of letters of credit, (g) the principal component of all obligations of such person in respect of bankers’ acceptances, (h) all Guarantees by such person of Indebtedness described in clauses (a) to (g) above and (i) the amount of all obligations of such person with respect to the redemption, repayment or other repurchase of any Disqualified Stock (excluding accrued dividends that have not increased the liquidation preference of such Disqualified Stock); provided, that Indebtedness shall not include (A) trade payables, accrued expenses and intercompany liabilities arising in the ordinary course of business, (B) prepaid or deferred revenue arising in the ordinary course of business, (C) purchase price holdbacks arising in the ordinary course of business in respect of a portion of the purchase prices of an asset to satisfy

unperformed obligations of the seller of such asset or (D) earn-out obligations until such obligations become a liability on the balance sheet of such person in accordance with GAAP. The Indebtedness of any person shall include the Indebtedness of any partnership in which such person is a general partner, other than to the extent that the instrument or agreement evidencing such Indebtedness expressly limits the liability of such person in respect thereof. To the extent not otherwise included, Indebtedness shall include the amount of any Receivables Net Investment.

“Indemnified Taxes” shall mean all Taxes other than Excluded Taxes.

“Indemnitee” shall have the meaning assigned to such term in Section 9.05(b).

“Ineligible Institution” shall mean the persons identified in writing to the Arrangers by the Borrower on or prior to the Closing Date, and as may be identified in writing to the Administrative Agent by the Borrower from time to time thereafter, with the consent of the Administrative Agent (not to be unreasonably withheld or delayed), by delivery of a notice thereof to the Administrative Agent setting forth such person or persons (or the person or persons previously identified to the Administrative Agent that are to be no longer considered “Ineligible Institutions”).

“Information” shall have the meaning assigned to such term in Section 3.14(a).

“Information Memorandum” shall mean the Confidential Information Memorandum dated January, 2008, as modified or supplemented prior to the Closing Date.

“Insurance Assignment” shall mean, with respect to each Mortgaged Vessel, an Assignment of Insurances substantially in the form of Exhibit E-4 (with such changes as are reasonably consented to by the Collateral Agent to account for local law matters) made by the applicable Loan Party in favor of the Collateral Agent for the benefit of the Secured Parties, as the same may be amended, supplemented or otherwise modified from time to time.

“Intellectual Property Right” shall have the meaning assigned to such term in Section 3.22.

“Intercreditor Agreement” shall mean the Intercreditor Agreement, dated as of the Closing Date, by and among the Administrative Agent, Citibank, N.A., as agent under the Interim Loan Facility, the Borrower, the Subsidiary Loan Parties and each Additional Contributing Agent (as defined therein) from time to time party thereto, as in effect on the Closing Date and as amended, restated, supplemented or otherwise modified from time to time in accordance with the requirements thereof and of this Agreement.

“Interest Election Request” shall mean a request by the Borrower to convert or continue a Term Borrowing or Revolving Facility Borrowing in accordance with Section 2.07.

“Interest Expense” shall mean, with respect to any person for any period, the sum of (a) gross interest expense of such person for such period on a consolidated basis, including (i) the amortization of debt discounts, (ii) the amortization of all fees (including fees with respect to

Swap Agreements) payable in connection with the incurrence of Indebtedness to the extent included in interest expense and (iii) the portion of any payments or accruals with respect to Capital Lease Obligations allocable to interest expense, (b) capitalized interest of such person, and (c) commissions, discounts, yield and other fees and charges incurred in connection with any Permitted Receivables Financing which are payable to any person other than the Borrower or a Subsidiary Loan Party. For purposes of the foregoing, gross interest expense shall be determined after giving effect to any net payments made or received and costs incurred by the Borrower and the Subsidiaries with respect to Swap Agreements, and interest on a Capital Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by the Borrower to be the rate of interest implicit in such Capital Lease Obligation in accordance with GAAP.

“Interest Payment Date” means, (a) as to any Loan other than an ABR Loan, the last day of each Interest Period applicable to such Loan and the scheduled maturity date of such Loan; provided, however, that if any Interest Period for a Eurocurrency Loan exceeds three months, the respective dates that fall every three months after the beginning of such Interest Period shall also be Interest Payment Dates; and (b) as to any ABR Loan (including a Swingline Loan), the last Business Day of each March, June, September and December and the scheduled maturity date of such Loan.

“Interest Period” means, as to each Eurocurrency Loan, the period commencing on the date such Eurocurrency Loan is disbursed or converted to or continued as a Eurocurrency Loan and ending on the date one, two, three or six months (or nine or twelve months if agreed to by each applicable Lender or such period of shorter than one month as may be consented to by the Administrative Agent) thereafter, as selected by the Borrower; provided that:

(a) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day;

(b) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; and

(c) no Interest Period for any Loan shall extend beyond the maturity date of such Loan.

Interest shall accrue from and including the first day of an Interest Period to but excluding the last day of such Interest Period.

“Interim Facility Loan Documents” shall mean the Loan Documents (as defined in the Interim Loan Agreement).

“Interim Loan Agreement” shall mean that certain Senior Unsecured Interim Loan Agreement, dated as of January 28, 2008, among the Borrower, Citibank, N.A., as administrative agent, and the other parties thereto from time to time, as amended, restated, supplemented or

otherwise modified from time to time in accordance with the requirements thereof and of this Agreement.

“Interim Loan Facility” shall mean the term loan facilities under the Interim Loan Agreement.

“Investment” shall have the meaning assigned to such term in Section 6.04.

“Investor” shall mean each investor arranged by the Sponsors for the purpose of consummating the Transactions.

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

“Issuer Documents” means, with respect to any Letter of Credit, the Letter of Credit Application, and any other document, agreement and instrument entered into by the L/C Issuer and the Borrower (or any Subsidiary or any Real Estate Revolver Subsidiary) or in favor of the L/C Issuer and relating to such Letter of Credit.

“Junior Financing” shall have the meaning assigned to such term in Section 6.09(b).

“L/C Advance” means, with respect to each Lender, such Lender’s funding of its participation in any L/C Borrowing in accordance with its Revolving Facility Percentage. All L/C Advances shall be denominated in Dollars.

“L/C Borrowing” means an extension of credit resulting from a drawing under any Letter of Credit which has not been reimbursed on the date when made or refinanced as an ABR Revolving Loan. All L/C Borrowings shall be denominated in Dollars.

“L/C Credit Extension” means, with respect to any Letter of Credit, the issuance thereof or extension of the expiry date thereof, or the increase of the amount thereof.

“L/C Issuer” shall mean Bank of America and each other L/C Issuer designated pursuant to Section 2.05(k), in each case in its capacity as an issuer of Letters of Credit hereunder, and its successors in such capacity as provided in Section 8.06; provided that, in the case of any Existing Letter of Credit, the L/C Issuer with respect thereto shall be as is indicated on Schedule 1.01C. An L/C Issuer may, in its discretion, arrange for one or more Letters of Credit to be issued by Affiliates of such L/C Issuer, in which case the term “L/C Issuer” shall include any such Affiliate with respect to Letters of Credit issued by such Affiliate. In the event that there is more than one L/C Issuer at any time, references herein and in the other Loan Documents to the L/C Issuer shall be deemed to refer to the L/C Issuer in respect of the applicable Letter of Credit or to all L/C Issuers, as the context requires.

“L/C Issuer Fees” shall have the meaning assigned to such term in Section 2.12(b).

“L/C Obligations” means, as at any date of determination, the aggregate amount available to be drawn under all outstanding Letters of Credit plus the aggregate of all Unreimbursed Amounts, including all L/C Borrowings. For purposes of computing the amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.08. For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, such Letter of Credit shall be deemed to be “outstanding” in the amount so remaining available to be drawn.

“L/C Participation Fee” shall have the meaning assigned such term in Section 2.12(b).

“Lender” shall mean each financial institution listed on Schedule 2.01 (other than any such person that has ceased to be a party hereto pursuant to an Assignment and Acceptance in accordance with Section 9.04), as well as any person that becomes a “Lender” hereunder pursuant to Section 9.04 or Section 2.21.

“Lender Default” shall mean (i) the refusal (which has not been retracted) of a Lender to make available its portion of any Borrowing, to acquire participations in a Swingline Loan pursuant to Section 2.04(c) or to fund its portion of any unreimbursed payment under Section 2.05(c), or (ii) a Lender having notified in writing the Borrower and/or the Administrative Agent that it does not intend to comply with its obligations under Section 2.04, 2.05 or 2.06.

“Lending Office” shall mean, as to any Lender, the applicable branch, office or Affiliate of such Lender designated by such Lender to make Loans.

“Letter of Credit” means any letter of credit issued hereunder and shall include the Existing Letters of Credit. A Letter of Credit may be a commercial letter of credit or a standby letter of credit. Letters of Credit may be issued in Dollars or in an Alternative Currency.

“Letter of Credit Application” means an application and agreement for the issuance or amendment of a Letter of Credit in the form from time to time in use by the L/C Issuer.

“Letter of Credit Commitment” shall mean, with respect to each L/C Issuer, the commitment of such L/C Issuer to issue Letters of Credit pursuant to Section 2.05.

“Letter of Credit Expiration Date” means the day that is five days prior to the Revolving Facility Maturity Date then in effect (or, if such day is not a Business Day, the next preceding Business Day).

“Letter of Credit Sublimit” means an amount equal to \$400,000,000. The Letter of Credit Sublimit is part of, and not in addition to, the Revolving Facility Commitments.

“License Revocation” means the revocation, failure to renew or suspension of, or the appointment of a receiver, supervisor, conservator or similar official with respect to, any

casino, gambling or gaming license issued by any Gaming Authority covering any casino or gaming facility of the Borrower or any of its Subsidiaries.

“Lien” shall mean, with respect to any asset, (a) any mortgage, preferred mortgage, deed of trust, lien, notice of claim of lien, hypothecation, pledge, charge, security interest or similar encumbrance in or on such asset and (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset; provided that in no event shall an operating lease or an agreement to sell be deemed to constitute a Lien.

“Liquor Authorities” means, in any jurisdiction in which the Borrower or any of its Subsidiaries sells and distributes liquor, the applicable alcoholic beverage commission or other Governmental Authority responsible for interpreting, administering and enforcing the Liquor Laws.

“Liquor Laws” means the laws, rules, regulations and orders applicable to or involving the sale and distribution of liquor by the Borrower or any of its Subsidiaries in any jurisdiction, as in effect from time to time, including the policies, interpretations and administration thereof by the applicable Liquor Authorities.

“Loan Documents” shall mean this Agreement, the Letters of Credit, each Issuer Document, the Security Documents and any Note issued under Section 2.09(e), and solely for the purposes of Section 7.01 hereof, the Fee Letter.

“Loan Parties” shall mean Holdings (prior to a Borrower Qualified IPO), the Borrower and the Subsidiary Loan Parties.

“Loans” shall mean the Term B Loans, the Incremental Term Loans (if any), the Revolving Facility Loans and the Swingline Loans.

“Local Time” shall mean Las Vegas, Nevada local time (daylight or standard, as applicable).

“Majority Lenders” of any Facility shall mean, at any time, Lenders under such Facility having Loans and unused Commitments representing more than 50% of the sum of all Loans outstanding under such Facility and unused Commitments under such Facility at such time.

“Management Group” means the group consisting of the directors, executive officers and other management personnel of Holdings, the Borrower and their Subsidiaries, as the case may be, on the Closing Date together with (x) any new directors whose election by such boards of directors or whose nomination for election by the shareholders of the Borrower or Holdings, as the case may be, was approved by a vote of a majority of the directors of the Borrower or Holdings, as the case may be, then still in office who were either directors on the Closing Date or whose election or nomination was previously so approved and (y) executive officers and other management personnel of the Borrower, Holdings and their Subsidiaries, as the case may be, hired at a time when the directors on the Closing Date together with the

directors so approved constituted a majority of the directors of the Borrower or Holdings, as the case may be.

“Management Termination Fee” shall have the meaning specified in Section 6.07(b)(xiv).

“Mandatory Cost” means, with respect to any period, the percentage rate per annum determined in accordance with Schedule 1.01I.

“Margin Stock” shall have the meaning assigned to such term in Regulation U.

“Material Adverse Effect” shall mean a material adverse effect on the business, property, operations or condition of the Borrower and its Subsidiaries, taken as a whole, or the validity and enforceability of any of the material Loan Documents or the rights and remedies of the Administrative Agent and the Lenders thereunder.

“Material Disruption” shall have the meaning assigned to such term in the definition of “Qualifying Act of Terrorism”.

“Material Indebtedness” shall mean Indebtedness (other than Loans and Letters of Credit) of any one or more of the Borrower or any Subsidiary in an aggregate principal amount exceeding \$150 million.

“Material Subsidiary” shall mean any Subsidiary other than Immaterial Subsidiaries.

“Maximum Rate” shall have the meaning assigned to such term in Section 9.09.

“Merger” shall have the meaning assigned to such term in the first recital hereto.

“Merger Agreement” shall have the meaning assigned to such term in the first recital hereto.

“Merger Documents” shall mean the collective reference to the Merger Agreement, all material exhibits and schedules thereto and all agreements expressly contemplated thereby.

“Merger Inc.” shall have the meaning assigned to such term in the introductory paragraph of this Agreement.

“Moody’s” shall mean Moody’s Investors Service, Inc.

“Mortgaged Properties” shall mean the Owned Real Properties owned by the Borrower or any Subsidiary Loan Party that are set forth on Schedule 1.01B and each additional Owned Real Property encumbered by a Mortgage or Additional Mortgage pursuant to Sections 5.10(c)(i), 5.10(d) or Section 5.11.

“Mortgaged Vessel” shall mean (a) each Documented Vessel listed on Schedule 1.01J and (b) each additional Documented Vessel or Replacement Vessel, if any, encumbered by a Ship Mortgage pursuant to Sections 5.10(c)(ii) or 5.10(d).

“Mortgages” shall mean, collectively, the mortgages, trust deeds, deeds of trust, deeds to secure debt, assignments of leases and rents, and other security documents delivered with respect to Mortgaged Properties, substantially, in the case of mortgages, in the form of Exhibit E-1 (with such changes as are reasonably consented to by the Collateral Agent to account for local law matters), as amended, supplemented or otherwise modified from time to time.

“Multiemployer Plan” shall mean a multiemployer plan as defined in Section 4001(a)(3) of ERISA to which the Borrower or any Subsidiary or any ERISA Affiliate (other than one considered an ERISA Affiliate only pursuant to subsection (m) or (o) of Code Section 414) is making or accruing an obligation to make contributions, or has within any of the preceding six plan years made or accrued an obligation to make contributions.

“Net Income” shall mean, with respect to any person, the net income (loss) of such person, determined in accordance with GAAP and before any reduction in respect of preferred stock dividends.

“Net Proceeds” shall mean:

(a) 100% of the cash proceeds actually received by the Borrower or any Subsidiary (including any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or purchase price adjustment receivable or otherwise and including casualty insurance settlements and condemnation awards, but only as and when received) from any Asset Sale (other than those pursuant to Section 6.05(a), (b), (c), (d) (except as contemplated by clause (b)(ii) of the proviso to Section 6.03), (e), (f), (h), (i), (j), (k), (n), (o) or (p)), net of (i) attorneys’ fees, accountants’ fees, investment banking fees, survey costs, title insurance premiums, and related search and recording charges, transfer taxes, deed or mortgage recording taxes, required debt payments and required payments of other obligations relating to the applicable asset to the extent such debt or obligations are secured by a Lien permitted hereunder (other than pursuant to the Loan Documents) on such asset, other customary expenses and brokerage, consultant and other customary fees actually incurred in connection therewith, (ii) Taxes paid or payable as a result thereof, and (iii) the amount of any reasonable reserve established in accordance with GAAP against any adjustment to the sale price or any liabilities (other than any taxes deducted pursuant to clause (i) above) (x) related to any of the applicable assets and (y) retained by the Borrower or any of the Subsidiaries including, without limitation, pension and other post-employment benefit liabilities and liabilities related to environmental matters or against any indemnification obligations (however, the amount of any subsequent reduction of such reserve (other than in connection with a payment in respect of any such liability) shall be deemed to be cash proceeds of such Asset Sale occurring on the date of such reduction); provided, that, if the Borrower shall deliver a certificate of a Responsible Officer of the Borrower to the Administrative Agent promptly following receipt of any such proceeds setting forth the Borrower’s intention to use any portion of such proceeds, to acquire, maintain, develop,

construct, improve, upgrade or repair assets useful in the business of the Borrower and the Subsidiaries or to make investments in Permitted Business Acquisitions, in each case within 15 months of such receipt, such portion of such proceeds shall not constitute Net Proceeds except to the extent not, within 15 months of such receipt, so used or contractually committed to be so used (it being understood that if any portion of such proceeds are not so used within such 15-month period but within such 15-month period are contractually committed to be used, then upon the termination of such contract, such remaining portion if not so used by such time shall constitute Net Proceeds as of the date of such termination or expiry without giving effect to this proviso); provided, further, that (x) no net cash proceeds calculated in accordance with the foregoing realized in any fiscal year shall constitute Net Proceeds in such fiscal year until the aggregate amount of all such net cash proceeds in such fiscal year shall exceed \$50.0 million (and thereafter only net cash proceeds in excess of such amount shall constitute Net Proceeds) and (y) in any event, no net cash proceeds calculated in accordance with the foregoing realized in a single transaction or series of related transactions shall constitute Net Proceeds unless such net cash proceeds shall exceed \$20.0 million; and

(b) 100% of the cash proceeds from the incurrence, issuance or sale by the Borrower or any Subsidiary Loan Party of any Indebtedness (other than Excluded Indebtedness), net of all taxes and fees (including investment banking fees), commissions, costs and other expenses, in each case incurred in connection with such issuance or sale.

“New Project” means each capital project which is either a new project or a new feature at an existing project owned by the Borrower or its Subsidiaries which receives a certificate of completion or occupancy and all relevant licenses, and in fact commences operations.

“New York Courts” shall have the meaning assigned to such term in Section 9.15.

“Non-Consenting Lender” shall have the meaning assigned to such term in Section 2.19(c).

“Non-Extension Notice Date” shall have the meaning assigned to such term in Section 2.05(b).

“Non-Reinstatement Deadline” shall have the meaning assigned to such term in Section 2.05(b).

“Note” shall have the meaning assigned to such term in Section 2.09(e).

“NVDC” shall mean the United States Coast Guard’s National Vessel Documentation Center in Falling Waters, West Virginia.

“Obligations” shall mean the “Loan Document Obligations” as defined in the Collateral Agreement, including any interest accruing after commencement of any bankruptcy or insolvency proceeding with respect to any Loan Party whether or not allowed in such proceeding.

“Operations Management Agreement” means each of the real estate management agreements and any other operating management agreement entered into by the Borrower or any of its Subsidiaries with the Company or with any other direct or indirect subsidiary of the Company, including, without limitation, any Real Estate Subsidiary and any and all modifications thereto, substitutions therefore and replacements thereof so long as such modifications, substitutions and replacements are not materially less favorable, taken as a whole, to the Company and the Subsidiaries than the terms of such agreements as in effect on the Closing Date.

“Other Taxes” shall mean any and all present or future stamp or documentary taxes or any other excise, transfer, sales, property, intangible, mortgage recording, or similar taxes, charges or levies arising from any payment made hereunder or from the execution, delivery or enforcement of, or otherwise with respect to, the Loan Documents, and any and all interest and penalties related thereto (but not Excluded Taxes).

“Other Term Loans” shall have the meaning assigned to such term in Section 2.21(a).

“Outstanding Amount” means (i) with respect to any Loans on any date, the Dollar Equivalent amount of the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of such Loans occurring on such date; (ii) with respect to Swingline Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of such Swingline Loans occurring on such date; and (iii) with respect to any L/C Obligations on any date, the Dollar Equivalent amount of the aggregate outstanding amount of such L/C Obligations on such date after giving effect to any L/C Credit Extension occurring on such date and any other changes in the aggregate amount of the L/C Obligations as of such date, including as a result of any reimbursements by the Borrower of Unreimbursed Amounts.

“Overdraft Line” shall have the meaning assigned to such term in Section 6.01(w).

“Overnight Rate” means, for any day, (a) with respect to any amount denominated in Dollars, the greater of (i) the Federal Funds Rate and (ii) an overnight rate determined by the Administrative Agent, the L/C Issuer, or the Swingline Lender, as the case may be, in accordance with banking industry rules on interbank compensation, and (b) with respect to any amount denominated in an Alternative Currency, the rate of interest per annum at which overnight deposits in the applicable Alternative Currency, in an amount approximately equal to the amount with respect to which such rate is being determined, would be offered for such day by a branch or Affiliate of Bank of America in the applicable offshore interbank market for such currency to major banks in such interbank market.

“Owned Real Property” means each parcel of Real Property that is owned in fee by the Borrower or any Subsidiary Loan Party that has an individual fair market value (as determined by the Borrower in good faith) of at least \$15.0 million (provided that such \$15.0 million threshold shall not be applicable in the case of Real Property that is integrally related to the ownership or operation of a Mortgaged Property or otherwise necessary for such

Mortgaged Property to be in compliance with all requirements of law applicable to such Mortgaged Property); provided that, with respect to any Real Property that is partially owned in fee and partially leased by the Borrower or any Subsidiary Loan Party, Owned Real Property will include only that portion of such Real Property that is owned in fee and only if (i) such portion that is owned in fee has an individual fair market value (as determined by the Borrower in good faith) of at least \$15.0 million (provided that such \$15.0 million threshold shall not be applicable in the case of Real Property that is integrally related to the ownership or operation of a Mortgaged Property or otherwise necessary for such Mortgaged Property to be in compliance with all requirements of law applicable to such Mortgaged Property) and (ii) a mortgage in favor of the Collateral Agent (for the benefit of the Secured Parties) is permitted on such portion of Real Property owned in fee by applicable law and by the terms of any lease, or other applicable document governing any leased portion of such Real Property.

“Parent” shall have the meaning assigned to such term in the first recital hereto.

“Parent Entity” means any direct or indirect parent of Holdings.

“Participant” shall have the meaning assigned to such term in Section 9.04(c)(i).

“Participant Register” shall have the meaning assigned to such term in Section 9.04(c)(ii).

“Participating Member State” means each state so described in any EMU Legislation.

“PBGC” shall mean the Pension Benefit Guaranty Corporation referred to and defined in ERISA.

“Pension Act” shall mean the Pension Protection Act of 2006, as amended.

“Perfection Certificate” shall mean the Perfection Certificate with respect to the Borrower and the other Loan Parties in a form reasonably satisfactory to the Administrative Agent.

“Permitted Business Acquisition” shall mean any acquisition of all or substantially all the assets of, or all or substantially all the Equity Interests (other than directors’ qualifying shares) in, or merger, consolidation or amalgamation with, a person or division or line of business of a person (or any subsequent investment made in a person, division or line of business previously acquired in a Permitted Business Acquisition), if immediately after giving effect thereto: (i) no Event of Default shall have occurred and be continuing or would result therefrom; (ii) all transactions related thereto shall be consummated in accordance with applicable laws; (iii) with respect to any such acquisition or investment with a fair market value (as determined in good faith by the Borrower) in excess of \$100 million, after giving effect to such acquisition or investment and any related transactions, the Borrower shall be in Pro Forma Compliance; (iv) any acquired or newly formed Subsidiary shall not be liable for any Indebtedness except for Indebtedness permitted by Section 6.01; (v) to the extent required by Section 5.10, any person acquired in such acquisition, if acquired by the Borrower or a

Subsidiary Loan Party, shall be merged into the Borrower or a Subsidiary Loan Party or become, following the consummation of such acquisition in accordance with Section 5.10, a Subsidiary Loan Party; (vi) the aggregate amount of such acquisitions and investments in assets that are not owned by the Borrower or Subsidiary Loan Parties or in Equity Interests in persons that are not Subsidiary Loan Parties or do not become Subsidiary Loan Parties following the consummation of such acquisition shall not exceed the greater of (x) 2.0% of Consolidated Total Assets as of the end of the fiscal quarter immediately prior to the date of such acquisition or investment for which financial statements have been delivered pursuant to Section 5.04 and (y) \$500 million; and (vii) if the date of the consummation of such acquisition shall occur during a Covenant Suspension Period, the sum of (1) the aggregate Available Unused Commitments under the Revolving Facility plus (2) all Unrestricted Cash and Permitted Investments of the Borrower and its Subsidiaries on such date shall not be less than \$800 million; provided that this clause (vii) shall not apply to any acquisition consummated pursuant to binding commitments in existence at or prior to the date on which the relevant Covenant Suspension Period began.

“Permitted Cure Securities” shall mean any equity securities of the Borrower, Holdings or a Parent Entity issued pursuant to the Cure Right other than Disqualified Stock.

“Permitted Holder” shall mean each of (i) the Sponsors, (ii) the Management Group, (iii) any Person that has no material assets other than the capital stock of the Borrower and that, directly or indirectly, holds or acquires beneficial ownership of 100% on a fully diluted basis of the voting Equity Interests of the Borrower, and of which no other Person or “group” (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act as in effect on the Closing Date), other than any of the other Permitted Holders specified in clauses (i) and (ii), beneficially owns more than 50% (or, following a Qualified IPO, the greater of 35% and the percentage beneficially owned by the Permitted Holders specified in clauses (i) and (ii)) on a fully diluted basis of the voting Equity Interests thereof, and (iv) any “group” (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act as in effect on the Closing Date) the members of which include any of the other Permitted Holders specified in clauses (i) and (ii) and that, directly or indirectly, hold or acquire beneficial ownership of the voting Equity Interests of the Borrower (a “Permitted Holder Group”), so long as (1) each member of the Permitted Holder Group has voting rights proportional to the percentage of ownership interests held or acquired by such member and (2) no Person or other “group” (other than the other Permitted Holders specified in clauses (i) and (ii)) beneficially owns more than 50% (or, following a Qualified IPO, the greater of 35% and the percentage beneficially owned by the Permitted Holders specified in clauses (i) and (ii)) on a fully diluted basis of the voting Equity Interests held by the Permitted Holder Group.

“Permitted Investments” shall mean:

(a) direct obligations of the United States of America or any member of the European Union or any agency thereof or obligations guaranteed by the United States of America or any member of the European Union or any agency thereof, in each case with maturities not exceeding two years;

(b) time deposit accounts, certificates of deposit and money market deposits maturing within 180 days of the date of acquisition thereof issued by a bank or trust company that is organized under the laws of the United States of America, any state thereof or any foreign country recognized by the United States of America having capital, surplus and undivided profits in excess of \$250 million and whose long-term debt, or whose parent holding company's long-term debt, is rated A (or such similar equivalent rating or higher by at least one nationally recognized statistical rating organization (as defined in Rule 436 under the Securities Act));

(c) repurchase obligations with a term of not more than 180 days for underlying securities of the types described in clause (a) above entered into with a bank meeting the qualifications described in clause (b) above;

(d) commercial paper, maturing not more than one year after the date of acquisition, issued by a corporation (other than an Affiliate of the Borrower) organized and in existence under the laws of the United States of America or any foreign country recognized by the United States of America with a rating at the time as of which any investment therein is made of P-1 (or higher) according to Moody's, or A-1 (or higher) according to S&P (or such similar equivalent rating or higher by at least one nationally recognized statistical rating organization (as defined in Rule 436 under the Securities Act));

(e) securities with maturities of two years or less from the date of acquisition issued or fully guaranteed by any State, commonwealth or territory of the United States of America, or by any political subdivision or taxing authority thereof, and rated at least A by S&P or A by Moody's (or such similar equivalent rating or higher by at least one nationally recognized statistical rating organization (as defined in Rule 436 under the Securities Act));

(f) shares of mutual funds whose investment guidelines restrict 95% of such funds' investments to those satisfying the provisions of clauses (a) through (e) above;

(g) money market funds that (i) comply with the criteria set forth in Rule 2a-7 under the Investment Company Act of 1940, (ii) are rated AAA by S&P and Aaa by Moody's and (iii) have portfolio assets of at least \$5,000.0 million; and

(h) time deposit accounts, certificates of deposit and money market deposits in an aggregate face amount not in excess of 0.5% of the total assets of the Borrower and the Subsidiaries, on a consolidated basis, as of the end of the Borrower's most recently completed fiscal year; and

(i) instruments equivalent to those referred to in clauses (a) through (h) above denominated in any foreign currency comparable in credit quality and tenor to those referred to above and commonly used by corporations for cash management purposes in any jurisdiction outside the United States to the extent reasonably required in connection with any business conducted by any Subsidiary organized in such jurisdiction.

“Permitted Liens” shall have the meaning assigned to such term in Section 6.02.

“Permitted Receivables Documents” shall mean all documents and agreements evidencing, relating to or otherwise governing a Permitted Receivables Financing.

“Permitted Receivables Financing” shall mean one or more transactions pursuant to which (i) Receivables Assets or interests therein are sold to or financed by one or more Special Purpose Receivables Subsidiaries, and (ii) such Special Purpose Receivables Subsidiaries finance their acquisition of such Receivables Assets or interests therein, or the financing thereof, by selling or borrowing against Receivables Assets; provided, that (A) recourse to the Borrower or any Subsidiary (other than the Special Purpose Receivables Subsidiaries) in connection with such transactions shall be limited to the extent customary for similar transactions in the applicable jurisdictions (including, to the extent applicable, in a manner consistent with the delivery of a “true sale”/“absolute transfer” opinion with respect to any transfer by the Borrower or any Subsidiary (other than a Special Purpose Receivables Subsidiary) and (B) the aggregate Receivables Net Investment shall not exceed \$500 million at any time outstanding.

“Permitted Refinancing Indebtedness” shall mean any Indebtedness issued in exchange for, or the net proceeds of which are used to extend, refinance, renew, replace, defease or refund (collectively, to “Refinance”), the Indebtedness being Refinanced (or previous refinancings thereof constituting Permitted Refinancing Indebtedness) (and, in the case of revolving Indebtedness being Refinanced, to effect a corresponding reduction in the commitments with respect to such revolving Indebtedness being Refinanced); provided, that:

(1) with respect to any Indebtedness being Refinanced other than the Indebtedness covered by clause (2) below: (a) the principal amount (or accreted value, if applicable) of such Permitted Refinancing Indebtedness does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness so Refinanced (plus unpaid accrued interest and premium (including tender premiums) thereon and underwriting discounts, defeasance costs, fees, commissions and expenses), (b) except with respect to Section 6.01(i), 6.01(y) and 6.01(z), the average life to maturity of such Permitted Refinancing Indebtedness is greater than or equal to the shorter of (i) the weighted average life to maturity of the Indebtedness being Refinanced and (ii) the weighted average life to maturity that would result if all payments of principal on the Indebtedness being Refinanced that were due on or after the date that is one year following the Term B Facility Maturity Date were instead due on the date that is one year following the Term B Facility Maturity Date, (c) if the Indebtedness being Refinanced is subordinated in right of payment to the Obligations under this Agreement, such Permitted Refinancing Indebtedness shall be subordinated in right of payment to such Obligations on terms at least as favorable to the Lenders as those contained in the documentation governing the Indebtedness being Refinanced and (d) no Permitted Refinancing Indebtedness pursuant to this subclause (1) shall have greater guarantees or security, than the Indebtedness being Refinanced; provided further, that with respect to a Refinancing of (x) Indebtedness permitted hereunder that is subordinated, such Permitted Refinancing Indebtedness shall (i) be subordinated to the guarantee by Holdings of the Facilities, and (ii) be otherwise on terms not materially less favorable to the Lenders than those contained in the documentation governing the Indebtedness being Refinanced and (y) any

Indebtedness being Refinanced that is subject to the Intercreditor Agreement (or another intercreditor agreement required by this Agreement), (i) such Permitted Refinancing Indebtedness shall be subject to the Intercreditor Agreement or another intercreditor agreement not materially less favorable to the Lenders than the Intercreditor Agreement and (ii) such Permitted Refinancing Indebtedness shall be otherwise on terms not materially less favorable to the Lenders than those contained in the documentation governing the Indebtedness being Refinanced; and

(2) with respect to any Retained Notes with a stated maturity on or before the Term Facility Maturity Date: (a) the principal amount (or accreted value, if applicable) of such Permitted Refinancing Indebtedness does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness so Refinanced (plus unpaid accrued interest and premium (including tender premiums) thereon and underwriting discounts, defeasance costs, fees, commissions and expenses) and (b) such Permitted Refinancing Indebtedness may have greater guarantees and/or security than the Indebtedness being Refinanced (provided that (i) any Liens securing such Permitted Refinancing Indebtedness shall be permitted pursuant to Section 6.02(u) or 6.02(ee) and (ii) any Guarantee by a Subsidiary Loan Party of such Permitted Refinancing Indebtedness shall be subject to the Intercreditor Agreement or another intercreditor agreement not materially less favorable to the Lenders than the Intercreditor Agreement).

“Permitted Vessel Liens” shall mean (i) seaman’s wage liens (including those of masters) for wages, maintenance, and cure, salvage and general average liens, stevedore’s wages, (ii) liens for damages arising from maritime torts (including personal injury and death) which are unclaimed or covered by insurance (subject to applicable deductibles), (iii) liens for general average and salvage, (iv) liens for necessities or otherwise arising by operation of law in the ordinary course of business in operating, maintaining or repairing a Vessel, (v) statutory liens for current Taxes or other governmental charges and (vi) mechanics’, carriers’, workers’, repairers’, and similar statutory or common law liens arising or incurred in the ordinary course of business, in each case in the preceding clauses (i) through (vi), for amounts which are not overdue by more than 30 days or that are being contested in good faith by appropriate proceedings and in respect of which, if applicable, the Borrower or any Subsidiary shall have set aside on its books reserves in accordance with GAAP.

“person” shall mean any natural person, corporation, business trust, joint venture, association, company, partnership, limited liability company or government, individual or family trusts, or any agency or political subdivision thereof.

“PIK Interest Amount” shall mean (i) the aggregate principal amount of all increases in outstanding principal amount of Senior Unsecured Notes, including any issuances of PIK Notes (as defined in the Senior Unsecured Notes Indenture) in connection with an election by the Borrower to pay interest on the Senior Unsecured Notes in kind, (ii) the aggregate principal amount of all increases in outstanding principal amount of Senior Notes, including any issuances of PIK Notes (as defined in the Senior Notes Indenture) in connection with an election by the Borrower to pay interest on the Senior Notes in kind and (iii) the aggregate principal amount of all increases in outstanding principal amount of loans under the Interim Loan Facility

in connection with an election by the Borrower to pay interest under the Interim Loan Facility in kind.

“Plan” shall mean any employee pension benefit plan (other than a Multiemployer Plan) that is, (i) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and (ii) sponsored or maintained (at the time of determination or at any time within the five years prior thereto) by the Borrower or any ERISA Affiliate, and (iii) in respect of which the Borrower, any Subsidiary or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an “employer” as defined in Section 3(5) of ERISA.

“Platform” shall have the meaning assigned to such term in Section 9.17(a).

“Pledged Collateral” shall have the meaning assigned to such term in the Collateral Agreement.

“Post-Closing CMBS Transaction” means: (i) the transfer to the Borrower or a Subsidiary Loan Party or a person that becomes in connection with such transaction a Subsidiary Loan Party from the Company or its subsidiaries (including the Real Estate Subsidiaries) of all Real Estate Loan Property constituting (1) Harrah’s Lake Tahoe, (2) Harvey’s Lake Tahoe, (3) Bill’s Lake Tahoe, (4) Showboat Atlantic City and (5) O’Sheas Las Vegas (subject to the right of the Real Estate Subsidiaries to freely release O’Sheas pursuant to the terms of the Real Estate Facility), as well as the Equity Interests of any subsidiary the assets of which are comprised of such Real Estate Loan Property, (ii) immediately following the transfer described in clause (i), disposition by the Borrower and its subsidiaries to the Company or its subsidiaries (including the Real Estate Subsidiaries) of all Real Estate Loan Property constituting (1) Paris Las Vegas (which does not include, for the avoidance of doubt, Bally’s Las Vegas) and (2) Harrah’s Laughlin, as well as the Equity Interests of any subsidiary the assets of which are comprised of such Real Estate Loan Property and (iii) any transactions undertaken in good faith by the Borrower and its Subsidiaries in connection with the implementation of the foregoing.

“Pre-Opening Expenses” means, with respect to any fiscal period, the amount of expenses (other than interest expense) incurred with respect to capital projects which are classified as “pre-opening expenses” or “project opening costs” (or any similar or equivalent caption) on the applicable financial statements of the Borrower and the Subsidiaries for such period, prepared in accordance with GAAP.

“Pricing Grid” shall mean, with respect to the Loans, the table set forth below:

Pricing Grid for Revolving Loans

<u>Senior Secured Leverage Ratio</u>	<u>Applicable Margin for ABR Loans (other than Swingline Loans)</u>	<u>Applicable Margin for Swingline Loans</u>	<u>Applicable Margin for Eurocurrency Loans</u>	<u>Applicable Commitment Fee</u>
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Greater than 2.50 to 1.0	2.00%	1.50%	3.00%	0.50%
Less than or equal to 2.50 to 1.0 but greater than or equal to 2.25 to 1.0	1.75%	1.25%	2.75%	0.50%
Less than 2.25 to 1.0	1.50%	1.125%	2.50%	0.375%

Pricing Grid for Term B-1 Loans, Term B-2 Loans and Term B-3 Loans

<u>Senior Secured Leverage Ratio</u>	<u>Applicable Margin for ABR Loans</u>	<u>Applicable Margin for Eurocurrency Loans</u>
Greater than 2.50 to 1.0	2.00%	3.00%
Less than or equal to 2.50 to 1.0	1.75%	2.75%

For the purposes of the Pricing Grid, changes in the Applicable Margin and Applicable Commitment Fee resulting from changes in the Senior Secured Leverage Ratio shall become effective on the date (the "Adjustment Date") of delivery of the relevant financial statements pursuant to Section 5.04 for the first full fiscal quarter of the Borrower after the Closing Date, and shall remain in effect until the next change to be effected pursuant to this paragraph. If any financial statements referred to above are not delivered within the time periods specified in Section 5.04, then, at the option of the Administrative Agent or the Required Lenders, until the date that is three Business Days after the date on which such financial statements are delivered, the pricing level that is one pricing level higher than the pricing level theretofore in effect shall apply as of the first Business Day after the date on which such financial statements were to have been delivered but were not delivered. Each determination of the Senior Secured Leverage Ratio pursuant to the Pricing Grid shall be made in a manner consistent with the determination thereof pursuant to Section 6.10.

Notwithstanding anything to the contrary contained above in this definition or elsewhere in this Agreement, if it is subsequently determined that the Senior Secured Leverage Ratio set forth in any compliance certificate delivered to the Administrative Agent pursuant to Section 5.04(c) is inaccurate as a result of any fraud, intentional misrepresentation or willful misconduct of the Borrower or any officer thereof and the result is that the Lenders received interest or fees for any period based on an Applicable Margin and the Applicable Commitment Fee that is less than that which would have been applicable had the Senior Secured Leverage

Ratio been accurately determined, then, for all purposes of this Agreement, the “Applicable Margin” and the “Applicable Commitment Fee” for any day occurring within the period covered by such compliance certificate shall retroactively be deemed to be the relevant percentage as based upon the accurately determined Senior Secured Leverage Ratio for such period, and any shortfall in the interest or fees theretofore paid by the Borrower for the relevant period pursuant to this Agreement as a result of the miscalculation of the Senior Secured Leverage Ratio shall be deemed to be (and shall be) due and payable under the relevant provisions of this Agreement, as applicable, at the time the interest or fees for such period were required to be paid pursuant to said Section (and shall remain due and payable until paid in full, together with all amounts owing under Section 2.13, in accordance with the terms of this Agreement).

“primary obligor” shall have the meaning given such term in the definition of the term “Guarantee.”

“Pro Forma Adjusted EBITDA” shall have the meaning assigned to such term in Section 3.05(a).

“Pro Forma Basis” shall mean, as to any person, for any events as described below that occur subsequent to the commencement of a period for which the financial effect of such events is being calculated, and giving effect to the events for which such calculation is being made, such calculation as will give pro forma effect to such events as if such events occurred on the first day of the four consecutive fiscal quarter period ended on or before the occurrence of such event (the “Reference Period”): (i) in making any determination of EBITDA, effect shall be given to any Asset Sale, any acquisition, Investment, capital expenditure, construction, repair, replacement, improvement, development, disposition, merger, amalgamation, consolidation (including the Transactions and the Post-Closing CMBS Transaction) (or any similar transaction or transactions not otherwise permitted under Section 6.04 or 6.05 that require a waiver or consent of the Required Lenders and such waiver or consent has been obtained), any dividend, distribution or other similar payment, any designation of any Subsidiary as an Unrestricted Subsidiary and any Subsidiary Redesignation, and any restructurings of the business of the Borrower or any of its Subsidiaries that the Borrower or any of its Subsidiaries has determined to make and/or made and are expected to have a continuing impact and are factually supportable, which would include cost savings resulting from head count reduction, closure of facilities and similar operational and other cost savings, which adjustments the Borrower determines are reasonable as set forth in a certificate of a Financial Officer of the Borrower (the foregoing, together with any transactions related thereto or in connection therewith, the “relevant transactions”), in each case that occurred during the Reference Period (or, in the case of determinations made pursuant to the definition of the term “Pro Forma Compliance” or pursuant to Sections 6.01, 6.02, 6.03, 6.04 and 6.06, occurring during the Reference Period or thereafter and through and including the date upon which the respective Permitted Business Acquisition or relevant transaction is consummated), (ii) in making any determination on a Pro Forma Basis, (x) all Indebtedness (including Indebtedness issued, incurred or assumed as a result of, or to finance, any relevant transactions and for which the financial effect is being calculated, whether incurred under this Agreement or otherwise, but excluding normal fluctuations in revolving Indebtedness incurred for working capital purposes and amounts outstanding under any Permitted Receivables Financing, in each case not to finance

any acquisition) issued, incurred, assumed or permanently repaid during the Reference Period (or, in the case of determinations made pursuant to the definition of the term “Pro Forma Compliance” or pursuant to Sections 6.01, 6.02, 6.03, 6.04 and 6.06, occurring during the Reference Period or thereafter and through and including the date upon which the respective Permitted Business Acquisition or relevant transaction is consummated) shall be deemed to have been issued, incurred, assumed or permanently repaid at the beginning of such period, (y) Interest Expense of such person attributable to interest on any Indebtedness, for which pro forma effect is being given as provided in preceding clause (x), bearing floating interest rates shall be computed on a pro forma basis as if the rates that would have been in effect during the period for which pro forma effect is being given had been actually in effect during such periods, and (z) with respect to each New Project which commences operations and records not less than one full fiscal quarter’s operations during the Reference Period, the operating results of such New Project shall be annualized on a straight line basis during such period, and (iii) (A) any Subsidiary Redesignation then being designated, effect shall be given to such Subsidiary Redesignation and all other Subsidiary Redesignations after the first day of the relevant Reference Period and on or prior to the date of the respective Subsidiary Redesignation then being designated, collectively, and (B) any designation of a Subsidiary as an Unrestricted Subsidiary, effect shall be given to such designation and all other designations of Subsidiaries as Unrestricted Subsidiaries after the first day of the relevant Reference Period and on or prior to the date of the then applicable designation of a Subsidiary as an Unrestricted Subsidiary, collectively.

“Pro forma” calculations made pursuant to the definition of the term “Pro Forma Basis” shall be determined in good faith by a Responsible Officer of the Borrower and may include, (i) for any fiscal period ending on or prior to the second anniversary of any relevant pro forma event (but not for any fiscal period ending after such second anniversary), adjustments to reflect (1) operating expense reductions and other operating improvements, synergies or cost savings reasonably expected to result from such relevant pro forma event (including, to the extent applicable, the Transactions and the Post-Closing CMBS Transaction) and (2) all adjustments of the type used in connection with the calculation of Adjusted EBITDA as set forth in footnote 3 to the “Summary Pro Forma Consolidated Financial Data” under “Summary” in the Senior Unsecured Notes Offering Memorandum to the extent such adjustments, without duplication, continue to be applicable. The Borrower shall deliver to the Administrative Agent a certificate of a Financial Officer of the Borrower setting forth such demonstrable or additional operating expense reductions and other operating improvements, synergies or cost savings and information and calculations supporting them in reasonable detail.

For purposes of this definition, any amount in a currency other than Dollars will be converted to Dollars based on the average exchange rate for such currency for the most recent twelve month period immediately prior to the date of determination in a manner consistent with that used in calculating EBITDA for the applicable period.

“Pro Forma Compliance” shall mean, at any date of determination, that the Borrower and its Subsidiaries shall be in compliance, on a Pro Forma Basis after giving effect on a Pro Forma Basis to the relevant transactions (including the assumption, the issuance, incurrence and permanent repayment of Indebtedness), with the Financial Performance Covenant recomputed as at the last day of the most recently ended fiscal quarter of the Borrower and its

Subsidiaries for which the financial statements and certificates required pursuant to Section 5.04 have been or were required to have been delivered (provided, that prior to delivery of financial statements for the fiscal quarter ended September 30, 2008 and at all times during a Covenant Suspension Period, such covenant shall be deemed to have applied to the Borrower's most recently completed fiscal quarter).

"Pro Forma Financial Statements" shall have the meaning assigned to such term in Section 3.05(a).

"Project" shall mean (i) any and all buildings, structures, fixtures, construction, development and other improvements of any nature to be constructed, added to, or made on, under or about any Real Property (exclusive of any personal property) with respect to which the cost of such construction, additions or development is at least equal to \$15.0 million and (ii) any planning processes or preparatory steps undertaken to implement or further any such construction, additions or developments contemplated by the foregoing clause (i) of this definition (including, without limitation, (a) the combination of two or more individual land parcels into one parcel, (b) the separation or division of one or more individual land parcels into two or more parcels, (c) the re-zoning of parcels, and (d) demolition work on parcels).

"Project Financing" shall mean (1) any Capital Lease Obligation, mortgage financing, purchase money Indebtedness or other similar Indebtedness incurred to finance the acquisition, lease, construction, repair, replacement, or improvement of any Undeveloped Land or any refinancing of any such Indebtedness and (2) any Sale and Lease-Back Transaction of any Undeveloped Land.

"Project Notice" shall mean a notice delivered by a Responsible Officer of the Borrower pursuant to Section 5.11(a) identifying the applicable Mortgaged Property constituting Undeveloped Land, providing a reasonable description of the applicable Project that the Borrower anticipates in good faith will be undertaken with respect to such Undeveloped Land and identifying the Project Financing to be entered into in connection with the financing of such Project.

"Projections" shall mean the projections of Holdings, the Borrower and the Subsidiaries included in the Information Memorandum and any other projections and any forward-looking statements (including statements with respect to booked business) of such entities furnished to the Lenders or the Administrative Agent by or on behalf of Holdings, the Borrower or any of the Subsidiaries prior to the Closing Date.

"Qualified Equity Interests" means any Equity Interests of Holdings or the Borrower or any Parent Entity other than Disqualified Stock.

"Qualified IPO" shall mean an underwritten public offering of the Equity Interests of the Borrower, Holdings or any direct or indirect parent of Holdings which generates cash proceeds of at least \$1,000.0 million.

"Qualified Non-Recourse Debt" shall mean Indebtedness that (i) is (x) incurred by a Qualified Non-Recourse Subsidiary to finance (whether prior to or within 270 days after)

the acquisition, lease, construction, repair, replacement or improvement of any new property (real or personal, whether through the direct purchase of property or the Equity Interests of any person owning such property and whether in a single acquisition or a series of related acquisitions) or any Undeveloped Land or, to the extent owned by the Borrower or a Subsidiary on the Closing Date, any Real Property located outside the United States or (y) assumed by a Qualified Non-Recourse Subsidiary, (ii) is non-recourse to the Borrower and any Subsidiary (other than a Qualified Non-Recourse Subsidiary or its Subsidiaries) and (iii) is non-recourse to any Subsidiary that is not a Qualified Non-Recourse Subsidiary.

“Qualified Non-Recourse Subsidiary” shall mean (i) a Subsidiary that is not a Subsidiary Loan Party and that is formed or created after the Closing Date in order to finance the acquisition, lease, construction, repair, replacement or improvement of any new property or any Undeveloped Land or, to the extent owned by the Borrower or a Subsidiary on the Closing Date, any Real Property located outside the United States (directly or through one of its Subsidiaries) that secures Qualified Non-Recourse Debt incurred in respect of such property and (ii) any Subsidiary of a Qualified Non-Recourse Subsidiary.

“Qualifying Act of Terrorism” shall mean (a) any Act of Terrorism which occurs on any property of the Company or its subsidiaries or in which the Company or any of its subsidiaries, or any property of any of them, is the target, or (b) any Act of Terrorism the result of which is that passenger deplanements into the McCarran Airport in Las Vegas, Nevada as reported by Clark County Department of Aviation (“Deplanements”) in a given fiscal quarter fall, or if the data is not yet available would reasonably be expected to fall, by 5% or more compared with Deplanements in the corresponding quarter during the prior year (a “Material Disruption”) or, as the case may be, the most recent corresponding quarter in which no Material Disruption occurred or existed.

“Real Estate Assets” means, collectively, all Real Estate Loan Property constituting any of the following: (i) Harrah’s Las Vegas, (ii) Rio Hotel & Casino, Las Vegas, (iii) Flamingo Hilton, Las Vegas, (iv) Harrah’s Lake Tahoe, (v) Harvey’s Lake Tahoe, (vi) Bill’s Lake Tahoe, (vii) Showboat Atlantic City and (viii) Harrah’s Atlantic City, as well as the Equity Interests of any subsidiary the assets of which are comprised of such Real Estate Loan Property.

“Real Estate Facility” means the mortgage financing and mezzanine financing arrangements between the Real Estate Subsidiaries, which are direct or indirect subsidiaries of the Company, and JPMorgan Chase Bank N.A. and its successors and assigns, dated as of the Closing Date, as amended, restated, supplemented, extended, waived, replaced, restructured, repaid, refunded, refinanced or otherwise modified from time to time (including in connection with the Post-Closing CMBS Transaction).

“Real Estate Loan Property” means, collectively, all right, title and interests (including any leasehold, mineral or other estate) in and to any and all parcels of or interests in real property owned, leased or operated by any person, whether by lease, license or other means, together with, in each case, all easements, hereditaments and appurtenances relating thereto, all buildings structures, parking areas and improvements and appurtenant fixtures and equipment,

all general intangibles and contract rights and other property and rights incidental to the ownership, lease or operation thereof.

“Real Estate Revolver Facility Credit Exposure” shall mean, at any time, the sum of (a) the aggregate Outstanding Amount of the Revolving Facility Loans at such time outstanding on account of or for the benefit of the Real Estate Revolver Subsidiaries and (b) the Outstanding Amount of the L/C Obligations at such time with respect to Letters of Credit issued for the account of any Real Estate Revolver Subsidiary.

“Real Estate Revolver Facility Sublimit” means an amount equal to \$250,000,000. The Real Estate Revolver Facility Sublimit is part of, and not in addition to, the Revolving Facility Commitments.

“Real Estate Revolver Subsidiary” means the Company and any subsidiary of the Company (other than the Borrower and its Subsidiaries) including, without limitation, the Real Estate Subsidiaries and their subsidiaries.

“Real Estate Subsidiary” means those subsidiaries of the Company that are party to (prior to, on or after the Closing Date) the Real Estate Facility (and the subsidiaries of the Company that are the operating companies of such subsidiaries) secured by the Real Estate Assets collateralizing such facility on the Closing Date and, subsequent to the Closing Date, any additional Real Estate Loan Property sold, contributed or transferred to such subsidiaries by the Company, the Borrower or any Subsidiary (whether directly or indirectly through the sale, contribution or transfer of the Equity Interests of a Subsidiary the assets of which are comprised of such Real Estate Loan Property) in accordance with Section 6.05 and in connection with the Post-Closing CMBS Transaction.

“Real Property” means, collectively, all right, title and interest (including, without limitation, any leasehold estate) in and to any and all parcels of or interests in real property owned in fee or leased by Borrower or any Subsidiary Loan Party, together with, in each case, all easements, hereditaments and appurtenances relating thereto, and all improvements situated, placed or constructed upon, or fixed to or incorporated into, or which becomes a component part of or which is permanently moored to such real property, and appurtenant fixtures incidental to the ownership or lease thereof.

“Receivables Assets” shall mean accounts receivable (including any bills of exchange) and related assets and property from time to time originated, acquired or otherwise owned by the Borrower or any Subsidiary.

“Receivables Net Investment” shall mean the aggregate cash amount paid by the lenders or purchasers under any Permitted Receivables Financing in connection with their purchase of, or the making of loans secured by, Receivables Assets or interests therein, as the same may be reduced from time to time by collections with respect to such Receivables Assets or otherwise in accordance with the terms of the Permitted Receivables Documents (but excluding any such collections used to make payments of items included in clause (c) of the definition of Interest Expense); provided, however, that if all or any part of such Receivables Net Investment shall have been reduced by application of any distribution and thereafter such distribution is

rescinded or must otherwise be returned for any reason, such Receivables Net Investment shall be increased by the amount of such distribution, all as though such distribution had not been made.

“Reference Period” shall have the meaning assigned to such term in the definition of the term “Pro Forma Basis.”

“Refinance” shall have the meaning assigned to such term in the definition of the term “Permitted Refinancing Indebtedness,” “Refinancing” and “Refinanced” shall have a meaning correlative thereto.

“Refinanced Indebtedness” shall mean the Indebtedness described on Schedule 1.01E.

“Register” shall have the meaning assigned to such term in Section 9.04(b)(iv).

“Regulation U” shall mean Regulation U of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

“Regulation X” shall mean Regulation X of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

“Related Fund” shall mean, with respect to any Lender that is a fund that invests in bank or commercial loans and similar extensions of credit, any other fund that invests in bank or commercial loans and similar extensions of credit and is advised or managed by (a) such Lender, (b) an Affiliate of such Lender or (c) an entity (or an Affiliate of such entity) that administers, advises or manages such Lender.

“Related Parties” shall mean, with respect to any specified person, such person’s Affiliates and the respective directors, trustees, officers, employees, agents and advisors of such person and such person’s Affiliates.

“Release” shall mean any spilling, leaking, seepage, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing, depositing, emanating or migrating in, into, onto or through the environment.

“Repaid Term B-3 Loans” shall have the meaning set forth in Section 2.11(a)(ii).

“Replacement Vessel” shall mean any Documented Vessel acquired as a replacement, in any manner, of any existing Mortgaged Vessel and subject to encumbrance in favor of the Collateral Agent for the benefit of the Secured Parties pursuant to the terms of Section 5.10.

“Reportable Event” shall mean any reportable event as defined in Section 4043(c) of ERISA or the regulations issued thereunder, other than those events as to which the 30-day notice period referred to in Section 4043(c) of ERISA has been waived, with respect to a Plan

(other than a Plan maintained by an ERISA Affiliate that is considered an ERISA Affiliate only pursuant to subsection (m) or (o) of Section 414 of the Code).

“Required Lenders” shall mean, at any time, Lenders having Term Loans and Commitments (and, if the Revolving Facility Commitments have been terminated, Revolving Facility Credit Exposures) that, taken together, represent more than 50% of the sum of all Term Loans and Commitments (and, if the Revolving Facility Commitments have been terminated, Revolving Facility Credit Exposures) at such time. The Loans, Commitments and Revolving Facility Credit Exposures of any Defaulting Lender shall be disregarded in determining Required Lenders at any time.

“Required Percentage” shall mean, with respect to an Excess Cash Flow Period, 50%; provided, that (a) if the Senior Secured Leverage Ratio at the end of the applicable Excess Cash Flow Period is greater than 2.50:1.00 but less than or equal to 2.75:1.00, such percentage shall be 25%, and (b) if the Senior Secured Leverage Ratio at the end of the applicable Excess Cash Flow Period is less than or equal to 2.50:1.00, such percentage shall be 0%.

“Required Prepayment Date” shall have the meaning assigned to such term in Section 2.11(e).

“Requisite Lead Arrangers” shall mean Arrangers representing no less than 66 <sup>2</sup>/<sub>3</sub>% of the aggregate amount of the financial commitments under the Commitment Letter.

“Responsible Officer” of any person shall mean any executive officer or Financial Officer of such person and any other officer or similar official thereof responsible for the administration of the obligations of such person in respect of this Agreement.

“Restricted Payments” shall have the meaning assigned to such term in Section 6.06.

“Retained Notes” shall mean the Indebtedness described on Schedule 1.01H.

“Retained Notes Basket Liens” shall mean Liens incurred without equally and ratably securing the Retained Notes pursuant to the last sentence of the Retained Notes Lien Covenant (or the comparable provision, if any, in the case of an amendment to any such Retained Notes Lien Covenant).

“Retained Notes Indebtedness” means “Indebtedness” as defined in each of the indentures or supplemental indentures governing the Retained Notes that contain a Retained Notes Lien Covenant.

“Retained Notes Lien Basket Amount” shall mean, at any time, the aggregate principal amount of Retained Notes Indebtedness that is permitted to be secured by Retained Notes Basket Liens at such time without equally and ratably securing the Retained Notes (which such amount does not include, for the avoidance of doubt, any Retained Notes Indebtedness secured by Retained Notes Permitted Liens).

“Retained Notes Lien Covenant” shall mean the Limitation on Liens covenant, if any, in each of the indentures or supplemental indentures governing the Retained Notes.

“Retained Notes Permitted Liens” shall mean Liens incurred without equally and ratably securing the Retained Notes pursuant to the Retained Notes Lien Covenant other than the last sentence of the Retained Notes Lien Covenant (or the comparable provision, if any, in the case of an amendment to any such Retained Notes Lien Covenant).

“Revaluation Date” means (a) with respect to any Loan denominated in an Alternative Currency, each of the following: (i) each date of a Borrowing of a Eurocurrency Revolving Loan denominated in an Alternative Currency, (ii) each date of a continuation of a Eurocurrency Revolving Loan denominated in an Alternative Currency pursuant to Section 2.07, and (iii) such additional dates as the Administrative Agent shall determine or the Majority Lenders under the Revolving Facility shall require; and (b) with respect to any Letter of Credit denominated in an Alternative Currency, each of the following: (i) each date of issuance of any such Letter of Credit, (ii) each date of an amendment of any such Letter of Credit having the effect of increasing the amount thereof (solely with respect to the increased amount), (iii) each date of any payment by the L/C Issuer under any such Letter of Credit, and (iv) such additional dates as the Administrative Agent or the L/C Issuer shall determine or the Majority Lenders under the Revolving Facility shall require.

“Revolving Facility” shall mean the Revolving Facility Commitments (including any Incremental Revolving Facility Commitments) and the extensions of credit made hereunder by the Revolving Facility Lenders.

“Revolving Facility Borrowing” shall mean a Borrowing comprised of Revolving Facility Loans.

“Revolving Facility Commitment” shall mean, with respect to each Revolving Facility Lender, the commitment of such Revolving Facility Lender to make Revolving Facility Loans pursuant to Section 2.01, as such commitment may be (a) reduced from time to time pursuant to Section 2.08, (b) reduced or increased from time to time pursuant to assignments by or to such Lender under Section 9.04, and (c) increased or provided under Section 2.21. The initial amount of each Lender’s Revolving Facility Commitment is set forth on Schedule 2.01, or in the Assignment and Acceptance or Incremental Assumption Agreement pursuant to which such Lender shall have assumed its Revolving Facility Commitment (or Incremental Revolving Facility Commitment), as applicable. The initial aggregate amount of the Lenders’ Revolving Facility Commitments (prior to any Incremental Revolving Facility Commitments) is \$2,000,000,000.

“Revolving Facility Credit Exposure” shall mean, at any time, the sum of (a) the aggregate Outstanding Amount of the Revolving Facility Loans at such time, (b) the Outstanding Amount of Swingline Loans at such time and (c) the Outstanding Amount of the L/C Obligations at such time. The Revolving Facility Credit Exposure of any Revolving Facility Lender at any time shall be the product of (x) such Revolving Facility Lender’s Revolving Facility Percentage

and (y) the aggregate Revolving Facility Credit Exposure of all Revolving Facility Lenders, collectively, at such time.

“Revolving Facility Lender” shall mean a Lender (including an Incremental Revolving Facility Lender) with a Revolving Facility Commitment or with outstanding Revolving Facility Loans.

“Revolving Facility Loan” shall mean a Loan made by a Revolving Facility Lender pursuant to Section 2.01(d).

“Revolving Facility Maturity Date” shall mean January 28, 2014.

“Revolving Facility Percentage” shall mean, with respect to any Revolving Facility Lender, the percentage of the total Revolving Facility Commitments represented by such Lender’s Revolving Facility Commitment. If the Revolving Facility Commitments have terminated or expired, the Revolving Facility Percentages shall be determined based upon the Revolving Facility Commitments most recently in effect, giving effect to any assignments pursuant to Section 9.04.

“S&P” shall mean Standard & Poor’s Ratings Group, Inc.

“Sale and Lease-Back Transaction” shall have the meaning assigned to such term in Section 6.03.

“Same Day Funds” means (a) with respect to disbursements and payments in Dollars, immediately available funds, and (b) with respect to disbursements and payments in an Alternative Currency, same day or other funds as may be determined by the Administrative Agent or the L/C Issuer, as the case may be, to be customary in the place of disbursement or payment for the settlement of international banking transactions in the relevant Alternative Currency.

“SEC” shall mean the Securities and Exchange Commission or any successor thereto.

“Secured Parties” shall mean the “Secured Parties” as defined in the Collateral Agreement.

“Securities Act” shall mean the Securities Act of 1933, as amended.

“Security Documents” shall mean the Mortgages, the Ship Mortgages, the Collateral Agreement, the Guaranty and Pledge Agreement and each of the security agreements and other instruments and documents executed and delivered pursuant to any of the foregoing or pursuant to Sections 4.02, 5.10 or 5.11.

“Senior Convertible Notes” shall mean the Borrower’s Floating Rate Contingent Convertible Senior Notes due 2024.

“Senior Note Documents” shall mean the Senior Notes and the Senior Notes Indenture.

“Senior Notes” shall mean the Borrower’s Senior Notes (as defined in the Interim Loan Agreement) and any notes issued by the Borrower in exchange for, and as contemplated by, the Senior Notes and the related registration rights agreement with substantially identical terms as the Senior Notes.

“Senior Notes Indenture” shall mean the Senior Notes Indenture (as defined in the Interim Loan Agreement), as amended, restated, supplemented or otherwise modified from time to time in accordance with the requirements thereof and of this Agreement.

“Senior Secured Leverage Ratio” means, on any date, the ratio of (a) Total First Lien Senior Secured Net Debt as of the last day of the Test Period most recently ended as of such date to (b) EBITDA for the Test Period most recently ended as of such date, all determined on a consolidated basis in accordance with GAAP; provided, that the Senior Secured Leverage Ratio shall be determined for the relevant Test Period on a Pro Forma Basis; provided, further, however, that for purposes of calculating the Senior Secured Leverage Ratio from and after any Covenant Resumption Date, (i) EBITDA for the fiscal quarter in which the relevant Qualifying Act of Terrorism shall have occurred, (ii) EBITDA for any fiscal quarter following such quarter referred to in clause (i) in which a Material Disruption existed and (iii) EBITDA for the next succeeding fiscal quarter after the latest quarter to occur of any quarter referred to in clause (i) or (ii) shall, in each case, be the greater of (1) Substituted EBITDA and (2) actual EBITDA for such quarter. For the purposes of the foregoing, “Substituted EBITDA” shall mean the EBITDA for the fiscal quarter immediately preceding the fiscal quarter referred to in clause (i) of the previous sentence, in each case subject to customary seasonal adjustments (as determined in good faith by the Borrower and set forth in a certificate of a Responsible Officer of the Borrower delivered to the Administrative Agent).

“Senior Unsecured Note Documents” shall mean the Senior Unsecured Notes and the Senior Unsecured Notes Indenture.

“Senior Unsecured Notes” shall mean the Borrower’s Senior Unsecured Notes having terms substantially as set forth in the Senior Unsecured Notes Offering Memorandum issued pursuant to the Senior Unsecured Notes Indenture and any notes issued by the Borrower in exchange for, and as contemplated by, the Senior Unsecured Notes and the related registration rights agreement with substantially identical terms as the Senior Unsecured Notes.

“Senior Unsecured Notes Indenture” shall mean the Indenture to be entered into under which the Senior Unsecured Notes will be issued, among the Borrower and certain of the Subsidiaries party thereto and the trustee named therein from time to time, as amended, restated, supplemented or otherwise modified from time to time in accordance with the requirements thereof and of this Agreement.

“Senior Unsecured Notes Offering Memorandum” shall mean the preliminary offering memorandum, dated January 11, 2008, in respect of the Senior Unsecured Notes.

“Ship Mortgage” shall mean a Ship Mortgage or Additional Ship Mortgage substantially in the form of Exhibit E-2 (with such changes as are reasonably consented to by the Collateral Agent to account for local law matters) made by the applicable Loan Party in favor of Collateral Agent for the benefit of the Secured Parties, as the same may be amended, supplemented or otherwise modified from time to time, together with an Earnings Assignment and an Insurance Assignment made by the applicable Loan Party for each Mortgaged Vessel, and such other agreements reasonably acceptable to Collateral Agent as shall be necessary to comply with applicable requirements of law and effective to grant in favor of Collateral Agent for the benefit of the Secured Parties a first preferred mortgage within the meaning of the Ship Mortgage Act on the Mortgaged Vessel covered thereby, subject only to Permitted Liens.

“Ship Mortgage Act” shall mean the Ship Mortgage Act of 1920, as amended, recodified at 46 U.S.C. § 31301 et seq.

“Similar Business” means a business, the majority of whose revenues are derived from the activities of the Company and its subsidiaries as of the Closing Date or any business or activity that is reasonably similar or complementary thereto or a reasonable extension, development or expansion thereof or ancillary thereto.

“Special Purpose Receivables Subsidiary” shall mean a direct or indirect Subsidiary of the Borrower established in connection with a Permitted Receivables Financing for the acquisition of Receivables Assets or interests therein, and which is organized in a manner intended to reduce the likelihood that it would be substantively consolidated with the Borrower or any of the Subsidiaries (other than Special Purpose Receivables Subsidiaries) in the event the Borrower or any such Subsidiary becomes subject to a proceeding under the U.S. Bankruptcy Code (or other insolvency law).

“Sponsor” shall mean (i) Apollo and each Affiliate of Apollo (but not including, however, any of its portfolio companies), (ii) TPG and each Affiliate of TPG (but not including, however, any of its portfolio companies), and (iii) any individual who is a partner or employee of Apollo Management, L.P., Apollo, the Texas Pacific Group or TPG, to the extent such individual is licensed by a relevant Gaming Authority on the Closing Date or thereafter replaces any such licensee.

“Spot Rate” for a currency means the rate determined by the Administrative Agent or the L/C Issuer, as applicable, to be the rate quoted by the person acting in such capacity as the spot rate for the purchase by such person of such currency with another currency through its principal foreign exchange trading office at approximately 11:00 a.m. on the date two Business Days prior to the date as of which the foreign exchange computation is made; provided that the Administrative Agent or the L/C Issuer may obtain such spot rate from another financial institution designated by the Administrative Agent or the L/C Issuer if the person acting in such capacity does not have as of the date of determination a spot buying rate for any such currency; provided, further, that the L/C Issuer may use such spot rate quoted on the date as of which the foreign exchange computation is made in the case of any Letter of Credit denominated in an Alternative Currency.

“Sterling” and “£” mean the lawful currency of the United Kingdom.

“Subordinated Intercompany Debt” shall have the meaning assigned to such term in Section 6.01(e).

“Subsidiary” shall mean, with respect to any person (herein referred to as the “parent”), any corporation, partnership, association or other business entity (a) of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or more than 50% of the general partnership interests are, at the time any determination is being made, directly or indirectly, owned, Controlled or held, or (b) that is, at the time any determination is made, otherwise Controlled, by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent.

“Subsidiary” shall mean, unless the context otherwise requires, a subsidiary of the Borrower. Notwithstanding the foregoing (and except for purposes of the definition of Unrestricted Subsidiary contained herein), an Unrestricted Subsidiary shall be deemed not to be a Subsidiary of the Borrower or any of its Subsidiaries for purposes of this Agreement.

“Subsidiary Loan Party” shall mean (a) each Wholly-Owned Domestic Subsidiary of the Borrower on the Closing Date as set forth on Schedule 1.01F and (b) each Subsidiary of the Borrower that becomes, or is required pursuant to Section 5.10 to become, a party to the Collateral Agreement after the Closing Date.

“Subsidiary Redesignation” shall have the meaning provided in the definition of “Unrestricted Subsidiary” contained in this Section 1.01.

“Swap Agreement” shall mean any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions; provided, that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of Holdings, the Borrower or any of the Subsidiaries shall be a Swap Agreement.

“Swingline Borrowing” shall mean a Borrowing comprised of Swingline Loans.

“Swingline Borrowing Request” shall mean a request by a Borrower substantially in the form of Exhibit C-2.

“Swingline Commitment” shall mean, with respect to each Swingline Lender, the commitment of such Swingline Lender to make Swingline Loans pursuant to Section 2.04. The aggregate amount of the Swingline Commitments on the Closing Date is \$200.0 million. The Swingline Commitment is part of, and not in addition to, the Revolving Facility Commitments.

“Swingline Lender” shall mean Bank of America, in its capacity as a lender of Swingline Loans and its successors in such capacity.

“Swingline Loans” shall mean the swingline loans made to the Borrower pursuant to Section 2.04.

“Syndication Agent” shall have the meaning assigned to such term in the introductory paragraph of this Agreement.

“TARGET Day” means any day on which the Trans-European Automated Real-time Gross Settlement Express Transfer (TARGET) payment system (or, if such payment system ceases to be operative, such other payment system (if any) determined by the Administrative Agent to be a suitable replacement) is open for the settlement of payments in Euro.

“Taxes” shall mean any and all present or future taxes, levies, imposts, duties (including stamp duties), deductions, withholdings or similar charges (including ad valorem charges) imposed by any Governmental Authority and any and all interest and penalties related thereto, other than Other Taxes.

“Term B Facility Maturity Date” shall mean January 28, 2015.

“Term B-1 Borrowing” shall mean a Borrowing comprised of Term B-1 Loans.

“Term B-1 Facility” shall mean the Term B-1 Loan Commitments and the Term B-1 Loans made hereunder.

“Term B-1 Loan Commitment” shall mean, with respect to each Lender, the commitment of such Lender to make Term B-1 Loans as set forth in Section 2.01(a). The initial amount of each Lender’s Term B-1 Loan Commitment is set forth on Schedule 2.01, or in the Assignment and Acceptance pursuant to which such Lender shall have assumed its Term B-1 Loan Commitment, as applicable. The aggregate amount of the Term B-1 Loan Commitments on the Closing Date is \$2,250,000,000.

“Term B-1 Loan Installment Date” shall have the meaning assigned to such term in Section 2.10(a)(i).

“Term B-1 Loans” shall mean the term loans made by the Lenders to the Borrower pursuant to Section 2.01(a) and any Incremental Term Loans in the form of Term B-1 Loans made by the Incremental Term Lenders to the Borrower pursuant to Section 2.01(e).

“Term B-2 Borrowing” shall mean a Borrowing comprised of Term B-2 Loans.

“Term B-2 Facility” shall mean the Term B-2 Loan Commitments and the Term B-2 Loans made hereunder.

“Term B-2 Loan Commitment” shall mean, with respect to each Lender, the commitment of such Lender to make Term B-2 Loans as set forth in Section 2.01(b). The initial amount of each Lender’s Term B-2 Loan Commitment is set forth on Schedule 2.01, or in the Assignment and Acceptance pursuant to which such Lender shall have assumed its Term B-2

Loan Commitment, as applicable. The aggregate amount of the Term B-2 Loan Commitments on the Closing Date is \$3,000,000,000.

“Term B-2 Loan Installment Date” shall have the meaning assigned to such term in Section 2.10(a)(ii).

“Term B-2 Loans” shall mean the term loans made by the Lenders to the Borrower pursuant to Section 2.01(b) and any Incremental Term Loans in the form of Term B-2 Loans made by the Incremental Term Lenders to the Borrower pursuant to Section 2.01(e).

“Term B-3 Borrowing” shall mean a Borrowing comprised of Term B-3 Loans.

“Term B-3 Facility” shall mean the Term B-3 Loan Commitments and the Term B-3 Loans made hereunder.

“Term B-3 Loan Commitment” shall mean, with respect to each Lender, the commitment of such Lender to make Term B-3 Loans as set forth in Section 2.01(c). The initial amount of each Lender’s Term B-3 Loan Commitment is set forth on Schedule 2.01, or in the Assignment and Acceptance pursuant to which such Lender shall have assumed its Term B-3 Loan Commitment, as applicable. The aggregate amount of the Term B-3 Loan Commitments on the Closing Date is \$2,000,000,000.

“Term B-3 Loan Installment Date” shall have the meaning assigned to such term in Section 2.10(a)(iii).

“Term B-3 Loans” shall mean the term loans made by the Lenders to the Borrower pursuant to Section 2.01(c) and any Incremental Term Loans in the form of Term B-3 Loans made by the Incremental Term Lenders to the Borrower pursuant to Section 2.01(e).

“Term Borrowing” shall mean any Term B-1 Borrowing, Term B-2 Borrowing, Term B-3 Borrowing or any Incremental Term Borrowing.

“Term Facility” shall mean the Term B-1 Facility, the Term B-2 Facility, the Term B-3 Facility and/or any or all of the Incremental Term Facilities.

“Term Facility Maturity Date” shall mean the latest of the Term B Facility Maturity Date and any Incremental Term Facility Maturity Date or, if the context so requires, either of such dates.

“Term Loan Commitment” shall mean any Term B-1 Loan Commitment, Term B-2 Loan Commitment, Term B-3 Loan Commitment or any Incremental Term Loan Commitment.

“Term Loan Installment Date” shall mean any Term B-1 Loan Installment Date, Term B-2 Loan Installment Date, Term B-3 Loan Installment Date or any Incremental Term Loan Installment Date.

“Term Loans” shall mean the Term B-1 Loans, Term B-2 Loans, Term B-3 Loans and/or the Incremental Term Loans.

“Test Period” shall mean, on any date of determination, the period of four consecutive fiscal quarters of the Borrower then most recently ended (taken as one accounting period) for which financial statements have been (or were required to be) delivered pursuant to Section 5.04(a) or 5.04(b) and, initially, the four fiscal quarter period ending December 31, 2007.

“Total First Lien Senior Secured Net Debt” at any date shall mean (i) the aggregate principal amount of Consolidated Debt of the Borrower and its Subsidiaries outstanding at such date that consists of, without duplication, Indebtedness (other than Qualified Non-Recourse Debt) that in each case is then secured by first priority Liens on property or assets of the Borrower or its Subsidiaries (other than property or assets held in a defeasance or similar trust or arrangement for the benefit of the Indebtedness secured thereby), less (ii) without duplication, the aggregate amount of all Unrestricted Cash and Permitted Investments of the Borrower and its Subsidiaries on such date.

“Total Leverage Ratio” shall mean, on any date, the ratio of (a) Total Net Debt as of the last day of the Test Period most recently ended as of such date to (b) EBITDA for the Test Period most recently ended as of such date, all determined on a consolidated basis in accordance with GAAP; provided that the Total Leverage Ratio shall be determined for the relevant Test Period on a Pro Forma Basis; provided, further, however, that for purposes of calculating the Total Leverage Ratio from and after any Covenant Resumption Date, (i) EBITDA for the fiscal quarter in which the relevant Qualifying Act of Terrorism shall have occurred, (ii) EBITDA for any fiscal quarter following such quarter referred to in clause (i) in which a Material Disruption existed and (iii) EBITDA for the next succeeding fiscal quarter after the latest quarter to occur of any quarter referred to in clause (i) or (ii) shall, in each case, be the greater of (1) Substituted EBITDA and (2) actual EBITDA for such quarter. For the purposes of the foregoing, “Substituted EBITDA” shall mean the EBITDA for the fiscal quarter immediately preceding the fiscal quarter referred to in clause (i) of the previous sentence, in each case subject to customary seasonal adjustments (as determined in good faith by the Borrower and set forth in a certificate of a Responsible Officer of the Borrower delivered to the Administrative Agent).

“Total Net Debt” at any date shall mean (i) the aggregate principal amount of Consolidated Debt (other than Qualified Non-Recourse Debt) of the Borrower and its Subsidiaries outstanding at such date, less (ii) without duplication, the aggregate amount of all Unrestricted Cash and Permitted Investments of the Borrower and its Subsidiaries on such date.

“TPG” shall have the meaning assigned to such term in the first recital hereto.

“Transaction Documents” shall mean the Merger Documents, the Senior Unsecured Note Documents, the Interim Facility Loan Documents, the Loan Documents and all documents executed in connection therewith.

“Transaction Expenses” means any fees or expenses incurred or paid by the Sponsors, Holdings, any Parent Entity, the Borrower or any of its Subsidiaries in connection with

the Transactions, this Agreement and the other Loan Documents (including expenses in connection with Swap Agreements) and the transactions contemplated hereby and thereby.

“Transactions” shall mean, collectively, the transactions to occur pursuant to or in connection with the Transaction Documents, including (a) the consummation of the Merger; (b) the execution and delivery of the Loan Documents, the creation of the Liens pursuant to the Security Documents, and the borrowings hereunder; (c) the Equity Contribution; (d) the sale and issuance of the Senior Unsecured Notes; (e) the execution and delivery of the Interim Facility Loan Documents and the borrowings thereunder, (f) the refinancing (or discharge) of the Refinanced Indebtedness; (g) the repayment and/or retirement of the Senior Convertible Notes; (h) the distribution of Real Estate Assets in connection with the Real Estate Facility; (i) the transactions described under “Summary — The Transactions” in the Senior Unsecured Notes Offering Memorandum (other than the Post-Closing CMBS Transaction); and (j) the payment of all fees and expenses to be paid in connection with the foregoing.

“Treasury Rate” shall mean, at any date, the yield to maturity as of such date of United States Treasury securities with a constant maturity (as compiled and published in the most recent Federal Reserve Statistical Release H.15 (519) that has become publicly available at least two Business Days prior to such date (or, if such Statistical Release is no longer published, any publicly available source of similar market data)) most nearly equal to the period from such date to the date which is three years following the Closing Date; provided, however, that if the period from such date to the date which is three years following the Closing Date is less than one year, the weekly average yield on actually traded United States Treasury securities adjusted to a constant maturity of one year will be used.

“Type” shall mean, when used in respect of any Loan or Borrowing, the Rate by reference to which interest on such Loan or on the Loans comprising such Borrowing is determined. For purposes hereof, the term “Rate” shall include the Eurocurrency Rate and the ABR.

“Undeveloped Land” shall mean, (i) all Real Property set forth on Schedule 1.01D, (ii) all undeveloped land acquired after the Closing Date and (iii) any operating property of the Borrower or any Subsidiary that is subject to a casualty event that results in such property ceasing to be operational.

“Unfunded Pension Liability” means, as of the most recent valuation date for the applicable Plan, the excess of (1) the Plan’s actuarial present value (determined on the basis of reasonable assumptions employed by the independent actuary for such Plan for purposes of Section 412 of the Code or Section 302 of ERISA) of its benefit liabilities (as defined in Section 4001(a)(16) of ERISA) over (2) the fair market value of the assets of such Plan.

“Uniform Commercial Code” means the Uniform Commercial Code as the same may from time to time be in effect in the State of New York or the Uniform Commercial Code (or similar code or statute) of another jurisdiction, to the extent it may be required to apply to any item or items of Collateral.

“Unreimbursed Amount” has the meaning specified in Section 2.05(c).

“Unrestricted Cash” shall mean cash or cash equivalents of the Borrower or any of its Subsidiaries that would not appear as “restricted” on a consolidated balance sheet of the Borrower or any of its Subsidiaries, including without limitation all “cage cash”.

“Unrestricted Subsidiary” shall mean (1) any Subsidiary of the Borrower identified on Schedule 1.01G, (2) any Subsidiary of the Borrower designated by the Borrower as an Unrestricted Subsidiary hereunder by written notice to the Administrative Agent; provided, that the Borrower shall only be permitted to so designate a new Unrestricted Subsidiary after the Closing Date and so long as (a) no Default or Event of Default has occurred and is continuing or would result therefrom, (b) immediately after giving effect to such designation, the Borrower shall be in Pro Forma Compliance, (c) such Unrestricted Subsidiary shall be capitalized (to the extent capitalized by the Borrower or any of its Subsidiaries) through Investments as permitted by, and in compliance with, Section 6.04, (d) without duplication of clause (c), any assets owned by such Unrestricted Subsidiary at the time of the initial designation thereof shall be treated as Investments pursuant to Section 6.04, and (e) such Subsidiary shall have been or will promptly be designated an “unrestricted subsidiary” (or otherwise not be subject to the covenants) under the Senior Unsecured Notes Indenture, the Interim Loan Agreement, the Senior Notes Indenture and all Permitted Refinancing Indebtedness in respect thereof and (3) any subsidiary of an Unrestricted Subsidiary. The Borrower may designate any Unrestricted Subsidiary to be a Subsidiary for purposes of this Agreement (each, a “Subsidiary Redesignation”); provided, that (i) no Default or Event of Default has occurred and is continuing or would result therefrom, (ii) immediately after giving effect to such Subsidiary Redesignation, the Borrower shall be in Pro Forma Compliance and (iii) the Borrower shall have delivered to the Administrative Agent an officer’s certificate executed by a Responsible Officer of the Borrower, certifying to the best of such officer’s knowledge, compliance with the requirements of preceding clauses (i) and (ii), and containing the calculations and information required by the preceding clause (ii).

“U.S. Bankruptcy Code” shall mean Title 11 of the United States Code, as amended, or any similar federal or state law for the relief of debtors.

“USA PATRIOT Act” shall mean the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Pub. L. No. 107-56 (signed into law October 26, 2001)).

“Vessel” shall mean (i) any vessel, boat, ship, catamaran, riverboat, or barge of any kind or nature whatsoever, whether or not temporarily or permanently moored or affixed to any real property, (ii) any improvement to real property which is used or susceptible of use as a dockside, riverboat or water-based venue for business operations, (iii) any property which is a vessel within the meaning given to that term in 1 U.S.C. § 3, and (iv) any property which would be a vessel within the meaning of that term as defined in 1 U.S.C. § 3 but for its removal from navigation for use in gaming or other business operations and/or any modifications made thereto to facilitate dockside gaming or other business operations which may affect its seaworthiness, and, in each case, all appurtenances thereof.

“Vessel Applicable Laws” shall have the meaning assigned to such term in Section 9.23.

“Vessel Related Collateral” shall have the meaning assigned to such term in Section 9.23.

“Waivable Mandatory Prepayment” shall have the meaning assigned to such term in Section 2.11(e).

“Wholly-Owned Domestic Subsidiary” of any person shall mean a Domestic Subsidiary of such person that is a Wholly-Owned Subsidiary.

“Wholly-Owned Foreign Subsidiary” of any person shall mean a Foreign Subsidiary of such person that is a Wholly-Owned Subsidiary.

“Wholly-Owned Subsidiary” of any person shall mean a subsidiary of such person, all of the Equity Interests of which (other than directors’ qualifying shares or nominee or other similar shares required pursuant to applicable law) are owned by such person or another Wholly-Owned Subsidiary of such person.

“Withdrawal Liability” shall mean liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

“Working Capital” shall mean, with respect to the Borrower and the Subsidiaries on a consolidated basis at any date of determination, Current Assets at such date of determination minus Current Liabilities at such date of determination; provided, that, for purposes of calculating Excess Cash Flow, increases or decreases in Working Capital shall be calculated without regard to any changes in Current Assets or Current Liabilities as a result of (a) any reclassification in accordance with GAAP of assets or liabilities, as applicable, between current and noncurrent or (b) the effects of purchase accounting.

SECTION 1.02 Terms Generally. The definitions set forth or referred to in Section 1.01 shall apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” All references herein to Articles, Sections, Exhibits and Schedules shall be deemed references to Articles and Sections of, and Exhibits and Schedules to, this Agreement unless the context shall otherwise require. Except as otherwise expressly provided herein, any reference in this Agreement to any Loan Document shall mean such document as amended, restated, supplemented or otherwise modified from time to time. Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time; provided, that, if the Borrower notifies the Administrative Agent that the Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the Closing Date in GAAP or in the application thereof on the operation of such provision (or if the Administrative Agent notifies the Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of

GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith.

SECTION 1.03 Effectuation of Transactions. Each of the representations and warranties of Holdings and the Borrower contained in this Agreement (and all corresponding definitions) are made after giving effect to the Transactions, unless the context otherwise requires.

SECTION 1.04 Exchange Rates; Currency Equivalents.

(a) The Administrative Agent or the L/C Issuer, as applicable, shall determine the Spot Rates as of each Revaluation Date to be used for calculating Dollar Equivalent amounts and Outstanding Amounts denominated in Alternative Currencies. Such Spot Rates shall become effective as of such Revaluation Date and shall be the Spot Rates employed in converting any amounts between the applicable currencies until the next Revaluation Date to occur. Except for purposes of financial statements delivered by Loan Parties hereunder or calculating financial covenants hereunder or except as otherwise provided herein, the applicable amount of any currency (other than Dollars) for purposes of the Loan Documents shall be such Dollar Equivalent amount as so determined by the Administrative Agent or the L/C Issuer, as applicable. No Default or Event of Default shall arise as a result of any limitation or threshold set forth in U.S. Dollars in Article VI or paragraph (f), (j) or (m) of Section 7.01 being exceeded solely as a result of changes in currency exchange rates from those rates applicable on the first day of the fiscal quarter in which such determination occurs or in respect of which such determination is being made.

(b) Wherever in this Agreement in connection with a Borrowing, conversion, continuation or prepayment of a Eurocurrency Loan or the issuance, amendment or extension of a Letter of Credit, an amount, such as a required minimum or multiple amount, is expressed in Dollars, but such Borrowing, Eurocurrency Loan or Letter of Credit is denominated in an Alternative Currency, such amount shall be the relevant Alternative Currency Equivalent of such Dollar amount (rounded to the nearest unit of such Alternative Currency, with 0.5 of a unit being rounded upward), as determined by the Administrative Agent or the L/C Issuer, as the case may be.

SECTION 1.05 Additional Alternative Currencies.

(a) The Borrower may from time to time request that Eurocurrency Revolving Loans be made and/or Letters of Credit be issued in a currency other than those specifically listed in the definition of "Alternative Currency;" provided that such requested currency is a lawful currency (other than Dollars) that is readily available and freely transferable and convertible into Dollars. In the case of any such request with respect to the making of Eurocurrency Revolving Loans, such request shall be subject to the approval of the Administrative Agent and the Revolving Facility Lenders; and in the case of any such request with respect to the issuance of Letters of Credit, such request shall be subject to the approval of the Administrative Agent and the L/C Issuer.

(b) Any such request shall be made to the Administrative Agent not later than 11:00 a.m., 20 Business Days prior to the date of the desired Credit Event (or such other time or date as may be agreed by the Administrative Agent and, in the case of any such request pertaining to Letters of Credit, the L/C Issuer, in its or their sole discretion). In the case of any such request pertaining to Eurocurrency Loans, the Administrative Agent shall promptly notify each Revolving Facility Lender thereof; and in the case of any such request pertaining to Letters of Credit, the Administrative Agent shall promptly notify the L/C Issuer thereof. Each Revolving Facility Lender (in the case of any such request pertaining to Eurocurrency Loans) or the L/C Issuer (in the case of a request pertaining to Letters of Credit) shall notify the Administrative Agent, not later than 11:00 a.m., 10 Business Days after receipt of such request whether it consents, in its sole discretion, to the making of Eurocurrency Loans or the issuance of Letters of Credit, as the case may be, in such requested currency.

(c) Any failure by a Revolving Facility Lender or the L/C Issuer, as the case may be, to respond to such request within the time period specified in the preceding sentence shall be deemed to be a refusal by such Revolving Facility Lender or the L/C Issuer, as the case may be, to permit Eurocurrency Loans to be made or Letters of Credit to be issued in such requested currency. If the Administrative Agent and all the Revolving Facility Lenders consent to making Eurocurrency Loans in such requested currency, the Administrative Agent shall so notify the Borrower and such currency shall thereupon be deemed for all purposes to be an Alternative Currency hereunder for purposes of any Borrowings of Eurocurrency Revolving Loans; and if the Administrative Agent and the L/C Issuer consent to the issuance of Letters of Credit in such requested currency, the Administrative Agent shall so notify the Borrower and such currency shall thereupon be deemed for all purposes to be an Alternative Currency hereunder for purposes of any Letter of Credit issuances. If the Administrative Agent shall fail to obtain consent to any request for an additional currency under this Section 1.05, the Administrative Agent shall promptly so notify the Borrower. Any specified currency of an Existing Letter of Credit that is neither Dollars nor one of the Alternative Currencies specifically listed in the definition of "Alternative Currency" shall be deemed an Alternative Currency with respect to such Existing Letter of Credit only.

#### SECTION 1.06 Change of Currency.

(a) Each obligation of the Borrower to make a payment denominated in the national currency unit of any member state of the European Union that adopts the Euro as its lawful currency after the date hereof shall be redenominated into Euro at the time of such adoption (in accordance with the EMU Legislation). If, in relation to the currency of any such member state, the basis of accrual of interest expressed in this Agreement in respect of that currency shall be inconsistent with any convention or practice in the London interbank market for the basis of accrual of interest in respect of the Euro, such expressed basis shall be replaced by such convention or practice with effect from the date on which such member state adopts the Euro as its lawful currency; provided that if any Borrowing in the currency of such member state is outstanding immediately prior to such date, such replacement shall take effect, with respect to such Borrowing, at the end of the then current Interest Period.

(b) Each provision of this Agreement shall be subject to such reasonable changes of construction as the Administrative Agent may from time to time specify to be appropriate to reflect the adoption of the Euro by any member state of the European Union and any relevant market conventions or practices relating to the Euro.

(c) Each provision of this Agreement also shall be subject to such reasonable changes of construction as the Administrative Agent may from time to time specify to be appropriate to reflect a change in currency of any other country and any relevant market conventions or practices relating to the change in currency.

SECTION 1.07 Times of Day. Unless otherwise specified, all references herein to times of day shall be references to Local Time.

SECTION 1.08 Letter of Credit Amounts. Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the Dollar Equivalent of the stated amount of such Letter of Credit in effect at such time; provided, however, that with respect to any Letter of Credit that, by its terms or the terms of any Issuer Document related thereto, provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit shall be deemed to be the Dollar Equivalent of the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at such time.

## ARTICLE II The Credits

SECTION 2.01 Commitments. Subject to the terms and conditions set forth herein:

(a) each Lender agrees to make Term B-1 Loans to the Borrower on the Closing Date in a principal amount not to exceed its Term B-1 Loan Commitment;

(b) each Lender agrees to make Term B-2 Loans to the Borrower on the Closing Date in a principal amount not to exceed its Term B-2 Loan Commitment;

(c) each Lender agrees to make Term B-3 Loans to the Borrower on the Closing Date in a principal amount not to exceed its Term B-3 Loan Commitment;

(d) each Lender agrees to make Revolving Facility Loans to the Borrower from time to time during the Availability Period in Dollars or in one or more Alternative Currencies in an aggregate principal amount that will not result in (i) such Lender's Revolving Facility Credit Exposure exceeding such Lender's Revolving Facility Commitment, (ii) the Revolving Facility Credit Exposure exceeding the total Revolving Facility Commitments, (iii) the aggregate Outstanding Amount of all Revolving Facility Loans denominated in Alternative Currencies exceeding the Alternative Currency Sublimit or (iv) the Real Estate Revolver Facility Credit Exposure exceeding the Real Estate Revolver Facility Sublimit; provided, that the aggregate principal amount of Revolving Facility Loans made on the Closing Date shall

not exceed \$500.0 million. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrower may borrow, prepay and reborrow Revolving Facility Loans;

(e) each Lender having an Incremental Term Loan Commitment agrees, subject to the terms and conditions set forth in the applicable Incremental Assumption Agreement, to make Incremental Term Loans to the Borrower, in an aggregate principal amount not to exceed its Incremental Term Loan Commitment; and

(f) amounts borrowed under Section 2.01(a), (b), (c) or (e) and repaid or prepaid may not be reborrowed.

#### SECTION 2.02 Loans and Borrowings.

(a) Each Revolving Facility Loan and Term Loan shall be made as part of a Borrowing consisting of Loans under the same Facility and of the same Type made by the Lenders ratably in accordance with their respective Commitments under the applicable Facility; provided, however, that Revolving Facility Loans shall be made by the Revolving Facility Lenders ratably in accordance with their respective Revolving Facility Percentages on the date such Loans are made hereunder. The failure of any Lender to make any Loan required to be made by it shall not relieve any other Lender of its obligations hereunder; provided, that the Commitments of the Lenders are several and no Lender shall be responsible for any other Lender's failure to make Loans as required.

(b) Subject to Section 2.14, each Borrowing of Revolving Facility Loans or Term Loans shall be comprised entirely of ABR Loans or Eurocurrency Loans as the Borrower may request in accordance herewith. Each Lender at its option may make any ABR Loan or Eurocurrency Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; provided, that any exercise of such option shall not affect the obligation of the Borrower to repay such Loan in accordance with the terms of this Agreement and such Lender shall not be entitled to any amounts payable under Section 2.15 or 2.17 solely in respect of increased costs resulting from such exercise and existing at the time of such exercise.

(c) At the commencement of each Interest Period for any Eurocurrency Borrowing, such Borrowing shall be in an aggregate amount not less than the Borrowing Minimum and, in the case of a Eurocurrency Revolving Facility Borrowing, that is an integral multiple of the Borrowing Multiple. Subject to Section 2.04(c) and Section 2.05(c), at the time that each Term Borrowing or Revolving Facility Borrowing is made, such Borrowing shall be in an aggregate amount that is not less than the Borrowing Minimum and, in the case of a Eurocurrency Revolving Facility Borrowing, that is an integral multiple of the Borrowing Multiple; provided, that an ABR Revolving Facility Borrowing may be in an aggregate amount that is equal to the entire unused balance of the Revolving Facility Commitments. Borrowings of more than one Type and under more than one Facility may be outstanding at the same time; provided, that there shall not at any time be more than a total of (i) 20 Eurocurrency Borrowings outstanding under the Term Facilities and (ii) 20 Eurocurrency Borrowings outstanding under the Revolving Facility.

SECTION 2.03 Requests for Borrowings. To request a Revolving Facility Borrowing and/or a Term Borrowing, the Borrower shall notify the Administrative Agent of such request by telephone (a) in the case of a Eurocurrency Borrowing, not later than 10:00 a.m., Local Time, (x) three Business Days before the date of any proposed Borrowing denominated in Dollars and (y) four Business Days before the date of any proposed Borrowing denominated in an Alternative Currency or (b) in the case of an ABR Borrowing, not later than 10:00 a.m., Local Time, one Business Day before the date of the proposed Borrowing. Each such telephonic Borrowing Request shall be irrevocable and shall be confirmed promptly by hand delivery or teletype to the Administrative Agent of a written Borrowing Request in a form approved by the Administrative Agent and signed by a Responsible Officer of the Borrower. Each such telephonic and written Borrowing Request shall specify the following information in compliance with Section 2.02:

- (i) whether such Borrowing is to be a Borrowing of Revolving Facility Loans, Term B-1 Loans, Term B-2 Loans, Term B-3 Loans or Other Term Loans;
- (ii) the aggregate amount of the requested Borrowing;
- (iii) the date of such Borrowing, which shall be a Business Day;
- (iv) whether such Borrowing is to be an ABR Borrowing or a Eurocurrency Borrowing;
- (v) in the case of a Eurocurrency Borrowing, the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term "Interest Period";
- (vi) in the case of a Eurocurrency Revolving Facility Borrowing, the currency in which such Borrowing is to be denominated (which shall be Dollars or an Alternative Currency); and
- (vii) the location and number of the Borrower's account to which funds are to be disbursed.

If no election as to the currency of any Revolving Facility Borrowing is made, then the requested Borrowing shall be made in Dollars. If no election as to the Type of Revolving Facility Borrowing or Term Borrowing is specified, then the requested Borrowing shall be (x) an ABR Borrowing in the case of Loans denominated in Dollars or (y) a Eurocurrency Borrowing with an Interest Period of one month's duration in the case of Revolving Facility Loans denominated in an Alternative Currency. If no Interest Period is specified with respect to any requested Eurocurrency Borrowing, then the Borrower shall be deemed to have selected an Interest Period of one month's duration. Promptly following receipt of a Borrowing Request in accordance with this Section, the Administrative Agent shall advise each applicable Lender of the details thereof and of the amount of such Lender's Loan to be made as part of the requested Borrowing.

SECTION 2.04 Swingline Loans.

(a) The Swingline. Subject to the terms and conditions set forth herein, the Swingline Lender agrees, in reliance upon the agreements of the other Revolving Facility Lenders set forth in this Section 2.04, to make loans in Dollars (each such loan, a “Swingline Loan”) to the Borrower from time to time on any Business Day during the Availability Period in an aggregate amount not to exceed at any time outstanding the aggregate amount of the Swingline Commitments, notwithstanding the fact that such Swingline Loans, when aggregated with the Revolving Facility Percentage of the Outstanding Amount of Revolving Facility Loans and L/C Obligations of the Revolving Facility Lender acting as Swingline Lender, may exceed the amount of such Lender’s Revolving Facility Commitment; provided, however, that after giving effect to any Swingline Loan, (i) the Revolving Facility Credit Exposure shall not exceed the total Revolving Facility Commitments, and (ii) the aggregate Revolving Facility Credit Exposure of any Revolving Facility Lender (other than the Swingline Lender) shall not exceed such Revolving Facility Lender’s Revolving Facility Commitment, and provided, further, that the Borrower shall not use the proceeds of any Swingline Loan to refinance any outstanding Swingline Loan. Within the foregoing limits, and subject to the other terms and conditions hereof, the Borrower may borrow under this Section 2.04, prepay under Section 2.11, and reborrow under this Section 2.04. Each Swingline Loan shall be an ABR Loan. Immediately upon the making of a Swingline Loan, each Revolving Facility Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the Swingline Lender a risk participation in such Swingline Loan in an amount equal to the product of such Lender’s Revolving Facility Percentage times the amount of such Swingline Loan.

(b) Borrowing Procedures. Each Swingline Borrowing shall be made upon the Borrower’s irrevocable notice to the Swingline Lender and the Administrative Agent, which may be given by telephone. Each such notice must be received by the Swingline Lender and the Administrative Agent not later than 1:00 p.m. on the requested borrowing date, and shall specify (i) the amount to be borrowed, which shall be a minimum of \$100,000, and (ii) the requested borrowing date, which shall be a Business Day. Each such telephonic notice must be confirmed promptly by delivery to the Swingline Lender and the Administrative Agent of a written Swingline Borrowing Request, appropriately completed and signed by a Responsible Officer of the Borrower. Promptly after receipt by the Swingline Lender of any telephonic Swingline Loan request, the Swingline Lender will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has also received such Swingline Loan request and, if not, the Swingline Lender will notify the Administrative Agent (by telephone or in writing) of the contents thereof. Unless the Swingline Lender has received notice (by telephone or in writing) from the Administrative Agent (including at the request of any Lender) prior to 2:00 p.m. on the date of the proposed Swingline Borrowing (A) directing the Swingline Lender not to make such Swingline Loan as a result of the limitations set forth in the proviso to the first sentence of Section 2.04(a), or (B) that one or more of the applicable conditions specified in Section 4.01 is not then satisfied, then, subject to the terms and conditions hereof, the Swingline Lender will, not later than 3:00 p.m. on the borrowing date specified in such Swingline Borrowing Request, make the amount of its Swingline Loan available to the Borrower at the account of the Borrower specified in such Swingline Borrowing Request.

(c) Refinancing of Swingline Loans.

(i) The Swingline Lender at any time in its sole and absolute discretion may request, on behalf of the Borrower (which hereby irrevocably authorizes the Swingline Lender to so request on its behalf), that each Revolving Facility Lender make an ABR Revolving Loan in an amount equal to such Revolving Facility Lender's Revolving Facility Percentage of the amount of Swingline Loans then outstanding. Such request shall be made in writing (which written request shall be deemed to be a Borrowing Request for purposes hereof) and in accordance with the requirements of Section 2.02, without regard to the Borrowing Minimum and Borrowing Multiples, but subject to the unutilized portion of the Revolving Facility Commitments and the conditions set forth in Section 4.01. The Swingline Lender shall furnish the Borrower with a copy of the applicable Borrowing Request promptly after delivering such notice to the Administrative Agent. Each Revolving Facility Lender shall make an amount equal to its Revolving Facility Percentage of the amount specified in such Borrowing Request available to the Administrative Agent in Same Day Funds for the account of the Swingline Lender at the Administrative Agent's Office for Dollar-denominated payments not later than 1:00 p.m. on the day specified in such Borrowing Request, whereupon, subject to Section 2.04(c)(ii), each Revolving Facility Lender that so makes funds available shall be deemed to have made an ABR Revolving Loan to the Borrower in such amount. The Administrative Agent shall remit the funds so received to the Swingline Lender.

(ii) If for any reason any Swingline Loan cannot be refinanced by such an ABR Revolving Facility Borrowing in accordance with Section 2.04(c)(i), the request for ABR Revolving Loans submitted by the Swingline Lender as set forth herein shall be deemed to be a request by the Swingline Lender that each of the Revolving Facility Lenders fund its risk participation in the relevant Swingline Loan and each Revolving Facility Lender's payment to the Administrative Agent for the account of the Swingline Lender pursuant to Section 2.04(c)(i) shall be deemed payment in respect of such participation.

(iii) If any Revolving Facility Lender fails to make available to the Administrative Agent for the account of the Swingline Lender any amount required to be paid by such Revolving Facility Lender pursuant to the foregoing provisions of this Section 2.04(c) by the time specified in Section 2.04(c)(i), the Swingline Lender shall be entitled to recover from such Revolving Facility Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the Swingline Lender at a rate per annum equal to the applicable Overnight Rate from time to time in effect, plus any administrative, processing or similar fees customarily charged by the Swingline Lender in connection with the foregoing. If such Revolving Facility Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Lender's ABR Revolving Loan included in the relevant ABR Revolving Facility Borrowing or funded participation in the relevant Swingline Loan, as the case may be. A certificate of the Swingline Lender submitted to any Revolving Facility Lender (through the Administrative Agent) with respect to any amounts owing under this clause (iii) shall be conclusive absent manifest error.

(iv) Each Revolving Facility Lender's obligation to make ABR Revolving Loans or to purchase and fund risk participations in Swingline Loans pursuant to this Section 2.04(c) shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against the Swingline Lender, the Borrower or any other person for any reason whatsoever, (B) the occurrence or continuance of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided, however, that each Lender's obligation to make ABR Revolving Loans pursuant to this Section 2.04(c) is subject to the conditions set forth in Section 4.01. No such funding of risk participations shall relieve or otherwise impair the obligation of the Borrower to repay Swingline Loans, together with interest as provided herein.

(d) Repayment of Participations.

(i) At any time after any Revolving Facility Lender has purchased and funded a risk participation in a Swingline Loan, if the Swingline Lender receives any payment on account of such Swingline Loan, the Swingline Lender will distribute to such Revolving Facility Lender its Revolving Facility Percentage thereof in the same funds as those received by the Swingline Lender.

(ii) If any payment received by the Swingline Lender in respect of principal or interest on any Swingline Loan is required to be returned by the Swingline Lender under any of the circumstances described in Section 8.10 (including pursuant to any settlement entered into by the Swingline Lender in its discretion), each Revolving Facility Lender shall pay to the Swingline Lender its Revolving Facility Percentage thereof on demand of the Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned, at a rate per annum equal to the applicable Overnight Rate. The Administrative Agent will make such demand upon the request of the Swingline Lender. The obligations of the Revolving Facility Lenders under this clause shall survive the payment in full of the Obligations and the termination of this Agreement.

(e) Interest for Account of Swingline Lender. The Swingline Lender shall be responsible for invoicing the Borrower for interest on the Swingline Loans. Until each Revolving Facility Lender funds its ABR Revolving Loan or risk participation pursuant to this Section 2.04 to refinance such Revolving Facility Lender's Revolving Facility Percentage of any Swingline Loan, interest in respect of such Revolving Facility Percentage shall be solely for the account of the Swingline Lender.

(f) Payments Directly to Swingline Lender. The Borrower shall make all payments of principal and interest in respect of the Swingline Loans directly to the Swingline Lender.

SECTION 2.05 The Letter of Credit Commitment.

(a) General.

(i) Subject to the terms and conditions set forth herein, (A) the L/C Issuer agrees, in reliance upon the agreements of the Revolving Facility Lenders set forth in this Section 2.05, (1) from time to time on any Business Day during the period from and including the Closing Date until the Letter of Credit Expiration Date, to issue Letters of Credit denominated in Dollars or in one or more Alternative Currencies for the account of the Borrower or its Subsidiaries or any Real Estate Revolver Subsidiary, and to amend or extend Letters of Credit previously issued by it, in accordance with clause (b) below, and (2) to honor drawings under the Letters of Credit; and (B) the Revolving Facility Lenders severally agree to participate in Letters of Credit issued for the account of the Borrower or its Subsidiaries or any Real Estate Revolver Subsidiary and any drawings thereunder; provided that after giving effect to any L/C Credit Extension with respect to any Letter of Credit, (w) the total Revolving Facility Credit Exposure shall not exceed the total Revolving Facility Commitments, (x) no Lender's Revolving Facility Credit Exposure shall exceed such Lender's Revolving Facility Commitment, and (y) the Outstanding Amount of the L/C Obligations shall not exceed the Letter of Credit Sublimit and (z) the total Real Estate Revolver Facility Credit Exposure shall not exceed the Real Estate Revolver Facility Sublimit. Each request by the Borrower for the issuance or amendment of a Letter of Credit shall be deemed to be a representation by the Borrower that the L/C Credit Extension so requested complies with the conditions set forth in the proviso to the preceding sentence. Within the foregoing limits, and subject to the terms and conditions hereof, the Borrower's ability to obtain Letters of Credit shall be fully revolving, and accordingly the Borrower or any Subsidiary or any Real Estate Revolver Subsidiary may, during the foregoing period, obtain Letters of Credit to replace Letters of Credit that have expired or that have been drawn upon and reimbursed. All Existing Letters of Credit shall be deemed to have been issued pursuant hereto, and from and after the Closing Date shall be subject to and governed by the terms and conditions hereof.

(ii) The L/C Issuer shall not issue any Letter of Credit, if:

(A) subject to Section 2.05(b)(iii), the expiry date of such requested Letter of Credit would occur more than twelve months after the date of issuance or last extension, unless the Majority Lenders under the Revolving Facility have approved such expiry date (such approval not to be unreasonably withheld or delayed); or

(B) the expiry date of such requested Letter of Credit would occur after the Letter of Credit Expiration Date, unless all the Revolving Facility Lenders have approved such expiry date (such approval not to be unreasonably withheld or delayed).

(iii) The L/C Issuer shall not be under any obligation to issue any Letter of Credit if:

(A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain the L/C Issuer from issuing such Letter of Credit, or any requirement of law applicable to the L/C Issuer or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the L/C Issuer shall prohibit, or request that the L/C Issuer refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall

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

(B) the issuance of such Letter of Credit would violate one or more policies of the L/C Issuer applicable to letters of credit generally;

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

(D) except as otherwise agreed by the Administrative Agent and the L/C Issuer, such Letter of Credit is to be denominated in a currency other than Dollars or an Alternative Currency;

(E) the L/C Issuer does not as of the issuance date of such requested Letter of Credit issue Letters of Credit in the requested currency (other than with respect to Letters of Credit requested to be in Dollars or an Alternative Currency);

(F) such Letter of Credit contains any provisions for automatic reinstatement of the stated amount after any drawing thereunder; or

(G) a default of any Revolving Facility Lender's obligations to fund under Section 2.05(c) exists or any Revolving Facility Lender is at such time a Defaulting Lender hereunder, unless the L/C Issuer has entered into satisfactory arrangements with the Borrower or such Revolving Facility Lender to eliminate the L/C Issuer's risk with respect to such Revolving Facility Lender.

(iv) The L/C Issuer shall not amend any Letter of Credit if the L/C Issuer would not be permitted at such time to issue such Letter of Credit in its amended form under the terms hereof.

(v) The L/C Issuer shall be under no obligation to amend any Letter of Credit if (A) the L/C Issuer would have no obligation at such time to issue such Letter of Credit in its amended form under the terms hereof, or (B) the beneficiary of such Letter of Credit does not accept the proposed amendment to such Letter of Credit.

(vi) The L/C Issuer shall act on behalf of the Revolving Facility Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and the L/C Issuer shall have all of the benefits and immunities (A) provided to the Administrative Agent in Article VIII with respect to any acts taken or omissions suffered by the L/C Issuer in connection with Letters of Credit issued by it or proposed to be issued by it and Issuer Documents pertaining to such Letters of Credit as fully as if the term "Administrative Agent" as used in Article VIII

included the L/C Issuer with respect to such acts or omissions, and (B) as additionally provided herein with respect to the L/C Issuer.

(b) Procedures for Issuance and Amendment of Letters of Credit; Auto-Extension Letters of Credit.

(i) Each Letter of Credit shall be issued or amended, as the case may be, upon the request of the Borrower delivered to the L/C Issuer (with a copy to the Administrative Agent) in the form of a Letter of Credit Application, appropriately completed and signed by a Responsible Officer of the Borrower. Such Letter of Credit Application must be received by the L/C Issuer and the Administrative Agent not later than 11:00 a.m. at least two Business Days (or such later date and time as the Administrative Agent and the L/C Issuer may agree in a particular instance in their sole discretion) prior to the proposed issuance date or date of amendment, as the case may be. In the case of a request for an initial issuance of a Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to the L/C Issuer: (A) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (B) the amount and currency thereof; (C) the expiry date thereof; (D) the name and address of the beneficiary thereof; (E) the documents to be presented by such beneficiary in case of any drawing thereunder; (F) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; and (G) such other matters as the L/C Issuer may reasonably request. In the case of a request for an amendment of any outstanding Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to the L/C Issuer (A) the Letter of Credit to be amended; (B) the proposed date of amendment thereof (which shall be a Business Day); (C) the nature of the proposed amendment; and (D) such other matters as the L/C Issuer may reasonably request. Additionally, the Borrower shall furnish to the L/C Issuer and the Administrative Agent such other documents and information pertaining to such requested Letter of Credit issuance or amendment, including any Issuer Documents, as the L/C Issuer or the Administrative Agent may reasonably request.

(ii) Promptly after receipt of any Letter of Credit Application, the L/C Issuer will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has received a copy of such Letter of Credit Application from the Borrower and, if not, the L/C Issuer will provide the Administrative Agent with a copy thereof. Unless the L/C Issuer has received written notice from any Revolving Facility Lender, the Administrative Agent or any Loan Party, at least one Business Day prior to the requested date of issuance or amendment of the applicable Letter of Credit, that one or more applicable conditions contained in Section 4.01 shall not then be satisfied, then, subject to the terms and conditions hereof, the L/C Issuer shall, on the requested date, issue a Letter of Credit for the account of the Borrower (or the applicable Subsidiary or Real Estate Revolver Subsidiary) or enter into the applicable amendment, as the case may be, in each case in accordance with the L/C Issuer's usual and customary business practices. Immediately upon the issuance of each Letter of Credit, each Revolving Facility Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the L/C Issuer a risk participation in such Letter of Credit in an amount equal to the product of such Lender's Revolving Facility Percentage times the amount of such Letter of Credit.

(iii) If the Borrower so requests in any applicable Letter of Credit Application, the L/C Issuer may, in its sole and absolute discretion, agree to issue a Letter of Credit that has automatic extension provisions (each, an “Auto-Extension Letter of Credit”); provided that any such Auto-Extension Letter of Credit must permit the L/C Issuer to prevent any such extension at least once in each twelve-month period (commencing with the date of issuance of such Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day (the “Non-Extension Notice Date”) in each such twelve-month period to be agreed upon at the time such Letter of Credit is issued. Unless otherwise directed by the L/C Issuer, the Borrower shall not be required to make a specific request to the L/C Issuer for any such extension. Once an Auto-Extension Letter of Credit has been issued, the Revolving Facility Lenders shall be deemed to have authorized (but may not require) the L/C Issuer to permit the extension of such Letter of Credit at any time to an expiry date not later than the Letter of Credit Expiration Date; provided, however, that the L/C Issuer shall not permit any such extension if (A) the L/C Issuer has determined that it would not be permitted at such time to issue such Letter of Credit in its revised form (as extended) under the terms hereof (by reason of the provisions of clause (ii) or (iii) of Section 2.05(a) or otherwise), or (B) it has received notice (which may be by telephone or in writing) on or before the day that is five Business Days before the Non-Extension Notice Date (1) from the Administrative Agent that the Majority Lenders under the Revolving Facility have elected not to permit such extension or (2) from the Administrative Agent, any Revolving Facility Lender or the Borrower that one or more of the applicable conditions specified in Section 4.01 is not then satisfied, and in each such case directing the L/C Issuer not to permit such extension.

(iv) If the Borrower so requests in any applicable Letter of Credit Application, the L/C Issuer may, in its sole and absolute discretion, agree to issue a Letter of Credit that permits the automatic reinstatement of all or a portion of the stated amount thereof after any drawing thereunder (each, an “Auto-Reinstatement Letter of Credit”). Unless otherwise directed by the L/C Issuer, the Borrower shall not be required to make a specific request to the L/C Issuer to permit such reinstatement. Once an Auto-Reinstatement Letter of Credit has been issued, except as provided in the following sentence, the Revolving Facility Lenders shall be deemed to have authorized (but may not require) the L/C Issuer to reinstate all or a portion of the stated amount thereof in accordance with the provisions of such Letter of Credit. Notwithstanding the foregoing, if such Auto-Reinstatement Letter of Credit permits the L/C Issuer to decline to reinstate all or any portion of the stated amount thereof after a drawing thereunder by giving notice of such non-reinstatement within a specified number of days after such drawing (the “Non-Reinstatement Deadline”), the L/C Issuer shall not permit such reinstatement if it has received a notice (which may be by telephone or in writing) on or before the day that is five Business Days before the Non-Reinstatement Deadline (A) from the Administrative Agent that the Majority Lenders under the Revolving Facility have elected not to permit such reinstatement or (B) from the Administrative Agent, any Revolving Facility Lender or the Borrower that one or more of the applicable conditions specified in Section 4.01 is not then satisfied (treating such reinstatement as an L/C Credit Extension for purposes of this clause) and, in each case, directing the L/C Issuer not to permit such reinstatement.

(v) Promptly after its delivery of any Letter of Credit or any amendment to a Letter of Credit to an advising bank with respect thereto or to the beneficiary thereof, the L/C

Issuer will also deliver to the Borrower and the Administrative Agent a true and complete copy of such Letter of Credit or amendment.

(c) Drawings and Reimbursements: Funding of Participations.

(i) Upon receipt from the beneficiary of any Letter of Credit of any notice of a drawing under such Letter of Credit, the L/C Issuer shall notify the Borrower and the Administrative Agent thereof. In the case of a Letter of Credit denominated in an Alternative Currency, the Borrower shall reimburse the L/C Issuer in such Alternative Currency, unless (A) the L/C Issuer (at its option) shall have specified in such notice that it will require reimbursement in Dollars, or (B) in the absence of any such requirement for reimbursement in Dollars, the Borrower shall have notified the L/C Issuer promptly following receipt of the notice of drawing that the Borrower will reimburse the L/C Issuer in Dollars. In the case of any such reimbursement in Dollars of a drawing under a Letter of Credit denominated in an Alternative Currency, the L/C Issuer shall notify the Borrower of the Dollar Equivalent of the amount of the drawing promptly following the determination thereof. Not later than (1) 1:00 p.m., Local Time, on the date that the L/C Issuer provides notice to the Borrower of any payment by the L/C Issuer under a Letter of Credit denominated in Dollars or the Applicable Time in the case of any Letter of Credit denominated in an Alternative Currency (if such notice is provided by 10:00 a.m., Local Time, on such date) or (2) 11:00 a.m., Local Time, on the next succeeding Business Day or the Applicable Time on such next succeeding Business Day, as the case may be (if such notice is provided after 10:00 a.m., Local Time, on the date such notice is given) (each such applicable date, an “Honor Date”), the Borrower shall reimburse the L/C Issuer (and the L/C Issuer shall promptly notify the Administrative Agent of any failure by the Borrower to so reimburse the L/C Issuer by such time) in an amount equal to the amount of such drawing and in the applicable currency. If the Borrower fails to so reimburse the L/C Issuer by such time, the Administrative Agent shall promptly notify each Revolving Facility Lender of the Honor Date, the amount of the unreimbursed drawing (expressed in Dollars in the amount of the Dollar Equivalent thereof in the case of a Letter of Credit denominated in an Alternative Currency) (the “Unreimbursed Amount”), and the amount of such Lender’s Revolving Facility Percentage thereof. In such event, the Borrower shall be deemed to have requested a Borrowing of ABR Revolving Loans to be disbursed on the Honor Date in an amount equal to the Unreimbursed Amount, without regard to the minimum Borrowing Minimums or Borrowing Multiples, but subject to the amount of the unutilized portion of the Revolving Facility Commitments and the conditions set forth in Section 4.01 (other than the delivery of a Borrowing Request). Any notice given by the L/C Issuer or the Administrative Agent pursuant to this Section 2.05(c)(i) may be given by telephone if immediately confirmed in writing; provided that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice.

(ii) Each Revolving Facility Lender shall upon any notice pursuant to Section 2.05(c)(i) make funds available to the Administrative Agent for the account of the L/C Issuer, in Dollars, at the Administrative Agent’s Office for Dollar-denominated payments in an amount equal to its Revolving Facility Percentage of the Unreimbursed Amount not later than 1:00 p.m. on the Business Day specified in such notice by the Administrative Agent, whereupon, subject to the provisions of Section 2.05(c)(iii), each Revolving Facility Lender that so makes funds

available shall be deemed to have made an ABR Revolving Loan to the Borrower in such amount. The Administrative Agent shall remit the funds so received to the L/C Issuer in Dollars.

(iii) With respect to any Unreimbursed Amount that is not fully refinanced by a Borrowing of ABR Revolving Loans because the conditions set forth in Section 4.01 cannot be satisfied or for any other reason, the Borrower shall be deemed to have incurred from the L/C Issuer an L/C Borrowing in the amount of the Unreimbursed Amount that is not so refinanced, which L/C Borrowing shall be due and payable on demand (together with interest) and shall bear interest at the rate specified in Section 2.13(c). In such event, each Revolving Facility Lender's payment to the Administrative Agent for the account of the L/C Issuer pursuant to Section 2.05(c)(ii) shall be deemed payment in respect of its participation in such L/C Borrowing and shall constitute an L/C Advance from such Revolving Facility Lender in satisfaction of its participation obligation under this Section 2.05.

(iv) Until each Revolving Facility Lender funds its ABR Revolving Loan or L/C Advance pursuant to this Section 2.05(c) to reimburse the L/C Issuer for any amount drawn under any Letter of Credit, interest in respect of such Lender's Revolving Facility Percentage of such amount shall be solely for the account of the L/C Issuer.

(v) Each Revolving Facility Lender's obligation to make ABR Revolving Loans or L/C Advances to reimburse the L/C Issuer for amounts drawn under Letters of Credit, as contemplated by this Section 2.05(c), shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Revolving Facility Lender may have against the L/C Issuer, the Borrower, any Subsidiary, any Real Estate Revolver Subsidiary, or any other person for any reason whatsoever; (B) the occurrence or continuance of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided, however, that each Lender's obligation to make ABR Revolving Loans pursuant to this Section 2.05(c) is subject to the conditions set forth in Section 4.01 (other than delivery by the Borrower of a Borrowing Request). No such making of an L/C Advance shall relieve or otherwise impair the obligation of the Borrower to reimburse the L/C Issuer for the amount of any payment made by the L/C Issuer under any Letter of Credit, together with interest as provided herein.

(vi) If any Revolving Facility Lender fails to make available to the Administrative Agent for the account of the L/C Issuer any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.05(c) by the time specified in Section 2.05(c)(ii), the L/C Issuer shall be entitled to recover from such Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the L/C Issuer at a rate per annum equal to the applicable Overnight Rate from time to time in effect, plus any administrative, processing or similar fees customarily charged by the L/C Issuer in connection with the foregoing. If such Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Lender's ABR Revolving Loan included in the relevant Borrowing or L/C Advance in respect of the relevant L/C Borrowing, as the case may be. A certificate of the L/C Issuer submitted to any Revolving Facility Lender (through the

Administrative Agent) with respect to any amounts owing under this clause (vi) shall be conclusive absent manifest error.

(d) Repayment of Participations.

(i) At any time after the L/C Issuer has made a payment under any Letter of Credit and has received from any Revolving Facility Lender such Revolving Facility Lender's L/C Advance in respect of such payment in accordance with Section 2.05(c), if the Administrative Agent receives for the account of the L/C Issuer any payment in respect of the related Unreimbursed Amount or interest thereon (whether directly from the Borrower or otherwise, including proceeds of Cash Collateral applied thereto by the Administrative Agent), the Administrative Agent will distribute to such Revolving Facility Lender its Revolving Facility Percentage thereof in Dollars and in the same funds as those received by the Administrative Agent.

(ii) If any payment received by the Administrative Agent for the account of the L/C Issuer pursuant to Section 2.05(c)(i) is required to be returned under any of the circumstances described in Section 8.10 (including pursuant to any settlement entered into by the L/C Issuer in its discretion), each Revolving Facility Lender shall pay to the Administrative Agent for the account of the L/C Issuer its Revolving Facility Percentage thereof on demand of the Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned by such Revolving Facility Lender, at a rate per annum equal to the applicable Overnight Rate from time to time in effect. The obligations of the Revolving Facility Lenders under this clause shall survive the payment in full of the Obligations and the termination of this Agreement.

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

(i) any lack of validity or enforceability of such Letter of Credit, this Agreement, or any other Loan Document;

(ii) the existence of any claim, counterclaim, setoff, defense or other right that the Borrower or any Subsidiary or any Real Estate Revolver Subsidiary may have at any time against any beneficiary or any transferee of such Letter of Credit (or any person for whom any such beneficiary or any such transferee may be acting), the L/C Issuer or any other person, whether in connection with this Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;

(iii) any draft, demand, certificate or other document presented under such Letter of Credit that appears on its face to be valid proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;

(iv) any payment by the L/C Issuer under such Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit; or any payment made by the L/C Issuer under such Letter of Credit to any person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law;

(v) any adverse change in the relevant exchange rates or in the availability of the relevant Alternative Currency to the Borrower or any Subsidiary or in the relevant currency markets generally; or

(vi) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, the Borrower or any Subsidiary or any Real Estate Revolver Subsidiary.

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

(f) Role of L/C Issuer. Each Revolving Facility Lender and the Borrower agree that, in paying any drawing under a Letter of Credit, the L/C Issuer shall not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the person executing or delivering any such document. None of the L/C Issuer, the Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of the L/C Issuer shall be liable to any Lender for (i) any action taken or omitted in connection herewith at the request or with the approval of the Revolving Facility Lenders or the Majority Facility Lenders under the Revolving Facility, as applicable; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct; or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or Issuer Document. The Borrower hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; provided, however, that this assumption is not intended to, and shall not, preclude the Borrower's pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. None of the L/C Issuer, the Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of the L/C Issuer shall be liable or responsible for any of the matters described in clauses (i) through (v) of Section 2.05(e); provided, however, that anything in such clauses to the contrary notwithstanding, the Borrower may have a claim against the L/C Issuer, and the L/C Issuer may be liable to the Borrower, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by the Borrower which the Borrower proves were caused by the

L/C Issuer's willful misconduct or gross negligence or the L/C Issuer's willful failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) strictly complying with the terms and conditions of a Letter of Credit. In furtherance and not in limitation of the foregoing, the L/C Issuer may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and the L/C Issuer shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason.

(g) Cash Collateral.

(i) Upon the request of the Administrative Agent if, as of the Letter of Credit Expiration Date, any L/C Obligation for any reason remains outstanding, the Borrower shall promptly Cash Collateralize the then Outstanding Amount of all L/C Obligations.

(ii) Sections 2.11(d) and 7.01 set forth certain additional requirements to deliver Cash Collateral hereunder. For purposes of this Section 2.05, Section 2.11(d) and Section 7.01, "Cash Collateralize" means to pledge and deposit with or deliver to the Administrative Agent, for the benefit of the L/C Issuer and the Revolving Facility Lenders, as collateral for the L/C Obligations, cash or deposit account balances pursuant to documentation in form and substance reasonably satisfactory to the Administrative Agent and the L/C Issuer (which documents are hereby consented to by the Lenders). Derivatives of such term have corresponding meanings. The Borrower hereby grants to the Administrative Agent, for the benefit of the L/C Issuer and the Revolving Facility Lenders, a security interest in all such cash, deposit accounts and all balances therein and all proceeds of the foregoing. Except as otherwise agreed to by the Administrative Agent, Cash Collateral shall be maintained in blocked, non-interest bearing deposit accounts at Bank of America.

(h) Applicability of ISP and UCP. Unless otherwise expressly agreed by the L/C Issuer and the Borrower when a Letter of Credit is issued (including any such agreement applicable to an Existing Letter of Credit), (i) the rules of the ISP shall apply to each standby Letter of Credit, and (ii) the rules of the Uniform Customs and Practice for Documentary Credits, as most recently published by the International Chamber of Commerce at the time of issuance shall apply to each commercial Letter of Credit.

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

(j) Letters of Credit Issued for Subsidiaries. Notwithstanding that a Letter of Credit issued or outstanding hereunder is in support of any obligations of, or is for the account of, a Subsidiary or a Real Estate Revolver Subsidiary, the Borrower shall be obligated to reimburse the L/C Issuer hereunder for any and all drawings under such Letter of Credit. The Borrower hereby acknowledges that the issuance of Letters of Credit for the account of Subsidiaries or Real Estate Revolver Subsidiaries inures to the benefit of the Borrower, and

that the Borrower's business derives substantial benefits from the businesses of such Subsidiaries or Real Estate Revolver Subsidiaries.

(k) Additional L/C Issuers. From time to time, the Borrower may by notice to the Administrative Agent with the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) and the applicable Revolving Facility Lender designate such Revolving Facility Lender (in addition to Bank of America) to act as an L/C Issuer hereunder. In the event that there shall be more than one L/C Issuer hereunder, each reference to "the L/C Issuer" hereunder with respect to any L/C Issuer shall refer to the person that issued such Letter of Credit and each such additional L/C Issuer shall be entitled to the benefits of this Agreement as an L/C Issuer to the same extent as if it had been originally named as the L/C Issuer hereunder. Promptly after its delivery of any Letter of Credit or any amendment to a Letter of Credit (including any Existing Letter of Credit) to an advising bank with respect thereto or to the beneficiary thereof, each L/C Issuer (other than Bank of America) will also deliver to the Administrative Agent a true and complete copy of such Letter of Credit or amendment. On the last Business Day of each March, June, September and December (and on such other dates as the Administrative Agent may request), each L/C Issuer shall provide the Administrative Agent a list of all Letters of Credit (including any Existing Letter of Credit) issued by it that are outstanding at such time together with such other information as the Administrative Agent may reasonably request.

#### SECTION 2.06 Funding of Borrowings.

(a) Each Lender shall make each Term Loan or Revolving Facility Loan to be made by it hereunder available to the Administrative Agent in Same Day Funds at the Administrative Agent's Office for the applicable currency not later than 10:00 a.m., Local Time, in the case of any Loan denominated in Dollars, and not later than the Applicable Time specified by the Administrative Agent in the case of any Revolving Facility Loan denominated in an Alternative Currency, in each case on the Business Day specified in the applicable Borrowing Request. The Administrative Agent will make such Loans available to the Borrower by promptly crediting the amounts so received, in like funds, to an account of the Borrower as specified in the Borrowing Request; provided, however, that if, on the date the Borrowing Request with respect to a Revolving Facility Borrowing denominated in Dollars is given by the Borrower, there are L/C Borrowings outstanding, then the proceeds of such Borrowing, first, shall be applied to the payment in full of any such L/C Borrowings, and, second, shall be made available to the applicable Borrower as provided above.

(b) Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing of Eurocurrency Loans (or, in the case of any Borrowing of ABR Loans, prior to 9:00 a.m., Local Time, on the date of such Borrowing) that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with Section 2.06(a) (or, in the case of a Borrowing of ABR Loans, that such Lender has made such share available in accordance with and at the time required by Section 2.06(a)) and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its

share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount in Same Day Funds with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (A) in the case of a payment to be made by such Lender, the Overnight Rate, plus any administrative, processing or similar fees customarily charged by the Administrative Agent in connection with the foregoing, and (B) in the case of a payment to be made by the Borrower, the interest rate applicable to ABR Loans under the applicable Facility. If the Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays its share of the applicable Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such Borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

SECTION 2.07 Interest Elections.

(a) Each Borrowing of Revolving Facility Loans or Term Loans initially shall be of the Type specified in the applicable Borrowing Request and, in the case of a Eurocurrency Borrowing, shall have an initial Interest Period as specified in such Borrowing Request. Thereafter, the Borrower may elect to convert such Borrowing to a different Type or to continue such Borrowing and, in the case of a Eurocurrency Borrowing, may elect Interest Periods therefor, all as provided in this Section; provided, that except as otherwise provided herein, a Eurocurrency Loan may be continued or converted only on the last day of an Interest Period for such Eurocurrency Loan. The Borrower may elect different options with respect to different portions of the affected Revolving Facility Borrowing or Term Borrowing, in which case each such portion shall be allocated ratably among the Lenders holding the Loans comprising such Borrowing, and the Loans comprising each such portion shall be considered a separate Borrowing.

(b) To make an election pursuant to this Section, the Borrower shall notify the Administrative Agent of such election by telephone by the time that a Borrowing Request would be required under Section 2.03 if the Borrower were requesting a Borrowing of the Type resulting from such election to be made on the effective date of such election. Each such telephonic Interest Election Request shall be irrevocable and shall be confirmed promptly by hand delivery or telecopy to the Administrative Agent of a written Interest Election Request in the form of Exhibit D and signed by a Responsible Officer of the Borrower.

(c) Each telephonic and written Interest Election Request shall be irrevocable and shall specify the following information in compliance with Section 2.02:

- (i) the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii) and (iv) below shall be specified for each resulting Borrowing);

- (ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day;
- (iii) whether the resulting Borrowing is to be an ABR Borrowing or a Eurocurrency Borrowing; and
- (iv) if the resulting Borrowing is a Eurocurrency Borrowing, the Interest Period to be applicable thereto after giving effect to such election, which shall be a period contemplated by the definition of the term "Interest Period."

If any such Interest Election Request requests a Eurocurrency Borrowing but does not specify an Interest Period, then the Borrower shall be deemed to have selected an Interest Period of one month's duration.

(d) Promptly following receipt of an Interest Election Request, the Administrative Agent shall advise each Lender to which such Interest Election Request relates of the details thereof and of such Lender's portion of each resulting Borrowing.

(e) If the Borrower fails to deliver a timely Interest Election Request with respect to a Eurocurrency Borrowing prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall be converted to an ABR Borrowing; provided, that any Loan denominated in an Alternative Currency shall instead be continued as a Eurocurrency Borrowing with an Interest Period of one month's duration. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing and the Administrative Agent, at the written request (including a request through electronic means) of the Required Lenders, so notifies the Borrower, then, so long as an Event of Default is continuing (i) no outstanding Borrowing denominated in Dollars may be converted to or continued as a Eurocurrency Borrowing, (ii) unless repaid, each Eurocurrency Borrowing denominated in Dollars shall be converted to an ABR Borrowing at the end of the Interest Period applicable thereto and (iii) each Eurocurrency Revolving Facility Borrowing shall, unless repaid, be continued as a Eurocurrency Revolving Facility Borrowing with an Interest Period of one month's duration.

#### SECTION 2.08 Termination and Reduction of Commitments.

(a) Unless previously terminated, (i) the Revolving Facility Commitments shall terminate on the Revolving Facility Maturity Date and (ii) the Term B-1 Loan Commitments, Term B-2 Loan Commitments and Term B-3 Loan Commitments shall terminate at 2:00 p.m., Local Time, on the Closing Date.

(b) The Borrower may at any time terminate, or from time to time reduce, the Revolving Facility Commitments; provided, that (i) each such reduction shall be in an amount that is an integral multiple of \$10.0 million and not less than \$10.0 million (or, if less, the remaining amount of the Revolving Facility Commitments) and (ii) the Borrower shall not terminate or reduce the Revolving Facility Commitments if, after giving effect to any

concurrent prepayment of the Revolving Facility Loans in accordance with Section 2.11, the Revolving Facility Credit Exposure would exceed the total Revolving Facility Commitments.

(c) The Borrower shall notify the Administrative Agent of any election to terminate or reduce the Revolving Facility Commitments under clause (b) of this Section at least three Business Days prior to the effective date of such termination or reduction, specifying such election and the effective date thereof. Promptly following receipt of any notice, the Administrative Agent shall advise the applicable Lenders of the contents thereof. Each notice delivered by the Borrower pursuant to this Section shall be irrevocable; provided, that a notice of termination of the Revolving Facility Commitments delivered by the Borrower may state that such notice is conditioned upon the effectiveness of other credit facilities, in which case such notice may be revoked by the Borrower (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. Any termination or reduction of the Commitments shall be permanent. Each reduction of the Commitments shall be made ratably among the applicable Lenders in accordance with their respective Commitments.

#### SECTION 2.09 Repayment of Loans; Evidence of Debt.

(a) The Borrower hereby unconditionally promises to pay (i) to the Administrative Agent for the account of each Revolving Facility Lender the then unpaid principal amount of each Revolving Facility Loan to the Borrower on the Revolving Facility Maturity Date, (ii) to the Administrative Agent for the account of each Lender the then unpaid principal amount of each Term Loan of such Lender as provided in Section 2.10 and (iii) to the Swingline Lender the then unpaid principal amount of each Swingline Loan on the Revolving Facility Maturity Date.

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

(c) The Administrative Agent shall maintain accounts in which it shall record (i) the amount and currency of each Loan made hereunder, the Facility and Type thereof and the Interest Period (if any) applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and (iii) any amount received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof.

(d) The entries made in the accounts maintained pursuant to paragraph (b) or (c) of this Section shall be prima facie evidence of the existence and amounts of the obligations recorded therein; provided, that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrower to repay the Loans in accordance with the terms of this Agreement.

(e) Any Lender may request that Loans made by it be evidenced by a promissory note (a "Note"). In such event, the Borrower shall prepare, execute and deliver to

such Lender a promissory note payable to the order of such Lender (or, if requested by such Lender, to such Lender and its registered assigns) and in a form approved by the Administrative Agent and reasonably acceptable to the Borrower. Thereafter, unless otherwise agreed to by the applicable Lender, the Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 9.04) be represented by one or more promissory notes in such form payable to the order of the payee named therein (or, if such promissory note is a registered note, to such payee and its registered assigns).

SECTION 2.10 Repayment of Term Loans and Revolving Facility Loans.

(a) Subject to the other paragraphs of this Section,

(i) the Borrower shall repay Term B-1 Borrowings on each date set forth below or, if such date is not a Business Day, the next preceding Business Day (each such date being referred to as a "Term B-1 Loan Installment Date"), in the aggregate principal amount equal to the amount set forth opposite such Term B-1 Loan Installment Date:

<u>Date</u>	<u>Amount of Term B-1 Borrowings to Be Repaid</u>
June 30, 2008	\$ 5,625,000
September 30, 2008	\$ 5,625,000
December 31, 2008	\$ 5,625,000
March 31, 2009	\$ 5,625,000
June 30, 2009	\$ 5,625,000
September 30, 2009	\$ 5,625,000
December 31, 2009	\$ 5,625,000
March 31, 2010	\$ 5,625,000
June 30, 2010	\$ 5,625,000
September 30, 2010	\$ 5,625,000
December 31, 2010	\$ 5,625,000
March 31, 2011	\$ 5,625,000
June 30, 2011	\$ 5,625,000
September 30, 2011	\$ 5,625,000
December 31, 2011	\$ 5,625,000
March 31, 2012	\$ 5,625,000
June 30, 2012	\$ 5,625,000
September 30, 2012	\$ 5,625,000
December 31, 2012	\$ 5,625,000
March 31, 2013	\$ 5,625,000
June 30, 2013	\$ 5,625,000
September 30, 2013	\$ 5,625,000
December 31, 2013	\$ 5,625,000
March 31, 2014	\$ 5,625,000
June 30, 2014	\$ 5,625,000

<u>Date</u>	<u>Amount of Term B-1 Borrowings to Be Repaid</u>
September 30, 2014	\$ 5,625,000
December 31, 2014	\$ 5,625,000
Term B Facility Maturity Date	\$ 2,098,125,000

(ii) the Borrower shall repay Term B-2 Borrowings on each date set forth below or, if such date is not a Business Day, the next preceding Business Day (each such date being referred to as a "Term B-2 Loan Installment Date"), in the aggregate principal amount equal to the amount set forth opposite such Term B-2 Loan Installment Date:

<u>Date</u>	<u>Amount of Term B-2 Borrowings to Be Repaid</u>
June 30, 2008	\$ 7,500,000
September 30, 2008	\$ 7,500,000
December 31, 2008	\$ 7,500,000
March 31, 2009	\$ 7,500,000
June 30, 2009	\$ 7,500,000
September 30, 2009	\$ 7,500,000
December 31, 2009	\$ 7,500,000
March 31, 2010	\$ 7,500,000
June 30, 2010	\$ 7,500,000
September 30, 2010	\$ 7,500,000
December 31, 2010	\$ 7,500,000
March 31, 2011	\$ 7,500,000
June 30, 2011	\$ 7,500,000
September 30, 2011	\$ 7,500,000
December 31, 2011	\$ 7,500,000
March 31, 2012	\$ 7,500,000
June 30, 2012	\$ 7,500,000
September 30, 2012	\$ 7,500,000
December 31, 2012	\$ 7,500,000
March 31, 2013	\$ 7,500,000
June 30, 2013	\$ 7,500,000
September 30, 2013	\$ 7,500,000
December 31, 2013	\$ 7,500,000
March 31, 2014	\$ 7,500,000
June 30, 2014	\$ 7,500,000
September 30, 2014	\$ 7,500,000
December 31, 2014	\$ 7,500,000
Term B Facility Maturity Date	\$ 2,797,500,000

(iii) the Borrower shall repay Term B-3 Borrowings on each date set forth below or, if such date is not a Business Day, the next preceding Business Day (each such date being referred to as a "Term B-3 Loan Installment Date"), in the aggregate principal amount equal to the amount set forth opposite such Term B-3 Loan Installment Date:

<u>Date</u>	<u>Amount of Term B-3 Borrowings to Be Repaid</u>
June 30, 2008	\$ 5,000,000
September 30, 2008	\$ 5,000,000
December 31, 2008	\$ 5,000,000
March 31, 2009	\$ 5,000,000
June 30, 2009	\$ 5,000,000
September 30, 2009	\$ 5,000,000
December 31, 2009	\$ 5,000,000
March 31, 2010	\$ 5,000,000
June 30, 2010	\$ 5,000,000
September 30, 2010	\$ 5,000,000
December 31, 2010	\$ 5,000,000
March 31, 2011	\$ 5,000,000
June 30, 2011	\$ 5,000,000
September 30, 2011	\$ 5,000,000
December 31, 2011	\$ 5,000,000
March 31, 2012	\$ 5,000,000
June 30, 2012	\$ 5,000,000
September 30, 2012	\$ 5,000,000
December 31, 2012	\$ 5,000,000
March 31, 2013	\$ 5,000,000
June 30, 2013	\$ 5,000,000
September 30, 2013	\$ 5,000,000
December 31, 2013	\$ 5,000,000
March 31, 2014	\$ 5,000,000
June 30, 2014	\$ 5,000,000
September 30, 2014	\$ 5,000,000
December 31, 2014	\$ 5,000,000
Term B Facility Maturity Date	\$ 1,865,000,000

(iv) in the event that any Incremental Term Loans are made on an Increased Amount Date, the Borrower shall repay such Incremental Term Loans on the dates and in the amounts set forth in the Incremental Assumption Agreement (each such date being referred to as an "Incremental Term Loan Installment Date"); and

(v) to the extent not previously paid, outstanding Term B-1 Loans, Term B-2 Loans and Term B-3 Loans shall be due and payable on the Term B Facility Maturity Date.

(b) To the extent not previously paid, outstanding Revolving Facility Loans shall be due and payable on the Revolving Facility Maturity Date.

(c) Prepayment of the Term Loans from:

(i) all Net Proceeds pursuant to Section 2.11(b) and Excess Cash Flow pursuant to Section 2.11(c) shall be applied to the Term Loans pro rata among each Term Facility, with the application thereof being applied to the remaining installments thereof as the Borrower may direct, provided that, subject to the pro rata application to Loans outstanding within any Class of Term Loans, the Borrower may allocate such prepayment in its sole discretion among the Class or Classes of Term Loans as the Borrower may specify, and

(ii) any optional prepayments of the Term Loans pursuant to Section 2.11(a) shall be applied to the remaining installments of the Term Loans as the Borrower may direct under the applicable Class or Classes as the Borrower may direct.

(d) Any mandatory prepayment of Term Loans pursuant to Section 2.11(b) or (c) shall be applied so that the aggregate amount of such prepayment is allocated among the Term Loans in the applicable Class or Classes of Term Loans (including Other Term Loans, if any) to be repaid, pro rata based on the aggregate principal amount of outstanding Term Loans in the applicable Class or Classes, irrespective of whether such outstanding Term Loans are ABR Loans or Eurocurrency Loans; provided that if no Lenders exercise the right to waive a given mandatory prepayment of the Term Loans pursuant to Section 2.11(e), then, with respect to such mandatory prepayment, prior to the repayment of any Term Loan, the Borrower may select the Borrowing or Borrowings to be repaid and shall notify the Administrative Agent by telephone (confirmed by teletype) of such selection not later than 1:00 p.m., Local Time, (i) in the case of an ABR Borrowing, one Business Day before the scheduled date of such repayment and (ii) in the case of a Eurocurrency Borrowing, three Business Days before the scheduled date of such repayment. Repayments of Eurocurrency Borrowings pursuant to this Section 2.10 shall be accompanied by accrued interest on the amount repaid.

#### SECTION 2.11 Prepayment of Loans.

(a) (i) The Borrower shall have the right at any time and from time to time to prepay any Loan in whole or in part, without premium or penalty (except as provided in clauses (ii) and (iii) of this Section 2.11(a) and subject to Section 2.16), in an aggregate principal amount that is an integral multiple of the Borrowing Multiple and not less than the Borrowing Minimum or, if less, the amount outstanding, upon prior notice to the Administrative Agent by telephone (confirmed by teletype) (x) in the case of an ABR Loan, not less than one Business Day prior to the date of prepayment, (y) in the case of Eurocurrency Loans denominated in Dollars, not less than three Business Days prior to the date of prepayment and (z) in the case of a Eurocurrency Revolving Loan denominated in an Alternative Currency, not less than four Business Days prior to the date of prepayment, which notice shall be irrevocable except to the extent conditioned on a refinancing of all or any portion of the Facilities. Each such notice shall be signed by a Responsible Officer of the

Borrower and shall specify the date and amount of such prepayment and the Class(es) and the Type(s) of Loans to be prepaid and, if Eurocurrency Loans are to be prepaid, the Interest Period(s) of such Loans. The Administrative Agent will promptly notify each applicable Lender of its receipt of each such notice, and of the amount of such Lender's pro rata share of such prepayment.

(ii) In the event that any Term B-3 Loans are repaid or any Term B-3 Loans are assigned pursuant to Section 2.19(c) in connection with an amendment to this Section 2.11(a)(ii) or the definition of Applicable Premium (the "Repaid Term B-3 Loans") prior to the date which is three years following the Closing Date in whole or in part (other than pursuant to Section 2.10(a) or Section 2.11(c)), the Borrower shall pay to the Lenders having such Repaid Term B-3 Loans the Applicable Premium as of the date of such prepayment or assignment; provided that prior to the date which is three years following the Closing Date, the Borrower may, at its option, on one or more occasions, repay up to 35% of the aggregate principal amount of the Term B-3 Loans subject to a prepayment premium on the principal amount of Term B-3 Loans being prepaid equal to the Eurocurrency Rate for an interest period of three months commencing on such date plus the Applicable Margin for Term B-3 Loans that are Eurocurrency Term Loans in effect on such date, plus accrued and unpaid interest thereon to the date of such repayment, with the net cash proceeds of one or more offerings of Qualified Equity Interests; provided that (x) at least 50% of the original aggregate principal amount of Term B-3 Loans remains outstanding immediately after the occurrence of each such repayment and (y) each such repayment occurs within 90 days of the date of receipt of the equity proceeds so utilized.

(iii) In the event that, prior to the date which is three years following the Closing Date, there shall occur any amendment, amendment and restatement or other modification of this Agreement which reduces the Applicable Margin with respect to the Term B-2 Loans or any prepayment or refinancing of the Term B-2 Loans with proceeds of new term loans having lower applicable margins or applicable yield (after giving effect to any premiums paid on such new term loans) than the Applicable Margin for the Term B-2 Loans as of the Closing Date, each such amendment, amendment and restatement, modification, prepayment or refinancing, as the case may be, shall be accompanied by a fee or prepayment premium, as applicable, equal to (i) 3%, if such amendment, amendment and restatement, modification, prepayment or refinancing, as the case may be, occurs after the Closing Date but prior to the first anniversary of the Closing Date, (ii) 2%, if such amendment, amendment and restatement, modification, prepayment or refinancing, as the case may be, occurs on or after the first anniversary of the Closing Date but prior to the second anniversary of the Closing Date and (iii) 1%, if such amendment, amendment and restatement, modification, prepayment or refinancing, as the case may be, occurs on or after the second anniversary of the Closing Date but prior to the third anniversary of the Closing Date. As a condition to the effectiveness of any assignment pursuant to Section 2.19(c) in respect of any amendment, amendment and restatement or modification to this Agreement effective prior to the third anniversary of the Closing Date that has the effect of reducing the Applicable Margin for the Term B-2 Loans from the Applicable Margin in effect on the Closing Date, the Borrower shall pay to such Non-Consenting Lender of Term B-2 Loans a premium equal to the premium that would apply if such Non-Consenting Lender's Term B-2 Loans being assigned were being prepaid and subject to the premium set forth in the immediately preceding sentence.

(b) Subject to Section 2.11(e) and (f), the Borrower shall apply all Net Proceeds promptly upon receipt thereof to prepay Term Loans in accordance with clauses (c) and (d) of Section 2.10. Notwithstanding the foregoing, the Borrower may retain all Net Proceeds from Asset Sales if the Senior Secured Leverage Ratio as of the last day of the most recently completed Test Period at the time such prepayment would otherwise have been required shall be less than or equal to 2.50 to 1.00.

(c) Subject to Section 2.11(e) and (f), within five (5) Business Days after financial statements are delivered under Section 5.04(a) with respect to each Excess Cash Flow Period, the Borrower shall calculate Excess Cash Flow for such Excess Cash Flow Period and shall apply an amount equal to (i) the Required Percentage of such Excess Cash Flow, minus (ii) the sum of (A) the amount of any voluntary prepayments during such Excess Cash Flow Period of Term Loans (and with respect to the Excess Cash Flow Period ending December 31, 2009, plus the amount of any voluntary prepayments of Term Loans made prior to such Excess Cash Flow Period) and (B) the amount of any permanent voluntary reductions during such Excess Cash Flow Period of Revolving Facility Commitments to the extent that an equal amount of Revolving Facility Loans was simultaneously repaid, to prepay Term Loans in accordance with clauses (c) and (d) of Section 2.10. Not later than the date on which the payment is required to be made pursuant to the foregoing sentence for each applicable Excess Cash Flow Period, the Borrower will deliver to the Administrative Agent a certificate signed by a Financial Officer of the Borrower setting forth the amount, if any, of Excess Cash Flow for such fiscal year and the calculation thereof in reasonable detail.

(d) If the Administrative Agent notifies the Borrower at any time that the Revolving Facility Credit Exposure at such time exceed an amount equal to 105% of the Revolving Facility Commitments then in effect, then, within two Business Days after receipt of such notice, the Borrower shall (at the Borrower's option) prepay Revolving Facility Loans and/or the Swingline Loans and/or the Borrower shall Cash Collateralize the L/C Obligations in an aggregate amount sufficient to reduce the Revolving Facility Credit Exposure as of such date of payment to an amount not to exceed 100% of the Revolving Facility Commitments then in effect. The Administrative Agent may, at any time and from time to time after any such initial deposit of such Cash Collateral, request that additional Cash Collateral be provided in order to protect against the results of further exchange rate fluctuations. If the Administrative Agent notifies the Borrower on any Revaluation Date that the Outstanding Amount of all Revolving Facility Loans denominated in Alternative Currencies at such time exceeds an amount equal to 105% of the Alternative Currency Sublimit then in effect, then, within five Business Days after receipt of such notice, the Borrower shall prepay Revolving Facility Loans denominated in Alternative Currencies in an aggregate amount sufficient to reduce such Outstanding Amount as of such date of payment to an amount not to exceed 100% of the Alternative Currency Sublimit then in effect.

(e) Anything contained herein to the contrary notwithstanding, in the event the Borrower is required to make any mandatory prepayment (a "Waivable Mandatory Prepayment") of the Term Loans, not less than three Business Days prior to the date (the "Required Prepayment Date") on which the Borrower elects (or is otherwise required) to make such Waivable Mandatory Prepayment, the Borrower shall notify Administrative Agent of the

amount of such prepayment, and Administrative Agent will promptly thereafter notify each Lender holding an outstanding Term Loan of the amount of such Lender's pro rata share of such Waivable Mandatory Prepayment and such Lender's option to refuse such amount. Each such Lender may exercise such option by giving written notice to the Administrative Agent of its election to do so on or before the second Business Day prior to the Required Prepayment Date (it being understood that any Lender which does not notify the Administrative Agent of its election to exercise such option on or before the first Business Day prior to the Required Prepayment Date shall be deemed to have elected, as of such date, not to exercise such option). On the Required Prepayment Date, the Borrower shall pay to the Administrative Agent the amount of the Waivable Mandatory Prepayment, which amount shall be applied by the Administrative Agent (i) in an amount equal to that portion of the Waivable Mandatory Prepayment payable to those Lenders that have elected to accept such Waivable Mandatory Prepayment (each, an "Accepting Lender"), to prepay the Term Loans of such Accepting Lenders (which prepayment shall be applied to the scheduled installments of principal of the Term Loans in the applicable Class(es) of Term Loans in accordance with paragraphs (c) and (d) of Section 2.10), and (ii) in an amount equal to that portion of the Waivable Mandatory Prepayment otherwise payable to those Lenders that have elected to exercise such option and decline such Waivable Mandatory Prepayment (such declined amounts, the "Declined Proceeds") to offer to each Accepting Lender such Accepting Lender's pro rata share of such Declined Proceeds (which may be declined by such Accepting Lender or accepted by such Accepting Lender and applied to the scheduled installments of principal of the Term Loans in the applicable Class(es) of Term Loans of the Accepting Lenders in accordance with paragraphs (c) and (d) of Section 2.10). To the extent any Accepting Lender elects to decline its pro rata share of such Declined Proceeds, such remaining Declined Proceeds shall be retained by the Borrower and may be used for any purpose not otherwise prohibited by this Agreement.

(f) Notwithstanding any other provisions of this Section 2.11 to the contrary, (i) to the extent that any Net Proceeds of any Asset Sale by a Foreign Subsidiary or Excess Cash Flow attributable to a Foreign Subsidiary is prohibited or delayed by applicable local law from being repatriated to the United States, the portion of such Net Proceeds or Excess Cash Flow so affected will not be required to be applied to repay Term Loans at the times provided in Section 2.11(b) or Section 2.11(c) but may be retained by the applicable Foreign Subsidiary so long, but only so long, as the applicable local law will not permit repatriation to the United States (the Borrower hereby agreeing to cause the applicable Foreign Subsidiary to promptly use commercially reasonable efforts to take all actions reasonably required by the applicable local law to permit such repatriation), and once such repatriation of any of such affected Net Proceeds or Excess Cash Flow is permitted under the applicable local law, such repatriation will be effected and such repatriated Net Proceeds or Excess Cash Flow will be promptly applied (net of additional taxes payable or reserved against as a result thereof) to the repayment of the Term Loans pursuant to Section 2.11(b) or Section 2.11(c), to the extent provided herein and (ii) to the extent that the Borrower has determined in good faith that repatriation of any or all of such Net Proceeds or Excess Cash Flow would have a material adverse tax cost consequence with respect to such Net Proceeds or Excess Cash Flow, the Net Proceeds or Excess Cash Flow so affected may be retained by the applicable Foreign Subsidiary; provided that, in the case of this clause (ii), on or before the date on which any Net

Proceeds or Excess Cash Flow so retained would otherwise have been required to be applied to prepayments pursuant to Section 2.11(b) or Section 2.11(c), (x) the Borrower applies an amount equal to such Net Proceeds or Excess Cash Flow to such prepayments as if such Net Proceeds or Excess Cash Flow had been received by the Borrower rather than such Foreign Subsidiary, less the amount of additional taxes that would have been payable or reserved against if such Net Proceeds or Excess Cash Flow had been repatriated (or, if less, Net Proceeds or Excess Cash Flow that would be calculated if received by such Foreign Subsidiary) or (y) such Net Proceeds or Excess Cash Flow is applied to the permanent repayment of Indebtedness of a Foreign Subsidiary.

SECTION 2.12 Fees.

(a) The Borrower agrees to pay to each Lender (other than any Defaulting Lender), through the Administrative Agent, on the date that is three Business Days after the last Business Day of March, June, September and December in each year, and the date on which the Revolving Facility Commitments of all the Lenders shall be terminated as provided herein, a commitment fee in Dollars (a "Commitment Fee") on the daily amount of the Available Unused Commitment of such Lender during the preceding quarter (or other period commencing with the Closing Date or ending with the date on which the last of the Commitments of such Lender shall be terminated) at a rate equal to the Applicable Commitment Fee. All Commitment Fees shall be computed on the basis of the actual number of days elapsed in a year of 360 days. For the purpose of calculating any Lender's Commitment Fee (other than with respect to the Swingline Lender), the outstanding Swingline Loans during the period for which such Lender's Commitment Fee is calculated shall be deemed to be zero. The Commitment Fee due to each Lender shall commence to accrue on the Closing Date and shall cease to accrue on the date on which the last of the Commitments of such Lender shall be terminated as provided herein.

(b) The Borrower from time to time agrees to pay (i) to each Revolving Facility Lender (other than any Defaulting Lender), through the Administrative Agent, three Business Days after the last day of March, June, September and December of each year and three Business Days after the date on which the Revolving Facility Commitments of all the Lenders shall be terminated as provided herein, a fee (an "L/C Participation Fee") on such Lender's Revolving Facility Percentage of the daily aggregate Outstanding Amount of L/C Obligations (excluding the portion thereof attributable to Unreimbursed Amounts), during the preceding quarter (or shorter period commencing with the Closing Date or ending with the Revolving Facility Maturity Date or the date on which the Revolving Facility Commitments shall be terminated) at the rate per annum equal to the Applicable Margin for Eurocurrency Revolving Facility Borrowings effective for each day in such period and (ii) to each L/C Issuer, for its own account (x) three Business Days after the last Business Day of March, June, September and December of each year and on the date on which the Revolving Facility Commitments of all the Lenders shall be terminated as provided herein, a fronting fee in Dollars in respect of each Letter of Credit issued by such L/C Issuer for the period from and including the date of issuance of such Letter of Credit to and including the termination of such Letter of Credit, computed at a rate equal to 1/8 of 1% per annum of the Dollar Equivalent of the daily stated amount of such Letter of Credit), plus (y) in connection with the issuance,

amendment or transfer of any such Letter of Credit or any drawing thereunder, such L/C Issuer's customary documentary and processing fees and charges (collectively, "L/C Issuer Fees"). All L/C Participation Fees and L/C Issuer Fees shall be computed on the basis of the actual number of days elapsed in a year of 360 days.

(c) The Borrower agrees to pay to the Administrative Agent, for the account of the Administrative Agent, the agency fees set forth in the Fee Letter, as amended, restated, supplemented or otherwise modified from time to time, at the times specified therein (the "Administrative Agent Fees").

(d) All Fees shall be paid on the dates due, in immediately available funds, to the Administrative Agent for distribution, if and as appropriate, among the Lenders, except that L/C Issuer Fees shall be paid directly to the applicable L/C Issuers. Once paid, none of the Fees shall be refundable under any circumstances.

#### SECTION 2.13 Interest.

(a) The Loans comprising each ABR Borrowing (including each Swingline Loan) shall bear interest at the ABR plus the Applicable Margin.

(b) The Loans comprising each Eurocurrency Borrowing shall bear interest at the Eurocurrency Rate for the Interest Period in effect for such Borrowing plus the Applicable Margin plus (in the case of a Eurocurrency Loan of any Lender which is lent from a lending office in the United Kingdom or a Participating Member State) the Mandatory Cost.

(c) Notwithstanding the foregoing, if any principal of or interest on any Loan or any Fees or other amount payable by the Borrower hereunder is not paid when due, whether at stated maturity, upon acceleration or otherwise, such overdue amount shall bear interest, after as well as before judgment, at a rate per annum equal to (i) in the case of overdue principal of any Loan, 2% plus the rate otherwise applicable to such Loan as provided in the preceding paragraphs of this Section or (ii) in the case of any other amount, 2% plus the rate applicable to ABR Loans as provided in paragraph (a) of this Section; provided, that this paragraph (c) shall not apply to any Event of Default that has been waived by the Lenders pursuant to Section 9.08.

(d) Accrued interest on each Loan shall be payable in arrears (i) on each Interest Payment Date for such Loan, (ii) in the case of Revolving Facility Loans, upon termination of the Revolving Facility Commitments and (iii) in the case of the Term Loans, on the applicable Term Facility Maturity Date; provided, that (i) interest accrued pursuant to paragraph (c) of this Section shall be payable on demand, and (ii) in the event of any repayment or prepayment of any Loan (other than a prepayment of an ABR Loan (including any Swingline Loan) prior to the end of the Availability Period), accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment.

(e) All interest hereunder shall be computed on the basis of a year of 360 days, except that (i) interest computed by reference to the ABR at times when the ABR is

based on the prime rate shall be computed on the basis of a year of 365 days (or 366 days in a leap year) and (ii) in the case of interest in respect of Eurocurrency Loans denominated in Alternative Currencies as to which market practice (as reasonably determined by the Administrative Agent) differs from the foregoing, such interest will be calculated in accordance with such market practice, and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable ABR or Eurocurrency Rate shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error.

SECTION 2.14 Alternate Rate of Interest. If prior to the commencement of any Interest Period for a Eurocurrency Borrowing:

(a) the Administrative Agent determines (which determination shall be conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining the Eurocurrency Rate, as applicable, for such Interest Period; or

(b) the Administrative Agent is advised by the Required Lenders or the Majority Lenders under the Revolving Facility that the Eurocurrency Rate for such Interest Period will not adequately and fairly reflect the cost to such Lenders of making or maintaining their Loans included in such Borrowing for such Interest Period;

then the Administrative Agent shall give notice thereof to the Borrower and the Lenders by telephone or telecopy as promptly as practicable thereafter and, until the Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, (i) any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Eurocurrency Borrowing denominated in the applicable currency shall be ineffective and (A) in the case of any Borrowing denominated in Dollars, such Borrowing shall be converted to or continued as on the last day of the Interest Period applicable thereto as an ABR Borrowing and (B) in the case of any Borrowing denominated in an Alternative Currency, such Borrowing shall be repaid at the end of the then current Interest Period, and (ii) if any Borrowing Request requests a Eurocurrency Borrowing in Dollars, such Borrowing shall be made as an ABR Borrowing.

SECTION 2.15 Increased Costs.

(a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by, any Lender (except any such reserve requirement reflected in the Mandatory Costs) or L/C Issuer; or

(ii) impose on any Lender or the L/C Issuer or the London interbank market any other condition affecting this Agreement or Eurocurrency Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Eurocurrency Loan (or of maintaining its obligation to make any such Loan) or

to increase the cost to such Lender or L/C Issuer of participating in, issuing or maintaining any Letter of Credit or to reduce the amount of any sum received or receivable by such Lender or L/C Issuer hereunder (whether of principal, interest or otherwise), then the Borrower will pay to such Lender or L/C Issuer, as applicable, such additional amount or amounts as will compensate such Lender or L/C Issuer, as applicable, for such additional costs incurred or reduction suffered.

(b) If any Lender or L/C Issuer determines that any Change in Law regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's or L/C Issuer's capital or on the capital of such Lender's or L/C Issuer's holding company, if any, as a consequence of this Agreement or the Loans made by, or participations in Letters of Credit or Swingline Loans held by, such Lender, or the Letters of Credit issued by such L/C Issuer, to a level below that which such Lender or such L/C Issuer or such Lender's or such L/C Issuer's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or such L/C Issuer's policies and the policies of such Lender's or such L/C Issuer's holding company with respect to capital adequacy), then from time to time the Borrower shall pay to such Lender or such L/C Issuer, as applicable, such additional amount or amounts as will compensate such Lender or such L/C Issuer or such Lender's or such L/C Issuer's holding company for any such reduction suffered.

(c) A certificate of a Lender or an L/C Issuer setting forth the amount or amounts necessary to compensate such Lender or L/C Issuer or its holding company, as applicable, as specified in paragraph (a) or (b) of this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender or L/C Issuer, as applicable, the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) Promptly after any Lender or any L/C Issuer has determined that it will make a request for increased compensation pursuant to this Section 2.15, such Lender or L/C Issuer shall notify the Borrower thereof. Failure or delay on the part of any Lender or L/C Issuer to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's or L/C Issuer's right to demand such compensation; provided, that the Borrower shall not be required to compensate a Lender or an L/C Issuer pursuant to this Section for any increased costs or reductions incurred more than 180 days prior to the date that such Lender or L/C Issuer, as applicable, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or L/C Issuer's intention to claim compensation therefor; provided, further, that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof.

(e) The foregoing provisions of this Section 2.15 shall not apply in the case of any Change in Law in respect of Taxes, which shall instead be governed by Section 2.17.

**SECTION 2.16 Break Funding Payments.** In the event of (a) the payment of any principal of any Eurocurrency Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default), (b) the failure to borrow, convert, continue or prepay any Eurocurrency Loan on the date specified in any notice delivered

pursuant hereto or (c) the assignment of any Eurocurrency Loan other than on the last day of the Interest Period applicable thereto as a result of a request by a Borrower pursuant to Section 2.19, then, in any such event, the Borrower shall compensate each Lender for the loss, cost and expense attributable to such event. In the case of a Eurocurrency Loan, such loss, cost or expense to any Lender shall be deemed to be the amount determined by such Lender (it being understood that the deemed amount shall not exceed the actual amount) to be the excess, if any, of (i) the amount of interest which would have accrued on the principal amount of such Loan had such event not occurred, at the Eurocurrency Rate that would have been applicable to such Loan, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue a Eurocurrency Loan, for the period that would have been the Interest Period for such Loan), over (ii) the amount of interest which would accrue on such principal amount for such period at the interest rate which such Lender would bid were it to bid, at the commencement of such period, for deposits in dollars of a comparable amount and period from other banks in the Eurocurrency market. A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

SECTION 2.17 Taxes.

(a) Any and all payments by or on account of any obligation of any Loan Party hereunder shall be made free and clear of and without withholding or deduction for any Indemnified Taxes or Other Taxes; provided, that if a Loan Party shall be required to withhold or deduct any Indemnified Taxes or Other Taxes from such payments, then (i) the sum payable shall be increased as necessary so that after making all required withholding or deductions (including withholding or deductions applicable to additional sums payable under this Section) the Administrative Agent, any Lender or any L/C Issuer, as applicable, receives an amount equal to the sum it would have received had no such withholding or deductions been made, (ii) such Loan Party shall make such withholding or deductions and (iii) such Loan Party shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with applicable law.

(b) In addition, the Loan Parties shall pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) Each Loan Party shall indemnify the Administrative Agent, each Lender and each L/C Issuer, within 10 days after written demand therefor, for the full amount of any Indemnified Taxes payable by the Administrative Agent, such Lender or such L/C Issuer, as applicable, on or with respect to any payment by or on account of any obligation of such Loan Party hereunder (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section), and any Other Taxes (including Other Taxes imposed or asserted on or attributable to amounts payable under this Section) and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to such Loan Party by a

Lender or an L/C Issuer, or by the Administrative Agent on its own behalf, on behalf of another Agent or on behalf of a Lender or an L/C Issuer, shall be conclusive absent manifest error.

(d) As soon as practicable after any payment of Indemnified Taxes or Other Taxes by a Loan Party to a Governmental Authority, such Loan Party shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(e) Any Lender that is entitled to an exemption from or reduction of withholding Tax or backup withholding Tax under the law of the jurisdiction in which the Borrower is located, or any treaty to which such jurisdiction is a party, with respect to payments under this Agreement shall deliver to the Borrower (with a copy to the Administrative Agent), to the extent such Lender is legally entitled to do so, at the time or times prescribed by applicable law, such properly completed and executed documentation prescribed by applicable law, or as may reasonably be requested by the Borrower to permit such payments to be made without such withholding tax or at a reduced rate; provided that, with respect to any withholding tax imposed by any jurisdiction other than the United States, a Lender shall not be required to provide any documentation if such Lender reasonably determines that doing so would be materially disadvantageous to such Lender.

(f) Each Foreign Lender shall deliver to the Borrower and the Administrative Agent on the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), two original copies of whichever of the following is applicable: (i) duly completed copies of Internal Revenue Service Form W-8BEN (or any subsequent versions thereof or successors thereto), claiming eligibility for benefits of an income tax treaty to which the United States of America is a party, (ii) duly completed copies of Internal Revenue Service Form W-8ECI (or any subsequent versions thereof or successors thereto), (iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under section 871(h) or 881(c) of the Code, (x) a certificate to the effect that such Foreign Lender is not (A) a "bank" within the meaning of section 881(c)(3)(A) of the Code, (B) a "10 percent shareholder" of the Borrower within the meaning of section 871(h)(3) or 881(c)(3)(B) of the Code, or (C) a "controlled foreign corporation" described in section 881(c)(3)(C) of the Code and (y) duly completed copies of Internal Revenue Service Form W-8BEN (or any subsequent versions thereof or successors thereto), (iv) duly completed copies of Internal Revenue Service Form W-8IMY, together with appropriate forms and certificates described in clauses (i) through (iii) above (additional Form W-8IMYs, withholding statements and other information) as may be required or (v) any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in United States federal withholding tax duly completed together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower to determine the withholding or deduction required to be made. In addition, in each of the foregoing circumstances, each Foreign Lender shall deliver such forms, if legally entitled to deliver such forms, promptly upon the obsolescence, expiration or invalidity of any form previously

delivered by such Foreign Lender. Each Foreign Lender shall promptly notify the Borrower at any time it determines that it is no longer in a position to provide any previously delivered certificate to the Borrower (or any other form of certification adopted by the United States of America or other taxing authorities for such purpose). In addition, each Lender that is not a Foreign Lender shall deliver to the Borrower and the Administrative Agent two copies of Internal Revenue Service Form W-9 (or any subsequent versions thereof or successors thereto) on or before the date such Lender becomes a party and upon the expiration of any form previously delivered by such Lender. Notwithstanding any other provision of this paragraph, a Lender shall not be required to deliver any form pursuant to this paragraph that such Lender is not legally able to deliver.

(g) If the Administrative Agent or a Lender has received a refund of any Indemnified Taxes or Other Taxes as to which it has been indemnified by a Loan Party or with respect to which such Loan Party has paid additional amounts pursuant to this Section 2.17, it shall pay over such refund to such Loan Party (but only to the extent of indemnity payments made, or additional amounts paid, by such Loan Party under this Section 2.17 with respect to the Indemnified Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses of the Administrative Agent or such Lender (including any Taxes imposed with respect to such refund) as is determined by the Administrative Agent or Lender in good faith, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided, that such Loan Party, upon the request of the Administrative Agent or such Lender, agrees to repay as soon as reasonably practicable the amount paid over to such Loan Party (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent or such Lender in the event the Administrative Agent or such Lender is required to repay such refund to such Governmental Authority. This Section 2.17 shall not be construed to require the Administrative Agent or any Lender to make available its Tax returns (or any other information relating to its Taxes which it deems in good faith to be confidential) to the Loan Parties or any other person. Notwithstanding anything to the contrary, in no event will any Lender be required to pay any amount to a Loan Party the payment of which would place such Lender in a less favorable net after tax position than such Lender would have been in if the additional amounts giving rise to such refund of any Indemnified Taxes or Other Taxes had never been paid.

**SECTION 2.18 Payments Generally; Pro Rata Treatment; Sharing of Set-offs.**

(a) The Borrower shall make each payment required to be made by it hereunder (whether of principal, interest, fees or reimbursement of drawings under Letters of Credit, or of amounts payable under Section 2.15, 2.16, or 2.17, or otherwise) without condition or deduction for any defense, recoupment, set-off or counterclaim. Except as otherwise expressly provided herein and except with respect to principal of and interest on Revolving Facility Loans denominated in an Alternative Currency, all payments by the Borrower hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the applicable Administrative Agent's Office in Dollars and in Same Day Funds not later than 2:00 p.m. on the date specified herein. Except as otherwise expressly provided herein, all payments by the Borrower hereunder with

respect to principal and interest on Loans denominated in an Alternative Currency shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the applicable Administrative Agent's Office in such Alternative Currency and in Same Day Funds not later than the Applicable Time specified by the Administrative Agent on the dates specified herein. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent to the applicable account designated to the Borrower by the Administrative Agent, except payments to be made directly to the applicable L/C Issuer or the Swingline Lender as expressly provided herein and except that payments pursuant to Sections 2.15, 2.16, 2.17 and 9.05 shall be made directly to the persons entitled thereto. Without limiting the generality of the foregoing, the Administrative Agent may require that any payments due under this Agreement be made in the United States. The Administrative Agent shall distribute any such payments received by it for the account of any other person to the appropriate recipient promptly following receipt thereof. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. Any payment required to be made by the Administrative Agent hereunder shall be deemed to have been made by the time required if the Administrative Agent shall, at or before such time, have taken the necessary steps to make such payment in accordance with the regulations or operating procedures of the clearing or settlement system used by the Administrative Agent to make such payment.

(b) If at any time insufficient funds are received by and available to the Administrative Agent from the Borrower to pay fully all amounts of principal, Unreimbursed Amounts, interest and fees then due from the Borrower hereunder, such funds shall be applied (i) first, towards payment of interest and fees then due from the Borrower hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties and (ii) second, towards payment of principal of Loans and Unreimbursed Amounts then due from the Borrower hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal and Unreimbursed Amounts then due to such parties.

(c) If any Lender shall, by exercising any right of set-off or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Term Loans, Revolving Facility Loans or participations in Letters of Credit or Swingline Loans resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Term Loans, Revolving Facility Loans and participations in Letters of Credit and Swingline Loans and accrued interest thereon than the proportion received by any other Lender, then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the Term Loans, Revolving Facility Loans and participations in Letters of Credit and Swingline Loans of other Lenders to the extent necessary so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Term Loans, Revolving Facility Loans and participations in Letters of Credit and Swingline Loans; provided, that (i) if any such participations are

purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this paragraph (c) shall not be construed to apply to any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or participations in Letters of Credit to any assignee or participant, other than to the Borrower or any Subsidiary or Affiliate thereof (as to which the provisions of this paragraph (c) shall apply). The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

(d) Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or the applicable L/C Issuer hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the applicable L/C Issuer, as applicable, the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders or the applicable L/C Issuer, as applicable, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or L/C Issuer with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the Overnight Rate.

(e) If any Lender shall fail to make any payment required to be made by it pursuant to Section 2.04(c), 2.05(d) or (e), 2.06(b) or 2.18(d), then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender's obligations under such Sections until all such unsatisfied obligations are fully paid.

#### SECTION 2.19 Mitigation Obligations; Replacement of Lenders.

(a) If any Lender requests compensation under Section 2.15, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.17, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or Affiliates, if, in the reasonable judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 2.15 or 2.17, as applicable, in the future and (ii) would not subject such Lender to any material unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender in any material respect. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) If any Lender requests compensation under Section 2.15, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.17, or if any Lender is a Defaulting Lender, or if any Lender is the subject of a Disqualification, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 9.04), all its interests, rights and obligations under this Agreement to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided, that (i) the Borrower shall have received the prior written consent of the Administrative Agent (and, if in respect of any Revolving Facility Commitment or Revolving Facility Loan, the Swingline Lender and the L/C Issuer), which consent shall not unreasonably be withheld, (ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and participations in L/C Obligations and Swingline Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder, from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts) and (iii) in the case of any such assignment resulting from a claim for compensation under Section 2.15 or payments required to be made pursuant to Section 2.17, such assignment will result in a reduction in such compensation or payments. Nothing in this Section 2.19 shall be deemed to prejudice any rights that the Borrower may have against any Lender that is a Defaulting Lender. No action by or consent of the removed Lender shall be necessary in connection with such assignment, which shall be immediately and automatically effective upon payment of such purchase price. In connection with any such assignment the Borrower, Administrative Agent, such removed Lender and the replacement Lender shall otherwise comply with Section 9.04; provided, that if such removed Lender does not comply with Section 9.04 within one Business Day after the Borrower's request, compliance with Section 9.04 shall not be required to effect such assignment.

(c) If any Lender (such Lender, a "Non-Consenting Lender") has failed to consent to a proposed amendment, waiver, discharge or termination which pursuant to the terms of Section 9.08 requires the consent of all of the Lenders affected and with respect to which the Required Lenders shall have granted their consent, then the Borrower shall have the right (unless such Non-Consenting Lender grants such consent) at its sole expense (including with respect to the processing and recordation fee referred to in Section 9.04(b)(ii)(B)) to replace such Non-Consenting Lender by deeming such Non-Consenting Lender to have assigned its Loans, and its Commitments hereunder to one or more assignees reasonably acceptable to (i) the Administrative Agent (unless, in the case of an assignment of Term Loans, such assignee is a Lender, an Affiliate of a Lender or an Approved Fund) and (ii) if in respect of any Revolving Facility Commitment or Revolving Facility Loan, the Swingline Lender and the L/C Issuer); provided, that: (a) all Obligations of the Borrower owing to such Non-Consenting Lender being replaced shall be paid in full to such Non-Consenting Lender concurrently with such assignment (including any amount payable pursuant to Section 2.11(a)) and (b) the replacement Lender shall purchase the foregoing by paying to such Non-Consenting Lender a price equal to the principal amount thereof plus accrued and unpaid interest thereon. No action by or consent of the Non-Consenting Lender shall be necessary in connection with such assignment, which shall be immediately and automatically effective

upon payment of such purchase price. In connection with any such assignment the Borrower, Administrative Agent, such Non-Consenting Lender and the replacement Lender shall otherwise comply with Section 9.04; provided, that if such Non-Consenting Lender does not comply with Section 9.04 within one Business Day after the Borrower's request, compliance with Section 9.04 shall not be required to effect such assignment.

SECTION 2.20 Illegality. If any Lender reasonably determines that any change in law has made it unlawful, or that any Governmental Authority has asserted after the Closing Date that it is unlawful, for any Lender or its applicable lending office to make or maintain any Eurocurrency Loans in any currency, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, any obligations of such Lender to make or continue Eurocurrency Loans in such currency or to convert ABR Borrowings to Eurocurrency Borrowings shall be suspended until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the Borrower shall upon demand from such Lender (with a copy to the Administrative Agent), either (i) in the case of Loans denominated in Dollars if the affected Lender may lawfully continue to maintain such Loans as Eurocurrency Loans until the last day of such Interest Period, convert all Eurocurrency Loans of such Lender to ABR Loans on the last day of such Interest Period (or, otherwise, immediately convert such Eurocurrency Loans to ABR Loans) or (ii) prepay such Eurocurrency Loans. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted.

SECTION 2.21 Incremental Commitments.

(a) The Borrower may, by written notice to the Administrative Agent from time to time, request Incremental Term Loan Commitments and/or Incremental Revolving Facility Commitments, as applicable, in an amount not to exceed the Incremental Amount from one or more Incremental Term Lenders and/or Incremental Revolving Facility Lenders (which may include any existing Lender) willing to provide such Incremental Term Loans and/or Incremental Revolving Facility Commitments, as the case may be, in their own discretion. Such notice shall set forth (i) the amount of the Incremental Term Loan Commitments and/or Incremental Revolving Facility Commitments being requested (which shall be in minimum increments of \$10.0 million and a minimum amount of \$50.0 million or equal to the remaining Incremental Amount), (ii) the date on which such Incremental Term Loan Commitments and/or Incremental Revolving Facility Commitments are requested to become effective (the "Increased Amount Date"), and (iii) in the case of Incremental Term Loan Commitments, whether such Incremental Term Loan Commitments are to be Term B-1 Loan Commitments, Term B-2 Loan Commitments, Term B-3 Loan Commitments or commitments to make term loans with interests rates and/or amortization and/or maturity and/or other terms different from the Term B-1 Loans, Term B-2 Loans or Term B-3 Loans ("Other Term Loans").

(b) The Borrower and each Incremental Term Lender and/or Incremental Revolving Facility Lender shall execute and deliver to the Administrative Agent an Incremental Assumption Agreement and such other documentation as the Administrative Agent shall reasonably specify to evidence the Incremental Term Loan Commitment of such

Incremental Term Lender and/or Incremental Revolving Facility Commitment of such Incremental Revolving Facility Lender. Each Incremental Assumption Agreement shall specify the terms of the applicable Incremental Term Loans and/or Incremental Revolving Facility Commitments; provided, that (i) except as to interest rates, amortization and final maturity date (which shall, subject to clause (ii) and (iii) of this proviso, be determined by the Borrower and the Incremental Term Lenders in their sole discretion), the Other Term Loans shall have (x) the same terms as the Term B-1 Loans, Term B-2 Loans or Term B-3 Loans, as applicable, or (y) such other terms as shall be reasonably satisfactory to the Administrative Agent, (ii) the final maturity date of any Other Term Loans shall be no earlier than the Term B Facility Maturity Date, (iii) the weighted average life to maturity of any Other Term Loans shall be no shorter than the remaining weighted average life to maturity of the Term B-1 Loans, Term B-2 Loans or Term B-3 Loans and (iv) any Incremental Revolving Loan Commitment shall be a Revolving Loan Commitment with the same terms as the Revolving Facility Loans. Each of the parties hereto hereby agrees that, upon the effectiveness of any Incremental Assumption Agreement, this Agreement shall be amended to the extent (but only to the extent) necessary to reflect the existence and terms of the Incremental Term Loan Commitments and/or Incremental Revolving Loan Commitments evidenced thereby as provided for in Section 9.08(e). Any such deemed amendment may be memorialized in writing by the Administrative Agent with the Borrower's consent (not to be unreasonably withheld) and furnished to the other parties hereto.

(c) Notwithstanding the foregoing, no Incremental Term Loan Commitment or Incremental Revolving Facility Commitment shall become effective under this Section 2.21 unless (i) on the date of such effectiveness, no Default or Event of Default shall have occurred and be continuing or would result therefrom, (ii) the Borrower shall be in Pro Forma Compliance after giving effect to such Incremental Term Loan Commitment and/or Incremental Revolving Facility Commitments and the Loans to be made thereunder and the application of the proceeds therefrom as if made and applied on such date and (iii) after giving effect to the incurrence of any Loans under such Incremental Term Loan Commitment and/or Incremental Revolving Facility Commitments on the date of such effectiveness such Loans shall constitute Obligations that are secured by the Collateral and such incurrence shall not result in a reduction in the outstanding amount of Obligations that are permitted to be secured by the Collateral without equally and ratably securing any Retained Notes.

(d) Each of the parties hereto hereby agrees that the Administrative Agent may take any and all action as may be reasonably necessary to ensure that (i) all Incremental Term Loans (other than Other Term Loans) in the form of additional Term B-1 Loans, Term B-2 Loans or Term B-3 Loans, when originally made, are included in each Borrowing of outstanding Term B-1 Loans, Term B-2 Loans or Term B-3 Loans, as applicable, on a pro rata basis, and (ii) all Revolving Facility Loans in respect of Incremental Revolving Facility Commitments, when originally made, are included in each Borrowing of outstanding Revolving Facility Loans on a pro rata basis. The Borrower agrees that Section 2.16 shall apply to any conversion of Eurocurrency Loans to ABR Loans reasonably required by the Administrative Agent to effect the foregoing.

ARTICLE III  
Representations and Warranties

On the date of each Credit Event, the Borrower represents and warrants to each of the Lenders that:

SECTION 3.01 Organization; Powers. Except as set forth on Schedule 3.01, the Borrower and each of the Material Subsidiaries (a) is a partnership, limited liability company or corporation duly organized, validly existing and in good standing (or, if applicable in a foreign jurisdiction, enjoys the equivalent status under the laws of any jurisdiction of organization outside the United States) under the laws of the jurisdiction of its organization, (b) has all requisite power and authority to own its property and assets and to carry on its business as now conducted, (c) is qualified to do business in each jurisdiction where such qualification is required, except where the failure so to qualify would not reasonably be expected to have a Material Adverse Effect, and (d) has the power and authority to execute, deliver and perform its obligations under each of the Loan Documents and each other agreement or instrument contemplated thereby to which it is or will be a party and, in the case of the Borrower, to borrow and otherwise obtain credit hereunder.

SECTION 3.02 Authorization. The execution, delivery and performance by the Borrower and each of the Loan Parties of each of the Loan Documents to which it is a party, and the borrowings hereunder and the transactions forming a part of the Transactions (a) have been duly authorized by all corporate, stockholder, partnership or limited liability company action required to be obtained by the Borrower and such Loan Parties and (b) will not (i) violate (A) any provision of law, statute, rule or regulation, or of the certificate or articles of incorporation or other constitutive documents (including any partnership, limited liability company or operating agreements) or by-laws of the Borrower or any such Loan Party, (B) any applicable order of any court or any rule, regulation or order of any Governmental Authority or (C) any provision of any indenture, certificate of designation for preferred stock, agreement or other instrument to which the Borrower or any such Loan Party is a party or by which any of them or any of their property is or may be bound, (ii) be in conflict with, result in a breach of or constitute (alone or with notice or lapse of time or both) a default under, give rise to a right of or result in any cancellation or acceleration of any right or obligation (including any payment) or to a loss of a material benefit under any such indenture, certificate of designation for preferred stock, agreement or other instrument, where any such conflict, violation, breach or default referred to in clause (i) or (ii) of this Section 3.02(b), would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, or (iii) result in the creation or imposition of any Lien upon or with respect to any property or assets now owned or hereafter acquired the Borrower or any such Loan Party, other than the Liens created by the Loan Documents and Permitted Liens.

SECTION 3.03 Enforceability. This Agreement has been duly executed and delivered by Holdings and the Borrower and constitutes, and each other Loan Document when executed and delivered by each Loan Party that is party thereto will constitute, a legal, valid and binding obligation of such Loan Party enforceable against each such Loan Party in accordance with its terms, subject to (i) the effects of bankruptcy, insolvency, moratorium,

reorganization, fraudulent conveyance or other similar laws affecting creditors' rights generally, (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law) and (iii) implied covenants of good faith and fair dealing.

SECTION 3.04 Governmental Approvals. No action, consent or approval of, registration or filing with or any other action by any Governmental Authority is or will be required in connection with the Transactions, the perfection or maintenance of the Liens created under the Security Documents or the exercise by any Agent or any Lender of its rights under the Loan Documents or the remedies in respect of the Collateral, except for (a) the filing of Uniform Commercial Code financing statements, (b) filings with the United States Patent and Trademark Office and the United States Copyright Office and comparable offices in foreign jurisdictions and equivalent filings in foreign jurisdictions, (c) recordation of the Mortgages, (d) filings with the NVDC, including the Ship Mortgages, (e) such actions, consents and approvals under Gaming Laws or from Gaming Authorities the failure of which to be obtained or made would not reasonably be expected to have a Material Adverse Effect, (f) such as have been made or obtained and are in full force and effect, (g) such actions, consents and approvals the failure of which to be obtained or made would not reasonably be expected to have a Material Adverse Effect and (h) filings or other actions listed on Schedule 3.04.

SECTION 3.05 Financial Statements.

(a) The unaudited pro forma consolidated balance sheet and related consolidated statements of income and cash flows of the Borrower, together with its consolidated Subsidiaries (including the notes thereto) (the "Pro Forma Financial Statements") and pro forma adjusted EBITDA for the fiscal year ending December 31, 2006 and the four fiscal quarter period ended September 30, 2007 (the "Pro Forma Adjusted EBITDA"), copies of which have heretofore been furnished to each Lender (via inclusion in the Information Memorandum), have been prepared giving effect (as if such events had occurred on such date) to the Transactions and the Post-Closing CMBS Transaction. Each of the Pro Forma Financial Statements and the Pro Forma Adjusted EBITDA has been prepared in good faith based on assumptions believed by the Borrower to have been reasonable as of the date of delivery thereof (it being understood that such assumptions are based on good faith estimates of certain items and that the actual amount of such items on the Closing Date is subject to change), and presents fairly in all material respects on a pro forma basis the estimated financial position of the Borrower and its consolidated Subsidiaries as at September 30, 2007, assuming that the Transactions and the Post-Closing CMBS Transaction had actually occurred at such date, and the results of operations of Borrower and its consolidated subsidiaries for the twelve-month period ended September 30, 2007, assuming that the Transactions and the Post-Closing CMBS Transaction had actually occurred on the first day of such twelve-month period.

(b) The audited consolidated balance sheets of the Company as at December 31, 2004, 2005 and 2006, and the related audited consolidated statements of income and cash flows for such fiscal years, reported on by and accompanied by a report from Deloitte & Touche LLP, copies of which have heretofore been furnished to each Lender, present fairly in all material respects the consolidated financial position of the Company as at

such date and the consolidated results of operations and cash flows of the Company for the years then ended.

(c) The unaudited consolidated balance sheet of the Company as at September 30, 2007 and the related unaudited consolidated statements of income and cash flows for the nine-month period ended September 30, 2007, copies of which have heretofore been furnished to each Lender, present fairly in all material respects the consolidated financial position of the Company as at such date and the consolidated results of operations and cash flows of the Company for such period (subject to normal year-end audit adjustments and the absence of footnotes).

SECTION 3.06 No Material Adverse Effect. After the Closing Date, there has been no event or circumstance that has had or would reasonably be expected to have a Material Adverse Effect.

SECTION 3.07 Title to Properties; Possession Under Leases.

(a) Each of the Borrower and the Subsidiaries has valid fee simple title to, or valid leasehold interests in, or easements or other limited property interests in, all its Real Properties and Vessels (including all Mortgaged Properties and Mortgaged Vessels) and has valid title to its personal property and assets, in each case, except for Permitted Liens and except for defects in title that do not materially interfere with its ability to conduct its business as currently conducted or to utilize such properties and assets for their intended purposes and except where the failure to have such title would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. All such properties and assets are free and clear of Liens, other than Permitted Liens.

(b) None of the Borrower or its Subsidiaries have defaulted under any leases to which it is a party, except for such defaults as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. All of the Borrower's or Subsidiaries' leases are in full force and effect, except leases in respect of which the failure to be in full force and effect would not reasonably be expected to have a Material Adverse Effect. Except as set forth on Schedule 3.07(b), the Borrower and each of the Subsidiaries enjoys peaceful and undisturbed possession under all such leases, other than leases in respect of which the failure to enjoy peaceful and undisturbed possession would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(c) Each of the Borrower and the Subsidiaries owns or possesses, or is licensed to use, all patents, trademarks, service marks, trade names and copyrights, all applications for any of the foregoing and all licenses and rights with respect to the foregoing necessary for the present conduct of its business, without any conflict (of which the Borrower has been notified in writing) with the rights of others, and free from any burdensome restrictions on the present conduct of the Borrower, except where such conflicts and restrictions would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect or except as set forth on Schedule 3.07(c).

(d) As of the Closing Date, none of the Borrower and the Subsidiaries has received any written notice of any pending or contemplated condemnation proceeding affecting any material portion of the Mortgaged Properties or any sale or disposition thereof in lieu of condemnation that remains unresolved as of the Closing Date.

(e) None of the Borrower and the Subsidiaries is obligated on the Closing Date under any right of first refusal, option or other contractual right to sell, assign or otherwise dispose of any Mortgaged Property or any interest therein, except as permitted under Section 6.02 or 6.05, or in connection with the Post-Closing CMBS Transaction.

SECTION 3.08 Subsidiaries.

(a) Schedule 3.08(a) sets forth as of the Closing Date the name and jurisdiction of incorporation, formation or organization of each subsidiary of the Borrower and, as to each such subsidiary, the percentage of each class of Equity Interests owned by the Borrower or by any such subsidiary.

(b) As of the Closing Date, there are no outstanding subscriptions, options, warrants, calls, rights or other agreements or commitments (other than stock options granted to employees or directors and directors' qualifying shares) of any nature relating to any Equity Interests of the Borrower or any of the Subsidiaries, except rights of employees to purchase Equity Interests in connection with the Transactions or as set forth on Schedule 3.08(b).

SECTION 3.09 Litigation; Compliance with Laws.

(a) There are no actions, suits or proceedings at law or in equity or by or on behalf of any Governmental Authority or in arbitration now pending, or, to the knowledge of the Borrower, threatened in writing against or affecting the Borrower or any of the Subsidiaries or any business, property or rights of any such person which would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(b) None of the Borrower, the Subsidiaries and their respective properties or assets is in violation of (nor will the continued operation of their material properties and assets as currently conducted violate) any law, rule or regulation (including any zoning, building, ordinance, code or approval or any building permit, but excluding any Environmental Laws, which are subject to Section 3.16) or any restriction of record or agreement affecting any Mortgaged Property, or is in default with respect to any judgment, writ, injunction or decree of any Governmental Authority, where such violation or default would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(c) The Borrower and each Subsidiary are in compliance in all material respects with all Gaming Laws that are applicable to them and their businesses.

SECTION 3.10 Federal Reserve Regulations.

(a) None of the Borrower and the Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying Margin Stock.

(b) No part of the proceeds of any Loan will be used, whether directly or indirectly, and whether immediately, incidentally or ultimately, (i) to purchase or carry Margin Stock or to extend credit to others for the purpose of purchasing or carrying Margin Stock or to refund indebtedness originally incurred for such purpose, or (ii) for any purpose that entails a violation of, or that is inconsistent with, the provisions of the Regulations of the Board, including Regulation U or Regulation X.

SECTION 3.11 Investment Company Act. None of the Borrower and the Subsidiaries is an “investment company” as defined in, or subject to regulation under, the Investment Company Act of 1940, as amended.

SECTION 3.12 Use of Proceeds. (a) The Borrower will use the proceeds of the Revolving Facility Loans and Swingline Loans, and may request the issuance of Letters of Credit (in each case subject to clause (b) below), solely for general corporate purposes (including, without limitation, for Permitted Business Acquisitions and project development and, in the case of Letters of Credit, for the back-up or replacement of existing letters of credit) and, in the case of Revolving Facility Loans made on the Closing Date, for the purposes set forth in clause (c) below; (b) to the extent the applicable Borrowing Request or Letter of Credit Application indicates that the Revolving Facility Loan is being drawn or Letter of Credit is being issued, as applicable, under the Real Estate Revolver Facility Sublimit, the Borrower may use the proceeds of Revolving Facility Loans and Swingline Loans for further distribution to, and may request the issuance of Letters of Credit for the account of, any Real Estate Revolver Subsidiary, in an aggregate amount not to exceed the Real Estate Revolver Facility Sublimit, in each case for general corporate purposes of the Real Estate Revolver Subsidiaries (including, without limitation, for Permitted Business Acquisitions and project development and, in the case of Letters of Credit, for the back-up or replacement of existing letters of credit); and (c) the Borrower will use the proceeds of the Term B-1 Loans, Term B-2 Loans and Term B-3 Loans made on the Closing Date to refinance the Refinanced Indebtedness (other than any Indebtedness that is subordinated to any of the Retained Notes) and other non-subordinated Indebtedness of the Company that is in existence on the Closing Date and to refinance, repay, retire and/or fund the conversion of the Senior Convertible Notes. Notwithstanding the foregoing, the Borrower shall not use the proceeds of the Revolving Facility Loans, Swingline Loans or any Incremental Term Loans and may not request the issuance of Letters of Credit, for any purpose if the Obligations with respect to such Revolving Facility Loans, Swingline Loans, Incremental Term Loans or Letters of Credit (whether or not drawn) shall fail to be secured by the Collateral or if, as a result thereof, there is a reduction in the outstanding amount of Obligations that are permitted to be secured by the Collateral without equally and ratably securing any Retained Notes.

SECTION 3.13 Tax Returns. Except as set forth on Schedule 3.13:

(a) Except as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, each of the Borrower and the Subsidiaries has filed or caused to be filed all federal, state, local and non-U.S. Tax returns required to have been filed by it and each such Tax return is true and correct;

(b) Each of the Borrower and the Subsidiaries has timely paid or caused to be timely paid all Taxes shown to be due and payable by it on the returns referred to in clause (a) and all other Taxes or assessments (or made adequate provision (in accordance with GAAP) for the payment of all Taxes not yet due) with respect to all periods or portions thereof ending on or before the Closing Date including in its capacity as a withholding agent (except Taxes or assessments that are being contested in good faith by appropriate proceedings in accordance with Section 5.03 and for which the Borrower or any of the Subsidiaries (as the case may be) has set aside on its books adequate reserves in accordance with GAAP), which Taxes, if not paid or adequately provided for, would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; and

(c) Other than as would not be, individually or in the aggregate, reasonably expected to have a Material Adverse Effect: as of the Closing Date, with respect to each of the Borrower and the Subsidiaries, there are no claims being asserted in writing with respect to any Taxes.

SECTION 3.14 No Material Misstatements. (a) All written information (other than the Projections, estimates and information of a general economic nature or general industry nature) (the "Information") concerning the Company, the Borrower, the Subsidiaries, the Transactions and any other transactions contemplated hereby included in the Information Memorandum or otherwise prepared by or on behalf of the foregoing or their representatives and made available to any Lenders or the Administrative Agent in connection with the Transactions or the other transactions contemplated hereby, when taken as a whole, was true and correct in all material respects, as of the date such Information was furnished to the Lenders and as of the Closing Date and did not, taken as a whole, contain any untrue statement of a material fact as of any such date or omit to state a material fact necessary in order to make the statements contained therein, taken as a whole, not materially misleading in light of the circumstances under which such statements were made.

(b) The Projections and estimates and information of a general economic nature prepared by or on behalf of the Borrower or any of its representatives and that have been made available to any Lenders or the Administrative Agent in connection with the Transactions or the other transactions contemplated hereby (i) have been prepared in good faith based upon assumptions believed by the Borrower to be reasonable as of the date thereof (it being understood that actual results may vary materially from the Projections), as of the date such Projections and estimates were furnished to the Lenders and as of the Closing Date, and (ii) as of the Closing Date, have not been modified in any material respect by the Borrower.

SECTION 3.15 Employee Benefit Plans. (a) Except as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect: (i)

each Plan is in compliance with the applicable provisions of ERISA and the Code; (ii) no Reportable Event has occurred during the past five years as to which the Borrower, any of its Subsidiaries or any ERISA Affiliate was required to file a report with the PBGC, other than reports that have been filed; (iii) as of the most recent valuation date preceding the date of this Agreement, no Plan has any material Unfunded Pension Liability; (iv) no ERISA Event has occurred or is reasonably expected to occur; (v) none of the Borrower, its Subsidiaries and the ERISA Affiliates (A) has received any written notification that any Multiemployer Plan is in reorganization or has been terminated within the meaning of Title IV of ERISA, or has knowledge that any Multiemployer Plan is reasonably expected to be in reorganization or to be terminated or (B) has incurred or is reasonably expected to incur any withdrawal liability to any Multiemployer Plan; and (vi) none of the Borrower or its Subsidiaries has engaged in a "prohibited transaction" (as defined in Section 406 of ERISA and Code Section 4975) in connection with any employee pension benefit plan (as defined in Section 3(2) of ERISA) that would subject the Borrower or any Subsidiary to tax.

(b) Each of the Borrower and the Subsidiaries is in compliance (i) with all applicable provisions of law and all applicable regulations and published interpretations thereunder with respect to any employee pension benefit plan or other employee benefit plan governed by the laws of a jurisdiction other than the United States and (ii) with the terms of any such plan, except, in each case, for such noncompliance that would not reasonably be expected to have a Material Adverse Effect.

(c) Except as would not reasonably be expected to result in a Material Adverse Effect, there are no pending or, to the knowledge of the Borrower, threatened claims (other than claims for benefits in the normal course), sanctions, actions or lawsuits, asserted or instituted against any Plan or any person as fiduciary or sponsor of any Plan that would reasonably be expected to result in liability to the Borrower or any of its Subsidiaries.

SECTION 3.16 Environmental Matters. Except as set forth in Schedule 3.16 and except as to matters that would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect: (i) no written notice has been received by the Borrower or any of its Subsidiaries, and there are no judicial, administrative or other actions, suits or proceedings pending or, to the Borrower's knowledge, threatened which allege a violation of any Environmental Laws, in each case relating to the Borrower or any of its Subsidiaries, (ii) each of the Borrower and its Subsidiaries has all environmental permits, licenses and other approvals necessary for its operations to comply with all applicable Environmental Laws and is in compliance with the terms of such permits, licenses and other approvals and with all other applicable Environmental Laws, (iii) to the Borrower's knowledge, no Hazardous Material is located at, on or under any property currently owned, operated or leased or formerly owned, operated or leased, by the Borrower or any of its Subsidiaries that would reasonably be expected to give rise to any cost, liability or obligation of the Borrower or any of its Subsidiaries under any Environmental Laws, and no Hazardous Material has been generated, owned, treated, stored, handled or controlled by the Borrower or any of its Subsidiaries and transported to or Released at any location in a manner that would reasonably be expected to give rise to any cost, liability or obligation of the Borrower or any of its Subsidiaries under any Environmental Laws and (iv) there are no agreements in which the Borrower or any of

its Subsidiaries has expressly assumed or undertaken responsibility for any known or reasonably likely liability or obligation of any other person arising under or relating to Environmental Laws, which in any such case has not been made available to the Administrative Agent prior to the date hereof.

SECTION 3.17 Security Documents.

(a) The Collateral Agreement is effective to create in favor of the Collateral Agent (for the benefit of the Secured Parties) a legal, valid and enforceable security interest in the Collateral described therein and proceeds thereof. In the case of the Pledged Collateral described in the Collateral Agreement, when certificates or promissory notes, as applicable, representing such Pledged Collateral are delivered to the Collateral Agent, and in the case of the other Collateral described in the Collateral Agreement (other than the Intellectual Property (as defined in the Collateral Agreement)), when financing statements and other filings specified in the Perfection Certificate are filed in the offices specified in the Perfection Certificate, the Collateral Agent (for the benefit of the Secured Parties) shall have a perfected Lien on, and security interest in, all right, title and interest of the Loan Parties in such Collateral and, subject to Section 9-315 of the New York Uniform Commercial Code, the proceeds thereof, as security for the Obligations to the extent perfection in such Collateral can be obtained by filing Uniform Commercial Code financing statements, in each case prior and superior in right to the Lien of any other person (except for Permitted Liens).

(b) When the Collateral Agreement or a summary thereof is properly filed in the United States Patent and Trademark Office and the United States Copyright Office, and, with respect to Collateral in which a security interest cannot be perfected by such filings, upon the proper filing of the financing statements referred to in paragraph (a) above, the Collateral Agent (for the benefit of the Secured Parties) shall have a fully perfected Lien on, and security interest in, all right, title and interest of the Loan Parties thereunder in the domestic Intellectual Property, in each case prior and superior in right to the Lien of any other person, except for Permitted Liens (it being understood that subsequent recordings in the United States Patent and Trademark Office and the United States Copyright Office may be necessary to perfect a Lien on registered trademarks and patents, trademark and patent applications and registered copyrights acquired by the grantors after the Closing Date).

(c) The Mortgages executed and delivered on the Closing Date are, and the Mortgages executed and delivered after the Closing Date pursuant to Section 5.10 and Section 5.11 will be, effective to create in favor of the Collateral Agent (for the benefit of the Secured Parties) a legal, valid and enforceable Lien on all of the applicable Loan Parties' right, title and interest in and to the Mortgaged Property thereunder and the proceeds thereof, and when such Mortgages are filed or recorded in the proper real estate filing or recording offices (which in the case of the Mortgages executed and delivered on the Closing Date are as set forth in the Perfection Certificate), and all relevant mortgage taxes and recording charges are duly paid, the Collateral Agent (for the benefit of the Secured Parties) shall have a perfected Lien on, and security interest in, all right, title, and interest of the applicable Loan Parties in such Mortgaged Property and, to the extent applicable, subject to Section 9-315 of the Uniform

Commercial Code, the proceeds thereof, in each case prior and superior in right to the Lien of any other person, except for Permitted Liens.

(d) The Ship Mortgages executed and delivered on the Closing Date are, and the Ship Mortgages executed and delivered after the Closing Date pursuant to Section 5.10 shall be, effective to create, and will create upon filing and/or recording of such Ship Mortgage with the NVDC (including payment of applicable filing fees), in favor of the Collateral Agent for the benefit of the Secured Parties a legal, valid and enforceable preferred mortgage over the whole of the applicable Mortgaged Vessel as collateral security for the payment and performance of the Loans and the other Obligations, and each Ship Mortgage, upon filing and recording in the NVDC creates in favor of the Collateral Agent for the benefit of the Secured Parties a preferred mortgage upon the applicable Mortgaged Vessel under Chapter 313 of Title 46 of the United States Code, free and clear of all Liens other than Permitted Liens.

(e) Notwithstanding anything herein (including this Section 3.17) or in any other Loan Document to the contrary, other than to the extent set forth in the Foreign Pledge Agreements (if any), neither the Borrower nor any other Loan Party makes any representation or warranty as to the effects of perfection or non-perfection, the priority or the enforceability of any pledge of or security interest in any Equity Interests of any Foreign Subsidiary, or as to the rights and remedies of the Agents or any Lender with respect thereto, under foreign law.

SECTION 3.18 Location of Real Property and Leased Premises; Vessel Data.

(a) The Perfection Certificate completely and correctly identifies, in all material respects, as of the Closing Date all material Real Property owned by the Borrower and the Subsidiary Loan Parties. As of the Closing Date, the Borrower and the Subsidiary Loan Parties own in fee all the Real Property set forth as being owned by them in the Perfection Certificate.

(b) The Perfection Certificate lists correctly in all material respects, as of the Closing Date, all material Real Property that is leased by the Borrower and the Subsidiary Loan Parties as the lessee and the addresses thereof. As of the Closing Date, the Borrower and the Subsidiary Loan Parties have in all material respects valid leases in all the Real Property set forth as being leased by them as the lessee in the Perfection Certificate.

(c) The Perfection Certificate completely and correctly identifies, in all material respects, all material Documented Vessels owned by the Borrower or a Subsidiary Loan Party as of the Closing Date, including the owner of the Documented Vessel, the name of the Documented Vessel, the official number issued by the NVDC (if applicable) and/or any other applicable information relating to the documentation or registration of the Documented Vessel under any applicable jurisdiction, and the location of the hailing port for such Documented Vessel.

SECTION 3.19 Solvency.

(a) On the Closing Date, immediately after giving effect to the Transactions that occur on the Closing Date, (i) the fair value of the assets of the Borrower and its Subsidiaries on a consolidated basis, at a fair valuation, will exceed the debts and liabilities, direct, subordinated, contingent or otherwise, of the Borrower and its Subsidiaries on a consolidated basis; (ii) the present fair saleable value of the property of the Borrower and its Subsidiaries on a consolidated basis will be greater than the amount that will be required to pay the probable liability of the Borrower and its Subsidiaries on a consolidated basis on their debts and other liabilities, direct, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured; (iii) the Borrower and its Subsidiaries on a consolidated basis will be able to pay their debts and liabilities, direct, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured; and (iv) the Borrower and its Subsidiaries on a consolidated basis will not have unreasonably small capital with which to conduct the businesses in which they are engaged as such businesses are now conducted and are proposed to be conducted following the Closing Date.

(b) On the Closing Date, the Borrower does not intend to, and the Borrower does not believe that it or any of its subsidiaries will, incur debts beyond its ability to pay such debts as they mature, taking into account the timing and amounts of cash to be received by it or any such subsidiary and the timing and amounts of cash to be payable on or in respect of its Indebtedness or the Indebtedness of any such subsidiary.

SECTION 3.20 Labor Matters. Except as, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect: (a) there are no strikes or other labor disputes pending or threatened against the Borrower or any of the Subsidiaries; (b) the hours worked and payments made to employees of the Borrower and the Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable law dealing with such matters; and (c) all payments due from the Borrower or any of the Subsidiaries or for which any claim may be made against the Borrower or any of the Subsidiaries, on account of wages and employee health and welfare insurance and other benefits have been paid or accrued as a liability on the books of the Borrower or such Subsidiary to the extent required by GAAP. Except as, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect, the consummation of the Transactions will not give rise to a right of termination or right of renegotiation on the part of any union under any material collective bargaining agreement to which the Borrower or any of the Subsidiaries (or any predecessor) is a party or by which the Borrower or any of the Subsidiaries (or any predecessor) is bound.

SECTION 3.21 No Default. No Default or Event of Default has occurred and is continuing or would result from the consummation of the transactions contemplated by this Agreement or any other Loan Document.

SECTION 3.22 Intellectual Property; Licenses, Etc. Except as would not reasonably be expected to have a Material Adverse Effect and except as set forth in Schedule 3.22, (a) the Borrower and each of its Subsidiaries owns, or possesses the right to use, all of the patents, registered trademarks, registered service marks or trade names, registered copyrights or mask works, domain names, applications and registrations for any of the foregoing (collectively, "Intellectual Property Rights") that are reasonably necessary for the operation of their respective

businesses, without conflict with the rights of any other person, (b) to the best knowledge of the Borrower, the Borrower and its Subsidiaries are not interfering with, infringing upon, misappropriating or otherwise violating Intellectual Property Rights of any person, and (c) no claim or litigation regarding any of the foregoing is pending or, to the best knowledge of the Borrower, threatened.

SECTION 3.23 Senior Debt. The Obligations constitute “Senior Debt” (or the equivalent thereof) and “Designated Senior Debt” (or the equivalent thereof, if any) under the documentation governing any subordinated Indebtedness permitted to be incurred hereunder or any Permitted Refinancing Indebtedness in respect thereof constituting subordinated Indebtedness.

#### ARTICLE IV Conditions of Lending

The obligations of (a) the Lenders (including the Swingline Lender) to make Loans and (b) any L/C Issuer to permit any L/C Credit Extension hereunder (each, a “Credit Event”) are subject to the satisfaction of the following conditions:

SECTION 4.01 All Credit Events. On the date of each Borrowing (other than the Closing Date) and on the date of each L/C Credit Extension (other than the Closing Date):

(a) The Administrative Agent shall have received, in the case of a Borrowing, a Borrowing Request as required by Section 2.03 or, in the case of an L/C Credit Extension, the applicable L/C Issuer and the Administrative Agent shall have received a Letter of Credit Application as required by Section 2.05(b).

(b) The representations and warranties set forth in the Loan Documents shall be true and correct in all material respects as of such date, as applicable, with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties shall be true and correct in all material respects as of such earlier date).

(c) At the time of and immediately after such Borrowing or L/C Credit Extension, as applicable, no Event of Default or Default shall have occurred and be continuing.

(d) The Obligations with respect to such Borrowing or L/C Credit Extension, as applicable, shall be secured by the Collateral and the incurrence of such Borrowing or L/C Credit Extension, as applicable, shall not result in a reduction in the outstanding amount of Obligations that are permitted to be secured by the Collateral without equally and ratably securing any Retained Notes.

Each such Borrowing (subject to the immediately preceding paragraph) and each L/C Credit Extension shall be deemed to constitute a representation and warranty by the

SECTION 4.02 First Credit Event. On the Closing Date:

(a) The Administrative Agent (or its counsel) shall have received from each party hereto either (i) a counterpart of this Agreement signed on behalf of such party or (ii) written evidence satisfactory to the Administrative Agent (which may include telecopy transmission of a signed signature page of this Agreement) that such party has signed a counterpart of this Agreement.

(b) The Administrative Agent shall have received, on behalf of itself, the Collateral Agent, the Lenders and each L/C Issuer on the Closing Date, a favorable written opinion of (i) O'Melveny & Myers LLP, counsel for the Loan Parties, and (ii) each local counsel specified on Schedule 4.02(b), in each case (A) dated the Closing Date, (B) addressed to each L/C Issuer on the Closing Date, the Administrative Agent, the Collateral Agent and the Lenders and (C) in form and substance reasonably satisfactory to the Administrative Agent.

(c) The Administrative Agent shall have received in the case of each Loan Party each of the items referred to in clauses (i), (ii) and (iii) below:

(i) a copy of the certificate or articles of incorporation, certificate of limited partnership or certificate of formation, including all amendments thereto, of each Loan Party, (A) in the case of a corporation, certified as of a recent date by the Secretary of State (or other similar official) of the jurisdiction of its organization, and a certificate as to the good standing (to the extent such concept or a similar concept exists under the laws of such jurisdiction) of each such Loan Party as of a recent date from such Secretary of State (or other similar official) or (B) in the case of a partnership or limited liability company, certified by the Secretary or Assistant Secretary of each such Loan Party;

(ii) a certificate of the Secretary or Assistant Secretary or similar officer of each Loan Party dated the Closing Date and certifying

(A) that attached thereto is a true and complete copy of the by-laws (or partnership agreement, limited liability company agreement or other equivalent governing documents) of such Loan Party as in effect on the Closing Date and at all times since a date prior to the date of the resolutions described in clause (B) below,

(B) that attached thereto is a true and complete copy of resolutions duly adopted by the Board of Directors of such Loan Party (or its managing general partner, managing member or equivalent) authorizing the execution, delivery and performance of the Loan Documents to which such person is a party and, in the case of the Borrower, the borrowings hereunder, and that such resolutions have not been modified, rescinded or amended and are in full force and effect on the Closing Date,

(C) that the certificate or articles of incorporation, certificate of limited partnership, articles of incorporation or certificate of formation of such Loan Party has

not been amended since the date of the last amendment thereto disclosed pursuant to clause (i) above,

(D) as to the incumbency and specimen signature of each officer executing any Loan Document or any other document delivered in connection herewith on behalf of such Loan Party and

(E) as to the absence of any pending proceeding for the dissolution or liquidation of such Loan Party; and

(iii) a certificate of a director or an officer as to the incumbency and specimen signature of the Secretary or Assistant Secretary or similar officer executing the certificate pursuant to clause (ii) above.

(d) Except for matters to be completed following the Closing Date in accordance with Section 5.10(i), the elements of the Collateral Requirement required to be satisfied on the Closing Date shall have been satisfied and the Administrative Agent shall have received a completed Perfection Certificate dated the Closing Date and signed by a Responsible Officer of the Borrower, together with all attachments contemplated thereby, and the results of a search of the Uniform Commercial Code (or equivalent) filings made with respect to the Loan Parties in the jurisdictions contemplated by the Perfection Certificate and copies of the financing statements (or similar documents) disclosed by such search and evidence reasonably satisfactory to the Administrative Agent that the Liens indicated by such financing statements (or similar documents) are Permitted Liens or have been released.

(e) The Merger shall have been consummated or shall be consummated simultaneously with or immediately following the closing under this Agreement in accordance with the terms and conditions of the Merger as set forth in the Merger Documents, without giving effect to any amendment, modification or waiver by Holdings thereto which is materially adverse to the interests of the Lenders without the approval of the Requisite Lead Arrangers (which approval shall not be unreasonably withheld, conditioned or delayed).

(f) The conditions in Section 6.02(a) of the Merger Agreement (but only with respect to representations and warranties that are material to the interests of the Lenders, and only to the extent that Parent has the right to terminate its obligations under the Merger Agreement as a result of a breach of such representations in the Merger Agreement) shall be satisfied, and the representations and warranties made in Sections 3.01(b) and (d), 3.02(a), 3.03, 3.10, 3.11 and 3.23 hereof shall be true and correct in all material respects.

(g) The Equity Contributions shall have been consummated and, to the extent any of the Equity Contributions are in the form of preferred Equity Interests, the terms of such preferred Equity Interests shall be reasonably satisfactory to the Requisite Lead Arrangers to the extent material to the interests of the Lenders.

(h) The Lenders shall have been provided access to the financial statements referred to in Section 3.05.

(i) On the Closing Date, after giving effect to the Transactions and the other transactions contemplated hereby, the Borrower and its Subsidiaries shall have outstanding no Indebtedness other than (i) the Loans and other extensions of credit under this Agreement, (ii) the Senior Unsecured Notes, (iii) the loans and other extensions of credit under the Interim Loan Agreement, (iv) the Retained Notes, (v) the Senior Convertible Notes and (vi) other Indebtedness permitted pursuant to Section 6.01.

(j) The Lenders shall have received a solvency certificate substantially in the form of Exhibit B and signed by the Chief Financial Officer of the Borrower confirming the solvency of Borrower and its Subsidiaries on a consolidated basis after giving effect to the Transactions on the Closing Date.

(k) The Agents shall have received all fees payable thereto or to any Lender on or prior to the Closing Date and, to the extent invoiced, all other amounts due and payable pursuant to the Loan Documents on or prior to the Closing Date, including, to the extent invoiced, reimbursement or payment of all reasonable out-of-pocket expenses (including reasonable fees, charges and disbursements of Cahill Gordon and Reindel LLP) required to be reimbursed or paid by the Loan Parties hereunder or under any Loan Document.

(l) The Administrative Agent shall have received all documentation and other information required by regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations, including without limitation, the USA PATRIOT Act that has been requested not less than five (5) Business Days prior to the Closing Date.

(m) The Administrative Agent shall have received, in the case of a Borrowing, a Borrowing Request as required by Section 2.03 or, in the case of an L/C Credit Extension, the applicable L/C Issuer and the Administrative Agent shall have received a Letter of Credit Application as required by Section 2.05(b).

(n) All amounts due or outstanding in respect of the Refinanced Indebtedness constituting the existing credit agreements shall have been (or substantially simultaneously with the closing under this Agreement shall be) paid in full, all commitments in respect thereof terminated and all guarantees thereof discharged and released. Holdings or the Borrower shall, or shall cause an Affiliate to, either (i) have purchased each of the Refinanced Indebtedness constituting notes validly tendered and not withdrawn in the debt tender offer and, to the extent not all the Refinanced Indebtedness constituting notes are so purchased, the indenture relating thereto shall have been amended pursuant to a consent solicitation to remove substantially all of the negative covenants therefrom that can be amended by a majority vote of the holders thereof, or (ii) have caused Holdings or the Borrower to have issued a notice of optional redemption for, and deposited funds with the trustee under the indenture governing the Refinanced Indebtedness constituting notes sufficient to “discharge” on the Closing Date such notes pursuant to the terms of the indenture governing such notes or, to the extent a discharge is unavailable, set aside an amount of funds sufficient, in the reasonable judgment of the Borrower, to redeem the Refinanced Indebtedness

constituting notes on the earliest redemption date permitted under the indenture governing such notes.

For purposes of determining compliance with the conditions specified in this Section 4.02, each Lender shall be deemed to have consented to, approved or accepted or to be satisfied with each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to the Lenders unless an officer of the Administrative Agent responsible for the transactions contemplated by the Loan Documents shall have received notice from such Lender prior to the Closing Date specifying its objection thereto and such Lender shall not have made available to the Administrative Agent such Lender's ratable portion of the initial Borrowing.

ARTICLE V  
Affirmative Covenants

The Borrower covenants and agrees with each Lender that so long as this Agreement shall remain in effect (other than in respect of contingent indemnification and expense reimbursement obligations for which no claim has been made) and until the Commitments have been terminated and the principal of and interest on each Loan, all Fees and all other expenses or amounts payable under any Loan Document shall have been paid in full and all Letters of Credit have been canceled or have expired and all amounts drawn or paid thereunder have been reimbursed in full, unless the Required Lenders shall otherwise consent in writing, the Borrower will, and will cause each of the Subsidiaries to:

SECTION 5.01 Existence; Businesses and Properties.

(a) Do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence, except, in the case of a Subsidiary of the Borrower, where the failure to do so would not reasonably be expected to have a Material Adverse Effect, and except as otherwise permitted under Section 6.05; provided that the Borrower may liquidate or dissolve one or more Subsidiaries if the assets of such Subsidiaries (to the extent they exceed estimated liabilities) are acquired by the Borrower or a Wholly-Owned Subsidiary of the Borrower in such liquidation or dissolution, except that Subsidiary Loan Parties may not be liquidated into Subsidiaries that are not Loan Parties and Domestic Subsidiaries may not be liquidated into Foreign Subsidiaries (except in each case as otherwise permitted under Section 6.05).

(b) Except where the failure to do so would not reasonably be expected to have a Material Adverse Effect, do or cause to be done all things necessary to (i) lawfully obtain, preserve, renew, extend and keep in full force and effect the permits, franchises, authorizations, patents, trademarks, service marks, trade names, copyrights, licenses and rights with respect thereto necessary to the normal conduct of its business, and (ii) at all times maintain and preserve all property necessary to the normal conduct of its business and keep such property in good repair, working order and condition and from time to time make, or cause to be made, all needful and proper repairs, renewals, additions, improvements and replacements thereto necessary in order that the business carried on in connection therewith, if

any, may be properly conducted at all times (in each case except as expressly permitted by this Agreement).

SECTION 5.02 Insurance.

(a) Maintain, with financially sound and reputable insurance companies, insurance (subject to customary deductibles and retentions) in such amounts and against such risks as are customarily maintained by similarly situated companies engaged in the same or similar businesses operating in the same or similar locations and cause the Borrower and the Subsidiary Loan Parties to be listed as insured and the Collateral Agent to be listed as a co-loss payee on property and property casualty policies and as an additional insured on liability policies. Notwithstanding the foregoing, the Borrower and the Subsidiaries may self-insure with respect to such risks with respect to which companies of established reputation engaged in the same general line of business in the same general area usually self-insure.

(b) With respect to any Mortgaged Properties, if at any time the area in which the Premises (as defined in the Mortgages) are located is designated a "flood hazard area" in any Flood Insurance Rate Map published by the Federal Emergency Management Agency (or any successor agency), obtain flood insurance to the extent required to comply with the National Flood Insurance Program as set forth in the Flood Disaster Protection Act of 1973, as it may be amended from time to time.

(c) In connection with the covenants set forth in this Section 5.02, it is understood and agreed that:

(i) none of the Administrative Agent, the Lenders, the L/C Issuer and their respective agents or employees shall be liable for any loss or damage insured by the insurance policies required to be maintained under this Section 5.02, it being understood that (A) the Loan Parties shall look solely to their insurance companies or any other parties other than the aforesaid parties for the recovery of such loss or damage and (B) such insurance companies shall have no rights of subrogation against the Administrative Agent, the Lenders, any L/C Issuer or their agents or employees. If, however, the insurance policies, as a matter of the internal policy of such insurer, do not provide waiver of subrogation rights against such parties, as required above, then the Borrower, on behalf of itself and behalf of each of its Subsidiaries, hereby agrees, to the extent permitted by law, to waive, and further agrees to cause each of their Subsidiaries to waive, its right of recovery, if any, against the Administrative Agent, the Lenders, any L/C Issuer and their agents and employees;

(ii) the designation of any form, type or amount of insurance coverage by the Administrative Agent under this Section 5.02 shall in no event be deemed a representation, warranty or advice by the Administrative Agent or the Lenders that such insurance is adequate for the purposes of the business of the Borrower and the Subsidiaries or the protection of their properties; and

(iii) the amount and type of insurance that the Borrower and its Subsidiaries has in effect as of the Closing Date satisfies for all purposes the requirements of this Section 5.02.

SECTION 5.03 Taxes. Pay and discharge promptly when due all material Taxes, imposed upon it or upon its income or profits or in respect of its property, before the same shall become delinquent or in default, as well as all material lawful claims which, if unpaid, might give rise to a Lien (other than a Permitted Lien) upon such properties or any part thereof; provided, however, that such payment and discharge shall not be required with respect to any such Tax, assessment, charge, levy or claim so long as (a) the validity or amount thereof shall be contested in good faith by appropriate proceedings and (b) Holdings, the Borrower or the affected Subsidiary, as applicable, shall have set aside on its books reserves in accordance with GAAP with respect thereto.

SECTION 5.04 Financial Statements, Reports, etc. Furnish to the Administrative Agent (which will promptly furnish such information to the Lenders):

(a) Within 105 days (or such other time period as specified in the SEC's rules and regulations with respect to non-accelerated filers for the filing of annual reports on Form 10-K), following the end of each fiscal year (commencing with the fiscal year ending December 31, 2007), a consolidated balance sheet and related statements of operations, cash flows and owners' equity showing the financial position of the Borrower and its Subsidiaries as of the close of such fiscal year and the consolidated results of its operations during such year and, starting with the fiscal year ending December 31, 2007, setting forth in comparative form the corresponding figures for the prior fiscal year, which consolidated balance sheet and related statements of operations, cash flows and owners' equity shall be audited by independent public accountants of recognized national standing and accompanied by an opinion of such accountants (which shall not be qualified as to scope of audit or as to the status of the Borrower or any Material Subsidiary as a going concern) to the effect that such consolidated financial statements fairly present, in all material respects, the financial position and results of operations of the Borrower and its Subsidiaries on a consolidated basis in accordance with GAAP (it being understood that the delivery by the Borrower of annual reports on Form 10-K of the Borrower and its consolidated Subsidiaries shall satisfy the requirements of this Section 5.04(a) to the extent such annual reports include the information specified herein);

(b) Within 60 days (or such other time period as specified in the SEC's rules and regulations with respect to non-accelerated filers for the filing of quarterly reports on Form 10-Q) (or, in the case of the first fiscal quarter for which quarterly financial statements are required to be delivered hereunder, within 75 days following the end of such fiscal quarter), following the end of each of the first three fiscal quarters of each fiscal year, a consolidated balance sheet and related statements of operations and cash flows showing the financial position of the Borrower and its Subsidiaries as of the close of such fiscal quarter and the consolidated results of its operations during such fiscal quarter and the then-elapsed portion of the fiscal year and setting forth in comparative form the corresponding figures for the corresponding periods of the prior fiscal year, all of which shall be in reasonable detail and which consolidated balance sheet and related statements of operations and cash flows shall be certified by a Financial Officer of Holdings or the Borrower on behalf of Holdings or the Borrower as fairly presenting, in all material respects, the financial position and results of operations of the Borrower and its Subsidiaries on a consolidated basis in accordance with

GAAP (subject to normal year-end audit adjustments and the absence of footnotes) (it being understood that the delivery by the Borrower of quarterly reports on Form 10-Q of the Borrower and its consolidated Subsidiaries shall satisfy the requirements of this Section 5.04(b) to the extent such quarterly reports include the information specified herein);

(c) (x) concurrently with any delivery of financial statements under paragraphs (a) or (b) above, a certificate of a Financial Officer of the Borrower (i) certifying that no Event of Default or Default has occurred or, if such an Event of Default or Default has occurred, specifying the nature and extent thereof and any corrective action taken or proposed to be taken with respect thereto and (ii) commencing with the fiscal quarter ending September 30, 2008 (or June 30, 2008 in order to effect any change in the Pricing Grid), but not including any fiscal quarter that ends during a Covenant Suspension Period, setting forth computations in reasonable detail satisfactory to the Administrative Agent demonstrating compliance with the Financial Performance Covenant, and (y) concurrently with any delivery of financial statements under paragraph (a) above, if the accounting firm is not restricted from providing such a certificate by its policies, a certificate of the accounting firm opining on or certifying such statements stating whether they obtained knowledge during the course of their examination of such statements of any Default or Event of Default (which certificate may be limited to accounting matters and disclaim responsibility for legal interpretations);

(d) promptly after the same become publicly available, copies of all periodic and other publicly available reports, proxy statements and, to the extent requested by the Administrative Agent, other materials filed by Holdings (prior to a Borrower Qualified IPO), the Borrower or any of the Subsidiaries with the SEC, or after an initial public offering, distributed to its stockholders generally, as applicable; provided, however, that such reports, proxy statements, filings and other materials required to be delivered pursuant to this paragraph (d) shall be deemed delivered for purposes of this Agreement when posted to the website of the Borrower;

(e) within 105 days after the beginning of each fiscal year, a reasonably detailed consolidated annual budget for such fiscal year (including a projected consolidated balance sheet of the Borrower and its Subsidiaries as of the end of the following fiscal year, and the related consolidated statements of projected cash flow and projected income), including a description of underlying assumptions with respect thereto (collectively, the "Budget"), which Budget shall in each case be accompanied by the statement of a Financial Officer of the Borrower to the effect that, the Budget is based on assumptions believed by such Financial Officer to be reasonable as of the date of delivery thereof;

(f) upon the reasonable request of the Administrative Agent, an updated Perfection Certificate (or, to the extent such request relates to specified information contained in the Perfection Certificate, such information) reflecting all changes since the date of the information most recently received pursuant to this paragraph (f) or Section 5.10(f);

(g) promptly, from time to time, such other information regarding the operations, business affairs and financial condition of the Borrower or any of the Subsidiaries, or compliance with the terms of any Loan Document, or such consolidating financial

statements (it being understood that consolidating financial statements shall not be requested until such time as the Borrower shall have filed a registration statement with the SEC with respect to the Senior Unsecured Notes or the Senior Notes), as in each case the Administrative Agent may reasonably request (for itself or on behalf of the Lenders); and

(h) in the event that in respect of the Senior Unsecured Notes, the Senior Notes or any Permitted Refinancing Indebtedness with respect thereto, the rules and regulations of the SEC permit the Borrower, Holdings or any Parent Entity to report at Holdings' or such Parent Entity's level on a consolidated basis such consolidated reporting at Holdings' or such Parent Entity's level in a manner consistent with that described in paragraphs (a) and (b) of this Section 5.04 for the Borrower (together with a reconciliation showing the adjustments necessary to determine compliance by the Borrower and its Subsidiaries with the Financial Performance Covenant) will satisfy the requirements of such paragraphs.

SECTION 5.05 Litigation and Other Notices. Furnish to the Administrative Agent (which will promptly thereafter furnish to the Lenders) written notice of the following promptly after any Responsible Officer of Borrower obtains actual knowledge thereof:

(a) any Event of Default or Default, specifying the nature and extent thereof and the corrective action (if any) proposed to be taken with respect thereto;

(b) the filing or commencement of, or any written threat or notice of intention of any person to file or commence, any action, suit or proceeding, whether at law or in equity or by or before any Governmental Authority (including any action, suit or proceeding by or subject to decision by any Gaming Authority) or in arbitration, against the Borrower or any of the Subsidiaries as to which an adverse determination is reasonably probable and which, if adversely determined, would reasonably be expected to have a Material Adverse Effect;

(c) any other development specific to the Borrower or any of the Subsidiaries that is not a matter of general public knowledge and that has had, or would reasonably be expected to have, a Material Adverse Effect;

(d) the development or occurrence of any ERISA Event that, together with all other ERISA Events that have developed or occurred, would reasonably be expected to have a Material Adverse Effect;

(e) promptly after the same are available, copies of any written communication to Borrower or any of its Subsidiaries from any Gaming Authority advising it of a material violation of, or material non-compliance with, any Gaming Law by Borrower or any of its Subsidiaries; and

(f) the Borrower's determination of the commencement or termination of a Covenant Suspension Period.

SECTION 5.06 Compliance with Laws. Comply with all laws, rules, regulations and orders of any Governmental Authority applicable to it or its property, including all Gaming Laws, except that the Borrower and its Subsidiaries need not comply with any laws, rules, regulations and orders of any Governmental Authority then being contested by any of them in good faith by appropriate proceedings, and except where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect; provided that this Section 5.06 shall not apply to Environmental Laws, which are the subject of Section 5.09, or to laws related to Taxes, which are the subject of Section 5.03.

SECTION 5.07 Maintaining Records; Access to Properties and Inspections. Maintain all financial records in accordance with GAAP and permit any persons designated by the Administrative Agent or, upon the occurrence and during the continuance of an Event of Default, any Lender to visit and inspect the financial records and the properties of the Borrower or any of the Subsidiaries at reasonable times, upon reasonable prior notice to the Borrower, and as often as reasonably requested and to make extracts from and copies of such financial records, and permit any persons designated by the Administrative Agent or, upon the occurrence and during the continuance of an Event of Default, any Lender upon reasonable prior notice to the Borrower to discuss the affairs, finances and condition of the Borrower or any of the Subsidiaries with the officers thereof and independent accountants therefor (subject to reasonable requirements of confidentiality, including requirements imposed by law or by contract).

SECTION 5.08 Use of Proceeds. Use the proceeds of the Loans in the manner set forth in Section 3.12.

SECTION 5.09 Compliance with Environmental Laws. Comply, and make reasonable efforts to cause all lessees and other persons occupying its properties to comply, with all Environmental Laws applicable to its operations and properties; and obtain and renew all material authorizations and permits required pursuant to Environmental Law for its operations and properties, in each case in accordance with Environmental Laws, except, in each case with respect to this Section 5.09, to the extent the failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

SECTION 5.10 Further Assurances; Additional Security.

(a) Execute any and all further documents, financing statements, agreements and instruments, and take all such further actions (including the filing and recording of financing statements, fixture filings, Mortgages, Ship Mortgages and other documents and recordings of Liens in stock registries), that the Collateral Agent may reasonably request, to satisfy the Collateral Requirement and to cause the Collateral Requirement to be and remain satisfied, all at the expense of the Loan Parties and provide to the Collateral Agent, from time to time upon reasonable request, evidence reasonably satisfactory to the Collateral Agent as to the perfection and priority of the Liens created or intended to be created by the Security Documents, subject in each case to paragraph (g) below.

(b) If any asset (other than Real Property and Documented Vessels, which are covered by paragraph (c) below) that has an individual fair market value (as determined in

good faith by the Borrower) in an amount greater than \$15.0 million is acquired by the Borrower or any Subsidiary Loan Party after the Closing Date (in each case other than (x) assets constituting Collateral under a Security Document that become subject to the Lien of such Security Document upon acquisition thereof and (y) assets that are not required to become subject to Liens in favor of the Collateral Agent pursuant to Section 5.10(g) or the Security Documents) will (i) promptly as practicable notify the Collateral Agent thereof and (ii) take or cause the Subsidiary Loan Parties to take such actions as shall be reasonably requested by the Collateral Agent to grant and perfect such Liens, including actions described in paragraph (a) of this Section, all at the expense of the Loan Parties, subject to paragraph (g) below.

(c) (i) Promptly notify the Administrative Agent of the acquisition (which for this clause (c)(i) shall include the improvement of any Real Property that was not Owned Real Property that results in it qualifying as Owned Real Property) of and will grant and cause each of the Subsidiary Loan Parties to grant to the Collateral Agent security interests and mortgages in such Owned Real Property of the Borrower or any such Subsidiary Loan Parties as are not covered by the original Mortgages, to the extent acquired after the Closing Date (including in connection with the Post-Closing CMBS Transaction), pursuant to documentation substantially in the form of the Mortgages delivered to the Collateral Agent on the Closing Date or in such other form as is reasonably satisfactory to the Collateral Agent (each, an “Additional Mortgage”) and constituting valid and enforceable Liens subject to no other Liens except Permitted Liens at the time of perfection thereof, record or file, and cause each such Subsidiary Loan Party to record or file, the Additional Mortgage or instruments related thereto in such manner and in such places as is required by law to establish, perfect, preserve and protect the Liens in favor of the Collateral Agent required to be granted pursuant to the Additional Mortgages and pay, and cause each such Subsidiary Loan Party to pay, in full, all Taxes, fees and other charges payable in connection therewith, in each case subject to paragraph (g) below. Unless otherwise waived by the Collateral Agent, with respect to each such Additional Mortgage, the Borrower shall deliver to the Collateral Agent contemporaneously therewith a title insurance policy and a survey and otherwise comply with the Collateral Requirements applicable to Mortgages and Mortgaged Property. Notwithstanding the foregoing in this paragraph (c)(i), to the extent that the Borrower anticipates in good faith (1) delivering a Project Notice to the Administrative Agent with respect to any such Owned Real Property acquired after the Closing Date within forty-five (45) days following such acquisition and (2) that such Project Notice would result in the release of a Mortgage securing the Obligations pursuant to Section 5.11(a) (if there were a Mortgage on such Owned Real Property), then the Borrower shall not be required to deliver an Additional Mortgage with respect to such Owned Real Property pursuant to this paragraph (c)(i) (and such Owned Real Property will instead be subject to Section 5.11 below). If the Borrower has not delivered a Project Notice with respect to such Owned Real Property within such forty-five (45) day period, then the Borrower shall promptly take the actions required to be taken pursuant to this paragraph (c)(i).

(ii) Promptly notify the Administrative Agent of the acquisition of and will grant and cause each of the Subsidiary Loan Parties to grant to the Collateral Agent security interests and preferred mortgages in such owned Replacement Vessels or other

Documented Vessels of the Borrower or any such Subsidiary Loan Party that are owned in fee as are not covered by the original Ship Mortgages to the extent that they are (1) acquired after the Closing Date and each such Replacement Vessel or other Documented Vessel has a fair market value at the time of acquisition in excess of \$15.0 million (as determined in good faith by the Borrower) or (2) subject to improvements that result in such Replacement Vessel or Documented Vessel acquiring a fair market value in excess of \$15.0 million (as determined in good faith by the Borrower), pursuant to documentation substantially in the form of the Ship Mortgages (and in the form of the related Insurance Assignments and Earnings Assignments) delivered to the Collateral Agent on the Closing Date or in such other form as is reasonably satisfactory to the Collateral Agent (each, an “Additional Ship Mortgage”) and constituting valid and enforceable preferred mortgages subject to no other Liens except Permitted Liens at the time of perfection thereof, record or file, and cause each such Subsidiary Loan Party to record or file, the Additional Ship Mortgage or instruments related thereto in such manner and in such places as is required by law to establish, perfect, preserve and protect the Liens in favor of the Collateral Agent required to be granted pursuant to the Additional Ship Mortgages and pay, and cause each Subsidiary Loan Party to pay, in full, all Taxes, fees and other charges payable in connection therewith, in each case subject to paragraph (g) below. Unless waived by the Collateral Agent, with respect to each such Additional Ship Mortgage, the Borrower shall deliver to the Collateral Agent contemporaneously therewith vessel and, alternatively, UCC title insurance policies and otherwise comply with the Collateral Requirements applicable to Ship Mortgages and Mortgaged Vessels.

(d) If any additional direct or indirect Subsidiary of the Borrower is formed or acquired after the Closing Date (with any Subsidiary Redesignation resulting in an Unrestricted Subsidiary becoming a Subsidiary being deemed to constitute the acquisition of a Subsidiary) and if such Subsidiary is a Wholly-Owned Domestic Subsidiary (other than a Domestic Subsidiary that is a Subsidiary of a Foreign Subsidiary and other than, at the Borrower’s option, any Immaterial Subsidiary), within ten (10) Business Days after the date such Wholly-Owned Domestic Subsidiary is formed or acquired, notify the Collateral Agent thereof and, within twenty (20) Business Days after the date such Wholly-Owned Domestic Subsidiary is formed or acquired or such longer period as the Collateral Agent shall agree, cause the Collateral Requirement to be satisfied with respect to such Domestic Subsidiary and with respect to any Equity Interest in or Indebtedness of such Domestic Subsidiary owned by or on behalf of the Borrower or any Subsidiary Loan Party, subject in each case to paragraph (g) below.

(e) If any additional Foreign Subsidiary of the Borrower is formed or acquired after the Closing Date (with any Subsidiary Redesignation resulting in an Unrestricted Subsidiary becoming a Subsidiary being deemed to constitute the acquisition of a Subsidiary) and if such Subsidiary is a “first tier” Foreign Subsidiary, within ten (10) Business Days after the date such Foreign Subsidiary is formed or acquired, notify the Collateral Agent thereof and, within twenty (20) Business Days after the date such Foreign Subsidiary is formed or acquired or such longer period as the Collateral Agent shall agree, cause the Collateral Requirement to be satisfied with respect to any Equity Interest in such Foreign Subsidiary owned by or on behalf of the Borrower or any Subsidiary Loan Party, subject in each case to paragraph (g) below.

(f) Furnish to the Collateral Agent promptly (and in any event within 30 days after such change) written notice of any change (A) in any Loan Party's corporate or organization name, (B) in any Loan Party's identity or organizational structure, (C) in any Loan Party's organizational identification number or (D) in any Loan Party's jurisdiction of organization; provided, that the Borrower shall not effect or permit any such change unless all filings have been made, or will have been made within any statutory period, under the Uniform Commercial Code or otherwise that are required in order for the Collateral Agent to continue at all times following such change to have a valid, legal and perfected security interest in all the Collateral for the benefit of the Secured Parties with the same priority as prior to such change.

(g) The Collateral Requirement and the other provisions of this Section 5.10 and the other provisions of the Loan Documents with respect to Collateral need not be satisfied with respect to (i) any Real Property or Vessel held by the Borrower or any of its Subsidiaries as a lessee under a lease or any Real Property owned in fee that is not Owned Real Property or any Vessel owned in fee that does not have an individual fair market value (as determined in good faith by the Borrower) of at least \$15.0 million, (ii) any vehicle, (iii) cash, deposit accounts and securities accounts (it being understood and agreed (1) that the Lien of the Collateral Agent may extend to such assets pursuant to the terms of the Collateral Agreement, but that such Lien need not be perfected to the extent perfection requires any action other than the filing of customary financing statements (and all representations, warranties, covenants and other terms of the Loan Documents with respect to Collateral shall be construed accordingly) and (2) that there shall be no lockbox arrangements nor any control agreements relating to the Borrower's and its subsidiaries' bank accounts), (iv) any Equity Interests owned on or acquired after the Closing Date (other than (x) Equity Interests in the Borrower or, (y) in the case of any person which is a Wholly-Owned Subsidiary, Equity Interests in such person issued or acquired after such person became a Wholly-Owned Subsidiary) in accordance with this Agreement if, and to the extent that, and for so long as doing so would violate applicable law or regulation (including any Gaming Law or regulation) or a shareholder agreement or other contractual obligation (in each case, after giving effect to Section 9-406(d), 9-407(a) or 9-408 of the Uniform Commercial Code and other applicable law) binding on such Equity Interests, (v) any assets owned on or acquired after the Closing Date, to the extent that, and for so long as, taking such actions would violate applicable law or regulation (including any Gaming Law or regulation) or an enforceable contractual obligation (after giving effect to Section 9-406(d), 9-407(a), 9-408 or 9-409 of the Uniform Commercial Code and other applicable law) binding on such assets that existed at the time of the acquisition thereof and was not created or made binding on such assets in contemplation or in connection with the acquisition of such assets (except in the case of assets (1) owned on the Closing Date or (2) acquired after the Closing Date with Indebtedness of the type permitted pursuant to Section 6.01(i), 6.01(y) and 6.01(z) that is secured by a Permitted Lien) permitted by this Agreement, (vi) those assets as to which the Administrative Agent shall reasonably determine that the costs of obtaining or perfecting such a security interest are excessive in relation to the value of the security to be afforded thereby, or (vii) for the avoidance of doubt, any assets owned by, or the Equity Interests of, the Real Estate Subsidiaries or any Qualified Non-Recourse Subsidiary or any other asset securing the Real Estate Facility or any Qualified Non-Recourse Debt (which shall in no event constitute Collateral hereunder, nor shall any

Real Estate Subsidiary or Qualified Non-Recourse Subsidiary be a Loan Party hereunder). Notwithstanding anything to the contrary in this Agreement, the Collateral Agreement, or any other Loan Document, (i) the amount of Obligations that shall be secured by a Lien in favor of the Collateral Agent or any Secured Party shall at all times be less than the amount at which the Retained Notes would be entitled under the terms thereof in effect on the Closing Date to be equally and ratably secured, (ii) the Administrative Agent may grant extensions of time for the creation or perfection of security interests in or the obtaining of title insurance and surveys with respect to particular assets (including extensions beyond the Closing Date for the perfection of security interests in the assets of the Loan Parties on such date) where it reasonably determines, in consultation with the Borrower, that perfection or obtaining of such items cannot be accomplished without undue effort or expense by the time or times at which it would otherwise be required by this Agreement or the other Loan Documents, and (iii) Liens required to be granted from time to time pursuant to the Collateral Requirement and the Security Documents shall be subject to exceptions and limitations set forth in the Security Documents and, to the extent appropriate in the applicable jurisdiction, as otherwise agreed between the Administrative Agent and the Borrower.

(h) If at any time following the Closing Date and prior to a Borrower IPO the entities that are borrowers under the Real Estate Facility are not subsidiaries of Holdings but are direct or indirect subsidiaries of any Parent Entity, the Borrower will cause at least one of such Parent Entities to execute a supplement to the Guaranty and Pledge Agreement pursuant to which such Parent Entity becomes a party thereto on terms substantially identical to those applicable to Holdings and all references to "Holdings" in any Loan Document as it relates to the Guaranty and Pledge Agreement shall thereafter also be deemed to refer to such Parent Entity that becomes a party thereto.

(i) The Borrower shall or shall cause the applicable Subsidiary Loan Parties to take such actions set forth on Schedule 5.10(i) within the timeframes set forth for the taking of such actions on Schedule 5.10(i) (or within such longer timeframes as the Administrative Agent shall permit in its reasonable discretion) (it being understood and agreed that all representations, warranties and covenants of the Loan Documents with respect to the taking of such actions are qualified by the non-completion of such actions until such time as they are completed or required to be completed in accordance with this Section 5.10(i)).

#### SECTION 5.11 Real Property Development Matters.

(a) Releases of Mortgaged Property. In the event that the Borrower delivers a Project Notice to the Administrative Agent with respect to all or any portion of a Mortgaged Property or Mortgaged Properties constituting Undeveloped Land identifying the applicable Mortgaged Property or Properties, providing a reasonable description of the Project that the Borrower anticipates in good faith to be undertaken with respect to such Mortgaged Property or Properties constituting Undeveloped Land and identifying the Project Financing to be entered into in connection with the financing of such Project, then, if (x) the terms of such Project Financing require the release of the Mortgage securing the Obligations and (y) in the case of Undeveloped Land acquired after the Closing Date, the Borrower is in Pro Forma Compliance after giving effect to such Project Financing, on the later of the date that is ten

(10) Business Days following the date of the delivery of the Project Notice to the Administrative Agent and the date a mortgage or other security document securing the Project Financing is executed and delivered for recording pending, or is executed and delivered substantially concurrently with, the release of the Mortgage securing the Obligations, the security interest and Mortgage on the applicable Mortgaged Property or Properties shall be automatically released, all without delivery of any instrument or performance of any act by any party (and the Borrower or any Subsidiary Loan Party shall be permitted to take any action in connection therewith consistent with such release including, without limitation, the filing of UCC termination statements). In connection with any such termination or release, the Administrative Agent and Collateral Agent shall execute and deliver (or cause to be executed or delivered) to the Borrower or any Subsidiary Loan Party, at the Borrower or such Subsidiary Loan Party's expense, all documents that the Borrower or such Subsidiary Loan Party shall reasonably request to evidence such termination or release (including, without limitation, mortgage releases (including partial mortgage releases in the case where the Mortgaged Property covered by any Mortgage includes Mortgaged Property not subject to such release) and UCC termination statements), and will duly assign and transfer to the Borrower or such Subsidiary Loan Party any such applicable Mortgaged Property. Any execution and delivery of documents pursuant to this Section 5.11 shall be without recourse to or warranty by the Administrative Agent or Collateral Agent. With respect to any Owned Real Property owned by the Borrower or any Subsidiary Loan Party that is subject to a Project Financing pursuant to this Section 5.11, no second lien mortgages may be placed on such Owned Real Property while such Project Financing is outstanding.

**(b) New Mortgages on Developed Properties.**

(i) Promptly (but in no event later than 20 Business Days (or such longer time as the Administrative Agent shall permit in its reasonable discretion)) following the final completion of construction (as defined in the applicable engineering, procurement and construction contract) of any Project for which a Project Notice was previously delivered to the Administrative Agent, the Borrower shall notify the Administrative Agent of the completion of such Project and, to the extent permitted by the terms of the applicable Project Financing (provided that to the extent the terms of the applicable Project Financing restrict the taking of such actions, the Borrower shall take such actions promptly (but in no event later than 20 Business Days (or such longer period as the Administrative Agent shall permit in its reasonable discretion)) following the cessation of such restrictions), shall take the actions specified in clause (iii) below;

(ii) Promptly (but in no event later than 20 Business Days (or such longer time as the Administrative Agent shall permit in its reasonable discretion)) following the abandonment or termination by the Borrower of any Project for which a Project Notice was previously delivered to the Administrative Agent, the Borrower shall notify the Administrative Agent of the abandonment or termination of such Project and, unless the Borrower delivers a new Project Notice with respect to the Real Property subject to such Project within such 20 Business Days (or such longer time permitted by the Administrative Agent), shall take the actions specified in clause (iii) below;

(iii) To the extent required by the foregoing clauses (i) and (ii), the Borrower shall (w) release or cause any applicable Subsidiary Loan Party to release all security interests or mortgages on the Real Property subject to such Project securing such Project Financing, (x) grant or cause any applicable Subsidiary Loan Party to grant to the Collateral Agent Additional Mortgages in any such Owned Real Property of the Borrower or such Subsidiary Loan Party subject to such Project as are not covered by the original Mortgages, constituting valid and enforceable Liens subject to no other Liens except Permitted Liens at the time of perfection thereof, (y) record or file, and cause such Subsidiary Loan Party to record or file, the Additional Mortgage or instruments related thereto in such manner and in such places as is required by law to establish, perfect, preserve and protect the Liens in favor of the Collateral Agent required to be granted pursuant to the Additional Mortgages and (z) pay, and cause such Subsidiary Loan Party to pay, in full, all Taxes, fees and other charges payable in connection therewith, in each case subject to Section 5.10(g). Unless otherwise waived by the Collateral Agent, with respect to each such Additional Mortgage, the Borrower shall deliver to the Collateral Agent contemporaneously therewith a title insurance policy and a survey and otherwise comply with the Collateral Requirements applicable to Mortgages and Mortgaged Property.

(c) Release of Liens. Promptly (but in no event later than 20 Business Days (or such longer time as the Administrative Agent shall permit in its reasonable discretion)) following the final completion of construction (as defined in the applicable engineering, procurement and construction contract) of any Project relating to a Mortgaged Property (other than with respect to which a Project Notice has been delivered), the Borrower shall notify the Administrative Agent of the completion of such Project and, to the extent permitted by the terms of any such third party mortgage financing Indebtedness (provided that to the extent the terms of the applicable mortgage financing Indebtedness restrict the taking of such actions, the Borrower shall take such actions promptly (but in no event later than 20 Business Days (or such longer period as the Administrative Agent shall permit in its reasonable discretion)) following the cessation of such restrictions), shall and shall cause any applicable Subsidiary Loan Party to release all third party mortgage financing Indebtedness for such Project (if any) and file and record any and all necessary documents to restore the first priority security interest and Lien of the original Mortgage relating to the Mortgaged Property that was the subject of the Project and pay, and cause such Subsidiary Loan Party to pay, in full, all Taxes, fees and other charges payable in connection therewith, in each case subject to Section 5.10(g). Unless otherwise waived by the Collateral Agent, the Borrower shall deliver to the Collateral Agent contemporaneously therewith a bring down endorsement to title insurance policy and a survey and otherwise comply with the Collateral Requirements applicable to Mortgages and Mortgaged Property.

SECTION 5.12 Rating. Exercise commercially reasonable efforts to maintain ratings from each of Moody's and S&P for the Term B-1 Loans, Term B-2 Loans and Term B-3 Loans.

ARTICLE VI  
Negative Covenants

The Borrower covenants and agrees with each Lender that, so long as this Agreement shall remain in effect (other than in respect of contingent indemnification and expense reimbursement obligations for which no claim has been made) and until the Commitments have been terminated and the principal of and interest on each Loan, all Fees and all other expenses or amounts payable under any Loan Document have been paid in full and all Letters of Credit have been canceled or have expired and all amounts drawn thereunder have been reimbursed in full, unless the Required Lenders shall otherwise consent in writing, the Borrower will not, and will not permit any of the Subsidiaries to:

SECTION 6.01 Indebtedness. Incur, create, assume or permit to exist any Indebtedness, except:

(a) (i) Indebtedness existing on the Closing Date (provided that any Indebtedness that is in excess of \$25.0 million individually or \$100.0 million in the aggregate shall only be permitted under this clause (a)(i) to the extent such Indebtedness is set forth on Schedule 6.01) and any Permitted Refinancing Indebtedness incurred to Refinance such Indebtedness (other than intercompany indebtedness Refinanced with Indebtedness owed to a person not affiliated with the Borrower or any Subsidiary), (ii) intercompany Indebtedness existing on the Closing Date; provided that any Indebtedness of the Borrower or a Subsidiary Loan Party to any Subsidiary that is not a Subsidiary Loan Party shall be subordinated to the Obligations on terms reasonably satisfactory to the Administrative Agent and (iii) the Retained Notes and any Permitted Refinancing Indebtedness incurred to Refinance the Retained Notes;

(b) Indebtedness created hereunder and under the other Loan Documents and any Permitted Refinancing Indebtedness incurred to Refinance such Indebtedness;

(c) Indebtedness of the Borrower or any Subsidiary pursuant to Swap Agreements not entered into for speculative purposes;

(d) Indebtedness owed to (including obligations in respect of letters of credit or bank guarantees or similar instruments for the benefit of) any person providing workers' compensation, health, disability or other employee benefits or property, casualty or liability insurance to the Borrower or any Subsidiary, pursuant to reimbursement or indemnification obligations to such person, in each case in the ordinary course of business; provided, that upon the incurrence of Indebtedness with respect to reimbursement obligations regarding workers' compensation claims, such obligations are reimbursed not later than 30 days following such incurrence;

(e) Indebtedness of the Borrower to any Subsidiary and of any Subsidiary to the Borrower or any other Subsidiary; provided, that other than in the case of intercompany current liabilities incurred in the ordinary course of business in connection with the cash management, tax and accounting operations of Borrower and the Subsidiaries, (i) Indebtedness of any Subsidiary that is not a Subsidiary Loan Party owing to the Borrower or any Subsidiary Loan Parties shall be subject to Section 6.04(b) or (ff) and (ii) Indebtedness of the Borrower to

any Subsidiary and Indebtedness of the Borrower or any Subsidiary Loan Party to any Subsidiary that is not a Subsidiary Loan Party (the “Subordinated Intercompany Debt”) shall be subordinated to the Obligations on terms reasonably satisfactory to the Administrative Agent;

(f) Indebtedness in respect of performance bonds, bid bonds, appeal bonds, surety bonds and completion guarantees and similar obligations, in each case provided in the ordinary course of business, including those incurred to secure health, safety and environmental obligations in the ordinary course of business;

(g) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business or other cash management services in the ordinary course of business;

(h) (i) Indebtedness of a Subsidiary acquired after the Closing Date or an entity merged into or consolidated with the Borrower or any Subsidiary after the Closing Date and Indebtedness assumed in connection with the acquisition of assets (including, in each case, in connection with the acquisition of Subsidiaries and assets pursuant to the Post-Closing CMBS Transaction), which Indebtedness in each case exists at the time of such acquisition, merger, consolidation or amalgamation and is not created in contemplation of such event and where such acquisition, merger, consolidation or amalgamation is permitted by this Agreement and (ii) any Permitted Refinancing Indebtedness incurred to Refinance such Indebtedness; provided, (A) no Default or Event of Default shall have occurred and be continuing or would result therefrom, and (B) immediately after giving effect to such acquisition, merger, consolidation or amalgamation, the assumption and incurrence of any Indebtedness and any related transactions, the Borrower shall be in Pro Forma Compliance;

(i) (i) Capital Lease Obligations, mortgage financings and other purchase money Indebtedness incurred by the Borrower or any Subsidiary prior to or within 270 days after the acquisition, lease, construction, repair, replacement or improvement of the respective property (real or personal, and whether through the direct purchase of property or the Equity Interests of any person owning such property) permitted under this Agreement in order to finance such acquisition, lease, construction, repair, replacement or improvement, so long as (A) no Default or Event of Default shall have occurred and be continuing or would result therefrom and (B) after giving effect to the issuance, incurrence or assumption of such Indebtedness, the Borrower shall be in Pro Forma Compliance, and (ii) any Permitted Refinancing Indebtedness in respect thereof;

(j) Capital Lease Obligations incurred by the Borrower or any Subsidiary in respect of any Sale and Lease-Back Transaction that is permitted under Section 6.03, and any Permitted Refinancing Indebtedness in respect thereof;

(k) other Indebtedness of the Borrower or any Subsidiary, in an aggregate principal amount that at the time of, and after giving effect to, the incurrence thereof, would not exceed the greater of \$1,000,000,000 and 4.0% of Consolidated Total Assets as of the end

of the fiscal quarter immediately prior to the date of such incurrence for which financial statements have been delivered pursuant to Section 5.04; provided that with respect to (i) any Indebtedness issued by the Borrower and Guaranteed by any Subsidiary Loan Party after the Closing Date and (ii) any debt security issued by any Subsidiary Loan Party after the Closing Date, the Guarantee by such Subsidiary Loan Party or the debt security of such Subsidiary Loan Party shall be subject to the Intercreditor Agreement or another intercreditor agreement not materially less favorable to the Lenders than the Intercreditor Agreement;

(l) Indebtedness of the Borrower pursuant to (i) the Senior Unsecured Notes, the Senior Notes and the Interim Loan Facility in an aggregate principal amount that is not in excess of \$6,775,000,000 plus the PIK Interest Amount, and (ii) any Permitted Refinancing Indebtedness incurred to Refinance any such Indebtedness;

(m) Guarantees (i) by the Subsidiary Loan Parties of the Indebtedness of the Borrower described in paragraph (l) of this Section 6.01, (ii) by the Borrower or any Subsidiary Loan Party of any Indebtedness of the Borrower or any Subsidiary Loan Party permitted to be incurred under this Agreement (other than Retained Notes maturing after the Term B Facility Maturity Date) (subject to the proviso at the end of this clause (m)), (iii) by the Borrower or any Subsidiary Loan Party of Indebtedness otherwise permitted hereunder of any Subsidiary that is not a Subsidiary Loan Party to the extent such Guarantees are permitted by Section 6.04 (other than Section 6.04(v)), and (iv) by any Subsidiary that is not a Subsidiary Loan Party of Indebtedness of another Subsidiary that is not a Subsidiary Loan Party; provided, that (x) Guarantees by the Borrower or any Subsidiary Loan Party under this Section 6.01(m) of any other Indebtedness of a person that is subordinated to other Indebtedness of such person shall be subordinated to the Obligations to at least the same extent such other Indebtedness is so subordinated and (y) with respect to any Indebtedness issued by the Borrower and permitted pursuant to clause (a) (to the extent such Indebtedness is not Guaranteed by such Subsidiary Loan Party on the Closing Date), (k), (l) or (r) of this Section 6.01, any Guarantee thereof by a Subsidiary Loan Party shall be subject to the Intercreditor Agreement or another intercreditor agreement not materially less favorable to the Lenders than the Intercreditor Agreement;

(n) Indebtedness arising from agreements of the Borrower or any Subsidiary providing for indemnification, adjustment of purchase or acquisition price or similar obligations, in each case, incurred or assumed in connection with the Transactions and any Permitted Business Acquisition or the disposition of any business, assets or a Subsidiary not prohibited by this Agreement, other than Guarantees of Indebtedness incurred by any person acquiring all or any portion of such business, assets or a Subsidiary for the purpose of financing such acquisition;

(o) Indebtedness in respect of letters of credit, bank guarantees, warehouse receipts or similar instruments issued to support performance obligations and trade letters of credit (other than obligations in respect of other Indebtedness) in the ordinary course of business or consistent with past practice or industry practice;

- (p) Indebtedness supported by a Letter of Credit, in a principal amount not in excess of the stated amount of such Letter of Credit;
- (q) Indebtedness consisting of (i) the financing of insurance premiums or (ii) take-or-pay obligations contained in supply arrangements, in each case, in the ordinary course of business;
- (r) (i) other Indebtedness so long as (A) no Default or Event of Default shall have occurred and be continuing or would result therefrom and (B) after giving effect to the issuance, incurrence or assumption of such Indebtedness the Senior Secured Leverage Ratio on a Pro Forma Basis shall not be greater than 4.5 to 1.0 and (ii) Permitted Refinancing Indebtedness in respect thereof; provided, however, that (x) Indebtedness of Subsidiaries that are not Subsidiary Loan Parties that is outstanding pursuant to clause (r)(i) shall not at any time exceed \$500 million in the aggregate and (y) with respect to (i) any Indebtedness issued by the Borrower and Guaranteed by any Subsidiary Loan Party after the Closing Date and (ii) any debt security issued by any Subsidiary Loan Party after the Closing Date, the Guarantee by such Subsidiary Loan Party or the debt security of such Subsidiary Loan Party shall be subject to the Intercreditor Agreement or another intercreditor agreement not materially less favorable to the Lenders than the Intercreditor Agreement;
- (s) Indebtedness of Subsidiaries that are not Subsidiary Loan Parties in an aggregate amount not to exceed at any time outstanding \$500 million;
- (t) unsecured Indebtedness in respect of obligations of the Borrower or any Subsidiary to pay the deferred purchase price of goods or services or progress payments in connection with such goods and services; provided, that such obligations are incurred in connection with open accounts extended by suppliers on customary trade terms (which require that all such payments be made within 90 days after the incurrence of the related obligations) in the ordinary course of business and not in connection with the borrowing of money or any Swap Agreements;
- (u) Indebtedness representing deferred compensation to employees of the Borrower or any Subsidiary incurred in the ordinary course of business;
- (v) Indebtedness in connection with Permitted Receivables Financings;
- (w) Indebtedness of the Borrower and the Subsidiaries incurred under lines of credit or overdraft facilities (including, but not limited to, intraday, ACH and purchasing card/T&E services) extended by one or more financial institutions reasonably acceptable to the Administrative Agent or by one or more of the Lenders or their Affiliates and (in each case) established for the Borrower's and the Subsidiaries' ordinary course of operations (such Indebtedness, the "Overdraft Line"), which Indebtedness may be secured under the Security Documents;
- (x) Indebtedness incurred on behalf of, or representing Guarantees of Indebtedness of, joint ventures not in excess, at any one time outstanding, of \$300 million;

(y) (i) Indebtedness in connection with any Project Financings and (ii) any Permitted Refinancing Indebtedness in respect thereof;

(z) (i) any Qualified Non-Recourse Debt and (ii) any Permitted Refinancing Indebtedness in respect thereof;

(aa) Indebtedness consisting of Indebtedness issued by the Borrower or any Subsidiary to current or former officers, directors and employees, their respective estates, spouses or former spouses to finance the purchase or redemption of Equity Interests of Holdings or any Parent Entity permitted by Section 6.06;

(bb) Indebtedness consisting of obligations of the Borrower or any Subsidiary under deferred compensation or other similar arrangements incurred by such person in connection with the Transactions and Permitted Business Acquisitions or any other Investment permitted hereunder;

(cc) Indebtedness of the Borrower or any Subsidiary to any joint venture (regardless of the form of legal entity) that is not a Subsidiary arising in the ordinary course of business in connection with the cash management operations (including with respect to intercompany self insurance arrangements) of the Borrower and its Subsidiaries; and

(dd) all premium (if any, including tender premiums), expenses, defeasance costs, interest (including post-petition interest), fees, expenses, charges and additional or contingent interest on obligations described in paragraphs (a) through (cc) above.

For purposes of determining compliance with this Section 6.01, the amount of any Indebtedness denominated in any currency other than Dollars shall be calculated based on customary currency exchange rates in effect, in the case of such Indebtedness incurred (in respect of term Indebtedness) or committed (in respect of revolving Indebtedness) on or prior to the Closing Date, on the Closing Date and, in the case of such Indebtedness incurred (in respect of term Indebtedness) or committed (in respect of revolving Indebtedness) after the Closing Date, on the date that such Indebtedness was incurred (in respect of term Indebtedness) or committed (in respect of revolving Indebtedness); provided that if such Indebtedness is incurred to refinance other Indebtedness denominated in a currency other than Dollars (or in a different currency from the Indebtedness being refinanced), and such refinancing would cause the applicable Dollar-denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such refinancing, such Dollar-denominated restriction shall be deemed not to have been exceeded so long as the principal amount of such refinancing Indebtedness does not exceed (i) the outstanding or committed principal amount, as applicable, of such Indebtedness being refinanced plus (ii) the aggregate amount of fees, underwriting discounts, premiums (including tender premiums), defeasance costs and other costs and expenses incurred in connection with such refinancing.

SECTION 6.02 Liens. Create, incur, assume or permit to exist any Lien on any property or assets (including stock or other securities of any person, including any Subsidiary) at the time owned by it or on any income or revenues or rights in respect of any thereof, except the following (collectively, "Permitted Liens"):

(a) Liens on property or assets of the Borrower and the Subsidiaries existing on the Closing Date (provided that any Liens securing Indebtedness in excess of \$25.0 million individually or \$100.0 million in the aggregate shall only be permitted under this paragraph (a) to the extent such Lien is set forth on Schedule 6.02(a)), and any modifications, replacements, renewals or extensions thereof; provided, that such Liens shall secure only those obligations that they secure on the Closing Date (and any Permitted Refinancing Indebtedness in respect of such obligations permitted by Section 6.01(a)) and shall not subsequently apply to any other property or assets of the Borrower or any Subsidiary other than (A) after-acquired property that is affixed or incorporated into the property covered by such Lien, and (B) proceeds and products thereof;

(b) any Lien created under the Loan Documents (including, without limitation, Liens created under the Security Documents securing obligations in respect of Swap Agreements and the Overdraft Line secured pursuant to the Security Documents) or permitted in respect of any Mortgaged Property by the terms of the applicable Mortgage;

(c) any Lien on any property or asset of the Borrower or any Subsidiary securing Indebtedness or Permitted Refinancing Indebtedness permitted by Section 6.01(h); provided, that such Lien (i) does not apply to any other property or assets of the Borrower or any of the Subsidiaries not securing such Indebtedness at the date of the acquisition of such property or asset (other than after acquired property subjected to a Lien securing Indebtedness and other obligations incurred prior to such date and which Indebtedness and other obligations are permitted hereunder and require a pledge of after acquired property, it being understood that such requirement shall not be permitted to apply to any property to which such requirement would not have applied but for such acquisition) and (ii) such Lien is not created in contemplation of or in connection with such acquisition;

(d) Liens for Taxes, assessments or other governmental charges or levies not yet delinquent or that are being contested in compliance with Section 5.03;

(e) Liens imposed by law, including landlord's, carriers', warehousemen's, mechanics', materialmen's, repairmen's, construction or other like Liens, securing obligations that are not overdue by more than 30 days or that are being contested in good faith by appropriate proceedings and in respect of which, if applicable, the Borrower or any Subsidiary shall have set aside on its books reserves in accordance with GAAP;

(f) (i) pledges and deposits and other Liens made in the ordinary course of business in compliance with the Federal Employers Liability Act or any other workers' compensation, unemployment insurance and other social security laws or regulations and deposits securing liability to insurance carriers under insurance or self-insurance arrangements in respect of such obligations and (ii) pledges and deposits and other Liens securing liability for reimbursement or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees for the benefit of) insurance carriers providing property, casualty or liability insurance to the Borrower or any Subsidiary;

(g) deposits and other Liens to secure the performance of bids, trade contracts (other than for Indebtedness), leases (other than Capital Lease Obligations), statutory obligations, surety and appeal bonds, performance and return of money bonds, bids, leases, government contracts, trade contracts, agreements with utilities, and other obligations of a like nature (including letters of credit in lieu of any such bonds or to support the issuance thereof) incurred in the ordinary course of business, including those incurred to secure health, safety and environmental obligations in the ordinary course of business;

(h) zoning restrictions, survey exceptions and such matters as an accurate survey would disclose, easements, trackage rights, leases (other than Capital Lease Obligations), licenses, special assessments, rights-of-way, covenants, conditions, restrictions and declarations on or with respect to the use of Real Property, servicing agreements, development agreements, site plan agreements and other similar encumbrances incurred in the ordinary course of business and title defects or irregularities that are of a minor nature and that, in the aggregate, do not interfere in any material respect with the ordinary conduct of the business of the Borrower or any Subsidiary;

(i) Liens securing Indebtedness and Permitted Refinancing Indebtedness permitted by Section 6.01(i), 6.01(y) and 6.01(z) (in each case limited to the assets financed with such Indebtedness and any accessions thereto and the proceeds and products thereof and related property; provided that individual financings provided by one lender may be cross-collateralized to other financings provided by such lender and incurred under Sections 6.01(i), (y) or (z));

(j) Liens arising out of capitalized lease transactions permitted under Section 6.03, so long as such Liens attach only to the property sold and being leased in such transaction and any accessions thereto or proceeds and products thereof and related property;

(k) Liens securing judgments that do not constitute an Event of Default under Section 7.01(j);

(l) Liens disclosed by the title insurance policies delivered on or subsequent to the Closing Date and pursuant to Section 5.10 and any replacement, extension or renewal of any such Lien; provided, that such replacement, extension or renewal Lien shall not cover any property other than the property that was subject to such Lien prior to such replacement, extension or renewal; provided, further, that the Indebtedness and other obligations secured by such replacement, extension or renewal Lien are permitted by this Agreement;

(m) any interest or title of a lessor or sublessor under any leases or subleases entered into by the Borrower or any Subsidiary in the ordinary course of business;

(n) Liens that are contractual rights of set-off (i) relating to the establishment of depository relations with banks and other financial institutions not given in connection with the issuance of Indebtedness, (ii) relating to pooled deposits, sweep accounts, reserve accounts or similar accounts of the Borrower or any Subsidiary to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Borrower

or any Subsidiary, including with respect to credit card chargebacks and similar obligations or (iii) relating to purchase orders and other agreements entered into with customers, suppliers or service providers of the Borrower or any Subsidiary in the ordinary course of business;

(o) Liens arising solely by virtue of any statutory or common law provision relating to banker's liens, rights of set-off or similar rights;

(p) Liens securing obligations in respect of trade-related letters of credit, bank guarantees or similar obligations permitted under Section 6.01(f) or (o) and covering the property (or the documents of title in respect of such property) financed by such letters of credit, bank guarantees or similar obligations and the proceeds and products thereof;

(q) leases or subleases, licenses or sublicenses (including with respect to intellectual property and software) granted to others in the ordinary course of business not interfering in any material respect with the business of the Borrower and its Subsidiaries, taken as a whole;

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

(s) Liens solely on any cash earnest money deposits made by the Borrower or any of the Subsidiaries in connection with any letter of intent or purchase agreement in respect of any Investment permitted hereunder;

(t) Liens with respect to property or assets of any Foreign Subsidiary securing Indebtedness of a Foreign Subsidiary permitted under Section 6.01;

(u) other Liens with respect to property or assets of the Borrower or any Subsidiary; provided that (i) after giving effect to any such Lien and the incurrence of Indebtedness, if any, secured by such Lien is created, incurred, acquired or assumed (or any prior Indebtedness becomes so secured) the Senior Secured Leverage Ratio on a Pro Forma Basis shall not be greater than 4.5 to 1.0, (ii) at the time of the incurrence of such Lien and after giving effect thereto, no Default or Event of Default shall have occurred and be continuing or would result therefrom, (iii) the Indebtedness or other obligations secured by such Lien are otherwise permitted by this Agreement, and (iv) if such Liens extend to all or any portion of the Collateral, such Liens shall be subordinated to the Liens granted under the Loan Documents on customary terms pursuant to an intercreditor agreement reasonably satisfactory to the Administrative Agent;

(v) the prior rights of consignees and their lenders under consignment arrangements entered into in the ordinary course of business;

(w) Liens arising from precautionary Uniform Commercial Code financing statements or consignments entered into in connection with any transaction otherwise permitted under this Agreement;

(x) Liens on Equity Interests in joint ventures securing obligations of such joint ventures;

(y) Liens on securities that are the subject of repurchase agreements constituting Permitted Investments under clause (c) of the definition thereof;

(z) Liens in respect of Permitted Receivables Financings that extend only to the receivables subject thereto;

(aa) Liens on goods or inventory the purchase, shipment or storage price of which is financed by a documentary letter of credit, bank guarantee or bankers' acceptance issued or created for the account of the Borrower or any Subsidiary in the ordinary course of business; provided that such Lien secures only the obligations of the Borrower or such Subsidiaries in respect of such letter of credit, bank guarantee or banker's acceptance to the extent permitted under Section 6.01;

(bb) Liens securing insurance premiums financing arrangements, provided, that such Liens are limited to the applicable unearned insurance premiums;

(cc) Liens in favor of the Borrower or any Subsidiary Loan Party; provided, that if any such Lien shall cover any Collateral, the holder of such Lien shall execute and deliver to the Administrative Agent a subordination agreement in the form and substance reasonably satisfactory to the Administrative Agent;

(dd) Liens on not more than \$100 million of deposits securing Swap Agreements that were not entered into for speculative purposes;

(ee) other Liens with respect to property or assets of the Borrower or any Subsidiary securing obligations in an aggregate principal amount outstanding at any time not to exceed \$750 million; provided that if such Liens extend to all or any portion of the Collateral, such Liens shall be subordinated to the Liens granted under the Loan Documents on customary terms pursuant to an intercreditor agreement reasonably satisfactory to the Administrative Agent;

(ff) any amounts held by a trustee in the funds and accounts under an indenture securing any revenue bonds issued for the benefit of the Borrower or any Subsidiary; and

(gg) with respect to any Vessel, Permitted Vessel Liens.

Notwithstanding the foregoing, the Borrower and the Subsidiaries shall not be permitted to incur Liens securing Retained Notes Indebtedness pursuant to this Section 6.02 (other than Retained Notes Permitted Liens) if, after giving effect to the incurrence of such Liens (and assuming that clause (i) of the last sentence of Section 5.10(g) hereof and all other similar savings clauses in the Loan Documents were not applicable), the sum of (i) the aggregate principal amount of Revolving Facility Credit Exposure constituting Retained Notes Indebtedness that is secured at such time by Retained Notes Basket Liens (including the

aggregate amount available to be drawn under all outstanding Letters of Credit which, to the extent drawn, would constitute Retained Notes Indebtedness and would not be permitted to be secured by Retained Notes Permitted Liens) plus (ii) the aggregate principal amount of all other Retained Notes Indebtedness of the Borrower and its subsidiaries outstanding at such time that is secured by Retained Notes Basket Liens shall exceed the Retained Notes Lien Basket Amount at such time.

SECTION 6.03 Sale and Lease-Back Transactions. Enter into any arrangement, directly or indirectly, with any person whereby it shall sell or transfer any property, real or personal, used or useful in its business, whether now owned or hereafter acquired, and thereafter rent or lease such property or other property that it intends to use for substantially the same purpose or purposes as the property being sold or transferred (a "Sale and Lease-Back Transaction"); provided that a Sale and Lease-Back Transaction shall be permitted (a) with respect to property owned (i) by the Borrower or any Domestic Subsidiary that is acquired after the Closing Date so long as such Sale and Lease-Back Transaction is consummated within 270 days of the acquisition of such property or (ii) by any Foreign Subsidiary regardless of when such property was acquired, (b) with respect to any property owned by the Borrower or any Domestic Subsidiary, (i) if at the time the lease in connection therewith is entered into, (A) no Default or Event of Default shall have occurred and be continuing or would result therefrom and (B) after giving effect to the entering into of such lease, the Borrower shall be in Pro Forma Compliance and (ii) if such Sale and Lease-Back Transaction is of property owned by the Borrower or any Domestic Subsidiary as of the Closing Date, the Net Proceeds therefrom are used to prepay the Term Loans to the extent required by Section 2.11(b), and (c) in connection with any Project Financing; provided, further, that the Borrower or the applicable Domestic Subsidiary shall receive at least fair market value (as determined by the Borrower in good faith) for any property disposed of in any Sale and Lease-Back Transaction pursuant to clause (a) (i) or (b) of this Section 6.03 (as approved by the Board of Directors of the Borrower in any case of any property with a fair market value in excess of \$100.0 million).

SECTION 6.04 Investments, Loans and Advances. Purchase, hold or acquire (including pursuant to any merger, consolidation or amalgamation with a person that is not a Wholly-Owned Subsidiary immediately prior to such merger, consolidation or amalgamation) any Equity Interests, evidences of Indebtedness or other securities of, make or permit to exist any loans or advances to or Guarantees of the obligations of, or make or permit to exist any investment or any other interest in (each, an "Investment"), any other person, except:

(a) the Transactions;

(b) (i) Investments by the Borrower or any Subsidiary in the Equity Interests of the Borrower or any Subsidiary; (ii) intercompany loans from the Borrower or any Subsidiary to the Borrower or any Subsidiary; and (iii) Guarantees by the Borrower or any Subsidiary of Indebtedness otherwise permitted hereunder of the Borrower or any Subsidiary; provided, that (A) Investments made after the Closing Date by the Borrower or any Subsidiary Loan Party pursuant to clause (i) in Subsidiaries that are not Subsidiary Loan Parties, and (B) intercompany loans made after the Closing Date by the Borrower or any Subsidiary Loan Party to Subsidiaries that are not Subsidiary Loan Parties pursuant to clause (ii) and (C)

Guarantees after the Closing Date by the Borrower or any Subsidiary Loan Party of Indebtedness of Subsidiaries that are not Subsidiary Loan Parties pursuant to clause (iii) shall, in each case, only be permitted to the extent that after giving effect to the incurrence of such Investment, intercompany loan or Guarantee, the Senior Secured Leverage Ratio on a Pro Forma Basis shall not be greater than 4.5 to 1.0;

(c) Permitted Investments and Investments that were Permitted Investments when made;

(d) Investments arising out of the receipt by the Borrower or any Subsidiary of noncash consideration for the sale of assets permitted under Section 6.05 (other than Section 6.05(h));

(e) loans and advances to officers, directors, employees or consultants of the Borrower or any Subsidiary (i) in the ordinary course of business not to exceed \$25 million in the aggregate at any time outstanding (calculated without regard to write downs or write offs thereof), (ii) in respect of payroll payments and expenses in the ordinary course of business and (iii) in connection with such person's purchase of Equity Interests of Holdings or any Parent Entity solely to the extent that the amount of such loans and advances shall be contributed to the Borrower in cash as common equity;

(f) accounts receivable, security deposits and prepayments arising and trade credit granted in the ordinary course of business and any assets or securities received in satisfaction or partial satisfaction thereof from financially troubled account debtors to the extent reasonably necessary in order to prevent or limit loss and any prepayments and other credits to suppliers made in the ordinary course of business;

(g) Swap Agreements that are not entered into for speculative purposes;

(h) Investments existing on, or contractually committed as of, the Closing Date consisting of intercompany loans or as set forth on Schedule 6.04 and any extensions, renewals or reinvestments thereof, so long as the aggregate amount of all Investments pursuant to this paragraph (h) is not increased at any time above the amount of such Investment existing or committed on the Closing Date (other than pursuant to an increase as required by the terms of any such Investment as in existence on the Closing Date);

(i) Investments resulting from pledges and deposits under Sections 6.02(f), (g), (k), (r), (s), (u) and (dd);

(j) other Investments by the Borrower or any Subsidiary in an aggregate amount (valued at the time of the making thereof, and without giving effect to any write-downs or write-offs thereof) not to exceed (i) the greater of \$500 million and 2.0% of Consolidated Total Assets as of the end of the fiscal quarter immediately prior to the date of such Investment for which financial statements have been delivered pursuant to Section 5.04 (plus any returns of capital actually received by the respective investor in respect of investments theretofore made by it pursuant to this paragraph (j)) plus (ii) the portion, if any, of the Cumulative Credit on the date of such election that the Borrower elects to apply to this

Section 6.04(j)(ii), such election to be specified in a written notice of a Responsible Officer of the Borrower calculating in reasonable detail the amount of Cumulative Credit immediately prior to such election and the amount thereof elected to be so applied; provided that if any Investment pursuant to this paragraph (j) is made in any person that is not a Subsidiary of the Borrower at the date of the making of such Investment and such person becomes a Subsidiary of the Borrower after such date, such Investment shall thereafter be deemed to have been made pursuant to paragraph (b) above and shall cease to have been made pursuant to this paragraph (j) for so long as such person continues to be a Subsidiary of the Borrower;

(k) Investments constituting Permitted Business Acquisitions;

(l) Investments in a Similar Business in an aggregate amount (valued at the time of the making thereof, and without giving effect to any write downs or write offs thereof) not to exceed the greater of \$500 million and 2.0% of Consolidated Total Assets as of the end of the fiscal quarter immediately prior to the date of such Investment for which financial statements have been delivered pursuant to Section 5.04 (plus any returns of capital actually received by the respective investor in respect of investments theretofore made by it pursuant to this paragraph (l)); provided that if any Investment pursuant to this paragraph (l) is made in any person that is not a Subsidiary of the Borrower at the date of the making of such Investment and such person becomes a Subsidiary of the Borrower after such date, such Investment shall thereafter be deemed to have been made pursuant to paragraph (b) above and shall cease to have been made pursuant to this paragraph (l) for so long as such person continues to be a Subsidiary of the Borrower;

(m) Investments received in connection with the bankruptcy or reorganization of, or settlement of delinquent accounts and disputes with or judgments against, customers and suppliers, in each case in the ordinary course of business or Investments acquired by the Borrower as a result of a foreclosure by the Borrower or any of the Subsidiaries with respect to any secured Investments or other transfer of title with respect to any secured Investment in default;

(n) Investments of a Subsidiary acquired after the Closing Date or of an entity merged into the Borrower or merged into or consolidated with a Subsidiary after the Closing Date, in each case, (i) to the extent such acquisition, merger or consolidation was or is permitted under this Section 6.04 or Section 6.05 and (ii) to the extent that such Investments were not made in contemplation of or in connection with such acquisition, merger, consolidation or amalgamation and were in existence on the date of such acquisition, merger, consolidation or amalgamation;

(o) acquisitions by the Borrower of obligations of one or more officers or other employees of Holdings, any Parent Entity, the Borrower or its Subsidiaries in connection with such officer's or employee's acquisition of Equity Interests of Holdings or any Parent Entity, so long as no cash is actually advanced by the Borrower or any of the Subsidiaries to such officers or employees in connection with the acquisition of any such obligations;

(p) Guarantees by the Borrower or any Subsidiary of operating leases (other than Capital Lease Obligations) or of other obligations that do not constitute Indebtedness, in each case entered into by the Borrower or any Subsidiary in the ordinary course of business;

(q) Investments to the extent that payment for such Investments is made with Qualified Equity Interests of Borrower, Holdings or any Parent Entity;

(r) [Reserved];

(s) Investments consisting of Restricted Payments permitted by Section 6.06;

(t) Investments in the ordinary course of business consisting of Uniform Commercial Code Article 3 endorsements for collection or deposit and Uniform Commercial Code Article 4 customary trade arrangements with customers consistent with past practices;

(u) Investments in Foreign Subsidiaries not to exceed \$250 million (plus an amount equal to any return of capital actually received in respect of Investments theretofore made pursuant to this paragraph (u)), as valued at the fair market value (as determined in good faith by the Borrower) of such Investment at the time such Investment is made;

(v) Guarantees permitted under Section 6.01 (except to the extent such Guarantee is expressly subject to Section 6.04);

(w) advances in the form of a prepayment of expenses, so long as such expenses are being paid in accordance with customary trade terms of the Borrower or such Subsidiary;

(x) Investments by Borrower and its Subsidiaries, including loans and advances to any direct or indirect parent of the Borrower, if the Borrower or any other Subsidiary would otherwise be permitted to make a Restricted Payment in such amount (provided that the amount of any such Investment shall also be deemed to be a Restricted Payment under the appropriate paragraph of Section 6.06 for all purposes of this Agreement);

(y) Investments arising as a result of Permitted Receivables Financings;

(z) Investments consisting of the licensing or contribution of intellectual property pursuant to joint marketing arrangements with other persons;

(aa) purchases and acquisitions of inventory, supplies, materials and equipment or purchases of contract rights or licenses or leases of intellectual property in each case in the ordinary course of business, to the extent such purchases and acquisitions constitute Investments;

(bb) Investments received substantially contemporaneously in exchange for Qualified Equity Interests of Holdings, the Borrower or any Parent Entity; provided that such Investments are not included in any determination of the Cumulative Credit;

(cc) any Investment in connection with the use of the Real Estate Revolver Facility Sublimit of the Revolving Facility for the account or benefit of the Real Estate Revolver Subsidiaries to the extent permitted hereunder (including the distribution of the proceeds of any Revolving Facility Loan and with respect to the issuance of or payments in connection with drawings under Letters of Credit), in each case to the extent the applicable Borrowing Request or Letter of Credit Application indicated that such Revolving Facility Loan or Letter of Credit was being drawn or issued, as applicable, under the Real Estate Revolver Facility Sublimit;

(dd) any Investment (i) made pursuant to an Operations Management Agreement and (ii) in connection with the Post-Closing CMBS Transaction;

(ee) Investments in joint ventures not in excess of \$500 million in the aggregate at any time outstanding; provided that if any Investment pursuant to this paragraph (ee) is made in any person that is not a Subsidiary of the Borrower at the date of the making of such Investment and such person becomes a Subsidiary of the Borrower after such date, such Investment shall thereafter be deemed to have been made pursuant to paragraph (b) above and shall cease to have been made pursuant to this paragraph (ee) for so long as such person continues to be a Subsidiary of the Borrower;

(ff) any Investment (i) deemed to exist as a result of a Subsidiary that is not a Loan Party distributing a note or other intercompany debt to a parent of such Subsidiary that is a Loan Party (to the extent there is no cash consideration or services rendered for such note), (ii) consisting of intercompany current liabilities in connection with the cash management, tax and accounting operations of the Borrower and the Subsidiaries and (iii) consisting of intercompany loans, advances or Indebtedness having a term not exceeding 364 days (inclusive of any roll-overs or extensions of terms) and made in the ordinary course of business; and

(gg) the contribution of any property acquired after the Closing Date, any Undeveloped Land or any Real Property located outside the United States and owned by the Borrower or a Subsidiary on the Closing Date to a Qualified Non-Recourse Subsidiary in connection with the incurrence by such Qualified Non-Recourse Subsidiary of Qualified Non-Recourse Debt to finance the construction, repair, replacement or improvement of the property being contributed; provided that, with respect to any property acquired after the Closing Date by the Borrower or any Subsidiary that is not a Qualified Non-Recourse Subsidiary, such contribution shall not be permitted unless, after giving effect to such contribution, (i) if such property is undeveloped land, the Borrower shall be in Pro Forma Compliance after giving effect to such contribution or (ii) if such property is not undeveloped land, the Senior Secured Leverage Ratio on a Pro Forma Basis shall not be greater than 4.5 to 1.0.

Any Investment in any person other than the Borrower or a Subsidiary Loan Party that is otherwise permitted by this Section 6.04 may be made through intermediate Investments in Subsidiaries that are not Loan Parties and such intermediate Investments shall be disregarded for purposes of determining the outstanding amount of Investments pursuant to any clause set forth above.

SECTION 6.05 Mergers, Consolidations, Sales of Assets and Acquisitions. Merge into, or consolidate or amalgamate with any other person, or permit any other person to merge into or consolidate with it, or sell, transfer, lease or otherwise dispose of (in one transaction or in a series of transactions) all or any part of its assets (whether now owned or hereafter acquired), or issue, sell, transfer or otherwise dispose of any Equity Interests of any Subsidiary, or purchase, lease or otherwise acquire (in one transaction or a series of transactions) all or any substantial part of the assets of any other person, except that this Section shall not prohibit:

(a) (i) the purchase and sale of inventory, or the sale of receivables pursuant to non-recourse factoring arrangements, in each case in the ordinary course of business by the Borrower or any Subsidiary, (ii) the acquisition or lease (pursuant to an operating lease) of any other asset in the ordinary course of business by the Borrower or any Subsidiary or, with respect to operating leases, otherwise for fair market value on market terms (as determined in good faith by the Borrower), (iii) the sale of surplus, obsolete, damaged or worn out equipment or other property in the ordinary course of business by the Borrower or any Subsidiary or (iv) the sale or disposition of Permitted Investments in the ordinary course of business;

(b) if at the time thereof and immediately after giving effect thereto no Event of Default shall have occurred and be continuing or would result therefrom, (i) the merger, consolidation or amalgamation of any Subsidiary into or with the Borrower in a transaction in which the Borrower is the survivor, (ii) the merger, consolidation or amalgamation of any Subsidiary into or with any Subsidiary Loan Party in a transaction in which the surviving or resulting entity is a Subsidiary Loan Party and, in the case of each of clauses (i) and (ii), no person other than the Borrower or Subsidiary Loan Party receives any consideration, (iii) the merger, consolidation or amalgamation of any Subsidiary that is not a Subsidiary Loan Party into or with any other Subsidiary that is not a Subsidiary Loan Party, (iv) the liquidation or dissolution or change in form of entity of any Subsidiary if the Borrower determines in good faith that such liquidation, dissolution or change in form is in the best interests of the Borrower and is not materially disadvantageous to the Lenders or (v) any Subsidiary may merge, consolidate or amalgamate into or with any other person in order to effect an Investment permitted pursuant to Section 6.04 so long as the continuing or surviving person shall be a Subsidiary, which shall be a Loan Party if the merging, consolidating or amalgamating Subsidiary was a Loan Party and which together with each of its Subsidiaries shall have complied with the requirements of Section 5.10;

(c) sales, transfers, leases or other dispositions to the Borrower or a Subsidiary (upon voluntary liquidation or otherwise); provided, that any sales, transfers, leases or other dispositions by the Borrower or a Subsidiary Loan Party to a Subsidiary that is not a Subsidiary Loan Party in reliance on this paragraph (c) shall not in the aggregate exceed, (x) in any fiscal year of the Borrower, \$500 million and (y) \$1,000,000,000 unless, with respect to clause (y) above, no Default or Event of Default exists or would result therefrom and immediately after giving effect to such sales, transfers, leases or other dispositions, the Senior Secured Leverage Ratio on a Pro Forma Basis shall not be greater than 4.5 to 1.0;

- (d) Sale and Lease-Back Transactions permitted by Section 6.03;
- (e) Investments permitted by Section 6.04, Permitted Liens, and Restricted Payments permitted by Section 6.06;
- (f) the sale of defaulted receivables in the ordinary course of business and not as part of an accounts receivables financing transaction;
- (g) sales, transfers, leases, licenses or other dispositions of assets not otherwise permitted by this Section 6.05; provided, that (i) no Default or Event of Default exists or would result therefrom, (ii) with respect to any such sale, transfer, lease or other disposition with aggregate gross proceeds (including noncash proceeds) in excess of \$250 million, immediately after giving effect thereto, the Senior Secured Leverage Ratio on a Pro Forma Basis shall not be greater than 4.5 to 1.0, and (iii) the Net Proceeds thereof are applied in accordance with Section 2.11(b);
- (h) Permitted Business Acquisitions (including any merger, consolidation or amalgamation in order to effect a Permitted Business Acquisition); provided, that following any such merger, consolidation or amalgamation involving the Borrower, the Borrower is the surviving corporation;
- (i) leases, licenses, or subleases or sublicenses of any real or personal property in the ordinary course of business;
- (j) sales, leases or other dispositions of inventory of the Borrower and its Subsidiaries determined by the management of the Borrower to be no longer useful or necessary in the operation of the business of the Borrower or any of the Subsidiaries;
- (k) acquisitions and purchases made with the proceeds of any Asset Sale pursuant to the first proviso of paragraph (a) of the definition of "Net Proceeds";
- (l) the purchase and sale or other transfer (including by capital contribution) of Receivables Assets pursuant to Permitted Receivables Financings; provided that the Net Proceeds thereof are applied in accordance with Section 2.11(b);
- (m) any exchange of assets for services and/or other assets of comparable or greater value; provided, that (i) at least 90% of the consideration received by the transferor consists of assets that will be used in a business or business activity permitted hereunder, (ii) in the event of a swap with a fair market value (as determined in good faith by the Borrower) in excess of \$50 million, the Administrative Agent shall have received a certificate from a Responsible Officer of the Borrower with respect to such fair market value and (iii) in the event of a swap with a fair market value (as determined in good faith by the Borrower) in excess of \$100 million, such exchange shall have been approved by at least a majority of the Board of Directors of Holdings or the Borrower; provided, further, that (A) no Default or Event of Default exists or would result therefrom, (B) with respect to any such exchange with aggregate gross consideration in excess of \$500 million, immediately after giving effect

thereto, the Borrower shall be in Pro Forma Compliance, and (C) the Net Proceeds, if any, thereof are applied in accordance with Section 2.11(b);

(n) any disposition of the Real Estate Assets to the Real Estate Subsidiaries on the Closing Date and dispositions in connection with the Post-Closing CMBS Transaction;

(o) any disposition made pursuant to an Operations Management Agreement; and

(p) any disposition of Equity Interests of a Subsidiary pursuant to an agreement or other obligation with or to a person (other than the Borrower and its Subsidiaries) from whom such Subsidiary was acquired or from whom such Subsidiary acquired its business and assets (having been newly formed in connection with such acquisition), made as part of such acquisition and in each case comprising all or a portion of the consideration in respect of such sale or acquisition.

Notwithstanding anything to the contrary contained in Section 6.05 above, (i) no sale, transfer or other disposition of assets shall be permitted by this Section 6.05 (other than sales, transfers, leases, licenses or other dispositions to Loan Parties) unless such disposition is for fair market value (as determined in good faith by the Borrower), or if not for fair market value, the shortfall is permitted as an Investment under Section 6.04 and (ii) no sale, transfer or other disposition of assets in excess of \$25 million shall be permitted by paragraph (a), (d) or (g) of this Section 6.05 unless such disposition is for at least 75% cash consideration; provided, that for purposes of clause (ii), (a) the amount of any liabilities (as shown on the Borrower's or any Subsidiary's most recent balance sheet or in the notes thereto) of the Borrower or any Subsidiary of the Borrower (other than liabilities that are by their terms subordinated to the Obligations) that are assumed by the transferee of any such assets, (b) any notes or other obligations or other securities or assets received by the Borrower or such Subsidiary of the Borrower from such transferee that are converted by the Borrower or such Subsidiary of the Borrower into cash within 180 days of the receipt thereof (to the extent of the cash received), (c) any Designated Non-Cash Consideration received by the Borrower or any of its Subsidiaries in such Asset Sale having an aggregate fair market value (as determined in good faith by the Borrower), taken together with all other Designated Non-Cash Consideration received pursuant to this paragraph (c) that is at that time outstanding, not to exceed \$500 million (with the fair market value of each item of Designated Non-Cash Consideration being measured at the time received and without giving effect to subsequent changes in value) and (d) with respect to any lease of assets by the Borrower or a Subsidiary that constitutes a disposition, receipt of lease payments over time on market terms (as determined in good faith by the Borrower) where the payment consideration is at least 75% cash consideration shall, in each case, be deemed to be cash. To the extent any Collateral is sold or disposed of in a transaction expressly permitted by this Section 6.05 to any person other than the Borrower or any Subsidiary Loan Party, such Collateral shall be sold or disposed of free and clear of the Liens created by the Loan Documents (provided that, for the avoidance of doubt, with respect to any disposal consisting of an operating lease or license, the underlying property retained by the Borrower or such Subsidiary Loan Party will not be so released), and the Administrative Agent shall take, and is hereby authorized by each Lender to take, any actions reasonably requested by the Borrower in order to evidence the foregoing.

SECTION 6.06 Restricted Payments. Declare or pay any dividend or make any other distribution (by reduction of capital or otherwise), whether in cash, property, securities or a combination thereof, with respect to any of its Equity Interests (other than dividends and distributions on Equity Interests payable solely by the issuance of additional Equity Interests (other than Disqualified Stock) of the person paying such dividends or distributions) or directly or indirectly redeem, purchase, retire or otherwise acquire for value (or permit any Subsidiary to purchase or acquire) any of its Equity Interests or set aside any amount for any such purpose (other than through the issuance of additional Equity Interests (other than Disqualified Stock) of the person redeeming, purchasing, retiring or acquiring such shares) (the foregoing, "Restricted Payments"); provided, however, that:

(a) any Subsidiary of the Borrower may make Restricted Payments to the Borrower or to any Wholly-Owned Subsidiary of the Borrower (or, in the case of non-Wholly-Owned Subsidiaries, to the Borrower or any Subsidiary that is a direct or indirect parent of such Subsidiary and to each other owner of Equity Interests of such Subsidiary on a pro rata basis (or more favorable basis from the perspective of the Borrower or such Subsidiary) based on their relative ownership interests);

(b) (x) the Borrower may make Restricted Payments in respect of (i) overhead, legal, accounting and other professional fees and expenses of Holdings or any Parent Entity, (ii) fees and expenses related to any public offering or private placement of debt or equity securities of Holdings or any Parent Entity whether or not consummated, (iii) franchise taxes and other fees, taxes and expenses in connection with the maintenance of its (and any Parent Entity's) existence and its (or any Parent Entity's indirect) ownership of the Borrower, (iv) payments permitted by Section 6.07(b) (other than clauses (vii) and (xxiii) thereof), and (v) customary salary, bonus and other benefits payable to, and indemnities provided on behalf of, officers, directors and employees of Holdings or any Parent Entity, in each case in order to permit Holdings or any Parent to make such payments; provided, that in the case of clauses (i), (ii) and (iii), the amount of such Restricted Payments shall not exceed the portion of any amounts referred to in such clauses (i), (ii) and (iii) that are allocable to the Borrower and its Subsidiaries and (y) the Borrower may make Restricted Payments to any direct or indirect parent company of the Borrower that files a consolidated U.S. federal tax return that includes the Borrower and its subsidiaries, in each case in an amount not to exceed the amount that the Borrower and its Subsidiaries would have been required to pay in respect of federal, state or local taxes (as the case may be) if the Borrower and its Subsidiaries paid such taxes directly as a stand-alone taxpayer (or stand-alone group);

(c) the Borrower may make Restricted Payments to Holdings the proceeds of which are used to purchase or redeem the Equity Interests of Holdings or any Parent Entity (including related stock appreciation rights or similar securities) held by then present or former directors, consultants, officers or employees of any Parent Entity, Holdings, the Borrower or any of the Subsidiaries or by any Plan or any shareholders' agreement then in effect upon such person's death, disability, retirement or termination of employment or under the terms of any such Plan or any other agreement under which such shares of stock or related rights were issued; provided, that the aggregate amount of such purchases or redemptions under this paragraph (c) shall not exceed in any fiscal year (1) \$50 million, plus (2) (x) the

amount of net proceeds contributed to the Borrower that were received by Holdings or any Parent Entity during such calendar year from sales of Equity Interests of Holdings or any Parent Entity to directors, consultants, officers or employees of Holdings, any Parent Entity, the Borrower or any Subsidiary in connection with permitted employee compensation and incentive arrangements, (y) the amount of net proceeds of any key-man life insurance policies received during such calendar year and (z) the amount of any cash bonuses otherwise payable to members of management, directors or consultants of Holdings, any Parent Entity, the Borrower or its Subsidiaries in connection with the Transactions that are foregone in return for the receipt of Equity Interests, which, if not used in any year, may be carried forward to any subsequent calendar year, subject, with respect to unused amounts from clause (1) of this proviso that are carried forward, to an overall limit in any fiscal year of \$100 million (which shall increase to \$150 million subsequent to a Qualified IPO); and provided, further, that cancellation of Indebtedness owing to the Borrower or any Subsidiary from members of management of Holdings, any Parent Entity, the Borrower or its Subsidiaries in connection with a repurchase of Equity Interests of Holdings or any Parent Entity will not be deemed to constitute a Restricted Payment for purposes of this Section 6.06;

(d) noncash repurchases of Equity Interests deemed to occur upon exercise of stock options if such Equity Interests represent a portion of the exercise price of such options;

(e) the Borrower may make Restricted Payments in an aggregate amount equal to the portion, if any, of the Cumulative Credit on such date that the Borrower elects to apply to this Section 6.06(e), such election to be specified in a written notice of a Responsible Officer of the Borrower calculating in reasonable detail the amount of Cumulative Credit immediately prior to such election and the amount thereof elected to be so applied; provided, that, (1) after giving effect to such Restricted Payment, the Borrower and its Subsidiaries shall be in Pro Forma Compliance and (2) the date of such Restricted Payment shall not occur during a Covenant Suspension Period;

(f) the Borrower may make Restricted Payments in connection with the consummation of the Transactions;

(g) the Borrower may make Restricted Payments to allow Holdings or any Parent Entity to make payments in cash, in lieu of the issuance of fractional shares, upon the exercise of warrants or upon the conversion or exchange of Equity Interests of any such person;

(h) after a Qualified IPO, the Borrower may make Restricted Payments to Holdings so that Holdings or any Parent Entity may make Restricted Payments to its equity holders in an amount equal to 6% per annum of the net proceeds received by the Borrower from any public offering of Equity Interests of Holdings or any Parent Entity;

(i) (x) any Restricted Payment of Real Estate Assets that is made for the purpose of transferring such assets to a Real Estate Subsidiary on the Closing Date and (y) any Restricted Payment in connection with the Post-Closing CMBS Transaction;

(j) any Restricted Payment made under any Operations Management Agreement;

(k) Restricted Payments out of Declined Proceeds not applied to the prepayment of Term Loans in an aggregate amount not to exceed \$100.0 million;

(l) the Borrower may make Restricted Payments to Holdings or any Parent Entity to finance any Investment permitted to be made pursuant to Section 6.04; provided that (A) such Restricted Payment shall be made substantially concurrently with the closing of such Investment and (B) such parent shall, immediately following the closing thereof, cause (1) all property acquired (whether assets or Equity Interests) to be contributed to the Borrower or a Subsidiary or (2) the merger, consolidation or amalgamation (to the extent permitted in Section 6.05) of the person formed or acquired into the Borrower or a Subsidiary in order to consummate such Permitted Business Acquisition or Investment, in each case, in accordance with the requirements of Section 5.10; and

(m) any Restricted Payment in connection with the use of the Real Estate Revolver Facility Sublimit of the Revolving Facility for the account or benefit of the Real Estate Revolver Subsidiaries to the extent permitted hereunder (including the distribution of the proceeds of any Revolving Facility Loan and with respect to the issuance of or payments in connection with drawings under Letters of Credit), in each case to the extent the applicable Borrowing Request or Letter of Credit Application indicated that such Revolving Facility Loan or Letter of Credit was being drawn or issued, as applicable, under the Real Estate Revolver Facility Sublimit.

Notwithstanding anything to the contrary contained in this Article VI (including Section 6.04 and this Section 6.06), the Borrower will not, and will not permit any of its Subsidiaries to, make any Restricted Payment for the purpose of (x) paying any cash dividend or making any cash distribution to or acquiring any Capital Stock of the Borrower or any direct or indirect parent of the Borrower for cash from the Sponsors or (y) guarantee any Indebtedness of any Affiliate of the Borrower for the purpose of making any Restricted Payment to the Sponsors, in each case by means of utilization of the cumulative dividend and investment credit provided by use of the Cumulative Credit or the exceptions provided by Section 6.06(e) or (k), unless after giving effect to such payment, the Total Leverage Ratio on a Pro Forma Basis would be equal to or less than 7.25 to 1.0.

#### SECTION 6.07 Transactions with Affiliates.

(a) Sell or transfer any property or assets to, or purchase or acquire any property or assets from, or otherwise engage in any other transaction with, any of its Affiliates or any known direct or indirect holder of 10% or more of any class of Equity Interests of Holdings (prior to a Borrower Qualified IPO) or the Borrower in a transaction involving aggregate consideration in excess of \$25 million, unless such transaction is (i) otherwise required under this Agreement or (ii) upon terms no less favorable to the Borrower or such Subsidiary, as applicable, than would be obtained in a comparable arm's-length transaction with a person that is not an Affiliate. For purposes of this Section 6.07, any transaction with

any Affiliate or any such 10% holder shall be deemed to have satisfied the standard set forth in clause (ii) of the immediately preceding sentence if such transaction is approved by a majority of the Disinterested Directors of the Board of Directors of Holdings or the Borrower.

(b) The foregoing paragraph (a) shall not prohibit, to the extent otherwise permitted under this Agreement:

(i) any issuance of securities, or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of, employment arrangements, equity purchase agreements, stock options and stock ownership plans approved by the Board of Directors of Holdings or of the Borrower;

(ii) loans or advances to employees or consultants of Holdings, any Parent Entity, the Borrower or any of the Subsidiaries in accordance with Section 6.04(e);

(iii) transactions among the Borrower or any Subsidiary or any entity that becomes a Subsidiary as a result of such transaction (including via merger, consolidation or amalgamation in which a Subsidiary is the surviving entity);

(iv) the payment of fees, reasonable out-of-pocket costs and indemnities to directors, officers, consultants and employees of Holdings, any Parent Entity, the Borrower and the Subsidiaries in the ordinary course of business (limited, in the case of any Parent Entity, to the portion of such fees and expenses that are allocable to the Borrower and its Subsidiaries);

(v) subject to the limitations set forth in Section 6.07(b)(xiv), if applicable, transactions pursuant to the Transaction Documents and permitted transactions, agreements and arrangements in existence on the Closing Date and, to the extent involving aggregate consideration in excess of \$25 million, set forth on Schedule 6.07 or any amendment thereto to the extent such amendment is not adverse to the Lenders when taken as a whole in any material respect (as determined in good faith by the Borrower) and other transactions, agreements and arrangements described on Schedule 6.07, and any amendment thereto or similar transactions, agreements or arrangements entered into by the Borrower or any of the Subsidiaries to the extent such amendment is not adverse to the Lenders when taken as a whole in any material respect (as determined in good faith by the Borrower);

(vi) (A) any employment agreements entered into by the Borrower or any of the Subsidiaries in the ordinary course of business, (B) any subscription agreement or similar agreement pertaining to the repurchase of Equity Interests pursuant to put/call rights or similar rights with employees, officers or directors, and (C) any employee compensation, benefit plan or arrangement, any health, disability or similar insurance plan which covers employees, and any reasonable employment contract and transactions pursuant thereto;

(vii) Restricted Payments permitted under Section 6.06, including payments to Holdings (and any Parent Entity);

(viii) any purchase by Holdings of the Equity Interests of the Borrower; provided, that any Equity Interests of the Borrower purchased by Holdings shall be pledged to the Collateral Agent on behalf of the Lenders pursuant to the Guaranty and Pledge Agreement;

(ix) payments by the Borrower or any of the Subsidiaries to any Sponsor made for any financial advisory, financing, underwriting or placement services or in respect of other investment banking activities, including in connection with acquisitions or divestitures, which payments are approved by the majority of the Board of Directors of the Borrower, or a majority of the Disinterested Directors of the Borrower, in good faith;

(x) transactions with Wholly-Owned Subsidiaries for the purchase or sale of goods, products, parts and services entered into in the ordinary course of business in a manner consistent with past practice;

(xi) any transaction in respect of which the Borrower delivers to the Administrative Agent (for delivery to the Lenders) a letter addressed to the Board of Directors of the Borrower from an accounting, appraisal or investment banking firm, in each case of nationally recognized standing that is (A) in the good faith determination of the Borrower qualified to render such letter and (B) reasonably satisfactory to the Administrative Agent, which letter states that such transaction is on terms that are no less favorable to the Borrower or such Subsidiary, as applicable, than would be obtained in a comparable arm's-length transaction with a person that is not an Affiliate;

(xii) subject to paragraph (xiv) below, if applicable, the payment of all fees, expenses, bonuses and awards related to the Transactions contemplated by the Senior Unsecured Notes Offering Memorandum, including fees to any Sponsor;

(xiii) transactions with joint ventures for the purchase or sale of goods, equipment and services entered into in the ordinary course of business;

(xiv) any one or more agreements to pay, and the payment of, monitoring, consulting, management, transaction, advisory or similar fees payable to any Sponsor (A) in an aggregate amount in any fiscal year not to exceed the sum of (1) the greater of \$30.0 million and 1.0% of EBITDA for such fiscal year, plus reasonable out of pocket costs and expenses in connection therewith and unpaid amounts accrued for prior periods; plus (2) any deferred fees (to the extent such fees were within such amount in clause (A) (1) above originally), plus (B) 1.0% of the value of transactions with respect to which any Sponsor provides any transaction, advisory or other services, plus (C) a transaction fee of not more than \$200.0 million to be paid to the Sponsors in connection with the Transactions on the Closing Date plus (D) so long as no Event of Default has occurred and is continuing, in the event of a Qualified IPO, the present value of all future amounts payable pursuant to any agreement referred to in clause (A) (1) above in connection with the termination of any such agreement with any Sponsor (the "Management Termination Fee"); provided, that if any such payment pursuant to clause (D) is not permitted to be paid as a result of an Event of Default, such payment shall accrue and may be payable when no Events of Default are continuing to the extent that no further Event of Default would result therefrom;

(xv) any transfer of Real Estate Assets to a Real Estate Subsidiary on the Closing Date, any transactions made pursuant to any Operations Management Agreement and any transactions in connection with the Post-Closing CMBS Transaction;

(xvi) the issuance, sale, transfer of Equity Interests of Borrower to Holdings (or another Parent Entity) in connection with capital contributions by Holdings or such Parent Entity to Borrower;

(xvii) the issuance of Equity Interests to the management of Holdings, any Parent Entity, the Borrower or any Subsidiary in connection with the Transaction;

(xviii) payments by Holdings (and any Parent Entity), the Borrower and the Subsidiaries pursuant to tax sharing agreements among Holdings (and any such Parent Entity), the Borrower and the Subsidiaries on customary terms that require each party to make payments when such taxes are due or refunds received of amounts equal to the income tax and franchise liabilities and refunds generated by each such party calculated on a separate return basis and payments to the party generating tax benefits and credits of amounts equal to the value of such tax benefits and credits made available to the group by such party;

(xix) transactions pursuant to any Permitted Receivables Financing;

(xx) payments or loans (or cancellation of loans) to employees or consultants that are (i) approved by a majority of the Disinterested Directors of the Board of Directors of Holdings or the Borrower in good faith, (ii) made in compliance with applicable law and (iii) otherwise permitted under this Agreement;

(xxi) transactions with customers, clients, suppliers, or purchasers or sellers of goods or services, in each case in the ordinary course of business and otherwise in compliance with the terms of this Agreement that are fair to the Borrower or the Subsidiaries;

(xxii) transactions between the Borrower or any of the Subsidiaries and any person, a director of which is also a director of the Borrower or any direct or indirect parent company of the Borrower, provided, however, that (A) such director abstains from voting as a director of the Borrower or such direct or indirect parent company, as the case may be, on any matter involving such other person and (B) such person is not an Affiliate of the Borrower for any reason other than such director's acting in such capacity;

(xxiii) transactions permitted by, and complying with, the provisions of Section 6.04(b), 6.04(h), 6.04(o), 6.04(u), 6.04(x), 6.05(b) or 6.06;

(xxiv) transactions undertaken in good faith (in the reasonable opinion of the Borrower) for the purpose of improving the consolidated tax efficiency of the Borrower, Holdings and the Subsidiaries (provided that such transactions, taken as a whole, are not materially adverse to the Borrower and the Subsidiaries);

(xxv) investments by the Sponsors in securities of the Borrower or any of the Subsidiaries so long as (A) the investment is being offered generally to other investors on the

same or more favorable terms and (B) the investment constitutes less than 5.0% of the outstanding issue amount of such class of securities; or

(xxvi) transactions in connection with the use of the Revolving Facility for the account or benefit of the Real Estate Revolver Subsidiaries to the extent permitted hereunder (including the distribution of the proceeds of any Revolving Facility Loan and with respect to the issuance of or payments in connection with drawings under Letters of Credit).

SECTION 6.08 Business of the Borrower and the Subsidiaries. Notwithstanding any other provisions hereof, engage at any time in any business or business activity other than any business or business activity conducted by any of them on the Closing Date and any business or business activities incidental or related thereto, or any business or activity that is reasonably similar or complementary thereto or a reasonable extension, development or expansion thereof or ancillary thereto, or any business or activity pursuant to any Operations Management Agreement, and in the case of a Special Purpose Receivables Subsidiary, Permitted Receivables Financings.

SECTION 6.09 Limitation on Payments and Modifications of Indebtedness; Modifications of Certificate of Incorporation, By-Laws and Certain Other Agreements; etc.

(a) Amend or modify in any manner materially adverse to the Lenders taken as a whole (as determined in good faith by the Borrower), or grant any waiver or release under or terminate in any manner (if such granting or termination shall be materially adverse to the Lenders taken as a whole (as determined in good faith by the Borrower)), the articles or certificate of incorporation, by-laws, limited liability company operating agreement, partnership agreement or other organizational documents of the Borrower or any Subsidiary Loan Party.

(b) (i) Make, or agree or offer to pay or make, directly or indirectly, any payment or other distribution (whether in cash, securities or other property) of or in respect of principal of or interest on (x) the loans under any Indebtedness of the Borrower or any Subsidiary that is expressly subordinate to the Obligations or (y) any Retained Notes (or any Permitted Refinancing Indebtedness thereof) that mature after the Term B Facility Maturity Date (“Junior Financing”), or any payment or other distribution (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination in respect of any Junior Financing except for (A) Refinancings with Permitted Refinancing Indebtedness permitted by Section 6.01, (B) with respect to any of the Retained Notes with a stated maturity on or before the Term B Facility Maturity Date, (C) payments of regularly scheduled interest and fees due thereunder, other non-accelerated and non-principal payments thereunder, scheduled payments thereon necessary to avoid the Junior Financing to constitute “applicable high yield discount obligations” within the meaning of Section 163(i)(1) of the Code, and payment of principal on the scheduled maturity date of any Junior Financing, (D) payments or distributions in respect of all or any portion of the Junior Financing with the proceeds contributed to the Borrower by Holdings from the issuance, sale or exchange by Holdings or any Parent Entity of Qualified Equity Interests made within eighteen months prior thereto, (E) the conversion of any Junior

Financing to Equity Interests of Holdings or any Parent Entity, and (F) so long as no Default or Event of Default has occurred and is continuing or would result therefrom and after giving effect to such payment or distribution the Borrower would be in Pro Forma Compliance, payments or distributions in respect of Junior Financings prior to their scheduled maturity made, in an aggregate amount, not to exceed the portion, if any, of the Cumulative Credit on the date of such election that the Borrower elects to apply to this Section 6.09(b)(i)(F), such election to be specified in a written notice of a Responsible Officer of the Borrower calculating in reasonable detail the amount of Cumulative Credit immediately prior to such election and the amount thereof elected to be applied; or

(ii) Amend or modify, or permit the amendment or modification of, any provision of Junior Financing that constitutes Material Indebtedness or any agreement, document or instrument evidencing or relating thereto, other than amendments or modifications that (A) are not materially adverse to Lenders taken as a whole (as determined in good faith by the Borrower) and that do not affect the subordination or payment provisions thereof (if any) in a manner adverse to the Lenders taken as a whole (as determined in good faith by the Borrower) or (B) otherwise comply with the definition of "Permitted Refinancing Indebtedness".

(c) Permit any Material Subsidiary to enter into any agreement or instrument that by its terms restricts (i) the payment of dividends or distributions or the making of cash advances to the Borrower or any Subsidiary that is a direct or indirect parent of such Subsidiary or (ii) the granting of Liens by the Borrower or such Material Subsidiary pursuant to the Security Documents, in each case other than those arising under any Loan Document, except, in each case, restrictions existing by reason of:

(A) restrictions imposed by applicable law;

(B) contractual encumbrances or restrictions in effect on the Closing Date under Indebtedness existing on the Closing Date and set forth on Schedule 6.01, the Senior Unsecured Notes, the Senior Notes, the Interim Facility Loan Documents, the Retained Notes or any agreements related to any Permitted Refinancing Indebtedness in respect of any such Indebtedness that does not materially expand the scope of any such encumbrance or restriction;

(C) any restriction on a Subsidiary imposed pursuant to an agreement entered into for the sale or disposition of the Equity Interests or assets of a Subsidiary;

(D) customary provisions in joint venture agreements and other similar agreements entered into in the ordinary course of business;

(E) any restrictions imposed by any agreement relating to secured Indebtedness permitted by this Agreement to the extent that such restrictions apply only to the property or assets securing such Indebtedness;

(F) any restrictions imposed by any agreement relating to Indebtedness incurred pursuant to Sections 6.01(k) or 6.01(r) or Permitted Refinancing Indebtedness in respect thereof, to the extent such restrictions are not more restrictive, taken as a whole,

than the restrictions contained in the Senior Unsecured Note Documents, the Senior Note Documents or the Interim Facility Loan Documents;

(G) customary provisions contained in leases or licenses of intellectual property and other similar agreements entered into in the ordinary course of business;

(H) customary provisions restricting subletting or assignment of any lease governing a leasehold interest;

(I) customary provisions restricting assignment of any agreement entered into in the ordinary course of business;

(J) customary restrictions and conditions contained in any agreement relating to the sale, transfer, lease or other disposition of any asset permitted under Section 6.05 pending the consummation of such sale, transfer, lease or other disposition;

(K) customary restrictions and conditions contained in the document relating to any Lien, so long as (1) such Lien is a Permitted Lien and such restrictions or conditions relate only to the specific asset subject to such Lien and (2) such restrictions and conditions are not created for the purpose of avoiding the restrictions imposed by this Section 6.09;

(L) customary net worth provisions contained in Real Property leases entered into by Subsidiaries of the Borrower, so long as the Borrower has determined in good faith that such net worth provisions would not reasonably be expected to impair the ability of the Borrower and its Subsidiaries to meet their ongoing obligations;

(M) any agreement in effect at the time such subsidiary becomes a Subsidiary (including in connection with the Post-Closing CMBS Transaction), so long as such agreement was not entered into in contemplation of such person becoming a Subsidiary;

(N) restrictions in agreements representing Indebtedness permitted under Section 6.01 of a Subsidiary of the Borrower that is not a Subsidiary Loan Party;

(O) customary restrictions on leases, subleases, licenses or Equity Interests or asset sale agreements otherwise permitted hereby as long as such restrictions relate to the Equity Interests and assets subject thereto;

(P) restrictions on cash or other deposits imposed by customers under contracts entered into in the ordinary course of business;

(Q) restrictions contained in any Permitted Receivables Document with respect to any Special Purpose Receivables Subsidiary;

(R) restrictions contained in any agreements related to a Project Financing or Qualified Non-Recourse Debt; or

(S) any encumbrances or restrictions of the type referred to in Sections 6.09(c)(i) and 6.09(c)(ii) above imposed by any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of the contracts, instruments or obligations referred to in clauses (A) through (R) above; provided that such amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings are, in the good faith judgment of the Borrower, no more restrictive with respect to such dividend and other payment restrictions than those contained in the dividend or other payment restrictions prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing.

SECTION 6.10 Senior Secured Leverage Ratio. Permit the Senior Secured Leverage Ratio on the last day of any fiscal quarter (beginning with the fiscal quarter ended September 30, 2008, but excluding any fiscal quarter the last day of which occurs during a Covenant Suspension Period) to exceed 4.75 to 1.00.

SECTION 6.11 No Other "Designated Senior Debt". Designate, or permit the designation of, any Indebtedness as "Designated Senior Debt" or any other similar term for the purpose of the definition of the same or the subordination provisions contained in any indenture governing any senior subordinated notes permitted to be incurred hereunder that constitute Material Indebtedness other than (a) the Obligations under this Agreement and the other Loan Documents and (b) any Permitted Refinancing Indebtedness thereof.

#### ARTICLE VI(A) Holdings Covenants

Holdings (prior to a Borrower Qualified IPO) covenants and agrees with each Lender that, so long as this Agreement shall remain in effect (other than in respect of contingent indemnification and expense reimbursement obligations for which no claim has been made) and until the Commitments have been terminated and the principal of and interest on each Loan, all Fees and all other expenses or amounts payable under any Loan Document have been paid in full and all Letters of Credit have been canceled or have expired and all amounts drawn thereunder have been reimbursed in full, unless the Required Lenders shall otherwise consent in writing, Holdings will not create, incur, assume or permit to exist any Lien (other than Liens of a type described in Section 6.02(d), (e), (k) or (ee)) on any of the Equity Interests issued by the Borrower to Holdings other than the Liens created under the Loan Documents.

#### ARTICLE VII Events of Default

SECTION 7.01 Events of Default. In case of the happening of any of the following events (each, an "Event of Default"):

(a) any representation or warranty made or deemed made by any Loan Party herein or in any other Loan Document or any certificate or document delivered pursuant

hereto or thereto shall prove to have been false or misleading in any material respect when so made or deemed made;

(b) default shall be made in the payment of any principal of any Loan when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or by acceleration thereof or otherwise;

(c) default shall be made in the payment of any interest on any Loan or the reimbursement with respect to any L/C Obligation or in the payment of any Fee or any other amount (other than an amount referred to in (b) above) due under any Loan Document, when and as the same shall become due and payable, and such default shall continue unremedied for a period of five Business Days;

(d) default shall be made in the due observance or performance by the Borrower of any covenant, condition or agreement contained in 5.01(a) (with respect to the Borrower), 5.05(a) or 5.08 or in Article VI;

(e) default shall be made in the due observance or performance by the Borrower or any Loan Party of any covenant, condition or agreement contained in any Loan Document (other than those specified in paragraphs (b), (c) and (d) above) and such default shall continue unremedied for a period of 30 days (or 60 days if such default results solely from a Foreign Subsidiary's failure to duly observe or perform any such covenant, condition or agreement) after notice thereof from the Administrative Agent to the Borrower;

(f) (i) any event or condition occurs that (A) results in any Material Indebtedness becoming due prior to its scheduled maturity or (B) enables or permits (with all applicable grace periods having expired) the holder or holders of any Material Indebtedness or any trustee or agent on its or their behalf to cause any Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity; or (ii) the Borrower or any of the Material Subsidiaries shall fail to pay the principal of any Material Indebtedness at the stated final maturity thereof; provided that this clause (f) shall not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness if such sale or transfer is permitted hereunder and under the documents providing for such Indebtedness;

(g) there shall have occurred a Change in Control;

(h) an involuntary proceeding shall be commenced or an involuntary petition shall be filed in a court of competent jurisdiction seeking (i) relief in respect of the Borrower or any Material Subsidiary, or of a substantial part of the property or assets of the Borrower or any Material Subsidiary, under Title 11 of the United States Code, as now constituted or hereafter amended, or any other federal, state or foreign bankruptcy, insolvency, receivership or similar law, (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Borrower or any Material Subsidiary or for a substantial part of the property or assets the Borrower or any Material Subsidiary or (iii) the winding-up or liquidation of the Borrower or any Material Subsidiary (other than as permitted hereunder);

and such proceeding or petition shall continue undismissed for 60 days or an order or decree approving or ordering any of the foregoing shall be entered;

(i) the Borrower or any Material Subsidiary shall (i) voluntarily commence any proceeding or file any petition seeking relief under Title 11 of the United States Code, as now constituted or hereafter amended, or any other federal, state or foreign bankruptcy, insolvency, receivership or similar law, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or the filing of any petition described in paragraph (h) above, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Borrower or any Material Subsidiary or for a substantial part of the property or assets of the Borrower or any Material Subsidiary, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors or (vi) become unable or admit in writing its inability or fail generally to pay its debts as they become due;

(j) the failure by the Borrower or any Material Subsidiary to pay one or more final judgments aggregating in excess of \$150 million (to the extent not covered by insurance), which judgments are not discharged or effectively waived or stayed for a period of 45 consecutive days, or any action shall be legally taken by a judgment creditor to levy upon assets or properties the Borrower or any Material Subsidiary to enforce any such judgment;

(k) (i) a trustee shall be appointed by a United States district court to administer any Plan, (ii) an ERISA Event or ERISA Events shall have occurred with respect to any Plan or Multiemployer Plan, (iii) the PBGC shall institute proceedings (including giving notice of intent thereof) to terminate any Plan or Plans, (iv) the Borrower or any Subsidiary or any ERISA Affiliate shall have been notified by the sponsor of a Multiemployer Plan that such Multiemployer Plan is in reorganization or is being terminated, within the meaning of Title IV of ERISA or (v) the Borrower or any Subsidiary shall engage in any "prohibited transaction" (as defined in Section 406 of ERISA or Section 4975 of the Code) involving any Plan that would subject the Borrower or any Subsidiary to tax; and in each case in clauses (i) through (v) above, such event or condition, together with all other such events or conditions, if any, would reasonably be expected to have a Material Adverse Effect;

(l) (i) any material provision of any Loan Document shall for any reason be asserted in writing by the Borrower or any Loan Party not to be a legal, valid and binding obligation of any party thereto, (ii) any security interest purported to be created by any Security Document and to extend to assets that are material to the Borrower and the Loan Parties on a consolidated basis shall cease to be, or shall be asserted in writing by the Borrower or any other Loan Party not to be, a valid and perfected security interest (perfected as or having the priority required by this Agreement or the relevant Security Document and subject to such limitations and restrictions as are set forth herein and therein) in the securities, assets or properties covered thereby, except to the extent that any such loss of perfection or priority results from the limitations of foreign laws, rules and regulations as they apply to pledges of Equity Interests in Foreign Subsidiaries or the application thereof, or except from the failure of the Collateral Agent to maintain possession of certificates actually delivered to it representing securities pledged under the Collateral Agreement or the Guaranty and Pledge

Agreement or to file Uniform Commercial Code continuation statements or take the actions described on Schedule 3.04 and except to the extent that such loss is covered by a lender's title insurance policy and the Collateral Agent shall be reasonably satisfied with the credit of such insurer, or (iii) the guarantee pursuant to the Guaranty and Pledge Agreement by Holdings (prior to a Borrower Qualified IPO) of or the pledges pursuant to the Security Documents by the Subsidiary Loan Parties securing any of the Obligations shall cease to be in full force and effect (other than in accordance with the terms thereof), or shall be asserted in writing by Holdings (prior to a Borrower Qualified IPO) or the Borrower or any Subsidiary Loan Party not to be in effect or not to be legal, valid and binding obligations (other than in accordance with the terms thereof); or

(m) the occurrence of a License Revocation with respect to a license issued to the Borrower or any Subsidiary by any Gaming Authority with respect to gaming operations at any gaming facility of the Borrower or any Subsidiary that continues for 30 calendar days to the extent that such License Revocation, together with all prior License Revocations that are still in effect, would reasonably be expected to have a Material Adverse Effect,

then, and in every such event (other than an event with respect to the Borrower described in paragraph (h) or (i) above), and at any time thereafter during the continuance of such event, the Administrative Agent, at the request of the Required Lenders, shall, by notice to the Borrower, take any or all of the following actions, at the same or different times: (i) terminate forthwith the Commitments, (ii) declare the Loans then outstanding to be forthwith due and payable in whole or in part, whereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and any unpaid accrued Fees and all other liabilities of the Borrower accrued hereunder and under any other Loan Document, shall become forthwith due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by the Borrower, anything contained herein or in any other Loan Document to the contrary notwithstanding and (iii) if the Loans have been declared due and payable pursuant to clause (ii) above, demand cash collateral pursuant to Section 2.05(j); and in any event with respect to the Borrower described in paragraph (h) or (i) above, the Commitments shall automatically terminate, the principal of the Loans then outstanding, together with accrued interest thereon and any unpaid accrued Fees and all other liabilities of the Borrower accrued hereunder and under any other Loan Document, shall automatically become due and payable and the Administrative Agent shall be deemed to have made a demand for Cash Collateral to the full extent permitted under Section 2.05(g), without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by the Borrower, anything contained herein or in any other Loan Document to the contrary notwithstanding.

SECTION 7.02 [Reserved].

SECTION 7.03 Right to Cure. Notwithstanding anything to the contrary contained in Section 7.01, in the event that the Borrower fails (or, but for the operation of this Section 7.03, would fail) to comply with the requirements of the Financial Performance Covenant, until the expiration of the 20th day subsequent to the date the certificate calculating such Financial Performance Covenant is required to be delivered pursuant to Section 5.04(c), any Parent Entity, Holdings and/or the Borrower shall have the right to issue Permitted Cure

Securities for cash or otherwise receive cash contributions to the capital of any Parent Entity, Holdings and/or the Borrower (and, with respect to Holdings or any Parent Entity, in each case, to contribute any such cash to the capital of the Borrower (collectively, the “Cure Right”), and upon the receipt by the Borrower of such cash (the “Cure Amount”) pursuant to the exercise by any Parent Entity, Holdings and/or the Borrower of such Cure Right such Financial Performance Covenant shall be recalculated giving effect to a pro forma adjustment by which EBITDA shall be increased with respect to such applicable quarter and any four-quarter period that contains such quarter, solely for the purpose of measuring the Financial Performance Covenant and not for any other purpose under this Agreement, by an amount equal to the Cure Amount; provided, that, (i) in each four-fiscal-quarter period there shall be at least one fiscal quarter in which the Cure Right is not exercised and (ii) for purposes of this Section 7.03, the Cure Amount shall be no greater than the amount required for purposes of complying with the Financial Performance Covenant. If, after giving effect to the adjustments in this paragraph, the Borrower shall then be in compliance with the requirements of the Financial Performance Covenant, the Borrower shall be deemed to have satisfied the requirements of the Financial Performance Covenant as of the relevant date of determination with the same effect as though there had been no failure to comply therewith at such date, and the applicable breach or default of the Financial Performance Covenant that had occurred shall be deemed cured for this purposes of the Agreement.

ARTICLE VIII  
The Agents

SECTION 8.01 Appointment.

(a) Each Lender hereby irrevocably designates and appoints the Administrative Agent as the agent of such Lender under this Agreement and the other Loan Documents and irrevocably authorizes the Administrative Agent, in such capacity, to take such action on its behalf under the provisions of this Agreement and the other Loan Documents and to exercise such powers and perform such duties as are expressly delegated to the Administrative Agent by the terms of this Agreement and the other Loan Documents, together with such other powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary elsewhere in this Agreement, the Administrative Agent shall not have any duties or responsibilities, except those expressly set forth herein, or any fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against the Administrative Agent.

(b) The Administrative Agent, each Lender, the Swingline Lender and each L/C Issuer hereby irrevocably designate and appoint the Collateral Agent as the agent with respect to the Collateral, and each of the Administrative Agent, each Lender, the Swingline Lender and each L/C Issuer irrevocably authorizes the Collateral Agent, in such capacity, to take such action on its behalf under the provisions of this Agreement and the other Loan Documents and to exercise such powers and perform such duties as are expressly delegated to the Collateral Agent by the terms of this Agreement and the other Loan Documents, together with such other powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary elsewhere in this Agreement, the Collateral Agent shall not have any duties or

responsibilities except those expressly set forth herein, or any fiduciary relationship with any of the Administrative Agent, the Lenders, the Swingline Lender or any L/C Issuers, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against the Collateral Agent.

SECTION 8.02 Delegation of Duties. The Administrative Agent and the Collateral Agent may each execute any of its duties under this Agreement and the other Loan Documents by or through agents or attorneys-in-fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. Neither the Administrative Agent nor the Collateral Agent shall be responsible for the negligence or misconduct of any agents or attorneys-in-fact selected by it with reasonable care.

SECTION 8.03 Exculpatory Provisions. Neither the Administrative Agent nor the Collateral Agent, nor any of their respective officers, directors, employees, agents, attorneys-in-fact or Affiliates shall be (a) liable for any action lawfully taken or omitted to be taken by it or such person under or in connection with this Agreement or any other Loan Document (except for its or such person's own gross negligence or willful misconduct) or (b) responsible in any manner to any of the Lenders for any recitals, statements, representations or warranties made by any of the Borrower or any other Loan Party or any officer thereof contained in this Agreement or any other Loan Document or in any certificate, report, statement or other document referred to or provided for in, or received by such Agent under or in connection with, this Agreement or any other Loan Document or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document or for any failure of the Borrower or any other Loan Party to perform its obligations hereunder or thereunder. Neither the Administrative Agent nor the Collateral Agent shall be under any obligation to any Lender to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the properties, books or records of any Loan Party.

SECTION 8.04 Reliance by Agents. The Administrative Agent and the Collateral Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, consent, certificate, affidavit, letter, teletype, telex or teletype message, statement, order or other document or instruction believed by it to be genuine and correct and to have been signed, sent or made by the proper person or persons and upon advice and statements of legal counsel (including counsel to the Borrower), independent accountants and other experts selected by the Administrative Agent or the Collateral Agent. The Administrative Agent may deem and treat the Lender specified in the Register with respect to any amount owing hereunder as the owner thereof for all purposes unless a written notice of assignment, negotiation or transfer thereof shall have been filed with the Administrative Agent. The Administrative Agent and the Collateral Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless it shall first receive such advice or concurrence of the Required Lenders as it deems appropriate or it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action. The Administrative Agent and the Collateral Agent shall in all cases be fully protected in acting, or in refraining

from acting, under this Agreement and the other Loan Documents in accordance with a request of the Required Lenders, and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders and all future holders of the Loans.

SECTION 8.05 Notice of Default. Neither the Administrative Agent nor the Collateral Agent shall be deemed to have knowledge or notice of the occurrence of any Default or Event of Default hereunder unless the Administrative Agent or Collateral Agent has received notice from a Lender or the Borrower referring to this Agreement, describing such Default or Event of Default and stating that such notice is a "notice of default." In the event that the Administrative Agent receives such a notice, it shall give notice thereof to the Lenders and the Collateral Agent. The Administrative Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Required Lenders, provided that unless and until the Administrative Agent shall have received such directions, the Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable in the best interests of the Lenders except to the extent that this Agreement requires that such action be taken only with the approval of the Required Lenders or each of the Lenders, as applicable.

SECTION 8.06 Non-Reliance on Administrative Agent, Collateral Agent and Other Lenders. Each Lender expressly acknowledges that neither the Administrative Agent nor the Collateral Agent nor any of their respective officers, directors, employees, agents, attorneys-in-fact or Affiliates has made any representations or warranties to it and that no act by the Administrative Agent or Collateral Agent hereinafter taken, including any review of the affairs of the Borrower or any other Loan Party, shall be deemed to constitute any representation or warranty by the Administrative Agent or Collateral Agent to any Lender, the Swingline Lender or any L/C Issuer. Each Lender, the Swingline Lender and each L/C Issuer represents to the Administrative Agent and the Collateral Agent that it has, independently and without reliance upon the Administrative Agent, Collateral Agent or any other Lender, and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, operations, property, financial and other condition and creditworthiness of the Borrower and other Loan Parties and made its own decision to make its Loans hereunder and enter into this Agreement. Each Lender also represents that it will, independently and without reliance upon the Administrative Agent, Collateral Agent or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigation as it deems necessary to inform itself as to the business, operations, property, financial and other condition and creditworthiness of the Borrowers the other Loan Parties. Except for notices, reports and other documents expressly required to be furnished to the Lenders by the Administrative Agent hereunder, neither the Administrative Agent nor the Collateral Agent shall have any duty or responsibility to provide any Lender with any credit or other information concerning the business, assets, operations, properties, financial condition, prospects or creditworthiness of any Borrower or any other Loan Party that may come into the possession of the Administrative Agent or Collateral Agent any of their respective officers, directors, employees, agents, attorneys-in-fact or Affiliates.

SECTION 8.07 Indemnification. The Lenders agree to indemnify the Administrative Agent and the Collateral Agent, each in its capacity as such (to the extent not reimbursed by the Borrower and without limiting the obligation of the Borrower to do so), ratably according to their respective portions of the total Term Loans and Revolving Facility Commitments (or, if the Revolving Facility Commitments shall have terminated, in accordance the Revolving Facility Commitments in effect immediately prior to such termination) held on the date on which indemnification is sought, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever that may at any time (including at any time following the payment of the Loans) be imposed on, incurred by or asserted against the Administrative Agent or the Collateral Agent in any way relating to or arising out of the Commitments, this Agreement, any of the other Loan Documents, the Intercreditor Agreement, or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by the Administrative Agent or the Collateral Agent under or in connection with any of the foregoing, provided that no Lender shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from the Administrative Agent's or the Collateral Agent's gross negligence or willful misconduct as determined by a final judgment of a court of competent jurisdiction. The agreements in this Section 8.07 shall survive the payment of the Loans and all other amounts payable hereunder.

SECTION 8.08 Agents in their Individual Capacity. The Administrative Agent, the Collateral Agent and their Affiliates may make loans to, accept deposits from and generally engage in any kind of business with the Borrower and any other Loan Party as though such persons were not the Administrative Agent and Collateral Agent hereunder and under the other Loan Documents. With respect to the Loans made by it, the Administrative Agent and the Collateral Agent shall each have the same rights and powers under this Agreement and the other Loan Documents as any Lender and may exercise the same as though it were not the Administrative Agent or the Collateral Agent, and the terms "Lender" and "Lenders" shall include the Administrative Agent and the Collateral Agent in their individual capacities.

SECTION 8.09 Successor Agents. Each of the Administrative Agent and Collateral Agent may at any time give notice of its resignation to the Lenders, the L/C Issuer and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, subject to the reasonable consent of the Borrower so long as no Event of Default under Section 7.01(h) or (i) is continuing, to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Agent gives notice of its resignation, then the retiring Agent may on behalf of the Lenders and the L/C Issuer, appoint a successor Agent meeting the qualifications set forth above; provided that if the retiring Agent shall notify the Borrower and the Lenders that no qualifying person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (1) the retiring Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except in the case of the Collateral Agent holding collateral security on behalf of any Secured Parties, the retiring Collateral Agent shall continue to hold such collateral security

as nominee until such time as a successor Collateral Agent is appointed) and (2) all payments, communications and determinations provided to be made by, to or through such Agent shall instead be made by or to each Lender and the L/C Issuer directly, until such time as the Required Lenders appoint a successor Agent as provided for above in this Section. Upon the acceptance of a successor's appointment as the Administrative Agent or Collateral Agent, as the case may be, hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Agent, and the retiring Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrower (following the effectiveness of such appointment) to such Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article VIII and Section 9.05 shall continue in effect for the benefit of such retiring Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Agent was acting as an Agent.

Any resignation by Bank of America as Administrative Agent pursuant to this Section shall also constitute its resignation as L/C Issuer and Swingline Lender. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer and Swingline Lender, (b) the retiring L/C Issuer and Swingline Lender shall be discharged from all of their respective duties and obligations hereunder or under the other Loan Documents, and (c) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to the retiring L/C Issuer to effectively assume the obligations of the retiring L/C Issuer with respect to such Letters of Credit.

**SECTION 8.10 Payments Set Aside.** To the extent that any payment by or on behalf of the Borrower is made to the Administrative Agent, the L/C Issuer or any Lender, or the Administrative Agent, the L/C Issuer or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent, the L/C Issuer or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender and the L/C Issuer severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the applicable Overnight Rate from time to time in effect, in the applicable currency of such recovery or payment. The obligations of the Lenders and the L/C Issuer under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

**SECTION 8.11 Administrative Agent May File Proofs of Claim.** In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan or L/C Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise

(i) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, L/C Obligations and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the L/C Issuer and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the L/C Issuer and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, the L/C Issuer and the Administrative Agent under Article II or Section 9.05) allowed in such judicial proceeding; and

(ii) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and the L/C Issuer to make such payments to the Administrative Agent and, if the Administrative Agent shall consent to the making of such payments directly to the Lenders and the L/C Issuer, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Article II and Section 9.05.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender or the L/C Issuer any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or the L/C Issuer to authorize the Administrative Agent to vote in respect of the claim of any Lender or the L/C Issuer or in any such proceeding.

**SECTION 8.12 Collateral and Guaranty Matters.** The Lenders and the L/C Issuer irrevocably authorize the Collateral Agent, at its option and in its discretion, to release any Lien on any property granted to or held by the Collateral Agent under any Loan Document if approved, authorized or ratified in writing in accordance with Section 9.08, or pursuant to Section 5.11 or Section 9.18. Upon request by the Collateral Agent at any time, the Required Lenders will confirm in writing the Collateral Agent's authority to release its interest in particular types or items of property in accordance with this Section.

**SECTION 8.13 Agents and Arrangers.** Neither the Syndication Agent, the Documentation Agents nor any of the Co-Lead Arrangers shall have any duties or responsibilities hereunder in its capacity as such.

ARTICLE IX  
Miscellaneous

SECTION 9.01 Notices; Communications.

(a) Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in Section 9.01(b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to any Loan Party, the Administrative Agent, the L/C Issuer or the Swingline Lender, to the address, telecopier number, electronic mail address or telephone number specified for such person on Schedule 9.01; and

(ii) if to any other Lender, to the address, telecopier number, electronic mail address or telephone number specified in its Administrative Questionnaire.

(b) Notices and other communications to the Lenders and the L/C Issuer hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices to any Lender or the L/C Issuer pursuant to Article II if such Lender or the L/C Issuer, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

(c) Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received. Notices sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient). Notices or communications (i) sent to an e-mail address shall be deemed received when delivered and (ii) posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefore.

(d) Any party hereto may change its address or telecopy number for notices and other communications hereunder by notice to the other parties hereto. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, telecopier number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender.

(e) Documents required to be delivered pursuant to Section 5.04 (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically (including as set forth in Section 9.17) and if so delivered, shall be deemed to have been delivered on the date (i) on which the Borrower posts such documents, or provides a link thereto on the Borrower's website on the Internet at the website address listed on Schedule 9.01, or (ii) on which such documents are posted on the Borrower's behalf on an Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); provided, that (A) the Borrower shall deliver paper copies of such documents to the Administrative Agent or any Lender that requests the Borrower to deliver such paper copies until a written request to cease delivering paper copies is given by the Administrative Agent or such Lender, and (B) the Borrower shall notify the Administrative Agent (by telecopier or electronic mail) of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. Except for certificates required by Section 5.04(c), the Administrative Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Borrower with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

SECTION 9.02 Survival of Agreement. All covenants, agreements, representations and warranties made by the Loan Parties herein, in the other Loan Documents and in the certificates or other instruments prepared or delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the Lenders and each L/C Issuer and shall survive the making by the Lenders of the Loans, the execution and delivery of the Loan Documents and the issuance of the Letters of Credit, regardless of any investigation made by such persons or on their behalf, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or L/C Obligation or any Fee or any other amount payable under this Agreement or any other Loan Document is outstanding and unpaid or any Letter of Credit is outstanding and so long as the Commitments have not been terminated. Without prejudice to the survival of any other agreements contained herein, indemnification and reimbursement obligations contained herein (including pursuant to Sections 2.15, 2.17, 8.07 and 9.05) shall survive the payment in full of the principal and interest hereunder, the expiration of the Letters of Credit and the termination of the Commitments or this Agreement.

SECTION 9.03 Binding Effect. This Agreement shall become effective when it shall have been executed by Merger Inc., the Borrower and the Administrative Agent and when the Administrative Agent shall have received copies hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of Holdings, the Borrower, each L/C Issuer, the Administrative Agent, the Collateral Agent and each Lender and their respective permitted successors and assigns.

SECTION 9.04 Successors and Assigns.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby (including any affiliate of the L/C Issuer that issues any Letter of Credit), except that (i) the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by the Borrower without such consent shall be null and void) except pursuant to the Merger, or in connection with the addition of one or more Domestic Subsidiaries as a joint and several co-borrower hereunder, and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section 9.04. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any person (other than the parties hereto, their respective successors and assigns permitted hereby (including any Affiliate of the L/C Issuer that issues any Letter of Credit), Participants (to the extent provided in clause (c) of this Section 9.04), and, to the extent expressly contemplated hereby, the Related Parties of each of the Agents, the L/C Issuer and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement or the other Loan Documents.

(b) (i) Subject to the conditions set forth in clause (b)(ii) below, any Lender may assign to one or more assignees (each, an “Assignee”) all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitments and the Loans at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld) of:

(A) the Borrower; provided, that no consent of the Borrower shall be required for an assignment to a Lender, an affiliate of a Lender, an Approved Fund (as defined below) or, if an Event of Default under Section 7.01(b), (c), (h) or (i) has occurred and is continuing, any other person;

(B) the Administrative Agent; provided, that no consent of the Administrative Agent shall be required for an assignment of all or any portion of a Term Loan to a Lender, an Affiliate of a Lender or an Approved Fund; and

(C) the L/C Issuer and the Swingline Lender; provided, that no consent of the L/C Issuer and the Swingline Lender shall be required for an assignment of all or any portion of a Term Loan.

(ii) Assignments shall be subject to the following additional conditions:

(A) except in the case of an assignment to a Lender, an affiliate of a Lender or an Approved Fund or an assignment of the entire remaining amount of the assigning Lender’s Commitments or Loans under any Facility, the amount of the Commitments or Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to the Administrative Agent) shall not be less than (x) \$1.0 million in the case of Term Loans (and shall be in an amount of an integral multiple thereof) and (y) \$5.0 million in the case of Revolving Facility Loans or Revolving

Facility Commitments, unless each of the Borrower and the Administrative Agent otherwise consent; provided, that (1) no such consent of the Borrower shall be required if an Event of Default under Section 7.01(b), (c), (h) or (i) has occurred and is continuing and (2) such amounts shall be aggregated in respect of each Lender and its Affiliates or Approved Funds (with simultaneous assignments to or by two or more Related Funds shall be treated as one assignment), if any;

(B) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Acceptance via an electronic settlement system acceptable to the Administrative Agent (or, if required by the Administrative Agent, manually), and shall pay to the Administrative Agent a processing and recordation fee of \$3,500 (which fee may be waived or reduced in the sole discretion of the Administrative Agent);

(C) the Assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire and any tax forms required to be delivered pursuant to Section 2.17; and

(D) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loans or the Commitment assigned, except that this clause (ii) shall not apply to the Swingline Lender's rights and obligations in respect of Swing Line Loans.

For the purposes of this Section 9.04, "Approved Fund" means any person (other than a natural person) that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course and that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

(iii) Subject to acceptance and recording thereof pursuant to paragraph (b)(v) below, from and after the effective date specified in each Assignment and Acceptance the Assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Acceptance, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.15, 2.16, 2.17 and 9.05). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 9.04 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with clause (c) of this Section 9.04.

(iv) The Administrative Agent, acting for this purpose as an agent of the Borrower, shall maintain at one of its offices a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the names and addresses of the Lenders, and

the Commitments of, and principal amount of the Loans and L/C Obligations owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, and the Borrower, the Administrative Agent, the L/C Issuer and the Lenders shall treat each person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower, the L/C Issuer and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(v) Upon its receipt of a duly completed Assignment and Acceptance executed by an assigning Lender and an Assignee, the Assignee's completed Administrative Questionnaire (unless the Assignee shall already be a Lender hereunder), all applicable tax forms, the processing and recordation fee referred to in clause (b) of this Section and any written consent to such assignment required by clause (b) of this Section, the Administrative Agent promptly shall accept such Assignment and Acceptance and record the information contained therein in the Register. No assignment, whether or not evidenced by a promissory note, shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this clause (b)(v).

(c) (i) Any Lender may, without the consent of the Borrower or the Administrative Agent, sell participations to one or more banks or other entities (a "Participant") in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Commitments and the Loans owing to it); provided, that (A) such Lender's obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) the Borrower, the Administrative Agent, the L/C Issuer and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and the other Loan Documents and to approve any amendment, modification or waiver of any provision of this Agreement and the other Loan Documents; provided, that (x) such agreement may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver that (1) requires the consent of each Lender directly affected thereby pursuant to clause (i), (ii), (iii) or (vi) of the first proviso to Section 9.08(b) and (2) directly affects such Participant and (y) no other agreement with respect to amendment, modification or waiver may exist between such Lender and such Participant. Subject to paragraph (c)(ii) of this Section 9.04, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.15, 2.16 and 2.17 (subject to the limitations and requirements of those Sections) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section 9.04. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.06 as though it were a Lender, provided such Participant agrees to be subject to Section 2.18(c) as though it were a Lender.

(ii) Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal and interest amount of each Participant's interest in

the Loans held by it (the "Participant Register"). The entries in the Participant Register shall be conclusive, and such Lender shall treat each person whose name is recorded in the Participant Register as the owner of the participation in question for all purposes of this Agreement, notwithstanding notice to the contrary.

(iii) A Participant shall not be entitled to receive any greater payment under Section 2.15, 2.16 or 2.17 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent (not to be unreasonably withheld). A Participant shall not be entitled to the benefits of Section 2.17 to the extent such Participant fails to comply with Section 2.17(e) and (f) as though it were a Lender.

(d) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank and in the case of any Lender that is an Approved Fund, any pledge or assignment to any holders of obligations owed, or securities issued, by such Lender, including to any trustee for, or any other representative of, such holders, and this Section 9.04 shall not apply to any such pledge or assignment of a security interest; provided, that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or Assignee for such Lender as a party hereto.

(e) The Borrower, upon receipt of written notice from the relevant Lender, agrees to issue Notes to any Lender requiring Notes to facilitate transactions of the type described in paragraph (d) above.

(f) Notwithstanding the foregoing, any Conduit Lender may assign any or all of the Loans it may have funded hereunder to its designating Lender without the consent of the Borrower or the Administrative Agent. Each of Holdings, the Borrower, each Lender and the Administrative Agent hereby confirms that it will not institute against a Conduit Lender or join any other person in instituting against a Conduit Lender any bankruptcy, reorganization, arrangement, insolvency or liquidation proceeding under any state bankruptcy or similar law, for one year and one day after the payment in full of the latest maturing commercial paper note issued by such Conduit Lender; provided, however, that each Lender designating any Conduit Lender hereby agrees to indemnify, save and hold harmless each other party hereto and each Loan Party for any loss, cost, damage or expense arising out of its inability to institute such a proceeding against such Conduit Lender during such period of forbearance.

(g) If the Borrower wishes to replace the Loans or Commitments under any Facility with ones having different terms, it shall have the option, with the consent of the Administrative Agent and subject to at least three Business Days' advance notice to the Lenders under such Facility, instead of prepaying the Loans or reducing or terminating the Commitments to be replaced, to (i) require the Lenders under such Facility to assign such Loans or Commitments to the Administrative Agent or its designees and (ii) amend the terms thereof in accordance with Section 9.08 (with such replacement, if applicable, being deemed to have been made pursuant to Section 9.08(d)). Pursuant to any such assignment, all Loans

and Commitments to be replaced shall be purchased at par (allocated among the Lenders under such Facility in the same manner as would be required if such Loans were being optionally prepaid or such Commitments were being optionally reduced or terminated by the Borrower), accompanied by payment of any accrued interest and fees thereon and any amounts owing pursuant to Section 9.05(b). By receiving such purchase price, the Lenders under such Facility shall automatically be deemed to have assigned the Loans or Commitments under such Facility pursuant to the terms of the form of Assignment and Acceptance attached hereto as Exhibit A, and accordingly no other action by such Lenders shall be required in connection therewith. The provisions of this paragraph (g) are intended to facilitate the maintenance of the perfection and priority of existing security interests in the Collateral during any such replacement.

(h) Notwithstanding anything to the contrary herein, no assignment may be made or participation sold to an Ineligible Institution. Notwithstanding anything to the contrary herein, the rights of the Lenders to make assignments and grant participations shall be subject to the approval of any Gaming Authority, to the extent required by applicable Gaming Laws.

SECTION 9.05 Expenses; Indemnity.

(a) The Borrower agrees to pay (i) all reasonable documented out-of-pocket expenses (including Other Taxes) incurred by the Administrative Agent, the Collateral Agent and the Co-Lead Arrangers in connection with the preparation of this Agreement and the other Loan Documents, or in connection with the administration of this Agreement and any amendments, modifications or waivers of the provisions hereof or thereof, including the reasonable fees, charges and disbursements of Cahill Gordon & Reindel llp, counsel for the Administrative Agent, the Collateral Agent and the Co-Lead Arrangers, and, if necessary, the reasonable fees, charges and disbursements of one local counsel per jurisdiction, and (ii) all out-of-pocket expenses (including Other Taxes) incurred by the Agents or any Lender in connection with the enforcement or protection of their rights in connection with this Agreement and the other Loan Documents, in connection with the Loans made or the Letters of Credit issued hereunder, including the reasonable fees, charges and disbursements of counsel for the Agents and the Lenders (including the reasonable fees, charges and disbursements of Cahill Gordon & Reindel llp, counsel for the Agents and the Co-Lead Arrangers, and, if necessary, the reasonable fees, charges and disbursements of one local counsel per jurisdiction and such additional counsel for each of the Lenders to the extent of any conflict of interests).

(b) The Borrower agrees to indemnify the Administrative Agent, the Agents, the Co-Lead Arrangers, each L/C Issuer, each Lender, each of their respective Affiliates and each of their respective directors, partners, officers, employees, agents, trustees and advisors (each such person being called an "Indemnitee") against, and to hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses, including reasonable counsel fees, charges and disbursements (limited to not more than one counsel, plus, if necessary, one local counsel per jurisdiction) (except the allocated costs of in-house counsel), incurred by or asserted against any Indemnitee arising out of, in

any way connected with, or as a result of (i) the execution or delivery of this Agreement or any other Loan Document, the Intercreditor Agreement, or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto and thereto of their respective obligations thereunder or the consummation of or otherwise relating to the Transactions and the other transactions contemplated hereby, (ii) the use of the proceeds of the Loans or the use of any Letter of Credit or (iii) any claim, litigation, investigation or proceeding relating to any of the foregoing, whether or not any Indemnitee is a party thereto and regardless of whether such matter is initiated by a third party or by Holdings, the Borrower or any of their subsidiaries or Affiliates; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a final, non-appealable judgment of a court of competent jurisdiction to have resulted from (1) the gross negligence or willful misconduct of such Indemnitee (for purposes this proviso only, each of the Administrative Agent, any Co-Lead Arranger, any L/C Issuer or any Lender shall be treated as several and separate Indemnitees, but each of them together with its respective Related Parties (other than advisors), shall be treated as a single Indemnitee) or (2) any material breach of any Loan Document by such Indemnitee. Subject to and without limiting the generality of the foregoing sentence, the Borrower agrees to indemnify each Indemnitee against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses, including reasonable counsel or consultant fees, charges and disbursements (limited to not more than one counsel, plus, if necessary, one local counsel per jurisdiction) (except the allocated costs of in-house counsel), incurred by or asserted against any Indemnitee arising out of, in any way connected with, or as a result of (A) any claim related in any way to Environmental Laws and Holdings, the Borrower or any of their Subsidiaries, or (B) any actual or alleged presence, Release or threatened Release of Hazardous Materials at, under, on, from or to any Real Property; provided, that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from (1) the gross negligence or willful misconduct of such Indemnitee or any of its Related Parties (other than advisors) or (2) any material breach of any Loan Document by such Indemnitee. None of the Indemnitees (or any of their respective affiliates) shall be responsible or liable to the Sponsors, Holdings, the Borrower or any of their respective subsidiaries, Affiliates or stockholders or any other person or entity for any special, indirect, consequential or punitive damages, which may be alleged as a result of the Facilities or the Transactions. The provisions of this Section 9.05 shall remain operative and in full force and effect regardless of the expiration of the term of this Agreement, the consummation of the transactions contemplated hereby, the repayment of any of the Obligations, the invalidity or unenforceability of any term or provision of this Agreement or any other Loan Document, or any investigation made by or on behalf of the Administrative Agent, any Co-Lead Arranger, any L/C Issuer or any Lender. All amounts due under this Section 9.05 shall be payable on written demand therefor accompanied by reasonable documentation with respect to any reimbursement, indemnification or other amount requested.

(c) Except as expressly provided in Section 9.05(a) with respect to Other Taxes, which shall not be duplicative of any amounts paid pursuant to Section 2.17, this

Section 9.05 shall not apply to Taxes, except taxes that represent damages or losses resulting from a non-Tax claim.

(d) To the fullest extent permitted by applicable law, Holdings and the Borrower shall not assert, and hereby waive, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof. No Indemnitee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby.

(e) The agreements in this Section 9.05 shall survive the resignation of the Administrative Agent, any L/C Issuer, the replacement of any Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all the other Obligations and the termination of this Agreement.

SECTION 9.06 Right of Set-off. If an Event of Default shall have occurred and be continuing, each Lender and each L/C Issuer is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by such Lender or such L/C Issuer to or for the credit or the account of Holdings (prior to a Borrower Qualified IPO), the Borrower or any Subsidiary against any of and all the obligations of Holdings (prior to a Borrower Qualified IPO) or the Borrower now or hereafter existing under this Agreement or any other Loan Document held by such Lender or such L/C Issuer, irrespective of whether or not such Lender or such L/C Issuer shall have made any demand under this Agreement or such other Loan Document and although the obligations may be unmatured. The rights of each Lender and each L/C Issuer under this Section 9.06 are in addition to other rights and remedies (including other rights of set-off) that such Lender or such L/C Issuer may have.

SECTION 9.07 Applicable Law. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (OTHER THAN AS EXPRESSLY SET FORTH IN OTHER LOAN DOCUMENTS) SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK.

SECTION 9.08 Waivers; Amendment.

(a) No failure or delay of the Administrative Agent, any L/C Issuer or any Lender in exercising any right or power hereunder or under any Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent, each L/C Issuer and the Lenders hereunder and under the other

Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or any other Loan Document or consent to any departure by Holdings (prior to a Borrower Qualified IPO), the Borrower or any other Loan Party therefrom shall in any event be effective unless the same shall be permitted by clause (b) below, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice or demand on Holdings, the Borrower or any other Loan Party in any case shall entitle such person to any other or further notice or demand in similar or other circumstances.

(b) Neither this Agreement nor any other Loan Document nor any provision hereof or thereof may be waived, amended or modified except (x) as provided in Section 2.21, (y) in the case of this Agreement, pursuant to an agreement or agreements in writing entered into by Holdings (prior to a Borrower Qualified IPO), the Borrower and the Administrative Agent (and consented to by the Required Lenders), and (z) in the case of any other Loan Document, pursuant to an agreement or agreements in writing entered into by each party thereto and consented to by the Required Lenders; provided, however, that no such agreement shall:

(i) decrease or forgive the principal amount of, or extend the final maturity of, or decrease the rate of interest on, any Loan or any L/C Obligation, or extend the stated expiration of any Letter of Credit beyond the Revolving Facility Maturity Date, without the prior written consent of each Lender directly adversely affected thereby; provided, that any amendment to the financial covenant definitions in this Agreement shall not constitute a reduction in the rate of interest for purposes of this clause (i),

(ii) increase or extend the Commitment of any Lender or decrease the Commitment Fees or L/C Participation Fees or other fees of any Lender without the prior written consent of such Lender (it being understood that waivers or modifications of conditions precedent, covenants, Defaults or Events of Default shall not constitute an increase of the Commitments of any Lender),

(iii) extend or waive any Term Loan Installment Date or reduce the amount due on any Term Loan Installment Date or extend any date on which payment of interest on any Loan or any L/C Obligation or any Fees is due, without the prior written consent of each Lender adversely affected thereby,

(iv) amend the provisions of Section 5.02 of the Collateral Agreement, or any analogous provision of any other Security Document, in a manner that would by its terms alter the pro rata sharing of payments required thereby, without the prior written consent of each Lender adversely affected thereby,

(v) amend or modify the provisions of this Section 9.08 or the definition of the terms "Required Lenders," "Majority Lenders" or any other provision hereof specifying the number or percentage of Lenders required to waive, amend or modify any rights hereunder or make any determination or grant any consent hereunder, without the prior written consent of each Lender adversely affected thereby (it being understood that, with the consent of the

Required Lenders, additional extensions of credit pursuant to this Agreement may be included in the determination of the Required Lenders on substantially the same basis as the Loans and Commitments are included on the Closing Date),

(vi) release all or substantially all the Collateral or release all or substantially all of the value of the pledges by the Subsidiary Loan Parties under the Collateral Agreement, unless, in each case, to the extent sold or otherwise disposed of in a transaction permitted by this Agreement or the other Loan Documents, without the prior written consent of each Lender;

(vii) effect any waiver, amendment or modification that by its terms adversely affects the rights in respect of payments or collateral of Lenders participating in any Facility differently from those of Lender participating in another Facility, without the consent of the Majority Lenders participating in the adversely affected Facility (it being agreed that the Required Lenders may waive, in whole or in part, any prepayment required by Section 2.11 so long as the application of any prepayment still required to be made is not changed);

provided, further, that no such amendment shall amend, modify or otherwise affect the rights or duties of the Administrative Agent, Swingline Lender or an L/C Issuer hereunder without the prior written consent of the Administrative Agent, Swingline Lender or such L/C Issuer acting as such at the effective date of such amendment, as applicable. Each Lender shall be bound by any waiver, amendment or modification authorized by this Section 9.08 and any consent by any Lender pursuant to this Section 9.08 shall bind any successor or assignee of such Lender.

(c) Without the consent of any Lender or L/C Issuer, the Loan Parties and the Administrative Agent or Collateral Agent may (in their respective sole discretion, or shall, to the extent required by any Loan Document) enter into any amendment, modification or waiver of any Loan Document, or enter into any new agreement or instrument, to effect the granting, perfection, protection, expansion or enhancement of any security interest in any Collateral or additional property to become Collateral for the benefit of the Secured Parties, or as required by local law to give effect to, or protect any security interest for the benefit of the Secured Parties, in any property or so that the security interests therein comply with applicable law or this Agreement.

(d) Notwithstanding the foregoing, this Agreement may be amended (or amended and restated) with the written consent of the Required Lenders, the Administrative Agent, Holdings (prior to a Borrower Qualified IPO) and the Borrower (a) to add one or more additional credit facilities to this Agreement and to permit the extensions of credit from time to time outstanding thereunder and the accrued interest and fees in respect thereof to share ratably in the benefits of this Agreement and the other Loan Documents with the Term Loans and the Revolving Facility Loans and the accrued interest and fees in respect thereof and (b) to include appropriately the Lenders holding such credit facilities in any determination of the Required Lenders.

(e) Notwithstanding the foregoing, technical and conforming modifications to the Loan Documents may be made with the consent of the Borrower and the Administrative Agent to the extent necessary to integrate any Incremental Term Loan Commitments or

Incremental Revolving Facility Commitments on substantially the same basis as the Term Loans or Revolving Facility Loans, as applicable.

SECTION 9.09 Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the applicable interest rate, together with all fees and charges that are treated as interest under applicable law (collectively, the "Charges"), as provided for herein or in any other document executed in connection herewith, or otherwise contracted for, charged, received, taken or reserved by any Lender or any L/C Issuer, shall exceed the maximum lawful rate (the "Maximum Rate") that may be contracted for, charged, taken, received or reserved by such Lender in accordance with applicable law, the rate of interest payable hereunder, together with all Charges payable to such Lender or such L/C Issuer, shall be limited to the Maximum Rate; provided, that such excess amount shall be paid to such Lender or such L/C Issuer on subsequent payment dates to the extent not exceeding the legal limitation.

SECTION 9.10 Entire Agreement. This Agreement, the other Loan Documents and the agreements regarding certain Fees referred to herein constitute the entire contract between the parties relative to the subject matter hereof. Any previous agreement among or representations from the parties or their Affiliates with respect to the subject matter hereof is superseded by this Agreement and the other Loan Documents. Notwithstanding the foregoing, the Fee Letter shall survive the execution and delivery of this Agreement and remain in full force and effect. Nothing in this Agreement or in the other Loan Documents, expressed or implied, is intended to confer upon any party other than the parties hereto and thereto any rights, remedies, obligations or liabilities under or by reason of this Agreement or the other Loan Documents.

SECTION 9.11 WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS. EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS, AS APPLICABLE, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 9.11.

SECTION 9.12 Severability. In the event any one or more of the provisions contained in this Agreement or in any other Loan Document should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby. The parties shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

SECTION 9.13 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall constitute an original but all of which, when taken together, shall constitute but one contract, and shall become effective as provided in Section 9.03. Delivery of an executed counterpart to this Agreement by facsimile transmission (or other electronic transmission pursuant to procedures approved by the Administrative Agent) shall be as effective as delivery of a manually signed original.

SECTION 9.14 Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and are not to affect the construction of, or to be taken into consideration in interpreting, this Agreement.

SECTION 9.15 Jurisdiction; Consent to Service of Process.

(a) Each of the parties hereto hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of any New York State court or federal court of the United States of America sitting in New York City, and any appellate court from any thereof (collectively, "New York Courts"), in any action or proceeding arising out of or relating to this Agreement or the other Loan Documents, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement shall affect any right that any party may otherwise have to bring any action or proceeding relating to this Agreement or any of the other Loan Documents in the courts of any jurisdiction, except that each of the Loan Parties agrees that (a) it will not bring any such action or proceeding in any court other than New York Courts (it being acknowledged and agreed by the parties hereto that any other forum would be inconvenient and inappropriate in view of the fact that more of the Lenders who would be affected by any such action or proceeding have contacts with the State of New York than any other jurisdiction), and (b) in any such action or proceeding brought against any Loan Party in any other court, it will not assert any cross-claim, counterclaim or setoff, or seek any other affirmative relief, except to the extent that the failure to assert the same will preclude such Loan Party from asserting or seeking the same in the New York Courts.

(b) Each of the parties hereto hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or the other Loan Documents in any New York State or federal court. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(c) Each party hereto irrevocably consents to service of process in the manner provided for notices in Section 9.01. Nothing in this Agreement will affect the right of any party hereto to serve process in any other manner permitted by applicable law.

SECTION 9.16 Confidentiality. Each of the Lenders, each L/C Issuer and each of the Agents agrees that it shall maintain in confidence any information relating to the Company, any Parent Entity, Holdings, the Borrower and any Subsidiary furnished to it by or on behalf of the Company, any Parent Entity, Holdings, the Borrower or any Subsidiary (other than information that (a) has become available to the public other than as a result of a disclosure by such party in breach of this Section 9.16, (b) has been independently developed by such Lender, such L/C Issuer or such Agent without violating this Section 9.16 or (c) was or becomes available to such Lender, such L/C Issuer or such Agent from a third party which, to such person's knowledge, had not breached an obligation of confidentiality to the Company, any Parent Entity, Holdings, the Borrower or any other Loan Party) and shall not reveal the same other than to its affiliates, directors, trustees, officers, employees and advisors with a need to know or to any person that approves or administers the Loans on behalf of such Lender (so long as each such person shall have been instructed to keep the same confidential), except: (A) to the extent necessary to comply with law or any legal process or the requirements of any Governmental Authority, the National Association of Insurance Commissioners or of any securities exchange on which securities of the disclosing party or any Affiliate of the disclosing party are listed or traded, (B) as part of normal reporting or review procedures to, or examinations by, Governmental Authorities or self regulatory authorities, including the National Association of Insurance Commissioners or the National Association of Securities Dealers, Inc., (C) in order to enforce its rights under any Loan Document in a legal proceeding, (D) to any pledgee under Section 9.04(e) or any other prospective assignee of, or prospective Participant in, any of its rights under this Agreement (so long as such person shall have been instructed to keep the same confidential in accordance with this Section 9.16 or terms substantially similar to this Section) and (E) to any direct or indirect contractual counterparty in Swap Agreements or such contractual counterparty's professional advisor (so long as such contractual counterparty or professional advisor to such contractual counterparty agrees to be bound by the provisions of this Section 9.16 or terms substantially similar to this Section).

SECTION 9.17 Platform; Borrower Materials. The Borrower hereby acknowledges that (a) the Administrative Agent and/or the Co-Lead Arrangers will make available to the Lenders and the L/C Issuer materials and/or information provided by or on behalf of the Borrower hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on IntraLinks or another similar electronic system (the "Platform"), and (b) certain of the Lenders may be "public-side" Lenders (i.e., Lenders that do not wish to receive material non-public information with respect to the Borrower or its securities) (each, a "Public Lender"). The Borrower hereby agrees that it will use commercially reasonable efforts to identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that (i) all such Borrower Materials shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof, (ii) by marking Borrower Materials "PUBLIC," the Borrower shall be deemed to have authorized the Administrative Agent, the Co-Lead Arrangers, the L/C Issuer and the Lenders to treat such Borrower Materials as either publicly available information or not material information

(although it may be sensitive and proprietary) with respect to the Borrower or its securities for purposes of United States Federal and state securities laws, (iii) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Investor;" and (iv) the Administrative Agent and the Co-Lead Arrangers shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Investor."

THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (collectively, the "Agent Parties") have any liability to the Borrower, any Lender, the L/C Issuer or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Borrower's or the Administrative Agent's transmission of Borrower Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Agent Party; provided, however, that in no event shall any Agent Party have any liability to the Borrower, any Lender, the L/C Issuer or any other person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

SECTION 9.18 Release of Liens, Guarantees and Pledges. In the event that any Loan Party conveys, sells, leases, assigns, transfers or otherwise disposes of all or any portion of any Equity Interests or assets to a person that is not (and is not required to become) a Loan Party in a transaction not prohibited by Section 6.05 (including dispositions of assets in connection with the Post-Closing CMBS Transaction and the contribution of property to a Qualified Non-Recourse Subsidiary pursuant to Section 6.04(gg)), any Liens created by any Loan Document in respect of such Equity Interests or assets shall be automatically released (provided that, for the avoidance of doubt, with respect to any disposal consisting of an operating lease or license, the underlying property retained by such Loan Party will not be so released) and the Administrative Agent and Collateral Agent shall promptly (and the Lenders hereby authorize the Administrative Agent and Collateral Agent to) take such action and execute any such documents as may be reasonably requested by Holdings or the Borrower and at the Borrower's expense in connection with the release of any Liens created by any Loan Document in respect of such Equity Interests or assets, and, in the case of a disposition of the Equity Interests of any Subsidiary Loan Party in a transaction not prohibited by Section 6.05 (including through merger, consolidation, amalgamation or otherwise and including the disposition of any Subsidiary in connection the Post-Closing CMBS Transaction) and as a result of which such Subsidiary Loan Party would cease to be a Subsidiary, such Subsidiary Loan Party's obligations under the Loan

Documents shall be automatically terminated and the Administrative Agent and Collateral Agent shall promptly (and the Lenders hereby authorize the Administrative Agent and Collateral Agent to) take such action and execute any such documents as may be reasonably requested by Holdings or the Borrower to terminate such Subsidiary Loan Party's obligations under the Loan Documents. In addition, the Administrative Agent agrees to take such actions as are reasonably requested by Holdings or the Borrower and at the Borrower's expense to terminate the Liens and security interests created by the Loan Documents when all the Obligations (other than contingent indemnification Obligations and expense reimbursement claims to the extent no claim therefor has been made) are paid in full and all Letters of Credit and Commitments are terminated. Without limiting the foregoing, upon the consummation of a Borrower Qualified IPO, at the sole election of Holdings, Holdings shall be released from its guarantee pursuant to the Guaranty and Pledge Agreement, and/or shall cease to be a Loan Party, and/or any Liens created by any Loan Documents on any assets or Equity Interests owned by Holdings shall be automatically released and the Administrative Agent shall promptly (and the Lenders hereby authorize the Administrative Agent to) take such action and execute any such documents as may be reasonably requested by Holdings or the Borrower to evidence the foregoing.

SECTION 9.19 Judgment Currency. If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder or any other Loan Document in one currency into another currency, the rate of exchange used shall be that at which in accordance with normal banking procedures the Administrative Agent could purchase the first currency with such other currency on the Business Day preceding that on which final judgment is given. The obligation of the Borrower in respect of any such sum due from it to the Administrative Agent or the Lenders hereunder or under the other Loan Documents shall, notwithstanding any judgment in a currency (the "Judgment Currency") other than that in which such sum is denominated in accordance with the applicable provisions of this Agreement (the "Agreement Currency"), be discharged only to the extent that on the Business Day following receipt by the Administrative Agent of any sum adjudged to be so due in the Judgment Currency, the Administrative Agent may in accordance with normal banking procedures purchase the Agreement Currency with the Judgment Currency. If the amount of the Agreement Currency so purchased is less than the sum originally due to the Administrative Agent from the Borrower in the Agreement Currency, such Borrower agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Administrative Agent or the person to whom such obligation was owing against such loss. If the amount of the Agreement Currency so purchased is greater than the sum originally due to the Administrative Agent in such currency, the Administrative Agent agrees to return the amount of any excess to such Borrower (or to any other person who may be entitled thereto under applicable law).

SECTION 9.20 USA PATRIOT Act Notice. Each Lender that is subject to the USA PATRIOT Act and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the USA Patriot Act, it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify each Loan Party in accordance with the USA PATRIOT Act.

**SECTION 9.21 No Advisory or Fiduciary Responsibility.** In connection with all aspects of each transaction contemplated hereby, Holdings and the Borrower acknowledge and agree that: (i) the credit facilities provided for hereunder and any related arranging or other services in connection therewith (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document) are an arm's-length commercial transaction between the Borrower, the other Loan Parties and their respective Affiliates, on the one hand, and the Agents, the Co-Lead Arrangers and the Lenders, on the other hand, and the Borrower and the other Loan Parties are capable of evaluating and understanding and understand and accept the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents (including any amendment, waiver or other modification hereof or thereof); (ii) in connection with the process leading to such transaction, each Agent, each Co-Lead Arranger and each Lender is and has been acting solely as a principal and is not the financial advisor, agent or fiduciary, for any of the Borrower, any Loan Party or any of their respective Affiliates, stockholders, creditors or employees or any other person; (iii) none of the Agents, any Co-Lead Arranger or any Lender has assumed or will assume an advisory, agency or fiduciary responsibility in favor of any Borrower or any other Loan Party with respect to any of the transactions contemplated hereby or the process leading thereto, including with respect to any amendment, waiver or other modification hereof or of any other Loan Document (irrespective of whether any Agent, any Co-Lead Arranger or any Lender has advised or is currently advising the Borrower or any other Loan Party or their respective Affiliates on other matters) and none of the Agents, any Co-Lead Arranger or any Lender has any obligation to any of the Borrower, the other Loan Parties or their respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; (iv) the Agents, the Co-Lead Arrangers, the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower and the other Loan Parties and their respective Affiliates, and none of the Agents, any Co-Lead Arranger or any Lender has any obligation to disclose any of such interests by virtue of any advisory, agency or fiduciary relationship; and (v) the Agents, the Co-Lead Arrangers and the Lenders have not provided and will not provide any legal, accounting, regulatory or tax advice with respect to any of the transactions contemplated hereby (including any amendment, waiver or other modification hereof or of any other Loan Document) and the Borrower and the other Loan Parties have consulted their own legal, accounting, regulatory and tax advisors to the extent they deemed appropriate. Holdings and the Borrower each hereby waives and releases, to the fullest extent permitted by law, any claims that it may have against the Agents, the Co-Lead Arrangers and the Lenders with respect to any breach or alleged breach of agency or fiduciary duty.

**SECTION 9.22 Application of Gaming Laws.**

(a) This Agreement and the other Loan Documents are subject to Gaming Laws. Without limiting the foregoing, the Lenders, Agents and Secured Parties acknowledge that (i) they are subject to the jurisdiction of the Gaming Authorities and Liquor Authorities, in their discretion, for licensing, qualification or findings of suitability or to file or provide other information, and (ii) all rights, remedies and powers in or under this Agreement and the other Loan Documents, including with respect to the Collateral, the Mortgaged Properties and the ownership and operation of facilities are subject to the jurisdiction of the Gaming Authorities

and Liquor Authorities, and may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of the Gaming Laws and Liquor Laws and only to the extent that required approvals (including prior approvals) are obtained from the relevant Gaming Authorities and Liquor Authorities.

(b) Lenders, Agents and Secured Parties agree to cooperate with all Gaming Authorities and Liquor Authorities in connection with the provision in a timely manner of such documents or other information as may be requested by such Gaming Authorities and Liquor Authorities relating to the Loan or Loan Documents.

(c) Lenders acknowledge and agree that if the Borrower receives a notice from any applicable Gaming Authority that any Lender is a disqualified holder (and such Lender is notified by the Borrower in writing of such disqualification), the Borrower shall, following any available appeal of such determination by such Gaming Authority (unless the rules of the applicable Gaming Authority do not permit such Lender to retain its Loans or Commitments pending appeal of such determination), have the right to (i) cause such disqualified holder to transfer and assign, without recourse all of its interests, rights and obligations in its Loans and Commitments or (ii) in the event that (A) the Borrower is unable to assign such Loan after using its best efforts to cause such an assignment and (B) no Default or Event of Default has occurred and is continuing, prepay such disqualified holder's Loan. Notice to such disqualified holder shall be given ten days prior to the required date of assignment or prepayment, as the case may be, and shall be accompanied by evidence demonstrating that such transfer or prepayment is required pursuant to Gaming Laws. If reasonably requested by any disqualified holder, the Borrower will use commercially reasonable efforts to cooperate with any such holder that is seeking to appeal such determination and to afford such holder an opportunity to participate in any proceedings relating thereto. Notwithstanding anything herein to the contrary, any prepayment of a Loan shall be at a price that, unless otherwise directed by a Gaming Authority, shall be equal to the sum of the principal amount of such Loan and interest to the date such Lender or holder became a disqualified holder (plus any fees and other amounts accrued for the account of such disqualified holder to the date such Lender or holder became a disqualified holder).

(d) If during the existence of an Event of Default hereunder or any of the other Loan Documents it shall become necessary or, in the opinion of the Administrative Agent, advisable for an agent, supervisor, receiver or other representative of the Lenders to become licensed or found qualified under any Gaming Law as a condition to receiving the benefit of any Collateral encumbered by the Loan Documents or to otherwise enforce the rights of the Agents, Secured Parties and the Lenders under the Loan Documents, the Borrower hereby agrees to consent to the application for such license or qualification and to execute such further documents as may be required in connection with the evidencing of such consent.

SECTION 9.23 Vessels and Admiralty Related Matters. Notwithstanding anything set forth in this Agreement, the Collateral Agreement, the Mortgages, the Ship Mortgages or any other Loan Document, the Agents, the Lenders and the other Secured Parties acknowledge the uncertain nature in which a security interest may be taken in any Vessel or any

improvements to Real Property or related assets which are used in connection with any dockside, riverboat, or water-based venue that are intended to be Collateral hereunder (collectively, "Vessel Related Collateral") and in the enforceability of any security interest in Vessel Related Collateral under the Ship Mortgage Act, the real property laws of any applicable jurisdiction, the Uniform Commercial Code, any and all applicable case law and any other applicable laws (the "Vessel Applicable Laws"). In order to grant the Collateral Agent a Lien for the benefit of the Secured Parties in all Vessel Related Collateral to the fullest extent permitted by applicable law, the Borrower and the Subsidiary Loan Parties have agreed to grant Liens and security interests in the Vessel Related Collateral to the Collateral Agent for the benefit of the Secured Parties under various types of Security Documents, including the Mortgages, the Collateral Agreement and the Ship Mortgages, notwithstanding such uncertainty. Accordingly, the Agents, the Lenders and the other Secured Parties acknowledge and agree that, notwithstanding any representations, warranties, covenants, further assurances, events of default or any other provisions of this Agreement, the Collateral Agreement, the Mortgages, the Ship Mortgages or any other Loan Document, any Loan Document that is unenforceable with respect to any Vessel Related Collateral, any element of the Collateral Requirement relating to the creation or perfection of a Lien or security interest that is not satisfied with respect to Vessel Related Collateral, or any failure of any Vessel Related Collateral to be secured by a Lien or security interest under any Loan Document, in each case solely as a result of Vessel Applicable Laws relating to the nature or circumstances in which a security interest may be taken in any Vessel Related Collateral and the enforceability thereof (or the failure of the Borrower or any Loan Party to take any action that is not possible under such Vessel Applicable Laws) shall not result in a breach of any such representations, warranties, covenants or further assurances or result in any Event of Default.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first written above.

HAMLET MERGER INC.

By: /s/ Anthony Civale

Name: Anthony Civale

Title: Vice President

HARRAH'S OPERATING COMPANY, INC.

By: /s/ Jonathan S. Halkyard

Name: Jonathan S. Halkyard

Title: Senior Vice President CFO & Treasurer

GUARANTY AND PLEDGE AGREEMENT

GUARANTY AND PLEDGE AGREEMENT dated as of January 28, 2008 made by HAMLET MERGER INC., a Delaware corporation (to be merged on the Closing Date with and into HARRAH'S ENTERTAINMENT, INC., "Holdings"), in favor of BANK OF AMERICA, N.A., as administrative agent and collateral agent (in such capacity, the "Agent") for the lenders (the "Lenders") parties to the Credit Agreement, dated as of January 28, 2008 (as amended, restated, supplemented, waived or otherwise modified from time to time, the "Credit Agreement"), among Holdings, Harrah's Operating Company, Inc. (the "Borrower"), the Lenders party thereto from time to time, the Agent, and the other parties named therein.

WITNESSETH:

WHEREAS, pursuant to the Credit Agreement, the Lenders have severally agreed to make loans to, and the L/C Issuers have agreed to issue certain letters of credit for the account of, the Borrower upon the terms and subject to the conditions set forth therein; and

WHEREAS, following the consummation of the Merger, Holdings is the legal and beneficial owner of the shares of Pledged Equity (as hereinafter defined) issued by the Borrower;

WHEREAS, it is a condition precedent to the obligation of the Lenders to make their respective loans to, and the L/C Issuers to issue certain letters of credit for the account of, the Borrower under the Credit Agreement that Holdings shall have executed and delivered this Agreement to the Agent for the ratable benefit of the Secured Parties;

NOW, THEREFORE, in consideration of the premises and to induce the Agent and the Lenders to enter into the Credit Agreement and to induce the Lenders to make their respective loans to, and the L/C Issuers to issue certain letters of credit for the account of, the Borrower under the Credit Agreement, Holdings hereby agrees with the Agent, for the ratable benefit of the Secured Parties, as follows:

1. Defined Terms. Unless otherwise defined herein, terms that are defined in the Credit Agreement and used herein are so used as so defined, and the following terms shall have the following meanings:

"Agreement": this Guaranty and Pledge Agreement, as amended, restated, supplemented, waived or otherwise modified from time to time.

"Collateral": the Pledged Equity and all Proceeds thereof.

"New York UCC": the Uniform Commercial Code from time to time in effect in the State of New York.

"Obligations": as defined in the Collateral Agreement.

"Pledged Equity": all of the Equity Interests of the Borrower listed on Schedule I hereto, together with all certificates, options or rights (including any additional Equity Interests

of the Borrower) of any nature whatsoever that may be issued or granted by the Borrower to Holdings while this Agreement is in effect.

“Proceeds”: all “proceeds” as such term is defined in Section 9-102(a)(64) of the New York UCC on the date hereof and, in any event, shall include, without limitation, all dividends or other income from the Pledged Equity, and any and all collections on the foregoing or distributions with respect to the foregoing.

“Requirement of Law”: means, with respect to any person, the common law and all federal, state, local and foreign laws, rules and regulations, orders, judgments, decrees and other legal requirements or determinations (including, without limitation, any Gaming Law) of any Governmental Authority or arbitrator, applicable to or binding upon such person or any of its property or which such Person or any of its property is subject.

2. Guarantee. Holdings unconditionally guarantees to the Agent, as a primary obligor and not merely as a surety, the due and punctual payment and performance of the Obligations for the benefit of the Secured Parties. Holdings further agrees that the Obligations may be extended or renewed, in whole or in part, without notice to or further assent from it, and that it will remain bound upon its guarantee notwithstanding any extension or renewal of any Obligation. Holdings waives presentment to, demand of payment from and protest to the Borrower or any other Loan Party of any of the Obligations, and also waives notice of acceptance of its guarantee and notice of protest for nonpayment.

3. Guarantee of Payment. Holdings further agrees that its guarantee hereunder constitutes a guarantee of payment when due and not of collection, and waives any right to require that any resort be had by the Agent or any other Secured Party to any security held for the payment of the Obligations or to any balance of any deposit account or credit on the books of the Agent or any other Secured Party in favor of the Borrower or any other person.

4. No Limitations, Etc. (a) Except for termination or release of Holdings’ obligations hereunder as expressly provided for in Section 26, the obligations of Holdings hereunder shall not be subject to any reduction, limitation, impairment or termination for any reason, including any claim of waiver, release, surrender, alteration or compromise, and shall not be subject to any defense or setoff, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality or unenforceability of the Obligations or otherwise (other than defense of payment or performance). Without limiting the generality of the foregoing, the obligations of Holdings hereunder shall not be discharged or impaired or otherwise affected by:

(i) the failure of the Agent or any other Secured Party to assert any claim or demand or to exercise or enforce any right or remedy under the provisions of any Loan Document or otherwise;

(ii) any rescission, waiver, amendment or modification of, or any release from any of the terms or provisions of, any Loan Document or any other agreement;

(iii) the failure to perfect any security interest in, or the exchange, substitution, release or any impairment of, any security held by the Agent or any other Secured Party for the Obligations;

- (iv) any default, failure or delay, willful or otherwise, in the performance of the Obligations;
- (v) any other act or omission that may or might in any manner or to any extent vary the risk of Holdings or otherwise operate as a discharge of Holdings as a matter of law or equity (other than the payment in full in cash of all the Obligations);
- (vi) any illegality, lack of validity or enforceability of any Obligation;
- (vii) any change in the corporate existence, structure or ownership of the Borrower, or any insolvency, bankruptcy, reorganization or other similar proceeding affecting the Borrower or its assets or any resulting release or discharge of any Obligation (other than the payment in full in cash of all the Obligations);
- (viii) the existence of any claim, set-off or other rights that Holdings may have at any time against the Borrower, the Agent, or any other corporation or person, whether in connection herewith or any unrelated transactions, provided that nothing herein will prevent the assertion of any such claim by separate suit or compulsory counterclaim; and
- (ix) and any other circumstance (including without limitation, any statute of limitations) or any existence of or reliance on any representation by the Agent that might otherwise constitute a defense to, or a legal or equitable discharge of, the Borrower or Holdings or any other guarantor or surety.

Holdings expressly authorizes the Secured Parties to take and hold security for the payment and performance of the Obligations, to exchange, waive or release any or all such security (with or without consideration), to enforce or apply such security and direct the order and manner of any sale thereof in their sole discretion or to release or substitute any one or more other guarantors or obligors upon or in respect of the Obligations, all without affecting the obligations of Holdings hereunder.

(b) To the fullest extent permitted by applicable law, Holdings waives any defense based on or arising out of any defense of any other Loan Party or the unenforceability of the Obligations or any part thereof from any cause, or the cessation from any cause of the liability of any other Loan Party, other than the payment in full in cash or immediately available funds of all the Obligations (other than contingent or unliquidated obligations or liabilities). The Agent and the other Secured Parties may, at their election, foreclose on any security held by one or more of them by one or more judicial or nonjudicial sales, accept an assignment of any such security in lieu of foreclosure, compromise or adjust any part of the Obligations, make any other accommodation with any other Loan Party or exercise any other right or remedy available to them against any other Loan Party, without affecting or impairing in any way the liability of Holdings hereunder except to the extent the Obligations (other than contingent or unliquidated obligations or liabilities) have been paid in full in cash or immediately available funds. To the fullest extent permitted by applicable law, Holdings waives any defense arising out of any such election even though such election operates, pursuant to applicable law, to impair or to extinguish any right of reimbursement or subrogation or other right or remedy of Holdings against any other Loan Party, as the case may be, or any security.

5. Reinstatement. Holdings agrees that its guarantee hereunder shall continue to be effective or be reinstated, as the case may be, if at any time payment, or any part thereof, of any Obligation is rescinded or must otherwise be restored by the Agent or any other Secured Party upon the bankruptcy or reorganization of the Borrower, any other Loan Party or otherwise.

6. Agreement To Pay; Indemnification. In furtherance of the foregoing and not in limitation of any other right that the Agent or any other Secured Party has at law or in equity against Holdings by virtue hereof, upon the failure of the Borrower to pay any Obligation when and as the same shall become due, whether at maturity, by acceleration, after notice of prepayment or otherwise, Holdings hereby promises to and will forthwith pay, or cause to be paid, to the Agent for distribution to the applicable Secured Parties in cash the amount of such unpaid Obligation. Upon payment by Holdings of any sums to the Agent as provided above, the Borrower agrees that (a) the Borrower shall indemnify Holdings for the full amount of such payment and Holdings shall be subrogated to the rights of the person to whom such payment shall have been made to the extent of such payment and (b) in the event any assets of Holdings shall be sold pursuant to this Agreement or any other Security Documents to satisfy in whole or in part an Obligation of the Borrower, the Borrower shall indemnify Holdings in an amount equal to the greater of the book value or the fair market value of the assets so sold.

7. Information. Holdings assumes all responsibility for being and keeping itself informed of the financial condition and assets of the Borrower and each other Loan Party, and of all other circumstances bearing upon the risk of nonpayment of the Obligations and the nature, scope and extent of the risks that Holdings assumes and incurs hereunder, and agrees that none of the Agent or the other Secured Parties will have any duty to advise Holdings of information known to it or any of them regarding such circumstances or risks.

8. Maximum Liability. Anything herein or in any other Loan Documents to the contrary notwithstanding, the maximum liability of Holdings hereunder and under the other Loan Documents shall in no event exceed the amount which can be guaranteed by Holdings under applicable federal and state laws relating to the insolvency of debtors.

9. Pledge; Grant of Security Interest. Holdings hereby transfers and grants to the Agent, for the benefit of the Secured Parties, a security interest in all of Holdings' right, title and interest in the Collateral, as collateral security for the prompt and complete payment and performance when due (whether at the stated maturity, by acceleration or otherwise) of the Obligations.

10. Powers; Endorsements. Concurrently with the delivery to the Agent of each certificate representing Pledged Equity, Holdings shall deliver an undated stock power covering such certificate, duly executed in blank by Holdings.

11. Representations and Warranties. Holdings represents and warrants that on the Closing Date:

(a) the Pledged Equity listed on Schedule I constitutes all of the issued and outstanding Equity Interests of the Borrower issued to Holdings;

(b) all the shares of Pledged Equity have been duly and validly issued and are fully paid and nonassessable;

(c) Holdings is the record and beneficial owner of, and has good title to, the Pledged Equity listed on Schedule I to be pledged by Holdings, free of any and all Liens or options in favor of, or claims of, any other Person, except the Lien created by this Agreement; and

(d) upon delivery of any certificates representing Pledged Equity duly endorsed in blank and the completion of the filings specified on Schedule II hereto, the Lien granted pursuant to this Agreement will constitute a valid, perfected and enforceable first priority Lien on the Collateral in favor of the Agent, for the benefit of the Secured Parties, except as enforceability may be affected by bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting creditors' rights generally, general equitable principles (whether considered in a proceeding in equity or at law) and an implied covenant of good faith and fair dealing.

12. Covenants. Holdings covenants and agrees with the Agent and the Lenders, that, from and after the date of this Agreement until the date of its termination pursuant to 26(a):

(a) If Holdings shall, as a result of its ownership of the Collateral, become entitled to receive or shall receive any certificate (including, without limitation, any certificate representing a dividend or a distribution in connection with any reclassification, increase or reduction of capital or any certificate issued in connection with any reorganization), promissory note or other instrument, option or rights, whether in addition to, in substitution of, as a conversion of, or in exchange for any of the Collateral, or otherwise in respect thereof, subject to applicable Gaming Laws, Holdings shall promptly deliver the same forthwith to the Agent in the exact form received, duly indorsed by Holdings to the Agent, if required, together with an undated power or endorsement, as appropriate, covering such certificate, note or instrument duly executed in blank by Holdings, to be held by the Agent, subject to the terms hereof, as additional collateral security for the Obligations. Any sums paid upon or in respect of the Collateral upon the liquidation or dissolution of the Borrower shall be paid over to the Agent to be held by it hereunder as additional collateral security for the Obligations, and in case any distribution of capital shall be made on or in respect of the Collateral or any property shall be distributed upon or with respect to the Collateral pursuant to the recapitalization or reclassification of the capital of the Borrower or pursuant to the reorganization thereof, the property so distributed shall be delivered to the Agent to be held by it hereunder as additional collateral security for the Obligations.

(b) At any time and from time to time, upon the written request of the Agent, and at the sole expense of Holdings, Holdings will promptly and duly execute and deliver such further instruments and documents and take such further actions as the Agent may reasonably request for the purposes of obtaining or preserving the full benefits of this Agreement and of the rights and powers herein granted.

(c) Holdings agrees to pay, and to save the Agent and the Secured Parties harmless from, any and all liabilities with respect to, or resulting from any delay in paying, any and all stamp, excise, sales or other similar taxes which may be payable or determined to be payable with respect to any of the Collateral or in connection with any of the transactions contemplated by this Agreement.

13. Dividends; Voting Rights; Interest Payments. Unless an Event of Default shall have occurred and be continuing and the Agent shall have given notice to Holdings of the Agent's intent to exercise its rights pursuant to paragraph 14 below, Holdings shall be permitted to receive and retain, and to utilize free and clear of the Lien of this Agreement, all distributions made in respect of the Pledged Equity and to exercise all voting and other consensual rights and powers inuring to an owner of such Pledged Equity, provided, that such rights and powers shall not be exercised in any manner that could materially and adversely affect the rights and remedies of any of the Agent or the other Secured Parties under this Agreement, the Credit Agreement or any other Loan Document or the ability of the Secured Parties to exercise the same.

14. Rights of the Lenders and the Agent. (a) If an Event of Default shall occur and be continuing and the Agent shall give notice of its intent to exercise its rights hereunder to Holdings, subject to applicable Gaming Laws, (i) the Agent shall have the right to receive any and all distributions paid in respect of the Pledged Equity and make application thereof to the Obligations in a manner consistent with Section 15 (other than cash distributions made to Holdings pursuant to Section 6.06(b) of the Credit Agreement, which such distributions may be received and retained by Holdings), and (ii) all shares of the Pledged Equity shall be registered in the name of the Agent or its nominee, and the Agent or its nominee may thereafter exercise (A) all voting and other consensual rights and powers pertaining to such shares of the Pledged Equity at any meeting of the board of directors of the Borrower or otherwise and (B) any and all rights of conversion, exchange, subscription and any other rights, privileges or options pertaining to such shares of the Pledged Equity as if it were the absolute owner thereof (including, without limitation, the right to exchange at its discretion any and all of the Pledged Equity upon the merger, consolidation, reorganization, recapitalization or other fundamental change in the organizational structure of the Borrower, or upon the exercise by Holdings or the Agent of any right, privilege or option pertaining to such shares of the Pledged Equity, and in connection therewith, the right to deposit and deliver any and all of the Pledged Equity with any committee, depository, transfer agent, registrar or other designated agency upon such terms and conditions as it may determine), all without liability except to account for property actually received by it and except for its gross negligence or willful misconduct, but the Agent shall have no duty to Holdings to exercise any such right, privilege or option and shall not be responsible for any failure to do so or delay in so doing.

(b) The rights of the Agent and the Secured Parties hereunder shall not be conditioned or contingent upon the pursuit by the Agent or any Secured Party of any right or remedy against the Borrower or against any other Person which may be or become liable in respect of all or any part of the Obligations or against any collateral security therefor, guarantee therefor or right of set-off with respect thereto. Neither the Agent nor any Secured Party shall be liable for any failure to demand, collect or realize upon all or any part of the Collateral or for any delay in doing so, except to the extent that such failure constitutes gross negligence or willful misconduct, nor shall the Agent be under any obligation to sell or otherwise dispose of any

Collateral upon the request of Holdings or any other Person or to take any other action whatsoever with regard to the Collateral or any part thereof.

15. **Remedies.** If an Event of Default shall occur and be continuing and the Agent shall have given notice of its intent to exercise its rights hereunder to Holdings, the Agent, on behalf of the Secured Parties, may exercise, in addition to all other rights and remedies granted in this Agreement and in any other instrument or agreement securing, evidencing or relating to the Obligations, all rights and remedies of a secured party under the New York UCC or applicable law. Without limiting the generality of the foregoing, the Agent, without demand of performance or other demand, presentment, protest, advertisement or notice of any kind (except any notice required by law referred to below and any notice referred to in the preceding sentence) to or upon Holdings, the Borrower, or any other Person (all and each of which demands, defenses, advertisements and notices are hereby waived), may in such circumstances forthwith collect, receive, appropriate and realize upon the Collateral, or any part thereof, and/or may forthwith sell, assign, give option or options to purchase or otherwise dispose of and deliver the Collateral or any part thereof (or contract to do any of the foregoing), in one or more parcels at public or private sale or sales, in the over-the-counter market, at any exchange or broker's board or office of the Agent or any Secured Party or elsewhere upon such terms and conditions as it may deem advisable and at such prices as it may deem best, for cash or on credit or for future delivery without assumption of any credit risk. The Agent or any Secured Party shall have the right upon any such public sale or sales, and, to the extent permitted by law, upon any such private sale or sales, to purchase the whole or any part of the Collateral so sold, free of any right or equity of redemption in Holdings, which right or equity is hereby waived or released. The Agent shall hold any Proceeds hereunder for the benefit of the Secured Parties as collateral security for the Obligations (whether matured or unmatured), and/or the net proceeds of any such collection, recovery, receipt, appropriation, realization or sale, may then or at any time thereafter, in the sole discretion of the Agent, be applied by the Agent against the Obligations then due and owing in the following order of priority:

FIRST, to the payment of all reasonable costs and expenses incurred by the Agent in connection with such collection or sale or otherwise in connection with this Agreement, any other Loan Document or any of the Obligations, including all court costs and the reasonable fees and expenses of its agents and legal counsel, the repayment of all advances made by the Agent hereunder or under any other Loan Document on behalf of Holdings and any other reasonable costs or expenses incurred in connection with the exercise of any right or remedy hereunder or under any other Loan Document;

SECOND, to the payment of all other Obligations (the amounts so applied to be distributed pro rata among the Secured Parties in accordance with the amounts of the Obligations owed to them on the date of any such distribution); and

THIRD, to Holdings or its successors or assigns, or as a court of competent jurisdiction may otherwise direct.

To the extent permitted by applicable law, Holdings waives all claims, damages and demands it may acquire against the Agent or any Secured Party arising out of the lawful exercise by them of any rights hereunder. If any notice of a proposed sale or other disposition of Collateral shall be

required by law, such notice shall be deemed reasonable and proper if given at least 10 days before such sale or other disposition.

16. Registration Rights; Private Sales. (a) If the Agent shall determine to exercise its right to sell any or all of the Pledged Equity pursuant to paragraph 15 hereof, and if in the opinion of the Agent it is necessary or advisable to have the Pledged Equity or that portion thereof to be sold, registered under the provisions of the Securities Act of 1933, as amended (the "Securities Act"), subject to applicable Gaming Laws, Holdings will use its commercially reasonable efforts to take or to cause the Borrower to take such action and prepare, distribute and/or file such documents, as required or advisable in the reasonable opinion of counsel for the Agent to permit the public sale of such Pledged Equity.

(b) Holdings recognizes that the Agent may be unable to effect a public sale of any or all the Pledged Equity by reason of certain prohibitions contained in the Securities Act and applicable state securities laws or otherwise, and may be compelled to resort to one or more private sales thereof to a restricted group of purchasers that will be obliged to agree, among other things, to acquire such securities for their own account for investment and not with a view to the distribution or resale thereof. Holdings acknowledges and agrees that any such private sale may result in prices and other terms less favorable than if such sale were a public sale and, notwithstanding such circumstances, agrees that any such private sale shall be deemed to have been made in a commercially reasonable manner. The Agent shall be under no obligation to delay a sale of any of the Pledged Equity for the period of time necessary to permit the Borrower to register such securities for public sale under the Securities Act, or under applicable state securities laws, even if the Borrower would agree to do so.

(c) Holdings further agrees to use its commercially reasonable efforts to do or cause to be done all such other acts as may be necessary to make such sale or sales of all or any portion of the Pledged Equity pursuant to this paragraph 16 valid and binding and in compliance with any and all other applicable Requirements of Law. Holdings will bear all costs and expenses of carrying out its obligations under this paragraph 16. Holdings acknowledges that there is no adequate remedy at law for failure by it to comply with the provisions of this paragraph 16 only and that such failure would not be adequately compensable in damages and, therefore, agrees that its agreements contained in this paragraph 16 may be specifically enforced.

17. Limitation on Duties Regarding Collateral. The Agent's sole duty with respect to the custody, safekeeping and physical preservation of the Collateral in its possession, under Section 9-207 of the New York UCC or otherwise, shall be to deal with it in the same manner as the Agent deals with similar securities and property for its own account. Neither the Agent nor any Secured Party nor their respective directors, officers, employees or agents shall be liable for failure to demand, collect or realize upon any of the Collateral or for any delay in doing so (except to the extent the same constitutes gross negligence or willful misconduct) or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of Holdings or otherwise.

18. Powers Coupled with an Interest. All authorizations and agencies herein contained with respect to the Collateral are irrevocable and powers coupled with an interest.

19. Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

20. Paragraph Headings. The paragraph headings used in this Agreement are for convenience of reference only and are not to affect the construction hereof or be taken into consideration in the interpretation hereof.

21. No Waiver; Cumulative Remedies. Neither the Agent nor any Secured Party shall by any act (except by a written instrument pursuant to paragraph 22 hereof) be deemed to have waived any right or remedy hereunder. No failure to exercise, nor any delay in exercising, on the part of the Agent or any Secured Party any right, power or privilege hereunder shall operate as a waiver thereof. No single or partial exercise of any right, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. A waiver by the Agent or any Secured Party of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy which the Agent or such Secured Party would otherwise have on any future occasion. The rights and remedies herein provided are cumulative, may be exercised singly or concurrently and are not exclusive of any other rights or remedies provided by law.

22. Waivers and Amendments; Successors and Assigns; Governing Law. None of the terms or provisions of this Agreement may be amended, supplemented or otherwise modified except by a written instrument executed by Holdings and the Agent, provided that any provision of this Agreement may be waived by the Agent in a letter or agreement executed by the Agent or by telex or facsimile transmission from the Agent. This Agreement shall be binding upon the successors and assigns of Holdings and shall inure to the benefit of the Agent and the Secured Parties and their respective permitted successors and assigns. **THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.**

23. Notices. Notices by the Agent to Holdings, or the Borrower may be given to such person at its address or transmission number and in the manner as set forth in Section 9.01(a) of the Credit Agreement.

24. Irrevocable Authorization and Instruction to Borrower. Holdings hereby authorizes and instructs the Borrower to comply with any instruction received by it from the Agent in writing that (a) states that an Event of Default has occurred and is continuing and (b) is otherwise in accordance with the terms of this Agreement and the Credit Agreement, without any other or further instructions from Holdings, and Holdings agrees that the Borrower shall be fully protected in so complying.

25. Authority of Agent. Holdings acknowledges that the rights and responsibilities of the Agent under this Agreement with respect to any action taken by the Agent or the exercise or non-exercise by the Agent of any option, voting right, request, judgment or other right or remedy provided for herein or resulting or arising out of this Agreement shall, as

between the Agent and the Secured Parties, be governed by the Credit Agreement and by such other agreements with respect thereto as may exist from time to time among them, but, as between the Agent and Holdings, the Agent shall be conclusively presumed to be acting as agent for the Secured Parties with full and valid authority so to act or refrain from acting, and neither Holdings nor the Borrower shall be under any obligation, or entitlement, to make any inquiry respecting such authority.

26. Termination or Release. (a) This Agreement, the pledges and guarantees made herein, the Liens in the Collateral created hereby and all other security interests granted hereby, shall automatically terminate and/or be released all without delivery of any instrument or performance of any act by any party, and all rights to the Collateral shall revert to Holdings, as of the date when all the Obligations (as defined in the Collateral Agreement) (other than contingent or unliquidated obligations or liabilities not then due) have been paid in full in cash or immediately available funds and the Lenders have no further commitment to lend under the Credit Agreement, the Revolving Facility Credit Exposure has been reduced to zero and each L/C Issuer has no further obligations to issue Letters of Credit under the Credit Agreement; provided that, upon payment in full of the Obligations, the Agent may assume that no Obligations are outstanding unless otherwise advised in writing by the Borrower.

(b) Upon any sale or other transfer by Holdings of any Collateral that is not prohibited by the Credit Agreement, or upon the effectiveness of any written consent to the release of the security interest granted hereby in any Collateral pursuant to Section 9.08 of the Credit Agreement, the security interest in such Collateral shall be automatically released, all without delivery of any instrument or performance of any act by any party.

(c) In connection with any termination or release pursuant to paragraph (a) or (b) of this Paragraph 26, the Agent shall execute and deliver to Holdings, at Holdings's expense, all documents that Holdings shall reasonably request to evidence such termination or release (including, without limitation, UCC termination statements), and will duly assign and transfer to Holdings, such of the Pledged Equity that may be in the possession of the Agent and has not theretofore been sold or otherwise applied or released pursuant to this Agreement. Any execution and delivery of documents pursuant to this Paragraph 26 shall be without recourse to or warranty by the Agent.

27. Financing Statements. Holdings hereby irrevocably authorizes the Agent at any time and from time to time to file in any relevant jurisdiction any initial financing statements with respect to the Collateral or any part thereof and amendments thereto that contain the information required by Article 9 of the New York UCC of each applicable jurisdiction for the filing of any financing statement or amendment, including (i) whether Holdings is an organization, the type of organization and any organizational identification number issued to Holdings and (ii) a description of collateral that describes such property in any other manner as the Agent may reasonably determine is necessary or advisable to ensure the perfection of the security interest in the Collateral.

28. Covenants. (a) Holdings agrees promptly (and in any event within 10 days thereof, or such longer period of time as may be agreed by the Agent) to notify the Agent in writing of any change (i) in its legal name, (ii) in its identity or type of organization or corporate

structure, (iii) in its Federal Taxpayer Identification Number or organizational identification number or (iv) in its jurisdiction of organization. Holdings agrees promptly to provide the Agent with certified organizational documents reflecting any of the changes described in the immediately preceding sentence. Holdings agrees not to effect or permit any change referred to in the first sentence of this paragraph (a) unless all filings have been made under the Uniform Commercial Code or otherwise that are required in order for the Agent to continue at all times following such change to have a valid, legal and perfected first priority security interest in all the Collateral, for the benefit of the Secured Parties.

(b) Subject to the rights of Holdings under the Loan Documents to dispose of Collateral, Holdings shall, at its own expense, use commercially reasonable efforts to defend title to the Collateral against all persons and to defend the security interest of the Agent, for the benefit of the Secured Parties, in the Collateral and the priority thereof against any Lien that is not a Permitted Lien or a Lien permitted by Article VIA of the Credit Agreement.

(c) Holdings agrees, at its own expense, to execute, acknowledge, deliver and cause to be duly filed all such further instruments and documents and take all such actions as the Agent may from time to time reasonably request to better assure, preserve, protect and perfect the security interest and the rights and remedies created hereby, including the payment of any fees and taxes required in connection with the execution and delivery of this Agreement and the granting of the security interest and the filing of any financing statements or other documents in connection herewith or therewith.

(d) Holdings shall not make or permit to be made an assignment, pledge or hypothecation of the Collateral or shall grant any other Lien in respect of the Collateral, except as permitted by the Credit Agreement. Holdings shall not make or permit to be made any transfer of the Collateral except as permitted by the Credit Agreement. Notwithstanding the foregoing, if the Agent shall have notified Holdings that an Event of Default under clause (b), (c), (h) or (i) of Section 7.01 of the Credit Agreement shall have occurred and be continuing, and during the continuance thereof, Holdings shall not sell, convey, lease, assign, transfer or otherwise dispose of any Collateral to the extent requested or permitted by the Agent (which notice may be given by telephone if promptly confirmed in writing).

29. Compliance with Gaming Laws. Notwithstanding anything to the contrary set forth in this Agreement or any other Loan Document, the Agent, on behalf of the Secured Parties, acknowledges and agrees that:

(a) the exercise of its rights and remedies under this Agreement is subject to the mandatory provisions of the Gaming Laws;

(b) the pledge of the Pledged Equity, and any restrictions on the transfer of and agreements not to encumber the Pledged Equity or other equity securities of the Borrower, pursuant to this Agreement and any other Loan Documents, are subject to the prior approval of the Nevada and Iowa Gaming Authorities, respectively, (which approval has been obtained and is in full force and effect) and any future amendment of this Agreement will not be effective without the prior approval of such Nevada and Iowa Gaming Authorities;

(c) in the event that the Agent exercises one or more of the remedies set forth in this Agreement with respect to the Pledged Equity, including without limitation, foreclosure or transfer of any interest therein (except back to Holdings), the exercise of voting and consensual rights, and any other resort to or enforcement of the security interest in the Pledged Equity, such action will require the separate and prior approval of the Nevada and Iowa Gaming Authorities unless such licensing requirement is waived thereby;

(d) the Agent, and any custodial agent of Agent in the State of Nevada or in the State of Iowa, will be required to comply with the conditions, if any, imposed by the Nevada and Iowa Gaming Authorities, respectively, in connection with their approval of the pledge granted hereunder, including, without limitation, requirements that the Agent or its custodial agent maintain the certificates evidencing the Pledged Equity at a location in Nevada designated to the Nevada Gaming Authorities, and that the Agent or its custodial agent permit agents or employees of the Nevada Gaming Authorities to inspect such certificates upon request during normal business hours;

(e) neither the Agent nor any custodial agent of the Agent will be permitted to surrender possession of any Pledged Equity to any person other than Holdings without the prior approval of the Nevada and Iowa Gaming Authorities or as otherwise permitted by the Gaming Laws;

(f) any approval of the Nevada and Iowa Gaming Authorities of this Agreement, or any amendment hereto, does not constitute approval, either express or implied, of the Agent to take any actions provided for in this Agreement, for which separate approval by the Nevada and Iowa Gaming Authorities may be required by the Gaming Laws; and

(g) the Agent, the Secured Parties and their respective successors and assigns are subject to being called forward by the Nevada and Iowa Gaming Authorities, in their sole and absolute discretion, for licensing or a finding of suitability in order to remain entitled to the benefits of this Agreement and the other Loan Documents.

30. Limitation on Rights and Remedies of Agent and Holdings. Notwithstanding anything in this Agreement to the contrary, the Agent, on behalf of the Secured Parties, and Holdings agree that they shall comply with all applicable laws and all applicable rules and regulations of the Illinois Gaming Authority, including Illinois Gaming Laws, in connection with their exercise of rights and remedies hereunder, including, without limitation, foreclosure or transfer of any interest in the Pledge Equity (except back to Holdings) or voting (or otherwise taking control of) any interest in the Pledged Equity. As and when required, the Agent, on behalf of the Secured Parties, shall seek and obtain all approvals, licenses and consents from the Illinois Gaming Authority required in connection with the exercise of any right or remedy prior to the exercise thereof.

31. Counterparts. This Agreement may be executed in any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed signature page of this Agreement by facsimile transmission shall be effective as delivery of a manually executed counterpart hereof.

IN WITNESS WHEREOF, the undersigned has caused this Agreement to be duly executed and delivered as of the date first above written.

HAMLET MERGER INC. (to be merged on the Closing Date  
with and into HARRAH'S ENTERTAINMENT, INC.)

By: /s/ Anthony Civale  
Name: Anthony Civale  
Title: Vice President

Accepted and Agreed:  
BANK OF AMERICA, N.A.

By: /s/ Christopher Kelly Wall  
Name: Christopher Kelly Wall  
Title: Principal

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\$6,775,000,000

SENIOR UNSECURED INTERIM LOAN AGREEMENT

Dated as of January 28, 2008,

Among

HARRAH'S OPERATING COMPANY, INC.,  
as Borrower,

THE LENDERS PARTY HERETO,

CITIBANK, N.A.,  
as Administrative Agent,

DEUTSCHE BANK AG NEW YORK BRANCH,  
as Syndication Agent,

BANC OF AMERICA BRIDGE LLC,  
CREDIT SUISSE,  
CAYMAN ISLANDS BRANCH,  
JPMORGAN CHASE BANK, N.A.,  
and

MERRILL LYNCH CAPITAL CORPORATION,  
as Co-Documentation Agents,

CITIGROUP GLOBAL MARKETS INC.,  
DEUTSCHE BANK SECURITIES, INC.,  
BANC OF AMERICA SECURITIES LLC,  
CREDIT SUISSE SECURITIES (USA) LLC,  
J.P. MORGAN SECURITIES INC.

and

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED,  
as Joint Bookrunners,

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CITIGROUP GLOBAL MARKETS INC.

and

DEUTSCHE BANK SECURITIES INC.,  
as Joint Lead Arrangers

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SENIOR UNSECURED INTERIM LOAN AGREEMENT dated as of January 28, 2008 (this "Agreement"), among HARRAH'S OPERATING COMPANY, INC., a Delaware corporation (the "Borrower"), the LENDERS party hereto from time to time, CITIBANK, N.A., as administrative agent for the Lenders, DEUTSCHE BANK AG NEW YORK BRANCH, as syndication agent (in such capacity, the "Syndication Agent"), and BANC OF AMERICA BRIDGE LLC, CREDIT SUISSE, CAYMAN ISLANDS BRANCH, JPMORGAN CHASE BANK, N.A., and MERRILL LYNCH CAPITAL CORPORATION, as co-documentation agents (in such capacity, the "Documentation Agents"), CITIGROUP GLOBAL MARKETS INC., DEUTSCHE BANK SECURITIES, INC., BANC OF AMERICA SECURITIES LLC, CREDIT SUISSE SECURITIES (USA) LLC, J.P. MORGAN SECURITIES INC. and MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED, as joint bookrunners (in such capacity, the "Joint Bookrunners"), and CITIGROUP GLOBAL MARKETS INC. and DEUTSCHE BANK SECURITIES INC., as joint lead arrangers (in such capacity, the "Joint Lead Arrangers").

WHEREAS, Apollo Management VI, L.P. and other affiliated co-investment partnerships (collectively, "Apollo") and TPG Partners V, L.P. and other affiliated co-investment partnerships (collectively, "TPG") have indirectly formed Hamlet Merger Inc., a Delaware Corporation ("Merger Inc."), for the purpose of entering into that certain Agreement and Plan of Merger by and among Hamlet Holdings LLC ("Parent"), Merger Inc. and Harrah's Entertainment, Inc., a Delaware corporation (the "Company"), dated as of December 19, 2006 (as amended or supplemented as of the date hereof, the "Merger Agreement"), pursuant to which Merger Inc. will merge (the "Merger") with and into the Company, with the Company surviving as a Wholly Owned Subsidiary of Parent; and

WHEREAS, in connection with the consummation of the Merger, the Borrower has requested the Lenders to extend credit in the form of Senior Interim Loans in an aggregate principal amount of \$6,775,000,000, which shall initially consist of (a) \$5,275,000,000 in aggregate principal amount of Senior Interim Cash Pay Loans and (b) \$1,500,000,000 in aggregate principal amount of Senior Interim Toggle Loans.

NOW, THEREFORE, the Lenders are willing to extend such credit to the Borrower on the terms and subject to the conditions set forth herein. Accordingly, the parties hereto agree as follows:

## ARTICLE I Definitions

SECTION 1.01 Defined Terms. As used in this Agreement, the following terms shall have the meanings specified below:

"ABR" shall mean, for any day, a fluctuating rate per annum equal to the higher of (a) the Federal Funds Rate plus 1/2 of 1% and (b) the rate of interest in effect for such day as announced from time to time by Citibank as its "prime rate". The "prime rate" is a rate set by Citibank based upon various factors including Citibank's costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans,

which may be priced at, above, or below such announced rate. Any change in such rate announced by Citibank shall take effect at the opening of business on the day specified in the public announcement of such change.

“ABR Loan” shall mean any Loan bearing interest at a rate determined by reference to the ABR in accordance with the provisions of Article II.

“Acquired Indebtedness” shall mean, with respect to any specified Person:

(a) Indebtedness of any other Person existing at the time such other Person is merged, consolidated or amalgamated with or into or became a Restricted Subsidiary of such specified Person, and

(b) Indebtedness secured by a Lien encumbering any asset acquired by such specified Person.

“Administrative Agent” shall mean Citibank in its capacity as administrative agent under any of the Loan Documents, or any successor administrative agent.

“Administrative Agent’s Office” shall mean the Administrative Agent’s address and, as appropriate, account as set forth on Schedule 9.01 or such other address or account with as the Administrative Agent may from time to time notify to the Borrower and the Lenders.

“Administrative Questionnaire” shall mean an Administrative Questionnaire in a form supplied by the Administrative Agent.

“Affiliate” of any specified Person shall mean any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, “control” (including, with correlative meanings, the terms “controlling,” “controlled by” and “under common control with”), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise.

“Affiliate Transaction” shall have the meaning assigned to such term in Section 5.05(a).

“Agent Parties” shall have the meaning assigned to such term in Section 9.17.

“Agents” shall mean the Administrative Agent, the Syndication Agent, the Documentation Agents, the Joint Bookrunners and the Joint Lead Arrangers.

“Agreement” shall have the meaning assigned to such term in the introductory paragraph of this Agreement.

“Agreement Currency” shall have the meaning assigned to such term in Section 9.19.

“AHYDO Repayment Date” shall have the meaning assigned to such term in Section 2.11(c).

“Apollo” shall have the meaning assigned to such term in the first recital hereto.

“Applicable ABR Margin” shall mean at any date, with respect to each ABR Loan, 2.75% per annum. If the Loans have not been repaid in whole within the six-month period following the Closing Date, the Applicable ABR Margin will increase by 0.50% per annum at the end of such six-month period and shall increase by an additional 0.50% per annum at the end of each three-month period thereafter until the Rollover Date. At the Rollover Date, the Applicable ABR Margin will increase by 0.50% per annum and shall increase by an additional 0.50% per annum at the end of each three-month period thereafter until the applicable Maturity Date. Notwithstanding the foregoing, the Applicable ABR Margin shall be adjusted such that the applicable interest rate (i) in the case of Senior Cash Pay Loans, shall not be less than 9.25% at any time and shall not exceed 10.75% at any time and (ii) in the case of Senior Toggle Loans, excluding the effect of the PIK Margin, shall not be less than 9.25% at any time and shall not exceed 10.75% at any time.

“Applicable Eurocurrency Margin” shall mean at any date, with respect to each Eurocurrency Loan, 3.75% per annum. If the Loans have not been repaid in full within the six-month period following the Closing Date, the Applicable Eurocurrency Margin will increase by 0.50% per annum at the end of such six-month period and shall increase by an additional 0.50% per annum at the end of each three-month period thereafter until the Rollover Date. At the Rollover Date, the Applicable Eurocurrency Margin will increase by 0.50% per annum and shall increase by an additional 0.50% per annum at the end of each three-month period thereafter until the applicable Maturity Date. Notwithstanding the foregoing, the Applicable Eurocurrency Margin shall be adjusted such that the applicable interest rate (i) in the case of Senior Cash Pay Loans, shall not be less than 9.25% at any time and shall not exceed 10.75% at any time and (ii) in the case of Senior Toggle Loans, excluding the effect of the PIK Margin, shall not be less than 9.25% at any time and shall not exceed 10.75% at any time.

“Approved Fund” shall have the meaning assigned to such term in Section 9.04(b).

“Asset Sale” shall mean:

(a) the sale, conveyance, transfer or other disposition (whether in a single transaction or a series of related transactions) of property or assets (including by way of a Sale/Leaseback Transaction) outside the ordinary course of business of the Borrower or any Restricted Subsidiary of the Borrower (each referred to in this definition as a “disposition”) or

(b) the issuance or sale of Equity Interests (other than directors’ qualifying shares and shares issued to foreign nationals or other third parties to the extent required by applicable law) of any Restricted Subsidiary (other than to the Borrower or another Restricted Subsidiary of the Borrower) (whether in a single transaction or a series of related transactions),

in each case other than:

- (i) a disposition of Cash Equivalents or Investment Grade Securities or obsolete, damaged or worn out property or equipment in the ordinary course of business;
- (ii) the disposition of all or substantially all of the assets of the Borrower in a manner permitted pursuant to Section 5.12 or any disposition that constitutes a Change of Control;
- (iii) any Restricted Payment or Permitted Investment that is permitted to be made, and is made, under Section 5.03;
- (iv) any disposition of assets of the Borrower or any Restricted Subsidiary or issuance or sale of Equity Interests of any Restricted Subsidiary, which assets or Equity Interests so disposed or issued have an aggregate Fair Market Value (as determined in good faith by the Borrower) of less than \$50,000,000;
- (v) any disposition of property or assets, or the issuance of securities, by a Restricted Subsidiary of the Borrower to the Borrower or by the Borrower or a Restricted Subsidiary of the Borrower to a Restricted Subsidiary of the Borrower;
- (vi) any exchange of assets (including a combination of assets and Cash Equivalents) for assets related to a Similar Business of comparable or greater market value or usefulness to the business of the Borrower and its Restricted Subsidiaries as a whole, as determined in good faith by the Borrower;
- (vii) foreclosure or any similar action with respect to any property or other asset of the Borrower or any of its Restricted Subsidiaries;
- (viii) any sale of Equity Interests in, or Indebtedness or other securities of, an Unrestricted Subsidiary;
- (ix) the lease, assignment or sublease of any real or personal property in the ordinary course of business;
- (x) any sale of inventory or other assets in the ordinary course of business;
- (xi) any grant in the ordinary course of business of any license of patents, trademarks, know-how or any other intellectual property;
- (xii) in the ordinary course of business, any swap of assets, or lease, assignment or sublease of any real or personal property, in exchange for services (including in connection with any outsourcing arrangements) of comparable or

greater value or usefulness to the business of the Borrower and its Restricted Subsidiaries as a whole, as determined in good faith by the Borrower;

(xiii) a transfer of accounts receivable and related assets of the type specified in the definition of "Receivables Financing" (or a fractional undivided interest therein) by a Receivables Subsidiary in a Qualified Receivables Financing;

(xiv) any financing transaction with respect to property built or acquired by the Borrower or any Restricted Subsidiary after the Closing Date, including any Sale/Leaseback Transaction or asset securitization permitted by this Agreement;

(xv) any disposition in connection with the Post-Closing CMBS Transaction;

(xvi) dispositions in connection with Permitted Liens;

(xvii) any disposition of Capital Stock of a Restricted Subsidiary pursuant to an agreement or other obligation with or to a Person (other than the Borrower or a Restricted Subsidiary) from whom such Restricted Subsidiary was acquired or from whom such Restricted Subsidiary acquired its business and assets (having been newly formed in connection with such acquisition), made as part of such acquisition and in each case comprising all or a portion of the consideration in respect of such sale or acquisition;

(xviii) any disposition made pursuant to an Operations Management Agreement;

(xix) the sale of any property in a Sale/Leaseback Transaction within six months of the acquisition of such property;

(xx) dispositions of receivables in connection with the compromise, settlement or collection thereof in the ordinary course of business or in bankruptcy or similar proceedings and exclusive of factoring or similar arrangements; and

(xxi) any surrender or waiver of contract rights or the settlement, release, recovery on or surrender of contract, tort or other claims of any kind.

"Asset Sale Offer" shall have the meaning assigned to such term in Section 2.11(b)(ii)(B).

"Asset Sale Offer Payment Date" shall have the meaning assigned to such term in Section 2.11(b)(ii)(D)(2).

"Assignee" shall have the meaning assigned to such term in Section 9.04(b).

“Assignment and Acceptance” shall mean an assignment and acceptance entered into by a Lender and an Assignee, and accepted by the Administrative Agent and the Borrower (if required by Section 9.04), in the form of Exhibit A or such other form as shall be approved by the Administrative Agent and reasonably satisfactory to the Borrower.

“Bank Indebtedness” shall mean any and all amounts payable under or in respect of the Credit Agreement and the other Credit Agreement Documents as amended, restated, supplemented, waived, replaced, restructured, repaid, refunded, refinanced or otherwise modified from time to time (including after termination of the Credit Agreement), including principal, premium (if any), interest (including interest accruing on or after the filing of any petition in bankruptcy or for reorganization relating to the Borrower whether or not a claim for post-filing interest is allowed in such proceedings), fees, charges, expenses, reimbursement obligations, guarantees and all other amounts payable thereunder or in respect thereof.

“Board” shall mean the Board of Governors of the Federal Reserve System of the United States of America.

“Board of Directors” shall mean, as to any Person, the board of directors or managers, as applicable, of such Person (or, if such Person is a partnership, the board of directors or other governing body of the general partner of such Person) or any duly authorized committee thereof.

“Borrower” shall have the meaning assigned to such term in the introductory paragraph of this Agreement.

“Borrower Materials” shall have the meaning assigned to such term in Section 9.17(a).

“Borrowing” shall mean the borrowing of the Senior Interim Loans on the Closing Date pursuant to Section 2.01, having, in the case of Eurocurrency Loans, the same Interest Period.

“Borrowing Request” shall mean a request by the Borrower in accordance with the terms of Section 2.02 and substantially in the form of Exhibit C.

“Business Day” shall mean any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the laws of, or are in fact closed in, the state where the Administrative Agent’s Office is located and if such day relates to any interest rate settings as to a Eurocurrency Loan, means any such day on which dealings in deposits in Dollars are conducted by and between banks in the London interbank eurodollar market.

“Capital Stock” shall mean:

- (a) in the case of a corporation, corporate stock or shares;
- (b) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock;

(c) in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited); and

(d) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person.

“Capitalized Lease Obligations” shall mean at the time any determination thereof is to be made, the amount of the liability in respect of a capital lease that would at such time be required to be capitalized and reflected as a liability on a balance sheet (excluding the footnotes thereto) in accordance with GAAP.

“Capitalized Software Expenditures” shall mean, for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities) by a Person and its Restricted Subsidiaries during such period in respect of purchased software or internally developed software and software enhancements that, in conformity with GAAP, are or are required to be reflected as capitalized costs on the consolidated balance sheet of such Person and such Restricted Subsidiaries.

“Cash Equivalents” shall mean:

(a) U.S. dollars, pounds sterling, euros, the national currency of any member state in the European Union or, in the case of any Foreign Subsidiary that is a Restricted Subsidiary, such local currencies held by it from time to time in the ordinary course of business;

(b) securities issued or directly and fully guaranteed or insured by the U.S. government or any country that is a member of the European Union or any agency or instrumentality thereof in each case maturing not more than two years from the date of acquisition;

(c) certificates of deposit, time deposits and eurodollar time deposits with maturities of one year or less from the date of acquisition, bankers' acceptances, in each case with maturities not exceeding one year and overnight bank deposits, in each case with any commercial bank having capital and surplus in excess of \$250,000,000 and whose long-term debt is rated “A” or the equivalent thereof by Moody's or S&P (or reasonably equivalent ratings of another internationally recognized ratings agency);

(d) repurchase obligations for underlying securities of the types described in clauses (b) and (c) above entered into with any financial institution meeting the qualifications specified in clause (c) above;

(e) commercial paper issued by a corporation (other than an Affiliate of the Borrower) rated at least “A-1” or the equivalent thereof by Moody's or S&P (or reasonably equivalent ratings of another internationally recognized ratings agency) and in each case maturing within one year after the date of acquisition;

(f) readily marketable direct obligations issued by any state of the United States of America or any political subdivision thereof having one of the two highest rating categories obtainable from either Moody's or S&P (or reasonably equivalent ratings of another internationally recognized ratings agency) in each case with maturities not exceeding two years from the date of acquisition;

(g) Indebtedness issued by Persons (other than the Sponsors or any of their Affiliates) with a rating of "A" or higher from S&P or "A-2" or higher from Moody's (or reasonably equivalent ratings of another internationally recognized ratings agency) in each case with maturities not exceeding two years from the date of acquisition; and

(h) investment funds investing at least 95% of their assets in securities of the types described in clauses (a) through (g) above.

"Cash Interest" shall have the meaning assigned to such term in Section 2.13.

"Change of Control" shall mean the occurrence of either of the following:

(a) the sale, lease or transfer, in one or a series of related transactions, of all or substantially all the assets of the Borrower and its Subsidiaries, taken as a whole, to a Person other than any of the Permitted Holders; or

(b) the Borrower becomes aware (by way of a report or any other filing pursuant to Section 13(d) of the Exchange Act, proxy, vote, written notice or otherwise) of the acquisition by any Person or group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act, or any successor provision), including any group acting for the purpose of acquiring, holding or disposing of securities (within the meaning of Rule 13d-5(b)(1) under the Exchange Act), other than any of the Permitted Holders, in a single transaction or in a related series of transactions, by way of merger, consolidation, amalgamation or other business combination or purchase of beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act, or any successor provision), of more than 50% of the total voting power of the Voting Stock of (prior to a Qualified IPO or upon or after an Borrower IPO) the Borrower or (upon or after a Holdco Qualified IPO) the Holdco Issuer.

"Change in Law" shall mean (a) the adoption of any law, rule or regulation after the Closing Date, (b) any change in law, rule or regulation or in the interpretation or application thereof by any Governmental Authority after the Closing Date or (c) compliance by any Lender (or, for purposes of Section 2.15(b), by any Lending Office of such Lender or by such Lender's holding company, if any) with any written request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the Closing Date.

"Change of Control Offer" shall have the meaning assigned to such term in Section 5.06(a).

"Change of Control Payment" shall have the meaning assigned to such term in Section 5.06(a).

“Change of Control Payment Date” shall have the meaning assigned to such term in Section 5.06(a)(ii).

“Charges” shall have the meaning assigned to such term in Section 9.09.

“Citibank” shall mean Citibank, N.A.

“Class” when used in reference to any Loan, shall refer to whether such Loan is a Senior Cash Pay Loan or Senior Toggle Loan and, when used in reference to any Commitment, refers to whether such Commitment is a Senior Interim Cash Pay Loan Commitment or a Senior Interim Toggle Loan Commitment.

“Closing Date” shall mean January 28, 2008.

“Code” shall mean the Internal Revenue Code of 1986, as amended from time to time.

“Commitment Letter” shall mean that certain Commitment Letter dated December 19, 2006, as amended, by and among Parent and Bank of America, N.A., Banc of America Bridge LLC, Banc of America Securities LLC, Citigroup Global Markets Inc., Credit Suisse, Cayman Islands Branch, Credit Suisse Securities (USA) LLC, Deutsche Bank AG New York Branch, Deutsche Bank AG Cayman Islands Branch, Deutsche Bank Securities Inc., JPMorgan Chase Bank, N.A., J.P. Morgan Securities Inc., Merrill Lynch Capital Corporation and Merrill Lynch, Pierce, Fenner & Smith Incorporated.

“Commitments” shall mean with respect to any Lender, such Lender’s Senior Interim Cash Pay Loan Commitment and/or Senior Interim Toggle Loan Commitment.

“Company” shall have the meaning assigned to such term in the first recital hereto.

“Consolidated Depreciation and Amortization Expense” shall mean, with respect to any Person for any period, the total amount of depreciation and amortization expense, including the amortization of intangible assets, deferred financing fees and Capitalized Software Expenditures and amortization of unrecognized prior service costs and actuarial gains and losses related to pensions and other post-employment benefits, of such Person and its Restricted Subsidiaries for such period on a consolidated basis and otherwise determined in accordance with GAAP.

“Consolidated Interest Expense” shall mean, with respect to any Person for any period, the sum, without duplication, of:

(a) consolidated interest expense of such Person and its Restricted Subsidiaries for such period, to the extent such expense was deducted in computing Consolidated Net Income (including amortization of original issue discount, the interest component of Capitalized Lease Obligations, and net payments and receipts (if any) pursuant to interest rate Hedging Obligations and excluding additional interest in respect of the Senior Notes or Senior Unsecured Notes, amortization of deferred financing fees,

debt issuance costs, commissions, fees and expenses and expensing of any bridge, commitment or other financing fees); plus

(b) consolidated capitalized interest of such Person and its Restricted Subsidiaries for such period, whether paid or accrued; plus

(c) commissions, discounts, yield and other fees and charges Incurred in connection with any Receivables Financing which are payable to Persons other than the Borrower and its Restricted Subsidiaries; minus

(d) interest income for such period.

For purposes of this definition, interest on a Capitalized Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by the Borrower to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with GAAP.

“Consolidated Leverage Ratio” shall mean, with respect to any Person, at any date the ratio of (a) Indebtedness (other than Qualified Non-Recourse Debt) of such Person and its Restricted Subsidiaries as of such date of calculation (determined on a consolidated basis in accordance with GAAP) less the amount of cash and Cash Equivalents in excess of any Restricted Cash that would be stated on the balance sheet of such Person and its Restricted Subsidiaries and held by such Person and its Restricted Subsidiaries as of such date of determination to (b) EBITDA of such Person for the four full fiscal quarters for which internal financial statements are available immediately preceding such date on which such additional Indebtedness is Incurred. In the event that the Borrower or any of its Restricted Subsidiaries Incurs, repays, repurchases or redeems any Indebtedness subsequent to the commencement of the period for which the Consolidated Leverage Ratio is being calculated but prior to the event for which the calculation of the Consolidated Leverage Ratio is made (the “Consolidated Leverage Calculation Date”), then the Consolidated Leverage Ratio shall be calculated giving *pro forma* effect to such Incurrence, repayment, repurchase or redemption of Indebtedness as if the same had occurred at the beginning of the applicable four-quarter period; provided that the Borrower may elect pursuant to an Officer’s Certificate delivered to the Administrative Agent to treat all or any portion of the commitment under any Indebtedness as being Incurred at such time, in which case any subsequent Incurrence of Indebtedness under such commitment shall not be deemed, for purposes of this calculation, to be an Incurrence at such subsequent time.

For purposes of making the computation referred to above, Investments, acquisitions, dispositions, mergers, amalgamations, consolidations (including the Transactions and the Post-Closing CMBS Transaction) and discontinued operations (as determined in accordance with GAAP), in each case with respect to an operating unit of a business, and any operational changes that the Borrower or any of its Restricted Subsidiaries has determined to make and/or made during the four-quarter reference period or subsequent to such reference period and on or prior to or simultaneously with the Consolidated Leverage Calculation Date shall be calculated on a *pro forma* basis assuming that all such Investments, acquisitions, dispositions, mergers, amalgamations, consolidations (including the Transactions and the Post-Closing CMBS Transaction), discontinued operations and other operational changes (and the

change of any associated Indebtedness and the change in EBITDA resulting therefrom) had occurred on the first day of the four-quarter reference period. If since the beginning of such period any Person that subsequently became a Restricted Subsidiary or was merged with or into the Borrower or any Restricted Subsidiary since the beginning of such period shall have made any Investment, acquisition, disposition, merger, consolidation, amalgamation, discontinued operation or operational change, in each case with respect to an operating unit of a business, that would have required adjustment pursuant to this definition, then the Consolidated Leverage Ratio shall be calculated giving *pro forma* effect thereto for such period as if such Investment, acquisition, disposition, discontinued operation, merger, amalgamation, consolidation or operational change had occurred at the beginning of the applicable four-quarter period. For purposes of making the computation referred to above, with respect to each New Project that commences operations and records not less than one full fiscal quarter's operations during the four-quarter reference period, the operating results of such New Project will be annualized on a straight-line basis during such period.

For purposes of this definition, whenever *pro forma* effect is to be given to any event, the *pro forma* calculations shall be made in good faith by a responsible financial or accounting officer of the Borrower. Any such *pro forma* calculation may include adjustments appropriate, in the reasonable good faith determination of the Borrower as set forth in an Officer's Certificate, to reflect (i) operating expense reductions and other operating improvements or synergies reasonably expected to result from the applicable event (including, to the extent applicable, from the Transactions and the Post-Closing CMBS Transaction) and (ii) all adjustments of the nature used in connection with the calculation of "Adjusted EBITDA" as set forth in footnote 3 to the "Summary Pro Forma Consolidated Financial Data" under "Summary" in the Senior Unsecured Notes Offering Memorandum to the extent such adjustments, without duplication, continue to be applicable to such four-quarter period.

For purposes of this definition, any amount in a currency than U.S. dollars will be converted to U.S. dollars based on the average exchange rate for such currency for the most recent twelve month period immediately prior to the date of determination in a manner consistent with that used in calculating EBITDA for the applicable period.

"Consolidated Net Income" shall mean, with respect to any Person for any period, the aggregate of the Net Income of such Person and its Restricted Subsidiaries for such period, on a consolidated basis; provided, however, that:

(a) any net after-tax extraordinary, nonrecurring or unusual gains or losses (less all fees and expenses relating thereto) or expenses or charges, any severance expenses, relocation expenses, curtailments or modifications to pension and post-retirement employee benefit plans, any expenses related to any reconstruction, decommissioning, recommissioning or reconfiguration of fixed assets for alternate uses and fees, expenses or charges relating to facilities closing costs, acquisition integration costs, facilities opening costs, project start-up costs, business optimization costs, signing, retention or completion bonuses, expenses or charges related to any issuance of Equity Interests, Investment, acquisition, disposition, recapitalization or issuance, repayment, refinancing, amendment or modification of Indebtedness (in each case, whether or not

successful), and any fees, expenses, charges or change of control payments made under the Merger Documents or otherwise related to the Transactions or the Post-Closing CMBS Transaction, in each case, shall be excluded;

(b) effects of purchase accounting adjustments (including the effects of such adjustments pushed down to such Person and such Restricted Subsidiaries) in amounts required or permitted by GAAP, resulting from the application of purchase accounting in relation to the Transactions or any consummated acquisition or the amortization or write-off of any amounts thereof, net of taxes, shall be excluded;

(c) the Net Income for such period shall not include the cumulative effect of a change in accounting principles during such period;

(d) any net after-tax income or loss from disposed, abandoned, transferred, closed or discontinued operations and any net after-tax gains or losses on disposal of disposed, abandoned, transferred, closed or discontinued operations shall be excluded;

(e) any net after-tax gains or losses (less all fees and expenses or charges relating thereto) attributable to business dispositions or asset dispositions other than in the ordinary course of business (as determined in good faith by management of the Borrower) shall be excluded;

(f) any net after-tax gains or losses (less all fees and expenses or charges relating thereto) attributable to the early extinguishment of indebtedness, Hedging Obligations or other derivative instruments shall be excluded;

(g) the Net Income for such period of any Person that is not a Subsidiary of such Person, or is an Unrestricted Subsidiary or a Qualified Non-Recourse Subsidiary, or that is accounted for by the equity method of accounting, shall be included only to the extent of the amount of dividends or distributions or other payments paid in cash (or to the extent converted into cash) to the referent Person or a Restricted Subsidiary thereof (other than a Qualified Non-Recourse Subsidiary of such referent Person) in respect of such period;

(h) solely for the purpose of determining the amount available for Restricted Payments under clause (a) of the definition of Cumulative Credit, the Net Income for such period of any Restricted Subsidiary (other than any Guarantor) shall be excluded to the extent that the declaration or payment of dividends or similar distributions by such Restricted Subsidiary of its Net Income is not at the date of determination permitted without any prior governmental approval (which has not been obtained) or, directly or indirectly, by the operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Restricted Subsidiary or its stockholders, unless such restrictions with respect to the payment of dividends or similar distributions have been legally waived; provided that the Consolidated Net Income of such Person shall be increased by the amount of dividends or other distributions or other payments actually paid in cash (or converted into cash) by any such Restricted Subsidiary to such Person, to the extent not already included therein;

(i) an amount equal to the amount of Tax Distributions actually made to any parent or equity holder of such Person in respect of such period in accordance with Section 5.03(b)(xii) shall be included as though such amounts had been paid as income taxes directly by such Person for such period;

(j) any impairment charges or asset write-offs, in each case pursuant to GAAP, and the amortization of intangibles arising pursuant to GAAP shall be excluded;

(k) any non-cash expense realized or resulting from stock option plans, employee benefit plans or post-employment benefit plans, or grants or sales of stock, stock appreciation or similar rights, stock options, restricted stock, preferred stock or other rights shall be excluded;

(l) any (i) one-time non-cash compensation charges, (ii) costs and expenses after the Closing Date related to employment of terminated employees, or (iii) costs or expenses realized in connection with or resulting from stock appreciation or similar rights, stock options or other rights existing on the Closing Date of officers, directors and employees, in each case of such Person or any of its Restricted Subsidiaries, shall be excluded;

(m) accruals and reserves that are established or adjusted within 12 months after the Closing Date and that are so required to be established or adjusted in accordance with GAAP or as a result of adoption or modification of accounting policies shall be excluded;

(n) solely for purposes of calculating EBITDA, (i) the Net Income of any Person and its Restricted Subsidiaries shall be calculated without deducting the income attributable to, or adding the losses attributable to, the minority equity interests of third parties in any non-Wholly Owned Restricted Subsidiary except to the extent of dividends declared or paid in respect of such period or any prior period on the shares of Capital Stock of such Restricted Subsidiary held by such third parties and (ii) any ordinary course dividend, distribution or other payment paid in cash and received from any Person in excess of amounts included in clause (g) above shall be included;

(o) (i)(A) the non-cash portion of "straight-line" rent expense shall be excluded and (B) the cash portion of "straight-line" rent expense which exceeds the amount expensed in respect of such rent expense shall be included and (ii) non-cash gains, losses, income and expenses resulting from fair value accounting required by the applicable standard under GAAP and related interpretations shall be excluded;

(p) any currency translation gains and losses related to currency remeasurements of Indebtedness, and any net loss or gain resulting from hedging transactions for currency exchange risk, shall be excluded; and

(q) to the extent covered by insurance and actually reimbursed, or, so long as such Person has made a determination that there exists reasonable evidence that such amount will in fact be reimbursed by the insurer and only to the extent that such amount

is (i) not denied by the applicable carrier in writing within 180 days and (ii) in fact reimbursed within 365 days of the date of such evidence (with a deduction for any amount so added back to the extent not so reimbursed within 365 days), expenses with respect to liability or casualty events or business interruption shall be excluded.

Notwithstanding the foregoing, for the purpose of Section 5.03 only, there shall be excluded from Consolidated Net Income any dividends, repayments of loans or advances or other transfers of assets from Unrestricted Subsidiaries of the Borrower or a Restricted Subsidiary of the Borrower to the extent such dividends, repayments or transfers increase the amount of Restricted Payments permitted under such covenant pursuant to clauses (d) and (e) of the definition of Cumulative Credit.

“Consolidated Non-Cash Charges” shall mean, with respect to any Person for any period, the non-cash expenses (other than Consolidated Depreciation and Amortization Expense) of such Person and its Restricted Subsidiaries reducing Consolidated Net Income of such Person for such period on a consolidated basis and otherwise determined in accordance with GAAP, provided that if any such non-cash expenses represent an accrual or reserve for potential cash items in any future period, the cash payment in respect thereof in such future period shall be subtracted from EBITDA in such future period to the extent paid, but excluding from this proviso, for the avoidance of doubt, amortization of a prepaid cash item that was paid in a prior period.

“Consolidated Taxes” shall mean, with respect to any Person for any period, the provision for taxes based on income, profits or capital, including, without limitation, state, franchise, property and similar taxes, foreign withholding taxes (including penalties and interest related to such taxes or arising from tax examinations) and any Tax Distributions taken into account in calculating Consolidated Net Income.

“Contingent Obligations” shall mean, with respect to any Person, any obligation of such Person guaranteeing any leases, dividends or other obligations that do not constitute Indebtedness (“primary obligations”) of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, including, without limitation, any obligation of such Person, whether or not contingent:

- (a) to purchase any such primary obligation or any property constituting direct or indirect security therefor,
- (b) to advance or supply funds:
  - (i) for the purchase or payment of any such primary obligation; or
  - (ii) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor; or
- (c) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation against loss in respect thereof.

“Covenant Suspension Event” shall have the meaning assigned to such term in Section 6.01(a).

“Credit Agreement” shall mean (a) the credit agreement entered into in connection with, and on or prior to, the consummation of the Acquisition, among the Borrower, the pledgors named therein, the financial institutions named therein, and Bank of America, N.A., as Administrative Agent, as amended, restated, supplemented, waived, replaced (whether or not upon termination, and whether with the original lenders or otherwise), restructured, repaid, refunded, refinanced or otherwise modified from time to time, including any agreement or indenture extending the maturity thereof, refinancing, replacing or otherwise restructuring all or any portion of the Indebtedness under such agreement or agreements or indenture or indentures or any successor or replacement agreement or agreements or indenture or indentures or increasing the amount loaned or issued thereunder or altering the maturity thereof and (b) whether or not the credit agreement referred to in clause (a) remains outstanding, if designated by the Borrower to be included in the definition of “Credit Agreement,” one or more (i) debt facilities or commercial paper facilities, providing for revolving credit loans, term loans, receivables financing (including through the sale of receivables to lenders or to special purpose entities formed to borrow from lenders against such receivables) or letters of credit, (ii) debt securities, indentures or other forms of debt financing (including convertible or exchangeable debt instruments or bank guarantees or bankers’ acceptances), or (iii) instruments or agreements evidencing any other Indebtedness, in each case, with the same or different borrowers or issuers and, in each case, as amended, supplemented, modified, extended, restructured, renewed, refinanced, restated, replaced or refunded in whole or in part from time to time.

“Credit Agreement Documents” shall mean the collective reference to any Credit Agreement, any notes issued pursuant thereto and the guarantees thereof, and the collateral documents relating thereto, as amended, supplemented, restated, renewed, refunded, replaced, restructured, repaid, refinanced or otherwise modified, in whole or in part, from time to time.

“Cumulative Credit” shall mean the sum of (without duplication):

(a) 50% of the Consolidated Net Income of the Borrower for the period (taken as one accounting period, the “Reference Period”) from January 1, 2008 to the end of the Borrower’s most recently ended fiscal quarter for which internal financial statements are available at the time of such Restricted Payment (or, in the case such Consolidated Net Income for such period is a deficit, minus 100% of such deficit), plus

(b) 100% of the aggregate net proceeds, including cash and the Fair Market Value (as determined in good faith by the Borrower) of property other than cash, received by the Borrower after the Closing Date (other than net proceeds to the extent such net proceeds have been used to incur Indebtedness, Disqualified Stock, or Preferred Stock pursuant to clause (xiii) of Section 5.02(b) from the issue or sale of Equity Interests of the Borrower (excluding Refunding Capital Stock (as defined below), Designated Preferred Stock, Excluded Contributions, and Disqualified Stock), including Equity Interests issued upon exercise of warrants or options (other than an issuance or sale to a Restricted Subsidiary of the Borrower), plus

(c) 100% of the aggregate amount of contributions to the capital of the Borrower received in cash and the Fair Market Value (as determined in good faith by the Borrower) of property other than cash after the Closing Date (other than Excluded Contributions, Refunding Capital Stock, Designated Preferred Stock, and Disqualified Stock and other than contributions to the extent such contributions have been used to incur Indebtedness, Disqualified Stock, or Preferred Stock pursuant to clause (xiii) of Section 5.02(b), plus

(d) 100% of the principal amount of any Indebtedness, or the liquidation preference or maximum fixed repurchase price, as the case may be, of any Disqualified Stock of the Borrower or any Restricted Subsidiary thereof issued after the Closing Date (other than Indebtedness or Disqualified Stock issued to a Restricted Subsidiary) which has been converted into or exchanged for Equity Interests in the Borrower (other than Disqualified Stock) or any direct or indirect parent of the Borrower (provided in the case of any parent, such Indebtedness or Disqualified Stock is retired or extinguished), plus

(e) 100% of the aggregate amount received by the Borrower or any Restricted Subsidiary in cash and the Fair Market Value (as determined in good faith by the Borrower) of property other than cash received by the Borrower or any Restricted Subsidiary from:

(i) the sale or other disposition (other than to the Borrower or a Restricted Subsidiary of the Borrower) of Restricted Investments made by the Borrower and its Restricted Subsidiaries and from repurchases and redemptions of such Restricted Investments from the Borrower and its Restricted Subsidiaries by any Person (other than the Borrower or any of its Restricted Subsidiaries) and from repayments of loans or advances, and releases of guarantees, which constituted Restricted Investments (other than in each case to the extent that the Restricted Investment was made pursuant to clause (vii) of Section 5.03(b)),

(ii) the sale (other than to the Borrower or a Restricted Subsidiary of the Borrower) of the Capital Stock of an Unrestricted Subsidiary, or

(iii) a distribution or dividend from an Unrestricted Subsidiary, plus

(f) in the event any Unrestricted Subsidiary of the Borrower has been redesignated as a Restricted Subsidiary or has been merged, consolidated or amalgamated with or into, or transfers or conveys its assets to, or is liquidated into, the Borrower or a Restricted Subsidiary, the Fair Market Value (as determined in good faith by the Borrower) of the Investment of the Borrower in such Unrestricted Subsidiary (which, if the Fair Market Value of such Investment shall exceed \$250,000,000, shall be determined by the Board of Directors of the Borrower, a copy of the resolution of which with respect thereto shall be delivered to the Administrative Agent) at the time of such redesignation, combination or transfer (or of the assets transferred or conveyed, as applicable) (other than in each case to the extent that the designation of such Subsidiary as an Unrestricted

Subsidiary was made pursuant to clause (vii) of Section 5.03(b) or constituted a Permitted Investment).

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

“Default” shall mean any event or condition which, but for the giving of notice, lapse of time or both would constitute an Event of Default.

“Default Rate” shall mean an interest rate equal to (a) the ABR Rate plus (b) the Applicable ABR Margin plus (c) 2.0% per annum; provided that with respect to a Eurocurrency Loan, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Eurocurrency Margin) otherwise applicable to such Loan plus 2.0% per annum, in each case, to the fullest extent permitted by applicable laws.

“Defaulting Lender” shall mean any Lender with respect to which a Lender Default is in effect.

“Designated Non-Cash Consideration” shall mean the Fair Market Value (as determined in good faith by the Borrower) of non-cash consideration received by the Borrower or one of its Restricted Subsidiaries in connection with an Asset Sale that is so designated as Designated Non-Cash Consideration pursuant to an Officer’s Certificate, setting forth the basis of such valuation, less the amount of Cash Equivalents received in connection with a subsequent sale of such Designated Non-Cash Consideration.

“Designated Preferred Stock” shall mean Preferred Stock of the Borrower or any direct or indirect parent of the Borrower (other than Disqualified Stock), that is issued for cash (other than to the Borrower or any of its Subsidiaries or an employee stock ownership plan or trust established by the Borrower or any of its Subsidiaries) and is so designated as Designated Preferred Stock, pursuant to an Officer’s Certificate, on the issuance date thereof.

“Disqualification” shall mean, with respect to any Lender:

(a) the failure of that person timely to file pursuant to applicable Gaming Laws:

(i) any application requested of that person by any Gaming Authority in connection with any licensing required of that person as a lender to the Borrower; or

(ii) any required application or other papers in connection with determination of the suitability of that person as a lender to the Borrower;

- (b) the withdrawal by that person (except where requested or permitted by the Gaming Authority) of any such application or other required papers;
- (c) any finding by a Gaming Authority that there is reasonable cause to believe that such person may be found unqualified or unsuitable; or
- (d) any final determination by a Gaming Authority pursuant to applicable Gaming Laws:
  - (i) that such person is “unsuitable” as a lender to the Borrower;
  - (ii) that such person shall be “disqualified” as a lender to the Borrower; or
  - (iii) denying the issuance to that person of any license or other approval required under applicable Gaming Laws to be held by all lenders to the Borrower.

“Disqualified Stock” shall mean, with respect to any Person, any Capital Stock of such Person which, by its terms (or by the terms of any security into which it is convertible or for which it is redeemable or exchangeable), or upon the happening of any event:

- (a) matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise (other than as a result of a change of control or asset sale),
- (b) is convertible or exchangeable for Indebtedness or Disqualified Stock of such Person, or
- (c) is redeemable at the option of the holder thereof, in whole or in part (other than solely as a result of a change of control or asset sale),

in each case prior to 91 days after the earlier of the maturity date of the Loans or the date the Loans are no longer outstanding; provided, however, that only the portion of Capital Stock which so matures or is mandatorily redeemable, is so convertible or exchangeable or is so redeemable at the option of the holder thereof prior to such date shall be deemed to be Disqualified Stock; provided, further, however, that if such Capital Stock is issued to any employee or to any plan for the benefit of employees of the Borrower or its Subsidiaries or by any such plan to such employees, such Capital Stock shall not constitute Disqualified Stock solely because it may be required to be repurchased by the Borrower in order to satisfy applicable statutory or regulatory obligations or as a result of such employee’s termination, death or disability; provided, further, that any class of Capital Stock of such Person that by its terms authorizes such Person to satisfy its obligations thereunder by delivery of Capital Stock that is not Disqualified Stock shall not be deemed to be Disqualified Stock.

“Documentation Agents” shall have the meaning assigned to such term in the introductory paragraph of this Agreement.

“Dollars” or “\$” shall mean lawful money of the United States of America.

“Domestic Subsidiary” shall mean a Restricted Subsidiary that is not a Foreign Subsidiary.

“EBITDA” shall mean, with respect to any Person for any period, the Consolidated Net Income of such Person for such period plus, without duplication, to the extent the same was deducted in calculating Consolidated Net Income:

(a) Consolidated Taxes; plus

(b) Fixed Charges; plus

(c) Consolidated Depreciation and Amortization Expense; plus

(d) Consolidated Non-cash Charges; plus

(e) any expenses or charges (other than Consolidated Depreciation or Amortization Expense) related to any issuance of Equity Interests, Investment, acquisition, disposition, recapitalization or the incurrence or repayment of Indebtedness permitted to be incurred by this Agreement (including a refinancing thereof) (whether or not successful), including (i) such fees, expenses or charges related to the offering of the Senior Unsecured Notes, the Senior Notes, the Senior Interim Loans and the Bank Indebtedness, (ii) any amendment or other modification of the Notes or other Indebtedness, (iii) any additional interest in respect of the Senior Unsecured Notes or Senior Notes and (iv) commissions, discounts, yield and other fees and charges (including any interest expense) related to any Receivables Facility; plus

(f) business optimization expenses and other restructuring charges, reserves or expenses (which, for the avoidance of doubt, shall include, without limitation, the effect of inventory optimization programs, facility consolidations, retention, systems establishment costs, contract termination costs, future lease commitments and excess pension charges); plus

(g) the amount of management, monitoring, consulting, transaction and advisory fees and related expenses paid to the Sponsors (or any accruals relating to such fees and related expenses) during such period to the extent otherwise permitted by Section 5.05; plus

(h) the amount of loss on sale of receivables and related assets to a Receivables Subsidiary in connection with a Receivables Facility; plus

(i) any costs or expense incurred pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement or any stock subscription or shareholder agreement, to the extent that such cost or expenses are funded with cash proceeds contributed to the capital of the Borrower or a Guarantor or net cash proceeds of an issuance of Equity Interests of the Borrower (other than Disqualified Stock) solely to the extent that such net cash proceeds are excluded from the calculation of the Cumulative Credit; plus

(j) Pre-Opening Expenses;

less, without duplication,

(k) non-cash items increasing Consolidated Net Income for such period (excluding the recognition of deferred revenue or any items which represent the reversal of any accrual of, or cash reserve for, anticipated cash charges that reduced EBITDA in any prior period and any items for which cash was received in a prior period).

“Engagement Letter” shall mean that certain Engagement Letter dated December 19, 2006, by and among Parent and Banc of America Securities LLC, Citigroup Global Markets Inc., Credit Suisse Securities (USA) LLC, Deutsche Bank Securities Inc., J.P. Morgan Securities Inc. and Merrill Lynch, Pierce, Fenner & Smith Incorporated.

“environment” shall mean ambient and indoor air, surface water and groundwater (including potable water, navigable water and wetlands), the land surface or subsurface strata, natural resources such as flora and fauna, the workplace or as otherwise defined in any Environmental Law.

“Environmental Laws” shall mean all applicable laws (including common law), rules, regulations, codes, ordinances, orders, decrees or judgments, promulgated or entered into by any Governmental Authority, relating in any way to the environment, preservation or reclamation of natural resources, the generation, management, Release or threatened Release of, or exposure to, any Hazardous Material or to occupational health and safety matters (to the extent relating to the environment or Hazardous Materials).

“Equity Contribution” shall mean, in connection with the consummation of the Merger, the purchase or contribution by the Permitted Holders and the Investors, directly or indirectly, of cash equity or rollover equity to or of the Company or any Parent Entity in an aggregate amount of not less than 17.5% of the *pro forma* total consolidated capitalization of the Company on the Closing Date.

“Equity Interests” shall mean Capital Stock and all warrants, options or other rights to acquire Capital Stock (but excluding any debt security that is convertible into, or exchangeable for, Capital Stock).

“Equity Offering” shall mean any public or private sale after the Closing Date of common stock or Preferred Stock of the Borrower or any direct or indirect parent of the Borrower, as applicable (other than Disqualified Stock), other than:

- (a) public offerings with respect to the Borrower’s or such direct or indirect parent’s common stock registered on Form S-4 or Form S-8;
- (b) issuances to any Subsidiary of the Borrower; and
- (c) any such public or private sale that constitutes an Excluded Contribution.

“ERISA” shall mean the Employee Retirement Income Security Act of 1974, as the same may be amended from time to time and any final regulations promulgated and the rulings issued thereunder.

“ERISA Affiliate” shall mean any trade or business (whether or not incorporated) that, together with the Borrower or a Subsidiary, is treated as a single employer under Section 414(b) or (c) of the Code, or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

“ERISA Event” shall mean (a) any Reportable Event or the requirements of Section 4043(b) of ERISA apply with respect to a Plan; (b) the existence with respect to any Plan of an “accumulated funding deficiency” (as defined in Section 412 of the Code or Section 302 of ERISA), whether or not waived; (c) the filing pursuant to Section 412(d) of the Code or Section 303(d) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan, the failure to make by its due date a required installment under Section 412(m) of the Code with respect to any Plan or the failure to make any required contribution to a Multiemployer Plan; (d) the incurrence by the Borrower, a Subsidiary or any ERISA Affiliate of any liability under Title IV of ERISA with respect to the termination of any Plan or Multiemployer Plan; (e) the receipt by the Borrower, a Subsidiary or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or to appoint a trustee to administer any Plan under Section 4042 of ERISA; (f) the incurrence by the Borrower, a Subsidiary or any ERISA Affiliate of any liability with respect to the withdrawal or partial withdrawal from any Plan or Multiemployer Plan; (g) the receipt by the Borrower, a Subsidiary or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from the Borrower, a Subsidiary or any ERISA Affiliate of any notice, concerning the impending imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA; (h) the conditions for imposition of a lien under Section 302(f) of ERISA shall have been met with respect to any Plan; or (i) the adoption of an amendment to a Plan requiring the provision of security to such Plan pursuant to Section 307 of ERISA.

“Eurocurrency Loan” shall mean any Loan that bears interest at a rate based on the Eurocurrency Rate.

“Eurocurrency Rate” shall mean, for any Interest Period with respect to a Eurocurrency Loan, the rate per annum equal to the British Bankers Association LIBOR Rate (“BBA LIBOR”), as published by Reuters (or other commercially available source providing quotations of BBA LIBOR as designated by the Administrative Agent from time to time) at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period, for deposits in the relevant currency (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period. If such rate is not available at such time for any reason, then the “Eurocurrency Rate” for such Interest Period shall be the rate per annum determined by the Administrative Agent to be the rate at which deposits in the relevant currency for delivery on the first day of such Interest Period in immediately available funds in the approximate amount of the Eurocurrency Loan being made, continued or converted by Bank of America and with a term equivalent to such Interest Period would be offered by Bank of

America's London Branch (or other Bank of America branch or Affiliate) to major banks in the London or other offshore interbank market for such currency at their request at approximately 11:00 a.m. (London time) two Business Days prior to the commencement of such Interest Period.

“Event of Default” shall have the meaning assigned to such term in Section 7.01.

“Excess Proceeds” shall have the meaning assigned to such term in Section 2.11(b)(ii)(B).

“Exchange Act” shall mean the Securities Exchange Act of 1934, as amended.

“Exchange Date” shall have the meaning assigned to such term in Section 2.21(b)(i).

“Exchange Notice” shall have the meaning assigned to such term in Section 2.21(b)(ii).

“Excluded Contributions” shall mean the Cash Equivalents or other assets (valued at their Fair Market Value as determined in good faith by senior management or the Board of Directors of the Borrower) received by the Borrower after the Closing Date from:

(a) contributions to its common equity capital, and

(b) the sale (other than to a Subsidiary of the Borrower or to any Subsidiary management equity plan or stock option plan or any other management or employee benefit plan or agreement) of Capital Stock (other than Disqualified Stock and Designated Preferred Stock) of the Borrower,

in each case designated as Excluded Contributions pursuant to an Officer's Certificate executed by a Responsible Officer of the Borrower on or promptly after the date such capital contributions are made or the date such Capital Stock is sold, as the case may be.

“Excluded Taxes” shall mean, with respect to the Administrative Agent, any Lender or any other recipient of any payment to be made by or on account of any obligation of the Borrower hereunder, (a) income taxes imposed on (or measured by) its net income (or franchise taxes imposed in lieu of net income taxes) by the United States of America (or any state or locality thereof) or the jurisdiction under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable Lending Office is located or any other jurisdiction as a result of such recipient engaging in a trade or business in such jurisdiction for tax purposes (other than a trade or business deemed to arise by virtue of entering into this Agreement, any other Loan Document or any of the transactions contemplated under such documents), (b) any branch profits tax or any similar tax that is imposed by any jurisdiction described in clause (a) above, and (c) in the case of a Lender making a Loan to the Borrower, any withholding tax (including any backup withholding tax) imposed by the United States federal government (or a jurisdiction as a result of such Lender being organized or having its principal office or its applicable Lending Office in such jurisdiction or as a result of such Lender engaging in a trade or business in such jurisdiction for tax purposes

(other than a trade or business deemed to arise by virtue of entering into this Agreement, any other Loan Document or any of the transactions contemplated under such documents)) that (x) is in effect and would apply to amounts payable hereunder to such Lender at the time such Lender becomes a party to such Loan to the Borrower (or designates a new Lending Office, except to the extent that such Lender (or its assignor, if any) was entitled, at the time of designation of a new Lending Office (or assignment), to receive additional amounts from a Loan Party with respect to such withholding tax pursuant to Section 2.17(a) or Section 2.17(c)) or (y) is attributable to such Lender's failure to comply with Section 2.17(e) or Section 2.17(f) with respect to such Loan.

“Fair Market Value” shall mean, with respect to any asset or property, the price which could be negotiated in an arm's-length transaction, for cash, between a willing seller and a willing and able buyer, neither of whom is under undue pressure or compulsion to complete the transaction.

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

“Fee Letter” shall mean that certain Fee Letter dated December 19, 2006, as amended, by and among Parent and Bank of America, N.A., Banc of America Bridge LLC, Banc of America Securities LLC, Citigroup Global Markets Inc., Credit Suisse, Cayman Islands Branch, Credit Suisse Securities (USA) LLC, Deutsche Bank AG New York Branch, Deutsche Bank AG Cayman Islands Branch, Deutsche Bank Securities Inc., JPMorgan Chase Bank, N.A., J.P. Morgan Securities Inc., Merrill Lynch Capital Corporation and Merrill Lynch, Pierce, Fenner & Smith Incorporated.

“Financial Officer” of any person shall mean the Chief Financial Officer, principal accounting officer, Treasurer, Assistant Treasurer or Controller of such person.

“Fixed Charge Coverage Ratio” shall mean, with respect to any Person for any period, the ratio of EBITDA of such Person for such period to the Fixed Charges (other than Fixed Charges in respect of Qualified Non-Recourse Debt) of such Person for such period. In the event that the Borrower or any of its Restricted Subsidiaries Incurs, repays, repurchases or redeems any Indebtedness (other than in the case of revolving credit borrowings or revolving advances under any Qualified Receivables Financing, in which case interest expense shall be computed based upon the average daily balance of such Indebtedness during the applicable period) or issues, repurchases or redeems Disqualified Stock or Preferred Stock subsequent to the commencement of the period for which the Fixed Charge Coverage Ratio is being calculated but prior to the event for which the calculation of the Fixed Charge Coverage Ratio is made (the

“Calculation Date”), then the Fixed Charge Coverage Ratio shall be calculated giving *pro forma* effect to such Incurrence, repayment, repurchase or redemption of Indebtedness, or such issuance, repurchase or redemption of Disqualified Stock or Preferred Stock, as if the same had occurred at the beginning of the applicable four-quarter period.

For purposes of making the computation referred to above, Investments, acquisitions, dispositions, mergers, amalgamations, consolidations (including the Transactions and the Post-Closing CMBS Transaction) and discontinued operations (as determined in accordance with GAAP), in each case with respect to an operating unit of a business, and any operational changes that the Borrower or any of its Restricted Subsidiaries has determined to make and/or made during the four-quarter reference period or subsequent to such reference period and on or prior to or simultaneously with the Calculation Date shall be calculated on a *pro forma* basis assuming that all such Investments, acquisitions, dispositions, mergers, amalgamations, consolidations (including the Transactions and the Post-Closing CMBS Transaction), discontinued operations and operational changes (and the change of any associated fixed charge obligations and the change in EBITDA resulting therefrom) had occurred on the first day of the four-quarter reference period. If since the beginning of such period any Person that subsequently became a Restricted Subsidiary or was merged with or into the Borrower or any Restricted Subsidiary since the beginning of such period shall have made any Investment, acquisition, disposition, merger, consolidation, amalgamation, discontinued operation or operational change, in each case with respect to an operating unit of a business, that would have required adjustment pursuant to this definition, then the Fixed Charge Coverage Ratio shall be calculated giving *pro forma* effect thereto for such period as if such Investment, acquisition, disposition, discontinued operation, merger, amalgamation, consolidation or operational change had occurred at the beginning of the applicable four-quarter period. For purposes of making the computation referred to above, with respect to each New Project that commences operations and records not less than one full fiscal quarter’s operations during the four-quarter reference period, the operating results of such New Project will be annualized on a straight line basis during such period.

For purposes of this definition, whenever *pro forma* effect is to be given to any event, the *pro forma* calculations shall be made in good faith by a responsible financial or accounting officer of the Borrower. Any such *pro forma* calculation may include adjustments appropriate, in the reasonable good faith determination of the Borrower as set forth in an Officer’s Certificate, to reflect (a) operating expense reductions and other operating improvements or synergies reasonably expected to result from the applicable event (including, to the extent applicable, from the Transactions and the Post-Closing CMBS Transaction), and (b) all adjustments of the nature used in connection with the calculation of “Adjusted EBITDA” as set forth in footnote 3 to the “Summary Pro Forma Consolidated Financial Data” under “Summary” in the Senior Unsecured Notes Offering Memorandum to the extent such adjustments, without duplication, continue to be applicable to such four-quarter period.

If any Indebtedness bears a floating rate of interest and is being given *pro forma* effect, the interest on such Indebtedness shall be calculated as if the rate in effect on the Calculation Date had been the applicable rate for the entire period (taking into account any Hedging Obligations applicable to such Indebtedness if such Hedging Obligation has a

remaining term in excess of 12 months). Interest on a Capitalized Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by a responsible financial or accounting officer of the Borrower to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with GAAP. For purposes of making the computation referred to above, interest on any Indebtedness under a revolving credit facility computed on a *pro forma* basis shall be computed based upon the average daily balance of such Indebtedness during the applicable period. Interest on Indebtedness that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a eurocurrency interbank offered rate, or other rate, shall be deemed to have been based upon the rate actually chosen, or, if none, then based upon such optional rate chosen as the Borrower may designate.

For purposes of this definition, any amount in a currency than U.S. dollars will be converted to U.S. dollars based on the average exchange rate for such currency for the most recent twelve month period immediately prior to the date of determination in a manner consistent with that used in calculating EBITDA for the applicable period.

“Fixed Charges” shall mean, with respect to any Person for any period, the sum, without duplication, of:

- (a) Consolidated Interest Expense of such Person for such period, and
- (b) all cash dividend payments (excluding items eliminated in consolidation) on any series of Preferred Stock or Disqualified Stock of such Person and its Restricted Subsidiaries.

“Foreign Lender” shall mean any Lender that is not a “U.S. Person” as defined by Section 7701(a)(30) of the Code.

“Foreign Subsidiary” shall mean a Restricted Subsidiary not organized or existing under the laws of the United States of America or any state or territory thereof or the District of Columbia and any direct or indirect subsidiary of such Restricted Subsidiary.

“GAAP” shall mean generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as have been approved by a significant segment of the accounting profession, which are in effect on the Closing Date. For the purposes of this Agreement, the term “consolidated” with respect to any Person shall mean such Person consolidated with its Restricted Subsidiaries, and shall not include any Unrestricted Subsidiary, but the interest of such Person in an Unrestricted Subsidiary will be accounted for as an Investment.

“Gaming Authorities” shall mean, in any jurisdiction in which Borrower or any of its subsidiaries manages or conducts any casino, gaming business or activities, the applicable gaming board, commission, or other governmental gaming regulatory body or agency which (a) has, or may at any time after the Borrowing of the Loans have, jurisdiction over the gaming activities of the Borrower or any of its subsidiaries, or any successor to such authority or (b) is,

or may at any time after Borrowing of the Loans be, responsible for interpreting, administering and enforcing the Gaming Laws.

“Gaming Laws” shall mean all applicable constitutions, treaties, laws and statutes pursuant to which any Gaming Authority possesses regulatory, licensing or permit authority over gaming, gambling or casino activities, and all rules, rulings, orders, ordinances, regulations of any Gaming Authority applicable to the gambling, casino, gaming businesses or activities of Borrower or any of its subsidiaries in any jurisdiction, as in effect from time to time, including the policies, interpretations and administration thereof by the Gaming Authorities.

“Governmental Authority” shall mean any federal, state, local or foreign court or governmental agency, authority, instrumentality or regulatory or legislative body.

“guarantee” shall mean a guarantee (other than by endorsement of negotiable instruments for collection in the ordinary course of business), direct or indirect, in any manner (including, without limitation, letters of credit and reimbursement agreements in respect thereof), of all or any part of any Indebtedness or other obligations.

“Guarantee” shall mean (a) the guarantee by any Guarantor of the Borrower’s Loan Obligations under this Agreement, substantially in the form of Exhibit E, and (b) each other guarantee supplement pursuant to Section 5.09.

“Guarantor” shall mean each of the Company and the Borrower’s Restricted Subsidiaries that guarantees the Loans in accordance with the terms of this Agreement, including those listed on Schedule 1.01A hereto.

“Hazardous Materials” shall mean all pollutants, contaminants, wastes, chemicals, materials, substances and constituents, including, without limitation, explosive or radioactive substances or petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls or radon gas, of any nature subject to regulation or which can give rise to liability under any Environmental Law.

“Hedging Obligations” shall mean, with respect to any Person, the obligations of such Person under:

(a) currency exchange, interest rate or commodity swap agreements, currency exchange, interest rate or commodity cap agreements and currency exchange, interest rate or commodity collar agreements; and

(b) other agreements or arrangements designed to protect such Person against fluctuations in currency exchange, interest rates or commodity prices.

“Holdco Issuer” shall mean the issuer in any Holdco Qualified IPO.

“Holdco Qualified IPO” shall mean any Qualified IPO in which a direct or indirect parent of the Borrower is the issuer.

“Immaterial Subsidiary” shall mean any subsidiary that (a) did not, as of the last day of the fiscal quarter of the Borrower most recently ended, have assets with a value in excess of 1.0% of the Total Assets or revenues representing in excess of 1.0% of total revenues of the Borrower and its Restricted Subsidiaries on a consolidated basis as of such date and (b) taken together with all Immaterial Subsidiaries as of the last day of the fiscal quarter of the Borrower most recently ended, did not have assets with a value in excess of 5.0% of Total Assets or revenues representing in excess of 5.0% of total revenues of the Borrower and its Restricted Subsidiaries on a consolidated basis as of such date.

“Incur” shall mean issue, assume, guarantee, incur or otherwise become liable for; provided, however, that any Indebtedness or Capital Stock of a Person existing at the time such person becomes a Subsidiary (whether by merger, amalgamation, consolidation, acquisition or otherwise) shall be deemed to be Incurred by such Person at the time it becomes a Subsidiary.

“Indebtedness” shall mean, with respect to any Person:

(a) the principal and premium (if any) of any indebtedness of such Person, whether or not contingent, (i) in respect of borrowed money, (ii) evidenced by bonds, notes, debentures or similar instruments or letters of credit or bankers’ acceptances (or, without duplication, reimbursement agreements in respect thereof), (iii) representing the deferred and unpaid purchase price of any property (except any such balance that (A) constitutes a trade payable or similar obligation to a trade creditor Incurred in the ordinary course of business, (B) any earn-out obligations until such obligation becomes a liability on the balance sheet of such Person in accordance with GAAP and (C) liabilities accrued in the ordinary course of business), which purchase price is due more than six months after the date of placing the property in service or taking delivery and title thereto, (iv) in respect of Capitalized Lease Obligations, or (v) representing any Hedging Obligations, if and to the extent that any of the foregoing indebtedness (other than letters of credit and Hedging Obligations) would appear as a liability on a balance sheet (excluding the footnotes thereto) of such Person prepared in accordance with GAAP;

(b) to the extent not otherwise included, any obligation of such Person to be liable for, or to pay, as obligor, guarantor or otherwise, the obligations referred to in clause (a) of another Person (other than by endorsement of negotiable instruments for collection in the ordinary course of business); and

(c) to the extent not otherwise included, Indebtedness of another Person secured by a Lien on any asset owned by such Person (whether or not such Indebtedness is assumed by such Person); provided, however, that the amount of such Indebtedness will be the lesser of: (i) the Fair Market Value (as determined in good faith by the Borrower) of such asset at such date of determination, and (ii) the amount of such Indebtedness of such other Person;

provided, however, that notwithstanding the foregoing, Indebtedness shall be deemed not to include (A) Contingent Obligations incurred in the ordinary course of business and not in respect of borrowed money; (B) deferred or prepaid revenues; (C) purchase price holdbacks in respect of

a portion of the purchase price of an asset to satisfy warranty or other unperformed obligations of the respective seller; (D) Obligations under or in respect of Qualified Receivables Financing or (E) obligations under the Merger Documents.

Notwithstanding anything in this Agreement to the contrary, Indebtedness shall not include, and shall be calculated without giving effect to, the effects of Statement of Financial Accounting Standards No. 133 and related interpretations to the extent such effects would otherwise increase or decrease an amount of Indebtedness for any purpose under this Agreement as a result of accounting for any embedded derivatives created by the terms of such Indebtedness; and any such amounts that would have constituted Indebtedness under this Agreement but for the application of this sentence shall not be deemed an Incurrence of Indebtedness under this Agreement.

“Indemnified Taxes” shall mean all Taxes other than Excluded Taxes.

“Indemnitee” shall have the meaning assigned to such term in Section 9.05(b).

“Independent Financial Advisor” shall mean an accounting, appraisal or investment banking firm or consultant, in each case of nationally recognized standing, that is, in the good faith determination of the Borrower, qualified to perform the task for which it has been engaged.

“Ineligible Institution” shall mean the persons identified in writing to the Arrangers by the Borrower on or prior to the Closing Date, and as may be identified in writing to the Administrative Agent by the Borrower from time to time thereafter, with the consent of the Administrative Agent (not to be unreasonably withheld or delayed), by delivery of a notice thereof to the Administrative Agent setting forth such person or persons (or the person or persons previously identified to the Administrative Agent that are to be no longer considered “Ineligible Institutions”).

“Information” shall have the meaning assigned to such term in Section 3.14(a).

“Information Memorandum” shall mean the Confidential Information Memorandum dated January 2008, as modified or supplemented prior to the Closing Date.

“Intellectual Property Rights” shall have the meaning assigned to such term in Section 3.22.

“Intercreditor Agreement” shall mean the intercreditor agreement among Bank of America, N.A., as agent under the Credit Agreement Documents, the Administrative Agent, U.S. Bank, National Association, the Borrower and each Guarantor that is a Subsidiary of the Borrower, as it may be amended from time to time in accordance with this Agreement and any representative on behalf of other holders of securities or lenders of indebtedness ranking *pari passu* with the Loans and Guarantees that are incurred from time to time and incurred or guaranteed by a Guarantor that is a Subsidiary.

“Interest Election Notice” shall have the meaning assigned to such term in Section 2.13(c).

“Interest Election Request” shall mean a request by the Borrower in the form of Exhibit D to convert or continue a Borrowing in accordance with Section 2.02.

“Interest Payment Date” shall mean, (a) as to any Loan other than an ABR Loan, the last day of each Interest Period applicable to such Loan and the scheduled maturity date of such Loan; provided, however, that if any Interest Period for a Eurocurrency Loan exceeds three months, the respective dates that fall every three months after the beginning of such Interest Period shall also be Interest Payment Dates; and (b) as to any ABR Loan, the last Business Day of each March, June, September and December, the Rollover Date and the Maturity Date.

“Interest Period” shall mean, as to each Eurocurrency Loan, the period commencing on the date such Eurocurrency Loan is disbursed or converted to or continued as a Eurocurrency Loan and ending on the date one, two, three or six months thereafter, as selected by the Borrower; provided that:

(a) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day;

(b) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; and

(c) no Interest Period that begins before the Rollover Date shall extend beyond the Rollover Date; and

(d) no Interest Period for any Loan shall extend beyond the Maturity Date.

Interest shall accrue from and including the first day of an Interest Period to but excluding the last day of such Interest Period.

“Investment Grade Rating” shall mean a rating equal to or higher than Baa3 (or the equivalent) by Moody’s and BBB- (or the equivalent) by S&P, or an equivalent rating by any other Rating Agency.

“Investment Grade Securities” shall mean:

(a) securities issued or directly and fully guaranteed or insured by the U.S. government or any agency or instrumentality thereof (other than Cash Equivalents),

(b) securities that have a rating equal to or higher than Baa3 (or equivalent) by Moody's and BBB- (or equivalent) by S&P, but excluding any debt securities or loans or advances between and among the Borrower and its Subsidiaries,

(c) investments in any fund that invests exclusively in investments of the type described in clauses (a) and (b) which fund may also hold immaterial amounts of cash pending investment and/or distribution, and

(d) corresponding instruments in countries other than the United States customarily utilized for high quality investments and in each case with maturities not exceeding two years from the date of acquisition.

"Investments" shall mean, with respect to any Person, all investments by such Person in other Persons (including Affiliates) in the form of loans (including guarantees), advances or capital contributions (excluding accounts receivable, trade credit and advances to customers and commission, travel and similar advances to officers, employees and consultants made in the ordinary course of business), purchases or other acquisitions for consideration of Indebtedness, Equity Interests or other securities issued by any other Person and investments that are required by GAAP to be classified on the balance sheet of the Borrower in the same manner as the other investments included in this definition to the extent such transactions involve the transfer of cash or other property. For purposes of the definition of "Unrestricted Subsidiary" and Section 5.03:

(a) "Investments" shall include the portion (proportionate to the Borrower's equity interest in such Subsidiary) of the Fair Market Value (as determined in good faith by the Borrower) of the net assets of a Subsidiary of the Borrower at the time that such Subsidiary is designated an Unrestricted Subsidiary; provided, however, that upon a redesignation of such Subsidiary as a Restricted Subsidiary, the Borrower shall be deemed to continue to have a permanent "Investment" in an Unrestricted Subsidiary equal to an amount (if positive) equal to:

(i) the Borrower's "Investment" in such Subsidiary at the time of such redesignation less

(ii) the portion (proportionate to the Borrower's equity interest in such Subsidiary) of the Fair Market Value (as determined in good faith by the Borrower) of the net assets of such Subsidiary at the time of such redesignation; and

(b) any property transferred to or from an Unrestricted Subsidiary shall be valued at its Fair Market Value (as determined in good faith by the Borrower) at the time of such transfer, in each case as determined in good faith by the Board of Directors of the Borrower.

"Investor" shall mean each investor arranged by the Sponsors for the purpose of consummating the Transactions.

“Joint Bookrunners” shall mean Citigroup Global Markets Inc., Deutsche Bank Securities Inc., Banc of America Securities LLC, Credit Suisse Securities (USA) LLC, J.P. Morgan Securities Inc. and Merrill Lynch, Pierce, Fenner & Smith Incorporated.

“Joint Lead Arrangers” shall mean Citigroup Global Markets Inc. and Deutsche Bank Securities Inc., in their capacities as joint lead arrangers.

“Judgment Currency” shall have the meaning assigned to such term in Section 9.19.

“Lender” shall have the meaning assigned to such term in the introductory paragraph to this Agreement and its respective successors and assigns as permitted hereunder, each of which is referred to herein as a “Lender.”

“Lending Office” shall mean, as to any Lender, the applicable branch, office or Affiliate of such Lender designated by such Lender to make Loans.

“Lien” shall mean, with respect to any asset, any mortgage, lien, pledge, charge, security interest or similar encumbrance of any kind in respect of such asset, whether or not filed, recorded or otherwise perfected under applicable law (including any conditional sale or other title retention agreement, any lease in the nature thereof, any option or other agreement to sell or give a security interest in and any filing of or agreement to give any financing statement under the Uniform Commercial Code (or equivalent statutes) of any jurisdiction); provided that in no event shall an operating lease be deemed to constitute a Lien.

“Liquor Authorities” shall mean, in any jurisdiction in which the Borrower or any of its Subsidiaries sells and distributes liquor, the applicable alcoholic beverage commission or other Governmental Authority responsible for interpreting, administering and enforcing the Liquor Laws.

“Liquor Laws” shall mean the laws, rules, regulations and orders applicable to or involving the sale and distribution of liquor by the Borrower or any of its Subsidiaries in any jurisdiction, as in effect from time to time, including the policies, interpretations and administration thereof by the applicable Liquor Authorities.

“Loan Documents” shall mean this Agreement, the Fee Letter, the Guarantee and any Note.

“Loan Parties” shall mean the Borrower and each Guarantor.

“Loans” shall mean the Senior Interim Loans and Senior Term Loans made by any Lender hereunder and any Loans made as a result of the accrual of the PIK Interest.

“Local Time” shall mean Las Vegas, Nevada local time (daylight or standard, as applicable).

“Long-Term Retained Notes” shall mean the Borrower’s 5.625% Senior Notes due 2015, 6.500% Senior Notes due 2016 and 5.75% Senior Notes due 2017.

“Majority Lenders” shall mean, at any time, Lenders having Loans representing more than 50% of the sum of all Loans outstanding at such time.

“Management Group” shall mean the group consisting of the directors, executive officers and other management personnel of the Borrower or any direct or indirect parent of the Borrower, as the case may be, on the Closing Date together with (1) any new directors whose election by such boards of directors or whose nomination for election by the shareholders of the Borrower or any direct or indirect parent of the Borrower, as applicable, was approved by a vote of a majority of the directors of the Borrower or any direct or indirect parent of the Borrower, as applicable, then still in office who were either directors on the Closing Date or whose election or nomination was previously so approved and (2) executive officers and other management personnel of the Borrower or any direct or indirect parent of the Borrower, as applicable, hired at a time when the directors on the Closing Date together with the directors so approved constituted a majority of the directors of the Borrower or any direct or indirect parent of the Borrower, as applicable.

“Mandatory Cost” shall mean, with respect to any period, the percentage rate per annum determined in accordance with Schedule 1.01B.

“Mandatory Principal Repayment” shall have the meaning assigned to such term in Section 2.11(c).

“Mandatory Principal Repayment Amount” shall have the meaning assigned to such term in Section 2.11(c).

“Margin Stock” shall have the meaning assigned to such term in Regulation U.

“Material Adverse Effect” shall mean a material adverse effect on the business, property, operations or condition of the Borrower and its Subsidiaries, taken as a whole, or the validity and enforceability of any of the material Loan Documents or the rights and remedies of the Administrative Agent and the Lenders thereunder.

“Material Subsidiary” shall mean any Subsidiary other than Immaterial Subsidiaries.

“Maturity Date” shall mean (a) if the Senior Interim Loans have not been converted to Senior Term Loans, the Rollover Date or (b) either the eighth anniversary of the Closing Date with respect to the Senior Cash Pay Loans or the tenth anniversary of the Closing Date with respect to the Senior Toggle Loans, as the context requires, or, in each case, if such day is not a Business Day, the immediately preceding Business Day.

“Maximum Rate” shall have the meaning assigned to such term in Section 9.09.

“Merger” shall have the meaning assigned to such term in the first recital hereto.

“Merger Agreement” shall have the meaning assigned to such term in the first recital hereto.

“Merger Documents” shall mean the Merger Agreement and any other document entered into in connection therewith, in each case as amended, supplemented or modified from time to time prior to the Closing Date or thereafter.

“Merger Inc.” shall have the meaning assigned to such term in the introductory paragraph of this Agreement.

“Moody’s” shall mean Moody’s Investors Service, Inc. or any successor to the rating agency business thereof.

“Multiemployer Plan” shall mean a multiemployer plan as defined in Section 4001(a)(3) of ERISA to which the Borrower or any Subsidiary or any ERISA Affiliate (other than one considered an ERISA Affiliate only pursuant to subsection (m) or (o) of Code Section 414) is making or accruing an obligation to make contributions, or has within any of the preceding six plan years made or accrued an obligation to make contributions.

“Net Income” shall mean, with respect to any Person, the net income (loss) of such Person, determined in accordance with GAAP and before any reduction in respect of Preferred Stock dividends.

“Net Proceeds” shall mean the aggregate cash proceeds received by the Borrower or any of its Restricted Subsidiaries in respect of any Asset Sale (including, without limitation, any cash received in respect of or upon the sale or other disposition of any Designated Non-Cash Consideration received in any Asset Sale and any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or otherwise, but only as and when received, but excluding the assumption by the acquiring person of Indebtedness relating to the disposed assets or other consideration received in any other non-cash form), net of the direct costs relating to such Asset Sale and the sale or disposition of such Designated Non-Cash Consideration (including, without limitation, legal, accounting and investment banking fees, and brokerage and sales commissions), and any relocation expenses Incurred as a result thereof, taxes paid or payable as a result thereof (after taking into account any available tax credits or deductions and any tax sharing arrangements related thereto), amounts required to be applied to the repayment of principal, premium (if any) and interest on Indebtedness required (other than pursuant to Section 2.11(b)(ii) to be paid as a result of such transaction, and any deduction of appropriate amounts to be provided by the Borrower as a reserve in accordance with GAAP against any liabilities associated with the asset disposed of in such transaction and retained by the Borrower after such sale or other disposition thereof, including, without limitation, pension and other post-employment benefit liabilities and liabilities related to environmental matters or against any indemnification obligations associated with such transaction.

“New Project” shall mean each capital project which is either a new project or a new feature at an existing project owned by the Borrower or its Subsidiaries which receives a certificate of completion or occupancy and all relevant licenses, and in fact commences operations.

“New York Courts” shall have the meaning assigned to such term in Section 9.15.

“Non-Consenting Lender” shall have the meaning assigned to such term in Section 2.19(c).

“Note” shall mean a Senior Interim Cash Pay Loan Note and/or Senior Interim Toggle Loan Note, as the context requires.

“Obligations” shall mean any principal, interest, penalties, fees, indemnifications, reimbursements (including, without limitation, reimbursement obligations with respect to letters of credit and bankers’ acceptances), damages and other liabilities payable under the documentation governing any Indebtedness.

“Officer’s Certificate” shall mean a certificate signed on behalf of the Borrower by a Responsible Officer of the Borrower, who must be the principal executive officer, the principal financial officer, the treasurer or the principal accounting officer of the Borrower.

“Operations Management Agreement” each of the real estate management agreements and any other operating management agreement entered into by the Borrower or any of its Restricted Subsidiaries with the Company or with any other direct or indirect Subsidiary of the Company, including, without limitation, any Real Estate Subsidiary, and any and all modifications thereto, substitutions therefore and replacements thereof so long as such modifications, substitutions and replacements are not materially less favorable, taken as a whole, to the Borrower and its Restricted Subsidiaries than the terms of such agreements as in effect on the Closing Date.

“Opinion of Counsel” shall mean a written opinion from legal counsel who is acceptable to the Administrative Agent. The counsel may be an employee of or counsel to the Borrower or the Administrative Agent.

“Other Taxes” shall mean any and all present or future stamp or documentary taxes or any other excise, transfer, sales, property, intangible, mortgage recording, or similar taxes, charges or levies arising from any payment made hereunder or from the execution, delivery or enforcement of, or otherwise with respect to, the Loan Documents, and any and all interest and penalties related thereto (but not Excluded Taxes).

“Outstanding Amount” shall mean with respect to any Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of such Loans occurring on such date.

“Overnight Rate” shall mean, for any day, (a) with respect to any amount denominated in Dollars, the greater of (i) the Federal Funds Rate and (ii) an overnight rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

“Parent” shall have the meaning assigned to such term in the first recital hereto.

“Parent Entity” shall mean any direct or indirect parent of the Company.

“Pari Passu Indebtedness” shall mean:

- (a) with respect to the Borrower, the Loans and any Indebtedness which ranks *pari passu* in right of payment to the Loans; and
- (b) with respect to any Guarantor, its Guarantee and any Indebtedness which ranks *pari passu* in right of payment to such Guarantor’s Guarantee.

“Participant” shall have the meaning assigned to such term in Section 9.04(c).

“Participant Register” shall have the meaning assigned to such term in Section 9.04(c).

“PBGC” shall mean the Pension Benefit Guaranty Corporation referred to and defined in ERISA.

“Permitted Holders” shall mean at any time, each of (a) the Sponsors, (b) the Management Group, (c) any Person that has no material assets other than the Capital Stock of the Borrower and, directly or indirectly, holds or acquires 100% of the total voting power of the Voting Stock of the Borrower, and of which no other Person or group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act, or any successor provision), other than any of the other Permitted Holders specified in clauses (a) and (b) above, holds more than 50% of the total voting power of the Voting Stock thereof and (d) any group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act, or any successor provision) the members of which include any of the Permitted Holders specified in clauses (a) and (b) above and that, directly or indirectly, hold or acquire beneficial ownership of the Voting Stock of the Borrower (a “Permitted Holder Group”), so long as (i) each member of the Permitted Holder Group has voting rights proportional to the percentage of ownership interests held or acquired by such member and (ii) no Person or other “group” (other than Permitted Holders specified in clauses (a) and (b) above) beneficially owns more than 50% on a fully diluted basis of the Voting Stock held by the Permitted Holder Group. Any Person or group whose acquisition of beneficial ownership constitutes a Change of Control in respect of which a Change of Control Offer is made in accordance with the requirements of this Agreement will thereafter, together with its Affiliates, constitute an additional Permitted Holder.

“Permitted Investments” shall mean:

- (a) any Investment in the Borrower or any Restricted Subsidiary;
- (b) any Investment in Cash Equivalents or Investment Grade Securities;
- (c) any Investment by the Borrower or any Restricted Subsidiary of the Borrower in a Person if as a result of such Investment (i) such Person becomes a Restricted Subsidiary of the Borrower, or (ii) such Person, in one transaction or a series of related transactions, is merged, consolidated or amalgamated with or into, or transfers

or conveys all or substantially all of its assets to, or is liquidated into, the Borrower or a Restricted Subsidiary of the Borrower;

(d) any Investment in securities or other assets not constituting Cash Equivalents and received in connection with an Asset Sale made pursuant to the provisions of Sections 5.13 and 2.11 or any other disposition of assets not constituting an Asset Sale;

(e) any Investment existing on, or made pursuant to binding commitments existing on, the Closing Date or an Investment consisting of any extension, modification or renewal of any Investment existing on the Closing Date; provided that the amount of any such Investment may be increased (x) as required by the terms of such Investment as in existence on the Closing Date or (y) as otherwise permitted under this Agreement;

(f) advances to employees, taken together with all other advances made pursuant to this clause (f), not to exceed \$25,000,000 at any one time outstanding;

(g) any Investment acquired by the Borrower or any of its Restricted Subsidiaries (i) in exchange for any other Investment or accounts receivable held by the Borrower or any such Restricted Subsidiary in connection with or as a result of a bankruptcy, workout, reorganization or recapitalization of the issuer of such other Investment or accounts receivable, or (ii) as a result of a foreclosure by the Borrower or any of its Restricted Subsidiaries with respect to any secured Investment or other transfer of title with respect to any secured Investment in default;

(h) Hedging Obligations permitted under Section 5.02(b)(x);

(i) any Investment by the Borrower or any of its Restricted Subsidiaries in a Similar Business having an aggregate Fair Market Value (as determined in good faith by the Borrower), taken together with all other Investments made pursuant to this clause (i) that are at that time outstanding, not to exceed the greater of (x) \$500,000,000 and (y) 4.5% of Total Assets at the time of such Investment (with the Fair Market Value of each Investment being measured at the time made and without giving effect to subsequent changes in value); provided, however, that if any Investment pursuant to this clause (i) is made in any Person that is not a Restricted Subsidiary of the Borrower at the date of the making of such Investment and such Person becomes a Restricted Subsidiary of the Borrower after such date, such Investment shall thereafter be deemed to have been made pursuant to clause (a) above and shall cease to have been made pursuant to this clause (i) for so long as such Person continues to be a Restricted Subsidiary;

(j) additional Investments by the Borrower or any of its Restricted Subsidiaries having an aggregate Fair Market Value (as determined in good faith by the Borrower), taken together with all other Investments made pursuant to this clause (j) that are at that time outstanding, not to exceed the greater of (x) \$950,000,000 and (y) 4.5% of Total Assets at the time of such Investment (with the Fair Market Value of each Investment being measured at the time made and without giving effect to subsequent changes in value); provided, however, that if any Investment pursuant to this clause (j) is

made in any Person that is not a Restricted Subsidiary of the Borrower at the date of the making of such Investment and such Person becomes a Restricted Subsidiary of the Borrower after such date, such Investment shall thereafter be deemed to have been made pursuant to clause (a) above and shall cease to have been made pursuant to this clause (j) for so long as such Person continues to be a Restricted Subsidiary;

(k) loans and advances to officers, directors or employees for business-related travel expenses, moving expenses and other similar expenses, in each case Incurred in the ordinary course of business or consistent with past practice or to fund such person's purchase of Equity Interests of the Borrower or any direct or indirect parent of the Borrower;

(l) Investments the payment for which consists of Equity Interests of the Borrower (other than Disqualified Stock) or any direct or indirect parent of the Borrower, as applicable; provided, however, that such Equity Interests will not increase the amount available for Restricted Payments under clause (c) of the definition of Cumulative Credit;

(m) any transaction to the extent it constitutes an Investment that is permitted by and made in accordance with the provisions of Section 5.05(b) (except transactions described in clauses (ii), (vi), (vii), (xi) and (xii)(B) thereof);

(n) Investments consisting of the licensing or contribution of intellectual property pursuant to joint marketing arrangements with other Persons;

(o) guarantees issued in accordance with Sections 5.02 and 5.09, including, without limitation, any guarantee or other obligation issued or incurred under the Credit Agreement in connection with any letter of credit issued for the account of the Company or any of its subsidiaries (including with respect to the issuance of, or payments in respect of drawings under, such letters of credit);

(p) Investments consisting of or to finance purchases and acquisitions of inventory, supplies, materials, services or equipment or purchases of contract rights or licenses or leases of intellectual property;

(q) any Investment in a Receivables Subsidiary or any Investment by a Receivables Subsidiary in any other Person in connection with a Qualified Receivables Financing, including Investments of funds held in accounts permitted or required by the arrangements governing such Qualified Receivables Financing or any related Indebtedness;

(r) any Investment in an entity or purchase of a business or assets in each case owned (or previously owned) by a customer of a Restricted Subsidiary as a condition or in connection with such customer (or any member of such customer's group) contracting with a Restricted Subsidiary, in each case in the ordinary course of business;

(s) any Investment in an entity which is not a Restricted Subsidiary to which a Restricted Subsidiary sells accounts receivable pursuant to a Receivable Financing;

(t) additional Investments in joint ventures not to exceed at any one time in the aggregate outstanding under this clause (t), the greater of \$350,000,000 and 2.0% of Total Assets; provided, however, that if any Investment pursuant to this clause (t) is made in any Person that is not a Restricted Subsidiary of the Borrower at the date of the making of such Investment and such Person becomes a Restricted Subsidiary of the Borrower after such date, such Investment shall thereafter be deemed to have been made pursuant to clause (a) above and shall cease to have been made pursuant to this clause (t) for so long as such Person continues to be a Restricted Subsidiary;

(u) Investments of a Restricted Subsidiary of the Borrower acquired after the Closing Date or of an entity merged into, amalgamated with, or consolidated with the Borrower or a Restricted Subsidiary of the Borrower in a transaction that is not prohibited by Section 5.12 after the Closing Date to the extent that such Investments were not made in contemplation of such acquisition, merger, amalgamation or consolidation and were in existence on the date of such acquisition, merger, amalgamation or consolidation; and

(v) any Investment in any Subsidiary of the Borrower or any joint venture in connection with intercompany cash management arrangements or related activities arising in the ordinary course of business.

“Permitted Liens” shall mean, with respect to any Person:

(a) pledges or deposits by such Person under workmen’s compensation laws, unemployment insurance laws or similar legislation, or good faith deposits in connection with bids, tenders, contracts (other than for the payment of Indebtedness) or leases to which such Person is a party, or deposits to secure public or statutory obligations of such Person or deposits of cash or U.S. government bonds to secure surety or appeal bonds to which such Person is a party, or deposits as security for contested taxes or import duties or for the payment of rent, in each case Incurred in the ordinary course of business;

(b) Liens imposed by law, such as carriers’, warehousemen’s and mechanics’ Liens, in each case for sums not yet due or being contested in good faith by appropriate proceedings or other Liens arising out of judgments or awards against such Person with respect to which such Person shall then be proceeding with an appeal or other proceedings for review;

(c) Liens for taxes, assessments or other governmental charges not yet due or payable or subject to penalties for nonpayment or which are being contested in good faith by appropriate proceedings;

(d) Liens in favor of issuers of performance and surety bonds or bid bonds or with respect to other regulatory requirements or letters of credit issued pursuant to the request of and for the account of such Person in the ordinary course of its business;

(e) minor survey exceptions, minor encumbrances, easements or reservations of, or rights of others for, licenses, rights-of-way, sewers, electric lines, telegraph and telephone lines and other similar purposes, or zoning or other restrictions as to the use of

real properties or Liens incidental to the conduct of the business of such Person or to the ownership of its properties which were not Incurred in connection with Indebtedness and which do not in the aggregate materially adversely affect the value of said properties or materially impair their use in the operation of the business of such Person;

(f) (i) Liens on assets of a Restricted Subsidiary that is not a Guarantor securing Indebtedness of such Restricted Subsidiary permitted to be Incurred pursuant to Section 5.02, (ii) Liens securing Indebtedness permitted to be incurred under the Credit Agreement, including any letter of credit facility relating thereto, that was permitted to be incurred pursuant to Section 5.02(b)(i), (iii) Liens securing obligations in respect of any Indebtedness permitted to be incurred by Section 5.02; provided that, with respect to Liens securing obligations permitted under this clause (iii), at the time of incurrence and after giving *pro forma* effect thereto, the Secured Indebtedness Leverage Ratio of the Borrower would not exceed 4.50 to 1.00, and (iv) Liens securing Indebtedness permitted to be Incurred pursuant to Section 5.02(b)(iv), (xii), (xvi), (xx), (xxiii) or (xxiv) (provided that (A) in the case of clause (d), such Lien extends only to the assets and/or Capital Stock, the acquisition, lease, construction, repair, replacement or improvement of which is financed thereby and any proceeds or products thereof, (B) in the case of clause (t), such Lien does not extend to the property or assets of any Subsidiary of the Borrower other than a Foreign Subsidiary, and (C) in the case of clause (xxiii) and (xxiv) such Lien applies solely to acquired property or asset of the acquired entity, as the case may be);

(g) Liens existing on the Closing Date (other than Liens in favor of the lenders under the Credit Agreement);

(h) Liens on assets, property or shares of stock of a Person at the time such Person becomes a Subsidiary; provided, however, that such Liens are not created or Incurred in connection with, or in contemplation of, such other Person becoming such a Subsidiary; provided, further, however, that such Liens may not extend to any other property owned by the Borrower or any Restricted Subsidiary of the Borrower;

(i) Liens on assets or property at the time the Borrower or a Restricted Subsidiary of the Borrower acquired the assets or property, including any acquisition by means of a merger, amalgamation or consolidation with or into the Borrower or any Restricted Subsidiary of the Borrower; provided, however, that such Liens are not created or Incurred in connection with, or in contemplation of, such acquisition; provided, further, however, that the Liens may not extend to any other property owned by the Borrower or any Restricted Subsidiary of the Borrower;

(j) Liens securing Indebtedness or other obligations of a Restricted Subsidiary owing to the Borrower or another Restricted Subsidiary of the Borrower permitted to be Incurred in accordance with Section 5.02;

(k) Liens securing Hedging Obligations not incurred in violation of this Agreement; provided that with respect to Hedging Obligations relating to Indebtedness, such Lien extends only to the property securing such Indebtedness;

(l) Liens on specific items of inventory or other goods and proceeds of any Person securing such Person's obligations in respect of bankers' acceptances issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods;

(m) leases and subleases of real property which do not materially interfere with the ordinary conduct of the business of the Borrower or any of its Restricted Subsidiaries;

(n) Liens arising from Uniform Commercial Code financing statement filings regarding operating leases entered into by the Borrower and its Restricted Subsidiaries in the ordinary course of business;

(o) Liens in favor of the Borrower or any Guarantor;

(p) Liens on accounts receivable and related assets of the type specified in the definition of "Receivables Financing" Incurred in connection with a Qualified Receivables Financing;

(q) deposits made in the ordinary course of business to secure liability to insurance carriers;

(r) Liens on the Equity Interests of Unrestricted Subsidiaries;

(s) grants of software and other technology licenses in the ordinary course of business;

(t) Liens to secure any refinancing, refunding, extension, renewal or replacement (or successive refinancings, refundings, extensions, renewals or replacements) as a whole, or in part, of any Indebtedness secured by any Lien referred to in the foregoing clauses (f), (g), (h), (i), (j), (k) and (o); provided, however, that (x) such new Lien shall be limited to all or part of the same property that secured the original Lien (plus improvements on such property), and (y) the Indebtedness secured by such Lien at such time is not increased to any amount greater than the sum of (i) the outstanding principal amount or, if greater, committed amount of the Indebtedness described under clauses (f), (g), (h), (i), (j), (k) and (o) at the time the original Lien became a Permitted Lien under this Agreement, and (ii) an amount necessary to pay any fees and expenses, including premiums, related to such refinancing, refunding, extension, renewal or replacement; provided further, however, that in the case of any Liens to secure any refinancing, refunding, extension or renewal of Indebtedness secured by a Lien referred to in clause (f)(B), the principal amount of any Indebtedness Incurred for such refinancing, refunding, extension or renewal shall be deemed secured by a Lien under clause (f)(B) and not this clause (t) for purposes of determining the principal amount of Indebtedness outstanding under clause (f)(B);

(u) Liens on equipment of the Borrower or any Restricted Subsidiary granted in the ordinary course of business to the Borrower's or such Restricted Subsidiary's client at which such equipment is located;

(v) judgment and attachment Liens not giving rise to an Event of Default and notices of lis pendens and associated rights related to litigation being contested in good faith by appropriate proceedings and for which adequate reserves have been made;

(w) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale of goods entered into in the ordinary course of business;

(x) Liens incurred to secure cash management services or to implement cash pooling arrangements in the ordinary course of business;

(y) other Liens securing obligations incurred in the ordinary course of business which obligations do not exceed \$100,000,000 at any one time outstanding;

(z) any encumbrance or restriction (including put and call arrangements) with respect to Capital Stock of any joint venture or similar arrangement pursuant to any joint venture or similar agreement;

(aa) any amounts held by a trustee in the funds and accounts under an indenture securing any revenue bonds issued for the benefit of the Borrower or any Restricted Subsidiary; and

(bb) Liens arising by virtue of any statutory or common law provisions relating to banker's Liens, rights of set-off or similar rights and remedies as to deposit accounts or other funds maintained with a depository or financial institution.

For purposes of this definition, notwithstanding anything in the foregoing clauses (a) through (bb), any Lien that secures Retained Notes or Long-Term Retained Notes shall not under any circumstances be deemed Permitted Liens.

"Person" shall mean any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock issuer, trust, unincorporated organization, government or any agency or political subdivision thereof or any other entity.

"PIK Interest" shall have the meaning assigned to such term in Section 2.13(a)(ii).

"PIK Interest Termination Date" shall have the meaning assigned to such term in Section 2.13(a)(ii).

"PIK Margin" shall mean 0.75% per annum.

"Plan" shall mean any employee pension benefit plan (other than a Multiemployer Plan) that is, (i) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and (ii) sponsored or maintained (at the time of determination or at any

time within the five years prior thereto) by the Borrower or any ERISA Affiliate, and (iii) in respect of which the Borrower, any Subsidiary or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an “employer” as defined in Section 3(5) of ERISA.

“Platform” shall have the meaning assigned to such term in Section 9.17(b).

“Post-Closing CMBS Transaction” shall mean the transaction described as the “Post-Closing CMBS Transaction” under “Summary—The Transactions—CMBS Transactions” in the Senior Unsecured Notes Offering Memorandum.

“Pre-Opening Expenses” shall mean, with respect to any fiscal period, the amount of expenses (other than interest expense) incurred with respect to capital projects that are classified as “pre-opening expenses” on the applicable financial statements of the Borrower and its Restricted Subsidiaries for such period, prepared in accordance with GAAP.

“Preferred Stock” shall mean any Equity Interest with preferential right of payment of dividends or upon liquidation, dissolution, or winding up.

“Pro Forma Financial Statements” shall have the meaning assigned to such term in Section 3.05(a).

“Project Financings” shall mean (a) any Capitalized Lease Obligations, mortgage financing, purchase money Indebtedness or other Indebtedness incurred in connection with the acquisition, lease, construction, repair, replacement, improvement or financing related to any of the Margaritaville Casino & Resort in Biloxi, Mississippi, the retail facilities related to the Margaritaville Casino & Resort, the planned casino and hotel in the community of Ciudad Real, Spain, and a hotel project with Baha Mar Resort Holdings Ltd. in the Bahamas or any refinancing of any such Indebtedness that does not extend to any assets other than the assets listed above and (b) any Sale/Leaseback Transaction with respect to any of the Margaritaville Casino & Resort in Biloxi, Mississippi, the retail facilities related to the Margaritaville Casino & Resort, the planned casino and hotel in the community of Ciudad Real, Spain, and a hotel project with Baha Mar Resort Holdings Ltd. in the Bahamas.

“Projections” shall mean the projections of the Company, the Borrower and the Subsidiaries included in the Information Memorandum and any other projections and any forward-looking statements (including statements with respect to booked business) of such entities furnished to the Lenders or the Administrative Agent by or on behalf of the Company, the Borrower or any of the Subsidiaries prior to the Closing Date.

“Public Lender” shall have the meaning assigned to such term in Section 9.17(b).

“Qualified IPO” shall mean any underwritten public Equity Offering.

“Qualified Non-Recourse Debt” shall mean Indebtedness that (a) is (i) incurred by a Qualified Non-Recourse Subsidiary to finance (whether prior to or within 270 days after) the acquisition, lease, construction, repair, replacement or improvement of any property (real or

personal) or equipment (whether through the direct purchase of property or the Equity Interests of any person owning such property and whether in a single acquisition or a series of related acquisitions) or (ii) assumed by a Qualified Non-Recourse Subsidiary, (b) is non-recourse to the Borrower and any Guarantor and (c) is non-recourse to any Restricted Subsidiary that is not a Qualified Non-Recourse Subsidiary.

“Qualified Non-Recourse Subsidiary” shall mean (a) a Restricted Subsidiary that is not a Guarantor and that is formed or created after the Closing Date in order to finance an acquisition, lease, construction, repair, replacement or improvement of any property or equipment (directly or through one of its Subsidiaries) that secures Qualified Non-Recourse Debt and (b) any Restricted Subsidiary of a Qualified Non-Recourse Subsidiary.

“Qualified Receivables Financing” shall mean any Receivables Financing of a Receivables Subsidiary that meets the following conditions:

(a) the Board of Directors of the Borrower shall have determined in good faith that such Qualified Receivables Financing (including financing terms, covenants, termination events and other provisions) is in the aggregate economically fair and reasonable to the Borrower and the Receivables Subsidiary;

(b) all sales of accounts receivable and related assets to the Receivables Subsidiary are made at Fair Market Value (as determined in good faith by the Borrower); and

(c) the financing terms, covenants, termination events and other provisions thereof shall be market terms (as determined in good faith by the Borrower) and may include Standard Securitization Undertakings.

The grant of a security interest in any accounts receivable of the Borrower or any of its Restricted Subsidiaries (other than a Receivables Subsidiary) to secure Bank Indebtedness, Indebtedness in respect of the Loans or any Refinancing Indebtedness with respect to the Loans shall not be deemed a Qualified Receivables Financing.

“Rating Agency” shall mean (a) each of Moody’s and S&P and (b) if Moody’s or S&P ceases to rate the Loans for reasons outside of the Borrower’s control, a “nationally recognized statistical rating organization” within the meaning of Rule 15cs-1(c)(2)(vi)(F) under the Exchange Act selected by the Borrower or any direct or indirect parent of the Borrower as a replacement agency for Moody’s or S&P, as the case may be.

“Real Estate Assets” shall mean, collectively, all Real Property that are to be transferred on the Closing Date constituting any of the following: Harrah’s Las Vegas, Rio and Flamingo Las Vegas in Las Vegas, Nevada; Harrah’s Atlantic City and Showboat Atlantic City in Atlantic City, New Jersey; and Harrah’s Lake Tahoe, Harveys Lake Tahoe and Bill’s Lake Tahoe in Lake Tahoe, Nevada, as well as the Capital Stock of any Subsidiary the assets of which are comprised of such Real Property.

“Real Estate Facility” shall mean the mortgage financing and mezzanine financing arrangements between the Real Estate Subsidiaries, which are direct or indirect subsidiaries of the Company, and JPMorgan Chase Bank N.A. and its successors and assigns, dated as of the Closing Date, as amended, restated, supplemented, extended, waived, replaced, restructured, repaid, refunded, refinanced or otherwise modified from time to time (including in connection with the Post-Closing CMBS Transaction).

“Real Estate Subsidiary” shall mean those Subsidiaries of the Company that are party to (prior to, on or after the Closing Date) the Real Estate Facility (and their respective Subsidiaries) secured by the Real Estate Assets collateralizing such facility on the Closing Date plus any additional Real Property sold, contributed or transferred to such Subsidiaries by the Borrower or any Restricted Subsidiary (whether directly or indirectly through the sale, contribution or transfer of the Capital Stock of a Subsidiary the assets of which are comprised solely of such Real Property) subsequent to the Closing Date in accordance with the terms of Sections 5.13 and 2.11(b)(ii) or in connection with the Post-Closing CMBS Transaction.

“Real Property” shall mean, collectively, all right, title and interests (including any leasehold, mineral or other estate) in and to any and all parcels of or interests in real property owned, leased or operated by any Person, whether by lease, license or other means, together with, in each case, all easements, hereditaments and appurtenances relating thereto, all buildings structures, parking areas and improvements and appurtenant fixtures and equipment, all general intangibles and contract rights and other property and rights incidental to the ownership, lease or operation thereof.

“Receivables Fees” shall mean distributions or payments made directly or by means of discounts with respect to any participation interests issued or sold in connection with, and all other fees paid to a Person that is not a Restricted Subsidiary in connection with, any Receivables Financing.

“Receivables Financing” shall mean any transaction or series of transactions that may be entered into by the Borrower or any of its Subsidiaries pursuant to which the Borrower or any of its Subsidiaries may sell, convey or otherwise transfer to (a) a Receivables Subsidiary (in the case of a transfer by the Borrower or any of its Subsidiaries); and (b) any other Person (in the case of a transfer by a Receivables Subsidiary), or may grant a security interest in, any accounts receivable (whether now existing or arising in the future) of the Borrower or any of its Subsidiaries, and any assets related thereto including, without limitation, all collateral securing such accounts receivable, all contracts and all guarantees or other obligations in respect of such accounts receivable, proceeds of such accounts receivable and other assets which are customarily transferred or in respect of which security interests are customarily granted in connection with asset securitization transactions involving accounts receivable and any Hedging Obligations entered into by the Borrower or any such Subsidiary in connection with such accounts receivable.

“Receivables Repurchase Obligation” shall mean any obligation of a seller of receivables in a Qualified Receivables Financing to repurchase receivables arising as a result of a breach of a representation, warranty or covenant or otherwise, including as a result of a receivable or portion thereof becoming subject to any asserted defense, dispute, off-set or

counterclaim of any kind as a result of any action taken by, any failure to take action by or any other event relating to the seller.

“Receivables Subsidiary” shall mean a Wholly Owned Restricted Subsidiary of the Borrower (or another Person formed for the purposes of engaging in Qualified Receivables Financing with the Borrower in which the Borrower or any Subsidiary of the Borrower makes an Investment and to which the Borrower or any Subsidiary of the Borrower transfers accounts receivable and related assets) which engages in no activities other than in connection with the financing of accounts receivable of the Borrower and its Subsidiaries, all proceeds thereof and all rights (contractual or other), collateral and other assets relating thereto, and any business or activities incidental or related to such business, and which is designated by the Board of Directors of the Borrower (as provided below) as a Receivables Subsidiary and:

(a) no portion of the Indebtedness or any other obligations (contingent or otherwise) of which (i) is guaranteed by the Borrower or any other Subsidiary of the Borrower (excluding guarantees of obligations (other than the principal of and interest on, Indebtedness) pursuant to Standard Securitization Undertakings), (ii) is recourse to or obligates the Borrower or any other Subsidiary of the Borrower in any way other than pursuant to Standard Securitization Undertakings, or (iii) subjects any property or asset of the Borrower or any other Subsidiary of the Borrower, directly or indirectly, contingently or otherwise, to the satisfaction thereof, other than pursuant to Standard Securitization Undertakings;

(b) with which neither the Borrower nor any other Subsidiary of the Borrower has any material contract, agreement, arrangement or understanding other than on terms which the Borrower reasonably believes to be no less favorable to the Borrower or such Subsidiary than those that might be obtained at the time from Persons that are not Affiliates of the Borrower; and

(c) to which neither the Borrower nor any other Subsidiary of the Borrower has any obligation to maintain or preserve such entity’s financial condition or cause such entity to achieve certain levels of operating results.

Any such designation by the Board of Directors of the Borrower shall be evidenced to the Administrative Agent by filing with the Administrative Agent a certified copy of the resolution of the Board of Directors of the Borrower giving effect to such designation and an Officer’s Certificate certifying that such designation complied with the foregoing conditions.

“Refinancing Indebtedness” shall have the meaning assigned to such term in Section 5.02(b)(xv).

“Refunding Capital Stock” shall have the meaning assigned to such term in Section 5.03.

“Register” shall have the meaning assigned to such term in Section 9.04(b).

“Regulation U” shall mean Regulation U of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

“Regulation X” shall mean Regulation X of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

“Related Fund” shall mean, with respect to any Lender that is a fund that invests in bank or commercial loans and similar extensions of credit, any other fund that invests in bank or commercial loans and similar extensions of credit and is advised or managed by (a) such Lender, (b) an Affiliate of such Lender or (c) an entity (or an Affiliate of such entity) that administers, advises or manages such Lender.

“Related Parties” shall mean, with respect to any specified person, such person’s Affiliates and the respective directors, trustees, officers, employees, agents and advisors of such person and such person’s Affiliates.

“Release” shall mean any spilling, leaking, seepage, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing, depositing, emanating or migrating in, into, onto or through the environment.

“Reportable Event” shall mean any reportable event as defined in Section 4043(c) of ERISA or the regulations issued thereunder, other than those events as to which the 30-day notice period referred to in Section 4043(c) of ERISA has been waived, with respect to a Plan (other than a Plan maintained by an ERISA Affiliate that is considered an ERISA Affiliate only pursuant to subsection (m) or (o) of Section 414 of the Code).

“Representative” shall mean the trustee, agent or representative (if any) for an issue of Indebtedness; provided that if, and for so long as, such Indebtedness lacks such a Representative, then the Representative for such Indebtedness shall at all times constitute the holder or holders of a majority in outstanding principal amount of obligations under such Indebtedness.

“Required Cash Pay Lenders” shall mean, at any time, Lenders having Senior Cash Pay Loans and Senior Cash Pay Commitments that, taken together, represent more than 50% of the sum of all Senior Cash Pay Loans and Senior Cash Pay Commitments at such time. The Senior Cash Pay Loans and Senior Cash Pay Commitments of any Defaulting Lender shall be disregarded in determining Required Cash Pay Lenders at any time.

“Required Lenders” shall mean, at any time, Lenders having Loans and Commitments that, taken together, represent more than 50% of the sum of all Loans and Commitments at such time. The Loans and Commitments of any Defaulting Lender shall be disregarded in determining Required Lenders at any time.

“Required Toggle Lenders” shall mean, at any time, Lenders having Senior Toggle Loans and Senior Toggle Commitments that, taken together, represent more than 50% of the sum of all Senior Toggle Loans and Senior Toggle Commitments at such time. The Senior

Toggle Loans and Senior Toggle Commitments of any Defaulting Lender shall be disregarded in determining Required Toggle Lenders at any time.

“Requisite Lead Arrangers” shall mean Joint Bookrunners representing no less than 66 2/3% of the aggregate amount of the financial commitments under the Commitment Letter.

“Responsible Officer” of any person shall mean any executive officer or Financial Officer of such person and any other officer or similar official thereof responsible for the administration of the obligations of such person in respect of this Agreement.

“Restricted Cash” shall mean cash and Cash Equivalents held by Restricted Subsidiaries that is contractually restricted from being distributed to the Borrower, except for (a) such cash and Cash Equivalents subject only to such restrictions that are contained in agreements governing Indebtedness permitted under this Agreement and that is secured by such cash or Cash Equivalents and (b) cash and Cash Equivalents constituting “cage cash.”

“Restricted Investment” shall mean an Investment other than a Permitted Investment.

“Restricted Payments” shall have the meaning assigned to such term in Section 5.03.

“Restricted Subsidiary” shall mean, with respect to any Person, any Subsidiary of such Person other than an Unrestricted Subsidiary of such Person. Unless otherwise indicated under this Agreement all references to Restricted Subsidiaries shall mean Restricted Subsidiaries of the Borrower.

“Retained Notes” shall mean the Borrower’s 5.500% Senior Notes due 2010, 8.00% Senior Notes due 2011, 5.375% Senior Notes due 2013, 7.875% Senior Subordinated Notes due 2010, and 8.125% Senior Subordinated Notes due 2011.

“Retired Capital Stock” shall have the meaning assigned to such term in Section 5.03.

“Rollover Date” shall mean January 28, 2009.

“Reversion Date” shall have the meaning assigned to such term in Section 6.01(b).

“S&P” shall mean Standard & Poor’s Ratings Group or any successor to the rating agency business thereof.

“Sale/LeaseBack Transaction” shall mean an arrangement relating to property now owned or hereafter acquired by the Borrower or a Restricted Subsidiary whereby the Borrower or a Restricted Subsidiary transfers such property to a Person and the Borrower or such Restricted Subsidiary leases it from such Person, other than leases between the Borrower and a Restricted Subsidiary of the Borrower or between Restricted Subsidiaries of the Borrower.

“SEC” shall mean the Securities and Exchange Commission or any successor thereto.

“Second Commitment” shall have the meaning assigned to such term in Section 2.11(b)(ii).

“Secured Indebtedness” shall mean any Indebtedness secured by a Lien.

“Secured Indebtedness Leverage Ratio” shall mean, with respect to any Person, at any date the ratio of (a) Secured Indebtedness (other than Qualified Non-Recourse Debt) of such Person and its Restricted Subsidiaries as of such date of calculation (determined on a consolidated basis in accordance with GAAP) less the amount of cash and Cash Equivalents in excess of any Restricted Cash held by such Person and its Restricted Subsidiaries as of such date of determination to (b) EBITDA of such Person for the four full fiscal quarters for which internal financial statements are available immediately preceding such date on which such additional Indebtedness is Incurred. In the event that the Borrower or any of its Restricted Subsidiaries Incurs, repays, repurchases or redeems any Indebtedness subsequent to the commencement of the period for which the Secured Indebtedness Leverage Ratio is being calculated but prior to the event for which the calculation of the Secured Indebtedness Leverage Ratio is made (the “Secured Leverage Calculation Date”), then the Secured Indebtedness Leverage Ratio shall be calculated giving *pro forma* effect to such Incurrence, repayment, repurchase or redemption of Indebtedness as if the same had occurred at the beginning of the applicable four-quarter period; provided that the Borrower may elect pursuant to an Officer’s Certificate delivered to the Administrative Agent to treat all or any portion of the commitment under any Indebtedness as being Incurred at such time, in which case any subsequent Incurrence of Indebtedness under such commitment shall not be deemed, for purposes of this calculation, to be an Incurrence at such subsequent time.

For purposes of making the computation referred to above, Investments, acquisitions, dispositions, mergers, amalgamations, consolidations (including the Transactions and the Post-Closing CMBS Transaction) and discontinued operations (as determined in accordance with GAAP), in each case with respect to an operating unit of a business, and any operational changes that the Borrower or any of its Restricted Subsidiaries has determined to make and/or made during the four-quarter reference period or subsequent to such reference period and on or prior to or simultaneously with the Secured Leverage Calculation Date shall be calculated on a *pro forma* basis assuming that all such Investments, acquisitions, dispositions, mergers, amalgamations, consolidations (including the Transactions and the Post-Closing CMBS Transaction), discontinued operations and other operational changes (and the change of any associated Indebtedness and the change in EBITDA resulting therefrom) had occurred on the first day of the four-quarter reference period. If since the beginning of such period any Person that subsequently became a Restricted Subsidiary or was merged with or into the Borrower or any Restricted Subsidiary since the beginning of such period shall have made any Investment, acquisition, disposition, merger, consolidation, amalgamation, discontinued operation or operational change, in each case with respect to an operating unit of a business, that would have required adjustment pursuant to this definition, then the Secured Indebtedness Leverage Ratio shall be calculated giving *pro forma* effect thereto for such period as if such Investment,

acquisition, disposition, discontinued operation, merger, amalgamation, consolidation or operational change had occurred at the beginning of the applicable four-quarter period. For purposes of making the computation referred to above, with respect to each New Project that commences operations and records not less than one full fiscal quarter's operations during the four-quarter reference period, the operating results of such New Project will be annualized on a straight line basis during such period.

For purposes of this definition, whenever *pro forma* effect is to be given to any event, the *pro forma* calculations shall be made in good faith by a responsible financial or accounting officer of the Borrower. Any such *pro forma* calculation may include adjustments appropriate, in the reasonable good faith determination of the Borrower as set forth in an Officer's Certificate, to reflect (i) operating expense reductions and other operating improvements or synergies reasonably expected to result from the applicable event (including, to the extent applicable, from the Transactions and the Post-Closing CMBS Transaction) and (ii) all adjustments of the nature used in connection with the calculation of "Adjusted EBITDA" as set forth in footnote 3 to the "Summary Historical and Unaudited Pro Forma Financial Data" under "Summary" in the Senior Unsecured Notes Offering Memorandum to the extent such adjustments, without duplication, continue to be applicable to such four-quarter period.

For purposes of this definition, any amount in a currency than U.S. dollars will be converted to U.S. dollars based on the average exchange rate for such currency for the most recent twelve month period immediately prior to the date of determination in a manner consistent with that used in calculating EBITDA for the applicable period.

"Securities Act" shall mean the Securities Act of 1933, as amended.

"Senior Cash Pay Exchange Notes" shall mean (a) the senior unsecured cash pay notes issued in accordance with the terms hereof, to be issued in connection with the refinancing of the Senior Interim Cash Pay Loans or the exchange of the Senior Cash Pay Term Loans under the Senior Notes Indenture, together with interest, fees and all other amounts payable in connection therewith, and (b) any modification, replacement, refinancing, refunding, renewal or extension thereof that constitutes Refinancing Indebtedness.

"Senior Cash Pay Loans" shall mean Senior Interim Cash Pay Loans and/or Senior Cash Pay Term Loans, as the context requires.

"Senior Cash Pay Notes" shall mean (a) the Senior Cash Pay Exchange Notes and (b) any senior cash pay notes due not earlier than eight years from the date of issuance thereof, to be issued in connection with the refinancing of the Senior Interim Cash Pay Loans or the exchange of the Senior Cash Pay Term Loans.

"Senior Cash Pay Portion" shall mean as of any date of determination, a fraction (expressed as a percentage and carried over to the ninth decimal place), the numerator of which is the aggregate Outstanding Amount of the Senior Interim Cash Pay Loans, the Senior Cash Pay Term Loans and the Senior Cash Pay Exchange Notes, as the case may be, at such time and the denominator of which is the aggregate Outstanding Amount of the Senior Interim Loans, the Senior Term Loans and the Senior Exchange Notes, as the case may be.

“Senior Cash Pay Term Loans” shall have the meaning assigned to such term in Section 2.21(a)(i).

“Senior Convertible Notes” shall mean the Borrower’s Floating Rate Contingent Convertible Senior Notes due 2024.

“Senior Exchange Note Registration Rights Agreement” shall mean the registration rights agreement relating to the Senior Exchange Notes, substantially in the form of Exhibit F.

“Senior Exchange Notes” shall mean Senior Cash Pay Exchange Notes and/or Senior Toggle Exchange Notes, as the context requires.

“Senior Interim Cash Pay Loan” shall have the meaning assigned to such term in Section 2.01(a).

“Senior Interim Cash Pay Loan Commitment” shall mean (a) in the case of each Lender that is a Lender on the date hereof, the amount set forth opposite such Lender’s name on Schedule 2.01 as such Lender’s “Senior Interim Cash Pay Loan Commitment” and (b) in the case of any Lender that becomes a Lender after the date hereof, the amount specified as such Lender’s “Senior Interim Cash Pay Loan Commitment” in the Assignment and Assumption pursuant to which such Lender assumes a portion of the aggregate amount of the Commitments, in each case as the same may be changed from time to time pursuant to the terms hereof. The aggregate amount of the Senior Interim Cash Pay Loan Commitments as of the Closing Date shall be equal to the \$5,275,000,000.

“Senior Interim Cash Pay Loan Note” shall mean a promissory note of the Borrower payable to any Lender or its registered assigns, in substantially the form of Exhibit G hereto, evidencing the aggregate Indebtedness of the Borrower to such Lender resulting from the Senior Interim Cash Pay Loans made by such Lender on the Closing Date.

“Senior Interim Loans” shall mean the Senior Interim Cash Pay Loans and/or Senior Interim Toggle Loans, as the context requires.

“Senior Interim Toggle Loan” shall have the meaning assigned to such term in Section 2.01(b).

“Senior Interim Toggle Loan Commitment” shall mean (a) in the case of each Lender that is a Lender on the date hereof, the amount set forth opposite such Lender’s name on Schedule 2.01 as such Lender’s “Senior Interim Toggle Loan Commitment” and (b) in the case of any Lender that becomes a Lender after the date hereof, the amount specified as such Lender’s “Senior Interim Toggle Loan Commitment” in the Assignment and Assumption pursuant to which such Lender assumes a portion of the aggregate amount of the Commitments, in each case as the same may be changed from time to time pursuant to the terms hereof. The aggregate amount of the Senior Interim Toggle Loan Commitments as of the Closing Date shall be equal to the \$1,500,000,000.

“Senior Interim Toggle Loan Note” shall mean a promissory note of the Borrower payable to any Lender or its registered assigns, in substantially the form of Exhibit H hereto, evidencing the aggregate Indebtedness of the Borrower to such Lender resulting from the Senior Interim Toggle Loans made by such Lender on the Closing Date.

“Senior Notes Indenture” shall mean, as determined by the Borrower in its sole discretion, either (i) an indenture having the terms substantially as set forth in the description of senior notes indenture attached hereto as Exhibit I to be entered into in connection with the issuance of the Senior Exchange Notes, by and among the Company, as guarantor, the Borrower, as issuer, certain direct and indirect Restricted Subsidiaries of the Borrower, as guarantors, and the trustee party thereto or (ii) the Senior Unsecured Notes Indenture, in each case as the same may be amended, modified, replaced or refinanced to the extent permitted by this Agreement.

“Senior Note Trustee” shall have the meaning assigned to such term in Section 2.21(c).

“Senior Notes” shall mean, collectively, the Senior Cash Pay Notes and the Senior Toggle Notes.

“Senior Term Loans” shall mean Senior Cash Pay Term Loans and/or Senior Toggle Term Loans, as the context requires.

“Senior Toggle Exchange Notes” shall mean (a) senior unsecured toggle notes issued in accordance with the terms hereof, to be issued in connection with the refinancing of the Senior Interim Toggle Loans or the exchange of the Senior Toggle Term Loans under the Senior Notes Indenture, together with interest (including any PIK Interest), fees and all other amounts payable in connection therewith, and (b) any modification, replacement, refinancing, refunding, renewal or extension thereof that constitutes Refinancing Indebtedness.

“Senior Toggle Loans” shall mean Senior Interim Toggle Loans and/or Senior Toggle Term Loans, as the context requires.

“Senior Toggle Notes” shall mean (a) the Senior Toggle Exchange Notes and (b) any senior PIK-option notes due not earlier than ten years from the date of issuance thereof, to be issued in connection with the refinancing of the Senior Interim Toggle Loans or the exchange of the Senior Toggle Term Loans.

“Senior Toggle Portion” shall mean as of any date of determination, a fraction (expressed as a percentage and carried over to the ninth decimal place), the numerator of which is the aggregate Outstanding Amount of the Senior Interim Toggle Loans, the Senior Toggle Term Loans and the Senior Toggle Exchange Notes, as the case may be, at such time and the denominator of which is the aggregate Outstanding Amount of the Senior Interim Loans, the Senior Term Loans and the Senior Exchange Notes, as the case may be.

“Senior Toggle Term Loans” shall have the meaning assigned to such term in Section 2.21(a)(ii).

“Senior Unsecured Note Documents” shall mean the Senior Unsecured Notes and the Senior Unsecured Notes Indenture.

“Senior Unsecured Notes” shall mean the Borrower’s Senior Unsecured Notes having the terms substantially as set forth in the Senior Unsecured Notes Offering Memorandum and issued pursuant to the Senior Unsecured Notes Indenture and any notes issued by the Borrower in exchange for, and as contemplated by, the Senior Unsecured Notes and the related registration rights agreement with substantially identical terms as the Senior Unsecured Notes.

“Senior Unsecured Notes Indenture” shall mean the Indenture under which the Senior Unsecured Notes will be issued, to be entered into among the Borrower, the Company and certain of the Restricted Subsidiaries of the Borrower party thereto and the trustee named therein from time to time, having the terms substantially as set forth in the Senior Unsecured Notes Offering Memorandum and as amended, restated, supplemented or otherwise modified from time to time in accordance with the requirements thereof and of this Agreement.

“Senior Unsecured Notes Offering” shall mean the offering of the Senior Unsecured Notes pursuant to the terms of the Purchase Agreement dated January 25, 2008 between the Borrower and the Joint Bookrunners.

“Senior Unsecured Notes Offering Memorandum” shall mean the preliminary offering memorandum, dated January 11, 2008 and as supplemented by the pricing supplement dated January 25, 2008, in respect of the Senior Unsecured Notes.

“Significant Subsidiary” shall mean any Restricted Subsidiary that would be a “Significant Subsidiary” of the Borrower within the meaning of Rule 1-02 under Regulation S-X promulgated by the SEC (or any successor provision).

“Similar Business” shall mean a business, the majority of whose revenues are derived from the activities of the Company and its subsidiaries as of the Closing Date or any business or activity that is reasonably similar or complementary thereto or a reasonable extension, development or expansion thereof or ancillary thereto.

“Sponsors” shall mean (a) Apollo Management, L.P. and any of its respective Affiliates other than any portfolio companies (collectively, the “Apollo Sponsors”), (b) Texas Pacific Group and any of its respective Affiliates other than any portfolio companies (collectively, the “Texas Pacific Sponsors”), (c) any individual who is a partner or employee of an Apollo Sponsor or a Texas Pacific Sponsor that is licensed by a relevant gaming authority on the Closing Date or thereafter replaces such licensee and (d) any Person that forms a group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act, or any successor provision) with any Apollo Sponsors and/or Texas Pacific Sponsors; provided that the Apollo Sponsors and/or the Texas Pacific Sponsors (i) owns a majority of the voting power and (ii) controls a majority of the Board of Directors of the Borrower.

“Standard Securitization Undertakings” shall mean representations, warranties, covenants, indemnities and guarantees of performance entered into by the Borrower or any Subsidiary of the Borrower which the Borrower has determined in good faith to be customary in

a Receivables Financing including, without limitation, those relating to the servicing of the assets of a Receivables Subsidiary, it being understood that any Receivables Repurchase Obligation shall be deemed to be a Standard Securitization Undertaking.

“Stated Maturity” shall mean, with respect to any security, the date specified in such security as the fixed date on which the final payment of principal of such security is due and payable, including pursuant to any mandatory redemption provision (but excluding any provision providing for the repurchase of such security at the option of the holder thereof upon the happening of any contingency beyond the control of the issuer unless such contingency has occurred).

“Subordinated Indebtedness” shall mean (a) with respect to the Borrower, any Indebtedness of the Borrower which is by its terms subordinated in right of payment to the Loans, and (b) with respect to any Guarantor, any Indebtedness of such Guarantor which is by its terms subordinated in right of payment to its Guarantee.

“Subsidiary” shall mean, with respect to any Person, (a) any corporation, association or other business entity (other than a partnership, joint venture or limited liability company) of which more than 50% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time of determination owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof, and (b) any partnership, joint venture or limited liability company of which (i) more than 50% of the capital accounts, distribution rights, total equity and voting interests or general and limited partnership interests, as applicable, are owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof, whether in the form of membership, general, special or limited partnership interests or otherwise, and (ii) such Person or any Subsidiary of such Person is a controlling general partner or otherwise controls such entity.

“Suspended Covenants” shall have the meaning assigned to such term in Section 6.01(a).

“Suspension Period” shall have the meaning assigned to such term in Section 6.01(a).

“Syndication Agent” shall have the meaning assigned to such term in the introductory paragraph of this Agreement.

“Tax Distributions” shall mean any distributions described in Section 5.03(b)(xii).

“Taxes” shall mean any and all present or future taxes, levies, imposts, duties (including stamp duties), deductions, withholdings or similar charges (including ad valorem charges) imposed by any Governmental Authority and any and all interest and penalties related thereto, other than Other Taxes.

“Total Assets” shall mean the total consolidated assets of the Borrower and its Restricted Subsidiaries, as shown on the most recent balance sheet of the Borrower, without giving effect to any amortization of the amount of intangible assets since the Closing Date.

“TPG” shall have the meaning assigned to such term in the first recital hereto.

“Transaction Documents” shall mean the Merger Documents, the Senior Unsecured Note Documents, the Credit Agreement Documents and the Loan Documents and all documents executed in connection therewith.

“Transactions” shall mean, collectively, the transactions to occur pursuant to or in connection with the Transaction Documents, including (a) the consummation of the Merger; (b) the execution and delivery of the Loan Documents and the Borrowings hereunder; (c) the Equity Contribution; (d) the sale and issuance of the Senior Unsecured Notes; (e) the borrowings under the Credit Agreement; (f) the refinancing (or discharge) of the Refinanced Indebtedness; (g) the repayment and/or retirement of the Senior Convertible Notes; (h) the distribution of Real Estate Assets in connection with the Real Estate Facility; (i) the transactions described under “Summary — The Transactions” in the Senior Unsecured Notes Offering Memorandum (other than the Post-Closing CMBS Transaction); and (j) the payment of all fees and expenses to be paid in connection with the foregoing.

“Type” shall mean, when used in respect of any Loan or Borrowing, the Rate by reference to which interest on such Loan or on the Loans comprising such Borrowing is determined. For purposes hereof, the term “Rate” shall include the Eurocurrency Rate and the ABR.

“Unfunded Pension Liability” shall mean, as of the most recent valuation date for the applicable Plan, the excess of (1) the Plan’s actuarial present value (determined on the basis of reasonable assumptions employed by the independent actuary for such Plan for purposes of Section 412 of the Code or Section 302 of ERISA) of its benefit liabilities (as defined in Section 4001(a)(16) of ERISA) over (2) the fair market value of the assets of such Plan.

“Unrestricted Subsidiary” shall mean:

- (a) any Subsidiary of the Borrower that at the time of determination shall be designated an Unrestricted Subsidiary by the Board of Directors of such Person in the manner provided below; and
- (b) any Subsidiary of an Unrestricted Subsidiary;

The Borrower may designate any Subsidiary of the Borrower (including any newly acquired or newly formed Subsidiary of the Borrower) to be an Unrestricted Subsidiary unless such Subsidiary or any of its Subsidiaries owns any Equity Interests or Indebtedness of, or owns or holds any Lien on any property of, the Borrower or any other Subsidiary of the Borrower that is not a Subsidiary of the Subsidiary to be so designated; provided, however, that the Subsidiary to be so designated and its Subsidiaries do not at the time of designation have and do not thereafter Incur any Indebtedness pursuant to which the lender has recourse to any of the

assets of the Borrower or any of its Restricted Subsidiaries; provided, further, however, that either:

- (i) the Subsidiary to be so designated has total consolidated assets of \$1,000 or less; or
- (ii) if such Subsidiary has consolidated assets greater than \$1,000, then such designation would be permitted under Section 5.03.

The Borrower may designate any Unrestricted Subsidiary to be a Restricted Subsidiary; provided, however, that immediately after giving effect to such designation:

- (x)(1) the Borrower could Incur \$1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Ratio test set forth under Section 5.02(a), or
- (2) the Fixed Charge Coverage Ratio for the Borrower and its Restricted Subsidiaries would be greater than such ratio for the Borrower and its Restricted Subsidiaries immediately prior to such designation, in each case on a pro forma basis taking into account such designation, and
- (y) no Event of Default shall have occurred and be continuing.

Any such designation by Borrower shall be evidenced to the Administrative Agent by promptly filing with the Administrative Agent a copy of the resolution of the Board of Directors or any committee thereof of the Borrower giving effect to such designation and an Officer's Certificate certifying that such designation complied with the foregoing provisions.

"U.S. Bankruptcy Code" shall mean Title 11 of the United States Code, as amended, or any similar federal or state law for the relief of debtors.

"U.S. Government Obligations" shall mean securities that are:

- (a) direct obligations of the United States of America for the timely payment of which its full faith and credit is pledged, or
- (b) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America, the timely payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America,

which, in each case, are not callable or redeemable at the option of the issuer thereof, and shall also include a depository receipt issued by a bank (as defined in Section 3(a)(2) of the Securities Act) as custodian with respect to any such U.S. Government Obligations or a specific payment of principal of or interest on any such U.S. Government Obligations held by such custodian for the account of the holder of such depository receipt; provided that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depository receipt from any amount received by the custodian in respect of the U.S. Government

Obligations or the specific payment of principal of or interest on the U.S. Government Obligations evidenced by such depository receipt.

“USA PATRIOT Act” shall mean the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Pub. L. No. 107-56 (signed into law October 26, 2001)).

“Voting Stock” of any Person as of any date shall mean the Capital Stock of such Person that is at the time entitled to vote in the election of the Board of Directors of such Person.

“Weighted Average Life to Maturity” shall mean, when applied to any Indebtedness or Disqualified Stock or Preferred Stock, as the case may be, at any date, the quotient obtained by dividing (a) the sum of the products of the number of years from the date of determination to the date of each successive scheduled principal payment of such Indebtedness or redemption or similar payment with respect to such Disqualified Stock or Preferred Stock multiplied by the amount of such payment, by (b) the sum of all such payments.

“Wholly Owned Restricted Subsidiary” shall mean any Wholly Owned Subsidiary that is a Restricted Subsidiary.

“Wholly Owned Subsidiary” of a Person shall mean a Subsidiary of such Person 100% of the outstanding Capital Stock or other ownership interests of which (other than directors’ qualifying shares or shares required to be held by Foreign Subsidiaries) shall at the time be owned by such Person or by one or more Wholly Owned Subsidiaries of such Person.

“Withdrawal Liability” shall mean liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

SECTION 1.02 Terms Generally. The definitions set forth or referred to in Section 1.01 shall apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” All references herein to Articles, Sections, Exhibits and Schedules shall be deemed references to Articles and Sections of, and Exhibits and Schedules to, this Agreement unless the context shall otherwise require. Except as otherwise expressly provided herein, any reference in this Agreement to any Loan Document shall mean such document as amended, restated, supplemented or otherwise modified from time to time. Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time; provided, that, if the Borrower notifies the Administrative Agent that the Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the Closing Date in GAAP or in the application thereof on the operation of such provision (or if the Administrative Agent notifies the Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of

GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith.

SECTION 1.03 Effectuation of Transactions. Each of the representations and warranties of the Company and the Borrower contained in this Agreement (and all corresponding definitions) are made after giving effect to the Transactions, unless the context otherwise requires.

SECTION 1.04 Times of Day. Unless otherwise specified, all references herein to times of day shall be references to Local Time.

## ARTICLE II The Credits

SECTION 2.01 The Loans. Subject to the terms and conditions set forth herein (a) each Lender having a Senior Interim Cash Pay Loan Commitment severally, but not jointly, agrees to make to the Borrower a loan (a "Senior Interim Cash Pay Loan") in a single draw on the Closing Date denominated in Dollars in a principal amount equal to such Lender's Senior Interim Cash Pay Loan Commitment and (b) each Lender having a Senior Interim Toggle Loan Commitment severally, but not jointly, agrees to make to the Borrower a loan (a "Senior Interim Toggle Loan") in a single draw on the Closing Date denominated in Dollars in a principal amount equal to such Lender's Senior Interim Toggle Loan Commitment. Amounts borrowed under this Section 2.01 and repaid or prepaid may not be reborrowed.

SECTION 2.02 Borrowing, Conversions and Continuations of Loans.

(a) The Borrowing, each conversion of Loans from ABR Loans to Eurocurrency Loans and each continuation of Eurocurrency Loans shall be made upon the Borrower's irrevocable notice to the Administrative Agent, which may be given by telephone. Each such notice must be received by the Administrative Agent not later than (i) 10:00 a.m. Local Time three Business Days prior to the requested date of any conversion of ABR Loans to Eurocurrency Loans or any continuation of Eurocurrency Loans and (ii) 2:00 p.m. Local Time two Business Days before the Closing Date in the case of the Borrowing. Each telephonic notice by the Borrower pursuant to this Section 2.02(a) must be confirmed promptly by delivery to the Administrative Agent of a written Borrowing Request or Interest Election Request, as applicable, appropriately completed and signed by a Responsible Officer of the Borrower. The Borrowing of, or any conversion to, or continuation of, Eurocurrency Loans shall be in a principal amount of \$2,500,000 or a whole multiple of \$500,000 in excess thereof.

(b) Each Borrowing Request or Interest Election Request, as applicable, (whether telephonic or written), shall specify (i) the requested date of the Borrowing or conversion, as the case may be (which shall be a Business Day), (ii) the principal amount of Loans to be borrowed or converted and (iii) if applicable, the duration of the Interest Period with respect thereto. On the last day of any Interest Period for each Eurocurrency Loan, such Loan shall be automatically continued as a Eurocurrency Loan with the same Interest Period

unless the Borrower gives timely notice requesting a continuation of such Eurocurrency Loan with a different Interest Period or unless otherwise provided herein.

(c) Following receipt of a Borrowing Request or Interest Election Request, as applicable, the Administrative Agent shall promptly notify each Lender of the amount of its Commitment for the Loans. In the case of the Borrowing, each Lender shall make the amount of its Loan available to the Administrative Agent in immediately available funds at the Administrative Agent's Office not later than 10:00 a.m. Local Time on the Business Day specified in the Borrowing Request; provided that such funds may be made available at such earlier time as may be agreed among the Lenders, the Borrower and the Administrative Agent for the purpose of consummating the Transactions. Upon satisfaction of the applicable conditions set forth in Article IV, the Administrative Agent shall make all funds so received available to the Borrower in like funds as received by the Administrative Agent either by (i) crediting the account of the Borrower on the books of the Administrative Agent with the amount of such funds or (ii) wire transfer of such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) the Administrative Agent by the Borrower.

(d) Except as otherwise provided herein, a Eurocurrency Loan may be continued only on the last day of an Interest Period for such Eurocurrency Loan. During the existence of an Event of Default, the Administrative Agent at the written request of the Required Lenders, may require that no Loans may be converted to or continued as Eurocurrency Loans.

(e) The Administrative Agent shall promptly notify the Borrower and the Lenders of the interest rate applicable to any Interest Period for Eurocurrency Loans upon determination of such interest rate. The determination of the Eurocurrency Rate by the Administrative Agent shall be conclusive absent manifest error. At any time when ABR Loans are outstanding, the Administrative Agent shall notify the Borrower and the Lenders of any change in the Administrative Agent's prime rate used in determining the ABR promptly following the public announcement of such change.

(f) After giving effect to the Borrowing, all conversions of Loans from ABR Loans to Eurocurrency Loans, and all continuations of Eurocurrency Loans, there shall not be more than five Interest Periods in effect unless otherwise agreed between the Borrower and the Administrative Agent.

(g) The failure of any Lender to make the Loan to be made by it as part of the Borrowing shall not relieve any other Lender of its obligation, if any, hereunder to make its Loan on the date of the Borrowing, but no Lender shall be responsible for the failure of any other Lender to make the Loan to be made by such other Lender on the Closing Date.

(h) Unless the Administrative Agent shall have received notice from a Lender prior to the Closing Date that such Lender will not make available to the Administrative Agent such Lender's pro rata share of the Borrowing, the Administrative Agent may assume that such Lender has made such pro rata share available to the Administrative Agent on the

Closing Date in accordance with Section 2.02(c), and the Administrative Agent may, in reliance upon such assumption, make available to the Borrower on the Closing Date a corresponding amount. If the Administrative Agent shall have so made funds available, then, to the extent that such Lender shall not have made such portion available to the Administrative Agent, each of such Lender and the Borrower severally agrees to repay to the Administrative Agent forthwith on demand such corresponding amount together with interest thereon, for each day from the date on which such amount is made available to the Borrower to the date on which such amount is repaid to the Administrative Agent, at (i) in the case of the Borrower, the interest rate applicable at the time to the Loans comprising the Borrowing, and (ii) in the case of such Lender, the Overnight Rate plus any administrative, processing, or similar fees customarily charged by the Administrative Agent in accordance with the foregoing. A certificate of the Administrative Agent submitted to any Lender with respect to any amounts owing under this Section 2.02(h) shall be conclusive in the absence of manifest error. If the Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays its share of the Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in the Borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(i) Each Lender may at its option make any Eurocurrency Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan, provided that (i) any exercise of such option shall not affect the obligation of the Borrower to repay such Loan and (ii) in exercising such option, such Lender shall use its reasonable efforts to minimize any increased costs to the Borrower resulting therefrom (which obligation of the Lender shall not require it to take or refrain from taking, actions that it determines would result in increased costs for which it will not be compensated hereunder or that it determines would be otherwise disadvantageous to it and in the event of such request for costs for which compensation is provided under this Agreement, the provisions of Section 2.20 shall apply).

SECTION 2.03 [Reserved].

SECTION 2.04 [Reserved].

SECTION 2.05 [Reserved].

SECTION 2.06 [Reserved].

SECTION 2.07 [Reserved].

SECTION 2.08 Termination of Commitments. The Commitment of each Lender shall be automatically and permanently reduced to \$0 upon the earlier of (a) the making of such Lender's Loans pursuant to Section 2.01 and (b) 5:00 p.m. Local Time on the Closing Date.

SECTION 2.09 Repayment of Loans; Evidence of Debt.

(a) The Borrower agrees to repay to the Administrative Agent for the ratable account of the Lenders (i) on the Maturity Date applicable to Senior Cash Pay Loans, the aggregate principal amount of all Senior Cash Pay Loans outstanding on such date and (ii) on the Maturity Date applicable to Senior Toggle Loans, the aggregate principal amount of all Senior Toggle Loans outstanding on such date.

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

(c) The Administrative Agent shall maintain accounts in which it shall record (i) the amount of each Loan made hereunder, the Type thereof and the Interest Period (if any) applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and (iii) any amount received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof.

(d) The entries made in the accounts maintained pursuant to paragraph (b) or (c) of this Section shall be prima facie evidence of the existence and amounts of the obligations recorded therein; provided, that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrower to repay the Loans in accordance with the terms of this Agreement.

(e) Any Lender may request that Loans made by it be evidenced by a Note. In such event, the Borrower shall prepare, execute and deliver to such Lender a Note payable to the order of such Lender (or, if requested by such Lender, to such Lender and its registered assigns). Thereafter, unless otherwise agreed to by the applicable Lender, the Loans evidenced by such Note and interest thereon shall at all times (including after assignment pursuant to Section 9.04) be represented by one or more Notes in such form payable to the order of the payee named therein (or, if such Note is a registered note, to such payee and its registered assigns).

SECTION 2.10 [Reserved].

SECTION 2.11 Prepayment of Loans.

(a) Optional

(i) The Borrower shall have the right at any time and from time to time to prepay any Loan in whole or in part, without premium or penalty, in an aggregate principal amount that is an integral multiple of \$500,000 and not less than the \$2,500,000 or, if less, the amount outstanding, upon prior notice to the Administrative Agent by telephone (confirmed by teletype), not less than three Business Days prior to the date of prepayment, which notice shall be irrevocable except to the extent conditioned on a refinancing of all or any portion of the Loans. Each such notice shall be signed by a Responsible Officer of the Borrower and shall specify the date and amount of such prepayment and the Class(es) and the Type(s) of

Loans to be prepaid and, if Eurocurrency Loans are to be prepaid, the Interest Period(s) of such Loans. The Administrative Agent will promptly notify each applicable Lender of its receipt of each such notice, and of the amount of such Lender's pro rata share of such prepayment.

(ii) Notwithstanding anything to the contrary contained in this Agreement, the Borrower may rescind any notice of prepayment under Section 2.11(a)(i) if such prepayment would have resulted from a refinancing of all of the Loans, which refinancing shall not be consummated or shall otherwise be delayed.

(b) Mandatory.

(i) [Reserved].

(ii) (A) Within 15 months after the Borrower's or any Restricted Subsidiary of the Borrower's receipt of the Net Proceeds of any Asset Sale, the Borrower or such Restricted Subsidiary of the Borrower may apply the Net Proceeds from such Asset Sale, at its option:

(1) to repay (a) Indebtedness constituting Bank Indebtedness and other Pari Passu Indebtedness that is secured by a Lien permitted under this Agreement (and, if the Indebtedness repaid is revolving credit Indebtedness, to correspondingly reduce commitments with respect thereto), (b) following the Rollover Date, Indebtedness of a Restricted Subsidiary that is not a Guarantor, (c) the Loans or (d) following the Rollover Date, other Pari Passu Indebtedness (provided that if the Borrower or any Guarantor shall so reduce Obligations under unsecured Pari Passu Indebtedness, the Borrower will equally and ratably reduce the Loans as provided under Section 2.11(a) or by making an offer (in accordance with the procedures set forth below for an Asset Sale Offer) to all Lenders to purchase at a purchase price equal to 100% of the principal amount thereof, plus accrued and unpaid interest and additional interest, if any, the pro rata principal amount of Loans), in each case other than Indebtedness owed to the Borrower or an Affiliate of the Borrower; or

(2) to make an Investment in any one or more businesses (provided that if such Investment is in the form of the acquisition of Capital Stock of a Person, such acquisition results in such Person becoming a Restricted Subsidiary of the Borrower), assets, or property or capital expenditures, in each case (a) used or useful in a Similar Business or (b) that replace the properties and assets that are the subject of such Asset Sale. A binding commitment shall be treated as a permitted application of the Net Proceeds from the date of such commitment; provided that in the event such binding commitment is later canceled or terminated for any reason before such Net Proceeds are so applied, the Borrower or such Restricted Subsidiary enters into another binding commitment (a "Second Commitment") within six months of such

cancellation or termination of the prior binding commitment; provided, further that the Borrower or such Restricted Subsidiary may only enter into a Second Commitment under the foregoing provision one time with respect to each Asset Sale and to the extent such Second Commitment is later cancelled or terminated for any reason before such Net Proceeds are applied, then such Net Proceeds shall constitute Excess Proceeds.

(B) Any Net Proceeds from any Asset Sale that are not applied as provided and within the time period set forth in clause (A) of this Section 2.11(b)(ii) (it being understood that any portion of such Net Proceeds used to make an offer to purchase Notes, as described in Section(b)(ii) (A)(1) above, shall be deemed to have been invested whether or not such offer is accepted) will be deemed to constitute "Excess Proceeds." When the aggregate amount of Excess Proceeds exceeds \$200,000,000, the Borrower shall make an offer to all Lenders (and, at the option of the Borrower, to holders of any Pari Passu Indebtedness) (an "Asset Sale Offer") to purchase the maximum principal amount of Loans (and such Pari Passu Indebtedness), that is at least \$2,000 and an integral multiple of \$1,000 in excess thereof that may be purchased out of the Excess Proceeds at an offer price in cash in an amount equal to 100% of the principal amount thereof (or, in the event such Pari Passu Indebtedness was issued with significant original issue discount, 100% of the accreted value thereof), plus accrued and unpaid interest and additional interest, if any (or, in respect of such Pari Passu Indebtedness, such lesser price, if any, as may be provided for by the terms of such Pari Passu Indebtedness), to the date fixed for the closing of such offer.

To the extent that the aggregate amount of Loans and such Pari Passu Indebtedness accepted for prepayment or tendered pursuant to an Asset Sale Offer is less than the Excess Proceeds, the Borrower may use any remaining Excess Proceeds for general corporate purposes, subject to other covenants contained in this Agreement. If the aggregate principal amount of Loans or the Pari Passu Indebtedness accepted for prepayment or surrendered by such holders thereof exceeds the amount of Excess Proceeds, the Administrative Agent shall (x) first apply 100.0% of the Excess Proceeds to the prepayment of the Term Loans (as defined in the Credit Agreement) accepted for prepayment and (y) thereafter, apply any remaining Excess Proceeds ratably to the prepayment of the Loans accepted for prepayment in accordance with the Senior Cash Pay Portion and the Senior Toggle Portion and any other tendered Pari Passu Indebtedness based on the accreted value or principal amount of such Loans and Pari Passu Indebtedness accepted for prepayment or tendered. Upon completion of any such Asset Sale Offer, the amount of Excess Proceeds that resulted in the Asset Sale Offer shall be reset to zero.

(C) Pending the final application of any Net Proceeds pursuant to this Section 2.11(b)(ii), the holder of such Net Proceeds may apply such Net Proceeds temporarily to reduce Indebtedness outstanding under a revolving credit facility or otherwise invest such Net Proceeds in any manner not prohibited by this Agreement.

(D) Within ten Business Days of any date on which the aggregate amount of Excess Proceeds exceeds \$200,000,000, the Borrower shall deliver notice of such occurrence to the Administrative Agent, and the Administrative Agent shall

promptly deliver such notice to each Lender to the address of such Lender appearing in the Register or otherwise in accordance with Section 9.01 with the following information:

- (1) that the Borrower is making an Asset Sale Offer pursuant to this Section 2.05(b) and that all Loans and Pari Passu Indebtedness properly accepted for prepayment or tendered and not withdrawn pursuant to such Asset Sale Offer will be prepaid by the Borrower;
- (2) the prepayment date, which will be no earlier than thirty days nor later than sixty days from the date on which such notice is delivered (the "Asset Sale Offer Payment Date");
- (3) that any Loan not properly accepted for prepayment will remain outstanding and continue to accrue interest;
- (4) that unless the Borrower defaults in making the payment, all Loans accepted for payment pursuant to the Asset Sale Offer will cease to accrue interest on the Asset Sale Offer Payment Date;
- (5) that Lenders electing to have any Loans prepaid pursuant to an Asset Sale Offer will be required to notify the Administrative Agent prior to the close of business on the third Business Day preceding the Asset Sale Offer Payment Date;
- (6) that Lenders will be entitled to withdraw their election to require the Borrower to prepay such Loans; provided that the Administrative Agent receives, not later than the close of business on the expiration date of the Asset Sale Offer, a facsimile transmission, electronic mail or letter setting forth the name of such Lender, the principal amount of Loans to be prepaid, and a statement that such Lender is withdrawing its election to have such Loans prepaid;
- (7) that, to the extent that the aggregate principal amount of Loans or the Pari Passu Indebtedness accepted for prepayment or surrendered by such holders thereof exceeds the amount of Excess Proceeds, the Administrative Agent shall apply the Excess Proceeds as set forth under the last sentence of Section 2.11(b)(ii)(B); and
- (8) the other instructions, as determined by the Borrower, consistent with this Section 2.11, that a Lender must follow.

The notice, if delivered in a manner herein provided, shall be conclusively presumed to have been given, whether or not the Lender receives such notice. If (x) the notice is delivered in a manner herein provided and (y) any Lender fails to receive such notice or a Lender receives such notice but it is defective, such Lender's failure to receive such notice or such defect shall not affect the validity of the proceedings for the prepayment of the Loans as to all other Lenders that properly received such notice without defect.

(iii) At any time prior to the Rollover Date, (A) if the Borrower issues any Senior Notes after the Closing Date, the Borrower shall cause to be prepaid an aggregate principal amount of the Senior Interim Loans equal to 100.0% of the Net Proceeds received therefrom, (B) if the Borrower or any Restricted Subsidiary incurs any Indebtedness permitted to be incurred or issued pursuant to Section 6.01(l) of the Credit Agreement, the Borrower shall cause to be prepaid an aggregate principal amount of the Loans equal to 100.0% of the Net Proceeds received therefrom and (C) if the Borrower or any Restricted Subsidiary incurs or issues any Indebtedness not expressly permitted to be incurred or issued pursuant to Section 6.01 of the Credit Agreement, the Borrower shall, after satisfying its obligations under Section 2.11(b) of the Credit Agreement, cause to be prepaid an aggregate principal amount of the Loans equal to the lesser of the Outstanding Amount of such Loans and 100.0% of all Net Proceeds received therefrom ratably in accordance with the Senior Cash Pay Portion and the Senior Toggle Portion, in each case of this clause (iii) on or prior to the date that is five Business Days after the receipt of the applicable Net Proceeds.

(iv) Upon consummation of the Senior Unsecured Notes Offering, the Borrower shall cause to be prepaid an aggregate principal amount of the Loans equal to 100.0% of the Net Proceeds received therefrom (it being understood that any Lender repaid with such Net Proceeds may receive less than 100% of the aggregate principal amount of its Loans, as determined by the Lead Arrangers).

(v) At any time prior to the Rollover Date, in the event of a Change of Control, the Borrower shall cause to be prepaid in full the Senior Interim Loans on or prior to the date that is five Business Days after such Change of Control.

(vi) Each prepayment of Loans pursuant to this Section 2.11(b) shall be paid to the Lenders in accordance with their respective pro rata share of the Loans; provided that the Borrower may designate the amount of each Class of Loans that is to be prepaid in the case of any mandatory prepayment of Loans required to be made pursuant to clause (iii)(A) or (iii)(B) of this Section 2.11(b) (it being understood that with respect to any such mandatory prepayment from the Net Proceeds of any Senior Toggle Notes or other Indebtedness that pays interest in kind, such Net Proceeds shall be applied first to any outstanding Senior Interim Toggle Loans); provided, further, that the prepayment of Loans pursuant to Section 2.11(b) (iv) shall not be paid to the Lenders in accordance with their respective pro rata share of the Loans but shall instead be paid in the manner determined by the Lead Arrangers.

(vii) The Borrower shall notify the Administrative Agent in writing of any mandatory prepayment of Loans required to be made pursuant to clause (iii) of this Section 2.11(b) at least three Business Days prior to the date of such prepayment. Each such notice shall specify the date of such prepayment and provide a reasonably detailed calculation of the amount of such prepayment. The Administrative Agent shall promptly notify each Lender of the contents of the Borrower's prepayment notice and of such Lender's pro rata share of the prepayment.

(c) If the Senior Toggle Loans would otherwise constitute "applicable high yield discount obligations" within the meaning of Section 163(i)(1) of the Code, at the end of each accrual period ending after the fifth anniversary of the Closing Date (each, an "AHYDO"),

Repayment Date”), the Borrower will be required to repay in cash a portion of each Senior Toggle Loan then outstanding equal to the Mandatory Principal Repayment Amount (such redemption, a “Mandatory Principal Repayment”). The repayment price for the portion of the Senior Toggle Loans repaid pursuant to a Mandatory Principal Repayment will be 100% of the principal amount of such portion plus any accrued interest thereon on the date of repayment. The “Mandatory Principal Repayment Amount” shall mean the portion of each Senior Toggle Loan that must be required to be repaid to prevent such Senior Toggle Loans from being treated as an “applicable high yield discount obligation” within the meaning of Section 163(i)(1) of the Code. No partial repayment of the Senior Toggle Loans prior to the AHYDO Repayment Date pursuant to any other provision of this Agreement will alter the Borrower’s obligation to make the Mandatory Principal Repayment with respect to any Senior Toggle Loans that remain outstanding on the AHYDO Repayment Date.

(d) Interest, Funding Losses, Etc. All prepayments under this Section 2.11 shall be accompanied by all accrued interest thereon, together with, in the case of any such prepayment of a Eurocurrency Loan on a date other than the last day of an Interest Period therefor, any amounts owing in respect of such Eurocurrency Loan pursuant to Section 2.16.

SECTION 2.12 Fees. The Borrower shall pay to the Agents such fees as shall have been separately agreed upon in writing in the Fee Letter at the times so specified. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever (except as expressly agreed between the Borrower and the applicable Agent).

SECTION 2.13 Interest.

(a) (i) Subject to Section 2.13(d), each Senior Cash Pay Loan that is an ABR Loan shall bear interest on the Outstanding Amount thereof from the date of the Borrowing thereof until maturity thereof (whether by acceleration or otherwise) at a rate per annum equal to the Applicable ABR Margin plus the ABR in effect from time to time.

(ii) Subject to Section 2.13(d), each Senior Toggle Loan that is an ABR Loan shall bear interest on the Outstanding Amount thereof (A) from the date of the Borrowing thereof until January 28, 2013 (the “PIK Interest Termination Date”), at the Borrower’s election (other than the initial interest payment, which shall be made in cash): (1) entirely in cash (“Cash Interest”), (2) entirely by increasing the principal amount of the outstanding Loans (“PIK Interest”) or (3) 50.0% as Cash Interest and 50.0% as PIK Interest (on a pro rata basis among the Lenders holding Senior Toggle Loans) and (B) from the PIK Interest Termination Date until maturity (whether by acceleration or otherwise) entirely as Cash Interest. Any Cash Interest shall accrue for each day at a rate per annum equal to the Applicable ABR Margin plus the ABR in effect from time to time. Any PIK Interest shall accrue for each day during such interest period related to such Interest Payment Date on the Senior Toggle Loans at a rate per annum equal to the Applicable ABR Margin plus the ABR in effect from time to time plus the PIK Margin.

(b) (i) Subject to Section 2.13(d), each Senior Cash Pay Loan that is a Eurocurrency Loan shall bear interest on the Outstanding Amount thereof from the date of the

Borrowing thereof until maturity thereof (whether by acceleration or otherwise) at a rate per annum equal to the Applicable Eurocurrency Margin plus the Eurocurrency Rate in effect from time to time.

(ii) Subject to Section 2.13(d), each Senior Toggle Loan that is a Eurocurrency Loan shall bear interest on the Outstanding Amount thereof (A) for any applicable Interest Period from the date of the Borrowing thereof until the PIK Interest Termination Date, at the Borrower's election (other than the initial interest payment, which shall be made in cash): (1) entirely as Cash Interest, (2) entirely as PIK Interest or (3) 50.0% as Cash Interest and 50.0% as PIK Interest (on a pro rata basis among the Lenders holding Senior Toggle Loans) and (B) for any applicable Interest Period from the PIK Interest Termination Date until maturity (whether by acceleration or otherwise) entirely as Cash Interest. Any Cash Interest shall accrue for each day at a rate per annum equal to the Applicable Eurocurrency Rate Margin plus the Eurocurrency Rate in effect from time to time. Any PIK Interest shall accrue for each day during such Interest Period related to such Interest Payment Date on the Senior Toggle Loans at a rate per annum equal to the Applicable Eurocurrency Rate Margin plus the Eurocurrency Rate in effect from time to time plus the PIK Margin.

All PIK Interest shall be treated as principal of the applicable Senior Toggle Loans for all purposes of this agreement (regardless of whether evidenced by any promissory note).

(c) Prior to the PIK Interest Termination Date, the Borrower may elect the form of interest payment on Senior Toggle Loans with respect to each Interest Period by delivering a notice (the "Interest Election Notice") to the Administrative Agent thirty (30) Business Days prior to (i) the commencement of the relevant Interest Period in the case of Eurocurrency Loans or (ii) the Interest Payment Date immediately preceding the Interest Payment Date on which the Borrower elect to pay PIK Interest, in the case of ABR Loans. Each Interest Election Notice shall include information to the following effect: (1) the relevant Interest Payment Date; (2) whether interest shall be paid on such Interest Payment Date entirely as Cash Interest, entirely as PIK Interest or 50.0% as Cash Interest and 50.0% as PIK Interest; and (3) if interest shall be paid as PIK Interest, the increase in the principal amount of the Senior Toggle Loans to be effective upon the relevant Interest Payment Date as a result of such payment and the principal amount of the Senior Toggle Loans outstanding as of such Interest Payment Date giving effect to such payment. If the Borrower does not deliver an Interest Election Notice pursuant to this Section 2.13(c), the interest on the Senior Toggle Loans will be payable on the related Interest Payment Date for such Interest Period in the form of Cash Interest.

(d) The Borrower agrees to pay interest on past due amounts under this Agreement at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws. Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(e) Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest

hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Bankruptcy Law.

(f) It is the intention of the parties hereto to comply strictly with applicable usury laws; accordingly, it is stipulated and agreed that the aggregate of all amounts which constitute interest under applicable usury laws, whether contracted for, charged, taken, reserved, or received, in connection with the Indebtedness evidenced by this Agreement or any Senior Exchange Notes, or any other document relating or referring hereto or thereto, now or hereafter existing, shall never exceed under any circumstance whatsoever the maximum amount of interest allowed by applicable usury laws.

SECTION 2.14 Alternate Rate of Interest. If prior to the commencement of any Interest Period for a Eurocurrency Loan:

(a) the Administrative Agent determines (which determination shall be conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining the Eurocurrency Rate, as applicable, for such Interest Period; or

(b) the Administrative Agent is advised by the Required Lenders that the Eurocurrency Rate for such Interest Period will not adequately and fairly reflect the cost to such Lenders of making or maintaining their applicable Loans for such Interest Period;

then the Administrative Agent shall give notice thereof to the Borrower and the Lenders by telephone or telecopy as promptly as practicable thereafter and, until the Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, (i) any Interest Election Request that requests the conversion of any Loan to, or continuation of any Loan as, a Eurocurrency Loan shall be ineffective and such Loan shall be converted to or continued as on the last day of the Interest Period applicable thereto as an ABR Loan, and (ii) if any Borrowing Request requests a Eurocurrency Loan, such Loan shall be made as an ABR Loan.

SECTION 2.15 Increased Costs.

(a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by, any Lender (except any such reserve requirement reflected in the Mandatory Costs); or

(ii) impose on any Lender or the London interbank market any other condition affecting this Agreement or Eurocurrency Loans made by such Lender;

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Eurocurrency Loan (or of maintaining its obligation to make any such Loan) or to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest or otherwise), then the Borrower will pay to such Lender such additional

amount or amounts as will compensate such for such additional costs incurred or reduction suffered.

(b) If any Lender determines that any Change in Law regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement or the Loans made by such Lender to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy), then from time to time the Borrower shall pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(c) A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as applicable, as specified in paragraph (a) or (b) of this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) Promptly after any Lender has determined that it will make a request for increased compensation pursuant to this Section 2.15, such Lender shall notify the Borrower thereof. Failure or delay on the part of any Lender to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's right to demand such compensation; provided, that the Borrower shall not be required to compensate a Lender pursuant to this Section for any increased costs or reductions incurred more than 180 days prior to the date that such Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor; provided, further, that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof.

(e) The foregoing provisions of this Section 2.15 shall not apply in the case of any Change in Law in respect of Taxes, which shall instead be governed by Section 2.17.

**SECTION 2.16 Break Funding Payments.** In the event of (a) the payment of any principal of any Eurocurrency Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default), (b) the failure to borrow, convert, continue or prepay any Eurocurrency Loan on the date specified in any notice delivered pursuant hereto or (c) the assignment of any Eurocurrency Loan other than on the last day of the Interest Period applicable thereto as a result of a request by a Borrower pursuant to Section 2.19, then, in any such event, the Borrower shall compensate each Lender for the loss, cost and expense attributable to such event. In the case of a Eurocurrency Loan, such loss, cost or expense to any Lender shall be deemed to be the amount determined by such Lender (it being understood that the deemed amount shall not exceed the actual amount) to be the excess, if any, of (i) the amount of interest which would have accrued on the principal amount of such Loan had such event not occurred, at the Eurocurrency Rate that would have been applicable to such Loan,

for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue a Eurocurrency Loan, for the period that would have been the Interest Period for such Loan), over (ii) the amount of interest which would accrue on such principal amount for such period at the interest rate which such Lender would bid were it to bid, at the commencement of such period, for deposits in dollars of a comparable amount and period from other banks in the Eurocurrency market. A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

SECTION 2.17 Taxes.

(a) Any and all payments by or on account of any obligation of any Loan Party hereunder shall be made free and clear of and without withholding or deduction for any Indemnified Taxes or Other Taxes; provided, that if a Loan Party shall be required to withhold or deduct any Indemnified Taxes or Other Taxes from such payments, then (i) the sum payable shall be increased as necessary so that after making all required withholding or deductions (including withholding or deductions applicable to additional sums payable under this Section) the Administrative Agent or any Lender as applicable, receives an amount equal to the sum it would have received had no such withholding or deductions been made, (ii) such Loan Party shall make such withholding or deductions and (iii) such Loan Party shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with applicable law.

(b) In addition, the Loan Parties shall pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) Each Loan Party shall indemnify the Administrative Agent and each Lender within 10 days after written demand therefor, for the full amount of any Indemnified Taxes payable by the Administrative Agent or such Lender, as applicable, on or with respect to any payment by or on account of any obligation of such Loan Party hereunder (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section), and any Other Taxes (including Other Taxes imposed or asserted on or attributable to amounts payable under this Section) and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to such Loan Party by a Lender, or by the Administrative Agent on its own behalf, on behalf of another Agent or on behalf of a Lender, shall be conclusive absent manifest error.

(d) As soon as practicable after any payment of Indemnified Taxes or Other Taxes by a Loan Party to a Governmental Authority, such Loan Party shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(e) Any Lender that is entitled to an exemption from or reduction of withholding Tax or backup withholding Tax under the law of the jurisdiction in which the Borrower is located, or any treaty to which such jurisdiction is a party, with respect to payments under this Agreement shall deliver to the Borrower (with a copy to the Administrative Agent), to the extent such Lender is legally entitled to do so, at the time or times prescribed by applicable law, such properly completed and executed documentation prescribed by applicable law, or as may reasonably be requested by the Borrower to permit such payments to be made without such withholding tax or at a reduced rate; provided that, with respect to any withholding tax imposed by any jurisdiction other than the United States, a Lender shall not be required to provide any documentation if such Lender reasonably determines that doing so would be materially disadvantageous to such Lender.

(f) Each Foreign Lender shall deliver to the Borrower and the Administrative Agent on the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), two original copies of whichever of the following is applicable: (i) duly completed copies of Internal Revenue Service Form W-8BEN (or any subsequent versions thereof or successors thereto), claiming eligibility for benefits of an income tax treaty to which the United States of America is a party, (ii) duly completed copies of Internal Revenue Service Form W-8ECI (or any subsequent versions thereof or successors thereto), (iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under section 871(h) or 881(c) of the Code, (x) a certificate to the effect that such Foreign Lender is not (A) a "bank" within the meaning of section 881(c)(3)(A) of the Code, (B) a "10 percent shareholder" of the Borrower within the meaning of section 871(h)(3) or 881(c)(3)(B) of the Code, or (C) a "controlled foreign corporation" described in section 881(c)(3)(C) of the Code and (y) duly completed copies of Internal Revenue Service Form W-8BEN (or any subsequent versions thereof or successors thereto), (iv) duly completed copies of Internal Revenue Service Form W-8IMY, together with appropriate forms and certificates described in clauses (i) through (iii) above (additional Form W-8IMYs, withholding statements and other information) as may be required or (v) any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in United States federal withholding tax duly completed together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower to determine the withholding or deduction required to be made. In addition, in each of the foregoing circumstances, each Foreign Lender shall deliver such forms, if legally entitled to deliver such forms, promptly upon the obsolescence, expiration or invalidity of any form previously delivered by such Foreign Lender. Each Foreign Lender shall promptly notify the Borrower at any time it determines that it is no longer in a position to provide any previously delivered certificate to the Borrower (or any other form of certification adopted by the United States of America or other taxing authorities for such purpose). In addition, each Lender that is not a Foreign Lender shall deliver to the Borrower and the Administrative Agent two copies of Internal Revenue Service Form W-9 (or any subsequent versions thereof or successors thereto) on or before the date such Lender becomes a party and upon the expiration of any form previously delivered by such Lender. Notwithstanding any other provision of this paragraph, a Lender shall not be required to deliver any form pursuant to this paragraph that such Lender is not legally able to deliver.

(g) If the Administrative Agent or a Lender has received a refund of any Indemnified Taxes or Other Taxes as to which it has been indemnified by a Loan Party or with respect to which such Loan Party has paid additional amounts pursuant to this Section 2.17, it shall pay over such refund to such Loan Party (but only to the extent of indemnity payments made, or additional amounts paid, by such Loan Party under this Section 2.17 with respect to the Indemnified Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses of the Administrative Agent or such Lender (including any Taxes imposed with respect to such refund) as is determined by the Administrative Agent or Lender in good faith, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided, that such Loan Party, upon the request of the Administrative Agent or such Lender, agrees to repay as soon as reasonably practicable the amount paid over to such Loan Party (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent or such Lender in the event the Administrative Agent or such Lender is required to repay such refund to such Governmental Authority. This Section 2.17 shall not be construed to require the Administrative Agent or any Lender to make available its Tax returns (or any other information relating to its Taxes which it deems in good faith to be confidential) to the Loan Parties or any other person. Notwithstanding anything to the contrary, in no event will any Lender be required to pay any amount to a Loan Party the payment of which would place such Lender in a less favorable net after tax position than such Lender would have been in if the additional amounts giving rise to such refund of any Indemnified Taxes or Other Taxes had never been paid.

SECTION 2.18 Payments Generally; Pro Rata Treatment; Sharing of Set-offs.

(a) The Borrower shall make each payment required to be made by it hereunder (whether of principal, interest, fees or of amounts payable under Section 2.15, 2.16, or 2.17, or otherwise) without condition or deduction for any defense, recoupment, set-off or counterclaim. Except as otherwise expressly provided herein, all payments by the Borrower hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the applicable Administrative Agent's Office in Dollars and in immediately available funds not later than 2:00 p.m. Local Time on the date specified herein. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent to the applicable account designated to the Borrower by the Administrative Agent, except that payments pursuant to Sections 2.15, 2.16, 2.17 and 9.05 shall be made directly to the persons entitled thereto. Without limiting the generality of the foregoing, the Administrative Agent may require that any payments due under this Agreement be made in the United States. The Administrative Agent shall distribute any such payments received by it for the account of any other person to the appropriate recipient promptly following receipt thereof. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. Any payment required to be made by the Administrative Agent hereunder shall be deemed to have been made by the time required if the Administrative

Agent shall, at or before such time, have taken the necessary steps to make such payment in accordance with the regulations or operating procedures of the clearing or settlement system used by the Administrative Agent to make such payment.

(b) If at any time insufficient funds are received by and available to the Administrative Agent from the Borrower to pay fully all amounts of principal, interest and fees then due from the Borrower hereunder, such funds shall be applied (i) first, towards payment of interest and fees then due from the Borrower hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties and (ii) second, towards payment of principal of Loans then due from the Borrower hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal then due to such parties.

(c) Except as permitted by the second proviso of Section 2.11(b)(iv), if any Lender shall, by exercising any right of set-off or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans, resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Loans and accrued interest thereon than the proportion received by any other Lender, then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the Loans of other Lenders to the extent necessary so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans; provided, that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this paragraph (c) shall not be construed to apply to any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant, other than to the Borrower or any Subsidiary or Affiliate thereof (as to which the provisions of this paragraph (c) shall apply). The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

(d) Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the Overnight Rate.

(e) If any Lender shall fail to make any payment required to be made by it pursuant to Section 2.02(h) and 2.18(d), then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender's obligations under such Sections until all such unsatisfied obligations are fully paid.

SECTION 2.19 Mitigation Obligations; Replacement of Lenders.

(a) If any Lender requests compensation under Section 2.15, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.17, then such Lender shall use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or Affiliates, if, in the reasonable judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 2.15 or 2.17, as applicable, in the future and (ii) would not subject such Lender to any material unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender in any material respect. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) If any Lender requests compensation under Section 2.15, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.17, or if any Lender is a Defaulting Lender, or if any Lender is the subject of a Disqualification, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 9.04), all its interests, rights and obligations under this Agreement to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided, that (i) the Borrower shall have received the prior written consent of the Administrative Agent, which consent shall not unreasonably be withheld, (ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder, from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts) and (iii) in the case of any such assignment resulting from a claim for compensation under Section 2.15 or payments required to be made pursuant to Section 2.17, such assignment will result in a reduction in such compensation or payments. Nothing in this Section 2.19 shall be deemed to prejudice any rights that the Borrower may have against any Lender that is a Defaulting Lender. No action by or consent of the removed Lender shall be necessary in connection with such assignment, which shall be immediately and automatically effective upon payment of such purchase price. In connection with any such assignment the Borrower, Administrative Agent, such removed Lender and the replacement Lender shall otherwise comply with Section 9.04; provided, that if such removed Lender does not comply with Section 9.04 within one Business Day after the Borrower's request, compliance with Section 9.04 shall not be required to effect such assignment.

(c) If any Lender (such Lender, a “Non-Consenting Lender”) has failed to consent to a proposed amendment, waiver, discharge or termination which pursuant to the terms of Section 9.08 requires the consent of all of the Lenders affected and with respect to which the Required Lenders shall have granted their consent, then the Borrower shall have the right (unless such Non-Consenting Lender grants such consent) at its sole expense (including with respect to the processing and recordation fee referred to in Section 9.04(b)(ii)(B)) to replace such Non-Consenting Lender by deeming such Non-Consenting Lender to have assigned its Loans, and its Commitments hereunder to one or more assignees reasonably acceptable to the Administrative Agent (unless such assignee is a Lender, an Affiliate of a Lender or an Approved Fund); provided, that: (a) all Obligations of the Borrower owing to such Non-Consenting Lender being replaced shall be paid in full to such Non-Consenting Lender concurrently with such assignment (including any amount payable pursuant to Section 2.11(a)) and (b) the replacement Lender shall purchase the foregoing by paying to such Non-Consenting Lender a price equal to the principal amount thereof plus accrued and unpaid interest thereon. No action by or consent of the Non-Consenting Lender shall be necessary in connection with such assignment, which shall be immediately and automatically effective upon payment of such purchase price. In connection with any such assignment the Borrower, Administrative Agent, such Non-Consenting Lender and the replacement Lender shall otherwise comply with Section 9.04; provided, that if such Non-Consenting Lender does not comply with Section 9.04 within one Business Day after the Borrower’s request, compliance with Section 9.04 shall not be required to effect such assignment.

SECTION 2.20 Illegality. If any Lender reasonably determines that any change in law has made it unlawful, or that any Governmental Authority has asserted after the Closing Date that it is unlawful, for any Lender or its applicable Lending Office to make or maintain any Eurocurrency Loans in any currency, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, any obligations of such Lender to make or continue Eurocurrency Loans in such currency or to convert ABR Loans to Eurocurrency Loans shall be suspended until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the Borrower shall upon demand from such Lender (with a copy to the Administrative Agent), either (i) convert all Eurocurrency Loans of such Lender to ABR Loans on the last day of such Interest Period (or, otherwise, immediately convert such Eurocurrency Loans to ABR Loans) or (ii) prepay such Eurocurrency Loans. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted.

SECTION 2.21 Permanent Refinancing.

(a) On the Rollover Date,

(i) all outstanding Senior Interim Cash Pay Loans shall be converted into term loans (each, a “Senior Cash Pay Term Loan”) having an aggregate principal amount equal to the Outstanding Amount of such Senior Interim Cash Pay Loans, in each case to the extent that such Senior Interim Cash Pay Loans are not repaid in whole or in part in cash on or prior to such date; and

(ii) all outstanding Senior Interim Toggle Loans shall be converted into term loans (each, a “Senior Toggle Term Loan”) having an aggregate principal amount equal to the Outstanding Amount of such Senior Interim Toggle Loans, in each case to the extent that such Senior Interim Toggle Loans are not repaid in whole or in part in cash on or prior to such date.

(b) (i) On the Rollover Date or on the fifteenth day of each calendar month (each, an “Exchange Date”), or if such day is not a Business Day, the preceding Business Day, after the Rollover Date, at the option of the applicable Lender, (A) the Senior Cash Pay Term Loans may be exchanged in whole or in part for one or more Senior Cash Pay Exchange Notes having an aggregate principal amount equal to the Outstanding Amount of such Senior Cash Pay Term Loans and (B) the Senior Toggle Term Loans may be exchanged in whole or in part for one or more Senior Toggle Exchange Notes having an aggregate principal amount equal to the Outstanding Amount of such Senior Toggle Term Loans; provided, however, that the Borrower shall not be required to issue Senior Cash Pay Exchange Notes or Senior Toggle Exchange Notes, as the case may be, until the Borrower shall have received requests to issue at least \$100,000,000 in aggregate principal amount of Senior Cash Pay Exchange Notes or Senior Toggle Exchange Notes, as the case may be. On each Exchange Date, the Borrower shall pay to the Administrative Agent for the account of the applicable Lender any accrued and unpaid interest on such Lender’s Loans being exchanged for Senior Exchange Notes on such date. The terms of the Senior Cash Pay Exchange Notes and the Senior Toggle Exchange Notes will be set forth in the Senior Notes Indenture.

(ii) Such Lender shall provide the Borrower prior irrevocable written notice of such election (each such notice, an “Exchange Notice”), substantially in the form of Exhibit J, at least five Business Days prior to the date of exchange (fifteen (15) Business Days if the Exchange Date is the Rollover Date). The Exchange Notice shall specify the principal amount of Senior Term Loans to be exchanged (which shall be at least \$1,000,000 and integral multiples of \$1,000,000 in excess thereof for each Class of Loans or the entire remaining aggregate principal amount of Loans of such Lender), the Exchange Date, which shall be a Business Day, and, subject to the terms of the Senior Notes Indenture, the name of the proposed registered holder and the amount of each Senior Exchange Note requested; provided, however, that no Lender shall be permitted to exchange only a portion of its Loans unless such Lender intends at the time of such exchange to transfer the Senior Exchange Notes to a third-party Person that is not an Affiliate of such Lender. Senior Term Loans exchanged for Senior Exchange Notes pursuant to this Section 2.21 shall be deemed repaid and canceled, and the Senior Exchange Notes so issued shall be governed by and construed in accordance with the provisions of the Senior Notes Indenture. The Senior Exchange Notes shall be issued in the form set forth in the Senior Notes Indenture.

(iii) As more particularly provided in the Senior Notes Indenture, (i) (A) Senior Cash Pay Exchange Notes issued pursuant to the Senior Notes Indenture shall bear interest at the rate applicable to Senior Cash Pay Term Loans in effect on the date of such exchange, (B) Senior Toggle Exchange Notes issued pursuant to the Senior Notes Indenture shall bear interest at the rate applicable to Senior Toggle Term Loans in effect on the date of such exchange, and (C) Senior Cash Pay Exchange Notes issued pursuant to the Senior Notes

Indenture shall mature on January 28, 2016 Senior Toggle Exchange Notes issued pursuant to the Senior Notes Indenture shall mature on January 28, 2018 and Senior Exchange Notes shall be redeemable as set forth in the Senior Notes Indenture and the applicable form of Senior Exchange Notes attached thereto.

(c) Not later than fifteen Business Days after the Exchange Date following delivery of any Exchange Notice, the Borrower shall (i) deliver a written notice to the trustee under the Senior Notes Indenture (the "Senior Note Trustee"), directing such Senior Note Trustee to authenticate and deliver Senior Exchange Notes as specified in the Exchange Notice and (ii) use all commercially reasonable efforts to effect delivery of such Senior Exchange Notes to the requesting Lender.

(d) The Borrower agrees that as a condition to the effectiveness of the exchange of Senior Term Loans for Senior Exchange Notes:

(i) The Borrower shall have issued the Senior Exchange Notes pursuant to the Senior Notes Indenture substantially in the applicable form set forth therein, and the Borrower and each Guarantor shall have executed and delivered the Senior Notes Indenture.

(ii) The Borrower and each Guarantor shall have provided to the Administrative Agent copies of resolutions of its board of directors approving the execution and delivery of the Senior Notes Indenture and, in the case of the Borrower, the issuance of the Senior Exchange Notes, together with a customary certificate of the secretary of such Borrower or such Guarantor certifying such resolutions.

(iii) The Borrower and each Guarantor shall have executed and delivered the Senior Exchange Notes Registration Rights Agreement.

(iv) The Borrower and each Guarantor shall have provided to the Lenders copies of resolutions of its board of directors approving the execution and delivery of the Senior Exchange Notes Registration Rights Agreement, together with a customary certificate of the secretary of such Borrower or such Guarantor certifying such resolutions.

(v) The Borrower shall have caused its counsel to deliver to the Administrative Agent an executed legal opinion in form and substance customary for a transaction of that type to be mutually agreed upon by the Borrower and the Administrative Agent (including, without limitation, with respect to due authorization, execution and delivery, validity and enforceability of the Senior Exchange Notes, the Senior Notes Indenture and the Senior Exchange Note Registration Rights Agreement).

(e) If the foregoing conditions set forth in Section 2.21(d) are not satisfied on the Rollover Date, then the Lenders shall retain all of their rights and remedies with respect to the Senior Term Loans pursuant to this Agreement until such conditions are satisfied and the Senior Term Loans are so exchanged for Senior Exchange Notes. The Borrower agrees to satisfy the conditions set forth in Section 2.21(d) no later than fifteen Business Days after its receipt of the first Exchange Notice and, if the Exchange Date is the Rollover Date, subject to the occurrence of the Rollover Date.

(f) Nothing in this Section 2.21 shall prevent or limit the ability of the Borrower from repaying or refinancing the Senior Term Loans in any other manner not otherwise prohibited by this Agreement.

(g) It is understood and agreed that the Senior Term Loans exchanged for the Senior Exchange Notes constitute the same indebtedness as such Senior Exchange Notes and that no novation shall be effected by any such exchange.

### ARTICLE III Representations and Warranties

The Borrower represents and warrants to each of the Lenders that:

SECTION 3.01 Organization; Powers. Except as set forth on Schedule 3.01, the Borrower and each of the Material Subsidiaries (a) is a partnership, limited liability company or corporation duly organized, validly existing and in good standing (or, if applicable in a foreign jurisdiction, enjoys the equivalent status under the laws of any jurisdiction of organization outside the United States) under the laws of the jurisdiction of its organization, (b) has all requisite power and authority to own its property and assets and to carry on its business as now conducted, (c) is qualified to do business in each jurisdiction where such qualification is required, except where the failure so to qualify would not reasonably be expected to have a Material Adverse Effect, and (d) has the power and authority to execute, deliver and perform its obligations under each of the Loan Documents and each other agreement or instrument contemplated thereby to which it is or will be a party and, in the case of the Borrower, to borrow and otherwise obtain credit hereunder.

SECTION 3.02 Authorization. The execution, delivery and performance by the Borrower and each of the Loan Parties of each of the Loan Documents to which it is a party, and the borrowings hereunder and the transactions forming a part of the Transactions (a) have been duly authorized by all corporate, stockholder, partnership or limited liability company action required to be obtained by the Borrower and such Loan Parties and (b) will not (i) violate (A) any provision of law, statute, rule or regulation, or of the certificate or articles of incorporation or other constitutive documents (including any partnership, limited liability company or operating agreements) or by-laws of the Borrower or any such Loan Party, (B) any applicable order of any court or any rule, regulation or order of any Governmental Authority or (C) any provision of any indenture, certificate of designation for preferred stock, agreement or other instrument to which the Borrower or any such Loan Party is a party or by which any of them or any of their property is or may be bound, (ii) be in conflict with, result in a breach of or constitute (alone or with notice or lapse of time or both) a default under, give rise to a right of or result in any cancellation or acceleration of any right or obligation (including any payment) or to a loss of a material benefit under any such indenture, certificate of designation for preferred stock, agreement or other instrument, where any such conflict, violation, breach or default referred to in clause (i) or (ii) of this Section 3.02(b), would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, or (iii) result in the creation or imposition of any Lien upon or with respect to any property or assets now owned or hereafter acquired the Borrower or any such Loan Party, other than the Permitted Liens.

SECTION 3.03 Enforceability. This Agreement has been duly executed and delivered by the Borrower and constitutes, and each other Loan Document when executed and delivered by each Loan Party that is party thereto will constitute, a legal, valid and binding obligation of such Loan Party enforceable against each such Loan Party in accordance with its terms, subject to (i) the effects of bankruptcy, insolvency, moratorium, reorganization, fraudulent conveyance or other similar laws affecting creditors' rights generally, (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law) and (iii) implied covenants of good faith and fair dealing.

SECTION 3.04 Governmental Approvals. No action, consent or approval of, registration or filing with or any other action by any Governmental Authority is or will be required in connection with the Transactions or the exercise by any Agent or any Lender of its rights under the Loan Documents, except for (a) such actions, consents and approvals under Gaming Laws or from Gaming Authorities the failure of which to be obtained or made would not reasonably be expected to have a Material Adverse Effect, (b) such as have been made or obtained and are in full force and effect, (c) such actions, consents and approvals the failure of which to be obtained or made would not reasonably be expected to have a Material Adverse Effect and (d) filings or other actions listed on Schedule 3.04.

SECTION 3.05 Financial Statements.

(a) The unaudited *pro forma* consolidated balance sheet and related consolidated statements of income and cash flows of the Borrower, together with its consolidated Subsidiaries (including the notes thereto) (the "Pro Forma Financial Statements") and *pro forma* adjusted EBITDA for the fiscal year ending December 31, 2006 and the four fiscal quarter period ended September 30, 2007 (the "Pro Forma Adjusted EBITDA"), copies of which have heretofore been furnished to each Lender (via inclusion in the Information Memorandum), have been prepared giving effect (as if such events had occurred on such date) to the Transactions and the Post-Closing CMBS Transaction. Each of the Pro Forma Financial Statements and the Pro Forma Adjusted EBITDA has been prepared in good faith based on assumptions believed by the Borrower to have been reasonable as of the date of delivery thereof (it being understood that such assumptions are based on good faith estimates of certain items and that the actual amount of such items on the Closing Date is subject to change), and presents fairly in all material respects on a *pro forma* basis the estimated financial position of the Borrower and its consolidated Subsidiaries as at September 30, 2007, assuming that the Transactions and the Post-Closing CMBS Transaction had actually occurred at such date, and the results of operations of Borrower and its consolidated subsidiaries for the twelve-month period ended September 30, 2007, assuming that the Transactions and the Post-Closing CMBS Transaction had actually occurred on the first day of such twelve-month period.

(b) The audited consolidated balance sheets of the Company as at December 31, 2004, 2005 and 2006, and the related audited consolidated statements of income and cash flows for such fiscal years, reported on by and accompanied by a report from Deloitte & Touche LLP, copies of which have heretofore been furnished to each Lender, present fairly in all material respects the consolidated financial position of the Company as at such date and the consolidated results of operations and cash flows of the Company for the years then ended.

(c) The unaudited consolidated balance sheet of the Company as at September 30, 2007 and the related unaudited consolidated statements of income and cash flows for the nine-month period ended September 30, 2007, copies of which have heretofore been furnished to each Lender, present fairly in all material respects the consolidated financial position of the Company as at such date and the consolidated results of operations and cash flows of the Company for such period (subject to normal year-end audit adjustments and the absence of footnotes).

SECTION 3.06 No Material Adverse Effect. After the Closing Date, there has been no event or circumstance that has had or would reasonably be expected to have a Material Adverse Effect.

SECTION 3.07 Title to Properties; Possession Under Leases.

(a) Each of the Borrower and the Subsidiaries has valid fee simple title to, or valid leasehold interests in, or easements or other limited property interests in, all its Real Properties and has valid title to its personal property and assets, in each case, except for Permitted Liens and except for defects in title that do not materially interfere with its ability to conduct its business as currently conducted or to utilize such properties and assets for their intended purposes and except where the failure to have such title would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. All such properties and assets are free and clear of Liens, other than Permitted Liens.

(b) None of the Borrower or its Subsidiaries have defaulted under any leases to which it is a party, except for such defaults as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. All of the Borrower's or Subsidiaries' leases are in full force and effect, except leases in respect of which the failure to be in full force and effect would not reasonably be expected to have a Material Adverse Effect. Except as set forth on Schedule 3.07(b), the Borrower and each of the Subsidiaries enjoys peaceful and undisturbed possession under all such leases, other than leases in respect of which the failure to enjoy peaceful and undisturbed possession would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(c) Each of the Borrower and the Subsidiaries owns or possesses, or is licensed to use, all patents, trademarks, service marks, trade names and copyrights, all applications for any of the foregoing and all licenses and rights with respect to the foregoing necessary for the present conduct of its business, without any conflict (of which the Borrower has been notified in writing) with the rights of others, and free from any burdensome restrictions on the present conduct of the Borrower, except where such conflicts and restrictions would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect or except as set forth on Schedule 3.07(c).

SECTION 3.08 Subsidiaries.

(a) Schedule 3.08(a) sets forth as of the Closing Date the name and jurisdiction of incorporation, formation or organization of each subsidiary of the Borrower

and, as to each such subsidiary, the percentage of each class of Equity Interests owned by the Borrower or by any such subsidiary.

(b) As of the Closing Date, there are no outstanding subscriptions, options, warrants, calls, rights or other agreements or commitments (other than stock options granted to employees or directors and directors' qualifying shares) of any nature relating to any Equity Interests of the Borrower or any of the Subsidiaries, except rights of employees to purchase Equity Interests in connection with the Transactions or as set forth on Schedule 3.08(b).

**SECTION 3.09 Litigation; Compliance with Laws.**

(a) There are no actions, suits or proceedings at law or in equity or by or on behalf of any Governmental Authority or in arbitration now pending, or, to the knowledge of the Borrower, threatened in writing against or affecting the Borrower or any of the Subsidiaries or any business, property or rights of any such person which would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(b) None of the Borrower, the Subsidiaries and their respective properties or assets is in violation of (nor will the continued operation of their material properties and assets as currently conducted violate) any law, rule or regulation (including any zoning, building, ordinance, code or approval or any building permit, but excluding any Environmental Laws, which are subject to Section 3.16) or any restriction of record, or is in default with respect to any judgment, writ, injunction or decree of any Governmental Authority, where such violation or default would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(c) The Borrower and each Subsidiary are in compliance in all material respects with all Gaming Laws that are applicable to them and their businesses.

**SECTION 3.10 Federal Reserve Regulations.**

(a) None of the Borrower and the Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying Margin Stock.

(b) No part of the proceeds of any Loan will be used, whether directly or indirectly, and whether immediately, incidentally or ultimately, (i) to purchase or carry Margin Stock or to extend credit to others for the purpose of purchasing or carrying Margin Stock or to refund indebtedness originally incurred for such purpose, or (ii) for any purpose that entails a violation of, or that is inconsistent with, the provisions of the Regulations of the Board, including Regulation U or Regulation X.

**SECTION 3.11 Investment Company Act.** None of the Borrower and the Subsidiaries is an "investment company" as defined in, or subject to regulation under, the Investment Company Act of 1940, as amended.

SECTION 3.12 Use of Proceeds. The Borrower will use the proceeds of the Senior Interim Loans as described under “Use of Proceeds” in the Senior Unsecured Notes Offering Memorandum.

SECTION 3.13 Tax Returns. Except as set forth on Schedule 3.13:

(a) Except as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, each of the Borrower and the Subsidiaries has filed or caused to be filed all federal, state, local and non-U.S. Tax returns required to have been filed by it and each such Tax return is true and correct;

(b) Each of the Borrower and the Subsidiaries has timely paid or caused to be timely paid all Taxes shown to be due and payable by it on the returns referred to in clause (a) and all other Taxes or assessments (or made adequate provision (in accordance with GAAP) for the payment of all Taxes not yet due) with respect to all periods or portions thereof ending on or before the Closing Date including in its capacity as a withholding agent (except Taxes or assessments that are being contested in good faith by appropriate proceedings in accordance with Section 5.03 and for which the Borrower or any of the Subsidiaries (as the case may be) has set aside on its books adequate reserves in accordance with GAAP), which Taxes, if not paid or adequately provided for, would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; and

(c) Other than as would not be, individually or in the aggregate, reasonably expected to have a Material Adverse Effect: as of the Closing Date, with respect to each of the Borrower and the Subsidiaries, there are no claims being asserted in writing with respect to any Taxes.

SECTION 3.14 No Material Misstatements. (a) All written information (other than the Projections, estimates and information of a general economic nature or general industry nature) (the “Information”) concerning the Company, the Borrower, the Subsidiaries, the Transactions and any other transactions contemplated hereby included in the Information Memorandum or otherwise prepared by or on behalf of the foregoing or their representatives and made available to any Lenders or the Administrative Agent in connection with the Transactions or the other transactions contemplated hereby, when taken as a whole, was true and correct in all material respects, as of the date such Information was furnished to the Lenders and as of the Closing Date and did not, taken as a whole, contain any untrue statement of a material fact as of any such date or omit to state a material fact necessary in order to make the statements contained therein, taken as a whole, not materially misleading in light of the circumstances under which such statements were made.

(b) The Projections and estimates and information of a general economic nature prepared by or on behalf of the Borrower or any of its representatives and that have been made available to any Lenders or the Administrative Agent in connection with the Transactions or the other transactions contemplated hereby (i) have been prepared in good faith based upon assumptions believed by the Borrower to be reasonable as of the date thereof (it being understood that actual results may vary materially from the Projections), as of the

date such Projections and estimates were furnished to the Lenders and as of the Closing Date, and (ii) as of the Closing Date, have not been modified in any material respect by the Borrower.

SECTION 3.15 Employee Benefit Plans. (a) Except as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect: (i) each Plan is in compliance with the applicable provisions of ERISA and the Code; (ii) no Reportable Event has occurred during the past five years as to which the Borrower, any of its Subsidiaries or any ERISA Affiliate was required to file a report with the PBGC, other than reports that have been filed; (iii) as of the most recent valuation date preceding the date of this Agreement, no Plan has any material Unfunded Pension Liability; (iv) no ERISA Event has occurred or is reasonably expected to occur; (v) none of the Borrower, its Subsidiaries and the ERISA Affiliates (A) has received any written notification that any Multiemployer Plan is in reorganization or has been terminated within the meaning of Title IV of ERISA, or has knowledge that any Multiemployer Plan is reasonably expected to be in reorganization or to be terminated or (B) has incurred or is reasonably expected to incur any Withdrawal Liability to any Multiemployer Plan; and (vi) none of the Borrower or its Subsidiaries has engaged in a "prohibited transaction" (as defined in Section 406 of ERISA and Code Section 4975) in connection with any employee pension benefit plan (as defined in Section 3(2) of ERISA) that would subject the Borrower or any Subsidiary to tax.

(b) Each of the Borrower and the Subsidiaries is in compliance (i) with all applicable provisions of law and all applicable regulations and published interpretations thereunder with respect to any employee pension benefit plan or other employee benefit plan governed by the laws of a jurisdiction other than the United States and (ii) with the terms of any such plan, except, in each case, for such noncompliance that would not reasonably be expected to have a Material Adverse Effect.

(c) Except as would not reasonably be expected to result in a Material Adverse Effect, there are no pending or, to the knowledge of the Borrower, threatened claims (other than claims for benefits in the normal course), sanctions, actions or lawsuits, asserted or instituted against any Plan or any person as fiduciary or sponsor of any Plan that would reasonably be expected to result in liability to the Borrower or any of its Subsidiaries.

SECTION 3.16 Environmental Matters. Except as set forth in Schedule 3.16 and except as to matters that would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect: (i) no written notice has been received by the Borrower or any of its Subsidiaries, and there are no judicial, administrative or other actions, suits or proceedings pending or, to the Borrower's knowledge, threatened which allege a violation of any Environmental Laws, in each case relating to the Borrower or any of its Subsidiaries, (ii) each of the Borrower and its Subsidiaries has all environmental permits, licenses and other approvals necessary for its operations to comply with all applicable Environmental Laws and is in compliance with the terms of such permits, licenses and other approvals and with all other applicable Environmental Laws, (iii) to the Borrower's knowledge, no Hazardous Material is located at, on or under any property currently owned, operated or leased or formerly owned, operated or leased, by the Borrower or any of its Subsidiaries that

would reasonably be expected to give rise to any cost, liability or obligation of the Borrower or any of its Subsidiaries under any Environmental Laws, and no Hazardous Material has been generated, owned, treated, stored, handled or controlled by the Borrower or any of its Subsidiaries and transported to or Released at any location in a manner that would reasonably be expected to give rise to any cost, liability or obligation of the Borrower or any of its Subsidiaries under any Environmental Laws and (iv) there are no agreements in which the Borrower or any of its Subsidiaries has expressly assumed or undertaken responsibility for any known or reasonably likely liability or obligation of any other person arising under or relating to Environmental Laws, which in any such case has not been made available to the Administrative Agent prior to the date hereof.

SECTION 3.17 [Reserved].

SECTION 3.18 [Reserved].

SECTION 3.19 Solvency.

(a) On the Closing Date, immediately after giving effect to the Transactions that occur on the Closing Date, (i) the fair value of the assets of the Borrower and its Subsidiaries on a consolidated basis, at a fair valuation, will exceed the debts and liabilities, direct, subordinated, contingent or otherwise, of the Borrower and its Subsidiaries on a consolidated basis; (ii) the present fair saleable value of the property of the Borrower and its Subsidiaries on a consolidated basis will be greater than the amount that will be required to pay the probable liability of the Borrower and its Subsidiaries on a consolidated basis on their debts and other liabilities, direct, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured; (iii) the Borrower and its Subsidiaries on a consolidated basis will be able to pay their debts and liabilities, direct, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured; and (iv) the Borrower and its Subsidiaries on a consolidated basis will not have unreasonably small capital with which to conduct the businesses in which they are engaged as such businesses are now conducted and are proposed to be conducted following the Closing Date.

(b) On the Closing Date, the Borrower does not intend to, and the Borrower does not believe that it or any of its subsidiaries will, incur debts beyond its ability to pay such debts as they mature, taking into account the timing and amounts of cash to be received by it or any such subsidiary and the timing and amounts of cash to be payable on or in respect of its Indebtedness or the Indebtedness of any such subsidiary.

SECTION 3.20 Labor Matters. Except as, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect: (a) there are no strikes or other labor disputes pending or threatened against the Borrower or any of the Subsidiaries; (b) the hours worked and payments made to employees of the Borrower and the Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable law dealing with such matters; and (c) all payments due from the Borrower or any of the Subsidiaries or for which any claim may be made against the Borrower or any of the Subsidiaries, on account of wages and employee health and welfare insurance and other benefits have been paid or accrued as a liability

on the books of the Borrower or such Subsidiary to the extent required by GAAP. Except as, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect, the consummation of the Transactions will not give rise to a right of termination or right of renegotiation on the part of any union under any material collective bargaining agreement to which the Borrower or any of the Subsidiaries (or any predecessor) is a party or by which the Borrower or any of the Subsidiaries (or any predecessor) is bound.

SECTION 3.21 No Default. No Default or Event of Default has occurred and is continuing or would result from the consummation of the transactions contemplated by this Agreement or any other Loan Document.

SECTION 3.22 Intellectual Property; Licenses, Etc. Except as would not reasonably be expected to have a Material Adverse Effect and except as set forth in Schedule 3.22, (a) the Borrower and each of its Subsidiaries owns, or possesses the right to use, all of the patents, registered trademarks, registered service marks or trade names, registered copyrights or mask works, domain names, applications and registrations for any of the foregoing (collectively, "Intellectual Property Rights") that are reasonably necessary for the operation of their respective businesses, without conflict with the rights of any other person, (b) to the best knowledge of the Borrower, the Borrower and its Subsidiaries are not interfering with, infringing upon, misappropriating or otherwise violating Intellectual Property Rights of any person, and (c) no claim or litigation regarding any of the foregoing is pending or, to the best knowledge of the Borrower, threatened.

SECTION 3.23 Senior Debt. The Obligations constitute "Senior Debt" (or the equivalent thereof) under the documentation governing any subordinated Indebtedness permitted to be incurred hereunder or any Refinancing Indebtedness permitted hereunder in respect thereof constituting subordinated Indebtedness.

#### ARTICLE IV Conditions of Lending

The obligations of the Lenders to make Loans are subject to the satisfaction of the following conditions:

SECTION 4.01 Conditions to Borrowing. On the Closing Date:

(a) The Administrative Agent (or its counsel) shall have received from each party hereto either (i) a counterpart of this Agreement signed on behalf of such party or (ii) written evidence satisfactory to the Administrative Agent (which may include telecopy transmission of a signed signature page of this Agreement) that such party has signed a counterpart of this Agreement.

(b) The Administrative Agent shall have received, on behalf of itself, and the Lenders on the Closing Date, a favorable written opinion of (i) O'Melveny & Myers LLP, counsel for the Loan Parties, and (ii) each local counsel specified on Schedule 4.02(b), in each case (A) dated the Closing Date, (B) addressed to, the Administrative Agent and the Lenders and (C) in form and substance reasonably satisfactory to the Administrative Agent.

(c) The Administrative Agent shall have received in the case of each Loan Party each of the items referred to in clauses (i), (ii) and (iii) below:

(i) a copy of the certificate or articles of incorporation, certificate of limited partnership or certificate of formation, including all amendments thereto, of each Loan Party, (A) in the case of a corporation, certified as of a recent date by the Secretary of State (or other similar official) of the jurisdiction of its organization, and a certificate as to the good standing (to the extent such concept or a similar concept exists under the laws of such jurisdiction) of each such Loan Party as of a recent date from such Secretary of State (or other similar official) or (B) in the case of a partnership or limited liability company, certified by the Secretary or Assistant Secretary of each such Loan Party;

(ii) a certificate of the Secretary or Assistant Secretary or similar officer of each Loan Party dated the Closing Date and certifying

(A) that attached thereto is a true and complete copy of the by-laws (or partnership agreement, limited liability company agreement or other equivalent governing documents) of such Loan Party as in effect on the Closing Date and at all times since a date prior to the date of the resolutions described in clause (B) below,

(B) that attached thereto is a true and complete copy of resolutions duly adopted by the Board of Directors of such Loan Party (or its managing general partner, managing member or equivalent) authorizing the execution, delivery and performance of the Loan Documents to which such person is a party and, in the case of the Borrower, the borrowings hereunder, and that such resolutions have not been modified, rescinded or amended and are in full force and effect on the Closing Date,

(C) that the certificate or articles of incorporation, certificate of limited partnership, articles of incorporation or certificate of formation of such Loan Party has not been amended since the date of the last amendment thereto disclosed pursuant to clause (i) above,

(D) as to the incumbency and specimen signature of each officer executing any Loan Document or any other document delivered in connection herewith on behalf of such Loan Party and

(E) as to the absence of any pending proceeding for the dissolution or liquidation of such Loan Party; and

(iii) a certificate of a director or an officer as to the incumbency and specimen signature of the Secretary or Assistant Secretary or similar officer executing the certificate pursuant to clause (ii) above.

(d) The Merger shall have been consummated or shall be consummated simultaneously with or immediately following the closing under this Agreement in accordance with the terms and conditions of the Merger as set forth in the Merger Documents, without giving effect to any amendment, modification or waiver by Merger Inc. thereto which is

materially adverse to the interests of the Lenders without the approval of the Requisite Lead Arrangers (which approval shall not be unreasonably withheld, conditioned or delayed).

(e) The conditions in Section 6.02(a) of the Merger Agreement (but only with respect to representations and warranties that are material to the interests of the Lenders, and only to the extent that Parent has the right to terminate its obligations under the Merger Agreement as a result of a breach of such representations in the Merger Agreement) shall be satisfied, and the representations and warranties made in Sections 3.01(b) and (d), 3.02(a), 3.03, 3.10, 3.11 and 3.23 hereof shall be true and correct in all material respects.

(f) The Equity Contributions shall have been consummated and, to the extent any of the Equity Contributions are in the form of preferred Equity Interests, the terms of such preferred Equity Interests shall be reasonably satisfactory to the Requisite Lead Arrangers to the extent material to the interests of the Lenders.

(g) The Lenders shall have been provided access to the financial statements referred to in Section 3.05.

(h) On the Closing Date, after giving effect to the Transactions and the other transactions contemplated hereby, the Borrower and its Subsidiaries shall have outstanding no Indebtedness other than (i) the Loans under this Agreement, (ii) the loans and other extensions of credit under the Credit Agreement, (iii) the Senior Unsecured Notes, (iv) the Retained Notes, (v) the Senior Convertible Notes and (vi) other Indebtedness permitted pursuant to Section 5.02.

(i) The Lenders shall have received a solvency certificate substantially in the form of Exhibit B and signed by the Chief Financial Officer of the Borrower confirming the solvency of Borrower and its Subsidiaries on a consolidated basis after giving effect to the Transactions on the Closing Date.

(j) The Agents shall have received all fees payable thereto or to any Lender on or prior to the Closing Date and, to the extent invoiced, all other amounts due and payable pursuant to the Loan Documents on or prior to the Closing Date, including, to the extent invoiced, reimbursement or payment of all reasonable out-of-pocket expenses (including reasonable fees, charges and disbursements of Cahill Gordon and Reindel LLP) required to be reimbursed or paid by the Loan Parties hereunder or under any Loan Document.

(k) The Administrative Agent shall have received all documentation and other information required by regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations, including without limitation, the USA PATRIOT Act that has been requested not less than five (5) Business Days prior to the Closing Date.

(l) The Administrative Agent shall have received a Borrowing Request as required by Section 2.02.

(m) All amounts due or outstanding in respect of the Refinanced Indebtedness constituting the existing credit agreements shall have been (or substantially simultaneously

with the closing under this Agreement shall be) paid in full, all commitments in respect thereof terminated and all guarantees thereof discharged and released. The Company or the Borrower shall, or shall cause an Affiliate to, either (i) have purchased each of the Refinanced Indebtedness constituting notes validly tendered and not withdrawn in the debt tender offer and, to the extent not all the Refinanced Indebtedness constituting notes are so purchased, the indenture relating thereto shall have been amended pursuant to a consent solicitation to remove substantially all of the negative covenants therefrom that can be amended by a majority vote of the holders thereof, or (ii) have caused the Company or the Borrower to have issued a notice of optional redemption for, and deposited funds with the trustee under the indenture governing the Refinanced Indebtedness constituting notes sufficient to “discharge” on the Closing Date such notes pursuant to the terms of the indenture governing such notes or, to the extent a discharge is unavailable, set aside an amount of funds sufficient, in the reasonable judgment of the Borrower, to redeem the Refinanced Indebtedness constituting notes on the earliest redemption date permitted under the indenture governing such notes.

For purposes of determining compliance with the conditions specified in this Section 4.01, each Lender shall be deemed to have consented to, approved or accepted or to be satisfied with each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to the Lenders unless an officer of the Administrative Agent responsible for the transactions contemplated by the Loan Documents shall have received notice from such Lender prior to the Closing Date specifying its objection thereto and such Lender shall not have made available to the Administrative Agent such Lender’s ratable portion of the initial Borrowing.

## ARTICLE V Covenants

The Borrower covenants and agrees with each Lender that so long as this Agreement shall remain in effect (other than in respect of contingent indemnification and expense reimbursement obligations for which no claim has been made) and until the Commitments have been terminated and the principal of and interest on each Loan, all Fees and all other expenses or amounts payable under any Loan Document shall have been paid in full, unless the Required Lenders shall otherwise consent in writing, the Borrower shall, and shall cause each of the Subsidiaries to covenant and warrant to the following:

### SECTION 5.01 Reports and Other Information.

(a) Notwithstanding that the Borrower may not be subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act or otherwise report on an annual and quarterly basis on forms provided for such annual and quarterly reporting pursuant to rules and regulations promulgated by the SEC, the Borrower shall file with the SEC (and provide the Administrative Agent and holders with copies thereof, without cost to each holder, within 15 days after it files them with the SEC),

(i) within the time period specified in the SEC’s rules and regulations for non-accelerated filers, annual reports on Form 10-K (or any successor or

comparable form) containing the information required to be contained therein (or required in such successor or comparable form),

(ii) within the time period specified in the SEC's rules and regulations for non-accelerated filers, reports on Form 10-Q (or any successor or comparable form) containing the information required to be contained therein (or required in such successor or comparable form),

(iii) promptly from time to time after the occurrence of an event required to be therein reported (and in any event within the time period specified in the SEC's rules and regulations), such other reports on Form 8-K (or any successor or comparable form), and

(iv) any other information, documents and other reports which the Borrower would be required to file with the SEC if it were subject to Section 13 or 15(d) of the Exchange Act;

provided, however, that the Borrower shall not be so obligated to file such reports with the SEC if the SEC does not permit such filing, in which event the Borrower shall make available such information to the Administrative Agent and the Lenders, in each case within 15 days after the time the Borrower would be required to file such information with the SEC if it were subject to Section 13 or 15(d) of the Exchange Act, subject, in the case of any such information, certificates or reports provided prior to the effectiveness of the exchange offer registration statement or shelf registration statement, to exceptions consistent with the presentation of financial information in the Senior Unsecured Notes Offering Memorandum.

(b) Notwithstanding the foregoing, the Borrower shall not be required to furnish any information, certificates or reports required by Items 307 or 308 of Regulation S-K prior to the effectiveness of the exchange offer registration statement or shelf registration statement with respect to the Senior Unsecured Notes.

(c) In the event that:

(i) the rules and regulations of the SEC permit the Borrower and any direct or indirect parent of the Borrower to report at such parent entity's level on a consolidated basis and such parent entity is not engaged in any business in any material respect other than incidental to its ownership, directly or indirectly, of the capital stock of the Borrower, or

(ii) any direct or indirect parent of the Borrower is or becomes a guarantor of the Senior Unsecured Notes or Senior Notes,

consolidating reporting at the parent entity's level in a manner consistent with that described in this covenant for the Borrower shall satisfy this covenant, and this Agreement shall permit the Borrower to satisfy its obligations in this covenant with respect to financial information relating to the Borrower by furnishing financial information relating to such direct or indirect parent; provided that such financial information is accompanied by consolidating information

that explains in reasonable detail the differences between the information relating to such direct or indirect parent and any of its Subsidiaries other than the Borrower and its Subsidiaries, on the one hand, and the information relating to the Borrower, the Guarantors and the other Subsidiaries of the Borrower on a standalone basis, on the other hand.

(d) The Borrower shall be deemed to have furnished such reports referred to above to the Administrative Agent and the Lenders if the Borrower has filed such reports with the SEC via the EDGAR filing system and such reports are publicly available. In addition, the requirements of this covenant shall be deemed satisfied prior to the commencement of the exchange offer contemplated by the registration rights agreement relating to the Senior Unsecured Notes or the effectiveness of the shelf registration statement by (i) the filing with the SEC of the exchange offer registration statement and/or shelf registration statement in accordance with the provisions of such registration rights agreement, and any amendments thereto, and such registration statement and/or amendments thereto are filed at times that otherwise satisfy the time requirements set forth in clause (a) of this covenant and/or (ii) the posting of reports that would be required to be provided to the Administrative Agent and the holders on the Borrower's website (or that of any of its parent companies).

**SECTION 5.02 Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock.**

(a) The Borrower shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly, Incur any Indebtedness (including Acquired Indebtedness) or issue any shares of Disqualified Stock, and (ii) the Borrower shall not permit any of its Restricted Subsidiaries (other than a Guarantor) to issue any shares of Preferred Stock; provided, however, that the Borrower and any Guarantor may Incur Indebtedness (including Acquired Indebtedness) or issue shares of Disqualified Stock, and, subject to the third paragraph of this covenant, any Restricted Subsidiary of the Borrower that is not a Guarantor may Incur Indebtedness (including Acquired Indebtedness), issue shares of Disqualified Stock or issue shares of Preferred Stock, in each case if the Fixed Charge Coverage Ratio of the Borrower for the most recently ended four full fiscal quarters for which internal financial statements are available immediately preceding the date on which such additional Indebtedness is Incurred or such Disqualified Stock or Preferred Stock is issued would have been at least 2.00 to 1.00 determined on a pro forma basis (including a pro forma application of the net proceeds therefrom), as if the additional Indebtedness had been Incurred, or the Disqualified Stock or Preferred Stock had been issued, as the case may be, and the application of proceeds therefrom had occurred at the beginning of such four-quarter period.

(b) The foregoing limitations shall not apply to:

(i) the Incurrence by the Borrower or its Restricted Subsidiaries of Indebtedness under the Credit Agreement and the issuance and creation of letters of credit and bankers' acceptances thereunder up to an aggregate principal amount of \$11,000,000,000;

(ii) the Incurrence by the Borrower and the Guarantors of Indebtedness represented by (A) the Loans (including any Guarantee), the Senior Exchange Notes and related guarantees to be issued in exchange for the Loans and the Guarantees pursuant to Section 2.21 and the exchange notes and related exchange guarantees to be issued in exchange for the Senior Exchange Notes and the guarantees thereof pursuant to the Senior Exchange Note Registration Rights Agreement (and including any Senior Exchange Notes issued as additional interest pursuant thereto), (B) the Senior Notes (including any guarantee thereof) and the exchange notes and related exchange guarantees to be issued in exchange for Senior Notes and the guarantees thereof pursuant to the registration rights agreement related thereto (but excluding any additional Senior Notes but including any Senior Notes issued as PIK interest from time to time); and (C) the Senior Unsecured Notes (not including any additional Senior Unsecured Notes, but including any Senior Unsecured Notes issued as PIK interest from time to time) and the guarantees thereof (including exchange Senior Unsecured Notes and related guarantees thereof);

(iii) Indebtedness existing on the Closing Date (other than Indebtedness described in clauses (i) and (ii));

(iv) Indebtedness (including Capitalized Lease Obligations) Incurred by the Borrower or any of its Restricted Subsidiaries, Disqualified Stock issued by the Borrower or any of its Restricted Subsidiaries and Preferred Stock issued by any Restricted Subsidiaries of the Borrower to finance (whether prior to or within 270 days after) the acquisition, lease, construction, repair, replacement or improvement of property (real or personal) or equipment (whether through the direct purchase of assets or the Capital Stock of any Person owning such assets);

(v) Indebtedness Incurred by the Borrower or any of its Restricted Subsidiaries constituting reimbursement obligations with respect to letters of credit and bank guarantees issued in the ordinary course of business, including without limitation letters of credit in respect of workers' compensation claims, health, disability or other benefits to employees or former employees or their families or property, casualty or liability insurance or self-insurance, and letters of credit in connection with the maintenance of, or pursuant to the requirements of, environmental or other permits or licenses from governmental authorities, or other Indebtedness with respect to reimbursement type obligations regarding workers' compensation claims;

(vi) Indebtedness arising from agreements of the Borrower or a Restricted Subsidiary providing for indemnification, adjustment of purchase price or similar obligations, in each case, Incurred in connection with the Transactions or any other acquisition or disposition of any business, assets or a Subsidiary of the Borrower in accordance with the terms of this Agreement, other than guarantees of Indebtedness Incurred by any Person acquiring all or any portion of such business, assets or Subsidiary for the purpose of financing such acquisition;

(vii) Indebtedness of the Borrower to a Restricted Subsidiary; provided that (except in respect of intercompany current liabilities incurred in the ordinary course of business in connection with the cash management operations of the Borrower and its Subsidiaries) any such Indebtedness owed to a Restricted Subsidiary that is not a Guarantor is subordinated in right of payment to the obligations of the Borrower under the Loans; provided, further, that any subsequent issuance or transfer of any Capital Stock or any other event which results in any such Restricted Subsidiary ceasing to be a Restricted Subsidiary or any other subsequent transfer of any such Indebtedness (except to the Borrower or another Restricted Subsidiary or any pledge of such Indebtedness constituting a Permitted Lien) shall be deemed, in each case, to be an Incurrence of such Indebtedness not permitted by this clause (vii);

(viii) shares of Preferred Stock of a Restricted Subsidiary issued to the Borrower or another Restricted Subsidiary; provided that any subsequent issuance or transfer of any Capital Stock or any other event which results in any Restricted Subsidiary that holds such shares of Preferred Stock of another Restricted Subsidiary ceasing to be a Restricted Subsidiary or any other subsequent transfer of any such shares of Preferred Stock (except to the Borrower or another Restricted Subsidiary) shall be deemed, in each case, to be an issuance of shares of Preferred Stock not permitted by this clause (viii);

(ix) Indebtedness of a Restricted Subsidiary to the Borrower or another Restricted Subsidiary; provided that if a Guarantor incurs such Indebtedness to a Restricted Subsidiary that is not a Guarantor (except in respect of intercompany current liabilities incurred in the ordinary course of business in connection with the cash management operations of the Borrower and its Subsidiaries), such Indebtedness is subordinated in right of payment to the Guarantee of such Guarantor; provided, further, that any subsequent issuance or transfer of any Capital Stock or any other event which results in any Restricted Subsidiary holding such Indebtedness ceasing to be a Restricted Subsidiary or any other subsequent transfer of any such Indebtedness (except to the Borrower or another Restricted Subsidiary or any pledge of such Indebtedness constituting a Permitted Lien) shall be deemed, in each case, to be an Incurrence of such Indebtedness not permitted by this clause (ix);

(x)(x) Hedging Obligations pursuant to hedging agreements entered into in connection with the Transactions and (y) Hedging Obligations that are not incurred for speculative purposes but (A) for the purpose of fixing or hedging interest rate risk with respect to any Indebtedness that is permitted by the terms of this Agreement to be outstanding; (B) for the purpose of fixing or hedging currency exchange rate risk with respect to any currency exchanges; or (C) for the purpose of fixing or hedging commodity price risk with respect to any commodity purchases or sales;

(xi) obligations (including reimbursement obligations with respect to letters of credit and bank guarantees) in respect of performance, bid, appeal and surety bonds and completion guarantees provided by the Borrower or any Restricted

Subsidiary in the ordinary course of business or consistent with past practice or industry practice;

(xii) Indebtedness or Disqualified Stock of the Borrower or, subject to clause (c) below, Indebtedness, Disqualified Stock or Preferred Stock of any Restricted Subsidiary of the Borrower not otherwise permitted hereunder in an aggregate principal amount or liquidation preference, which when aggregated with the principal amount or liquidation preference of all other Indebtedness, Disqualified Stock and Preferred Stock then outstanding and Incurred pursuant to this clause (xii), does not exceed the greater of \$1,100,000,000 and 5.0% of Total Assets at the time of Incurrence (it being understood that any Indebtedness Incurred pursuant to this clause (xii) shall cease to be deemed Incurred or outstanding for purposes of this clause (xii) but shall be deemed Incurred for purposes of the first paragraph of this covenant from and after the first date on which the Borrower, or the Restricted Subsidiary, as the case may be, could have Incurred such Indebtedness under the first paragraph of this covenant without reliance upon this clause (xii));

(xiii) Indebtedness or Disqualified Stock of the Borrower or any Restricted Subsidiary of the Borrower and Preferred Stock of any Restricted Subsidiary of the Borrower not otherwise permitted hereunder in an aggregate principal amount or liquidation preference not greater than 200.0% of the net cash proceeds received by the Borrower and its Restricted Subsidiaries since immediately after the Closing Date from the issue or sale of Equity Interests of the Borrower or any direct or indirect parent entity of the Borrower (which proceeds are contributed to the Borrower or its Restricted Subsidiary) or cash contributed to the capital of the Borrower (in each case other than proceeds of Disqualified Stock or sales of Equity Interests to, or contributions received from, the Borrower or any of its Subsidiaries) as determined in accordance with clauses (b) and (c) of the definition of Cumulative Credit to the extent such net cash proceeds or cash have not been applied pursuant to such clauses to make Restricted Payments or to make other Investments, payments or exchanges pursuant to Section 5.03(b)(iii) or to make Permitted Investments (other than Permitted Investments specified in clauses (a) and (c) of the definition thereof);

(xiv) any guarantee by the Borrower or any Restricted Subsidiary of the Borrower of Indebtedness or other obligations of the Borrower or any of its Restricted Subsidiaries so long as the Incurrence of such Indebtedness Incurred by the Borrower or such Restricted Subsidiary is permitted under the terms of this Agreement; provided that (A) if such Indebtedness is by its express terms subordinated in right of payment to the Loans or the Guarantee of such Restricted Subsidiary, as applicable, any such guarantee of such Guarantor with respect to such Indebtedness shall be subordinated in right of payment to such Guarantor's Guarantee with respect to the Loans substantially to the same extent as such Indebtedness is subordinated to the Loans or the Guarantee of such Restricted Subsidiary, as applicable and (B) if such guarantee is of Indebtedness of the Borrower, such guarantee is Incurred in accordance with Section 5.09 solely to the extent such covenant is applicable;

(xv) the Incurrence by the Borrower or any of its Restricted Subsidiaries of Indebtedness or Disqualified Stock or Preferred Stock of a Restricted Subsidiary of the Borrower which serves to refund, refinance or defease any Indebtedness Incurred or Disqualified Stock or Preferred Stock issued as permitted under clause (a) of this covenant and clauses (ii), (iii), (iv), (xii), (xiii), (xv), (xvi), (xx) and (xxiv) of this clause (b) or any Indebtedness, Disqualified Stock or Preferred Stock Incurred to so refund or refinance such Indebtedness, Disqualified Stock or Preferred Stock, including any additional Indebtedness, Disqualified Stock or Preferred Stock Incurred to pay premiums (including tender premiums), expenses, defeasance costs and fees in connection therewith (subject to the following proviso, “Refinancing Indebtedness”) prior to its respective maturity; provided, however, that such Refinancing Indebtedness:

(a) has a Weighted Average Life to Maturity at the time such Refinancing Indebtedness is Incurred which is not less than the shorter of (x) the remaining Weighted Average Life to Maturity of the Indebtedness, Disqualified Stock or Preferred Stock being refunded, refinanced or defeased and (y) the Weighted Average Life to Maturity that would result if all payments of principal on the Indebtedness, Disqualified Stock and Preferred Stock being refunded or refinanced that were due on or after the date that is one year following the last maturity date of any Loans then outstanding were instead due on such date;

(b) to the extent such Refinancing Indebtedness refinances (i) Indebtedness junior to the Loans or the Guarantee of such Restricted Subsidiary, as applicable, such Refinancing Indebtedness is junior to the Loans or the Guarantee of such Restricted Subsidiary, as applicable, or (ii) Disqualified Stock or Preferred Stock, such Refinancing Indebtedness is Disqualified Stock or Preferred Stock; and

(c) shall not include (x) Indebtedness of a Restricted Subsidiary of the Borrower that is not a Guarantor that refinances Indebtedness of the Borrower or a Guarantor, or (y) Indebtedness of the Borrower or a Restricted Subsidiary that refinances Indebtedness of an Unrestricted Subsidiary.

provided, further, that subclause (a) of this clause (xv) shall not apply to any refunding or refinancing of any Secured Indebtedness and subclauses (a) and (b) of this clause (xv) shall not apply to any refunding or refinancing of any of the Retained Notes.

(xvi) Indebtedness, Disqualified Stock or Preferred Stock of (x) the Borrower or, subject to clause (c) of this covenant, any of its Restricted Subsidiaries incurred to finance an acquisition or (y) Persons that are acquired by the Borrower or any of its Restricted Subsidiaries or merged, consolidated or amalgamated with or into the Borrower or any of its Restricted Subsidiaries in accordance with the terms of

this Agreement; provided that after giving effect to such acquisition or merger, consolidation or amalgamation, either:

(a) the Borrower would be permitted to incur at least \$1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Ratio test set forth in the clause (a) of this covenant; or

(b) the Fixed Charge Coverage Ratio of the Borrower would be greater than immediately prior to such acquisition or merger, consolidation or amalgamation;

(xvii) Indebtedness Incurred by a Receivables Subsidiary in a Qualified Receivables Financing that is not recourse to the Borrower or any Restricted Subsidiary other than a Receivables Subsidiary (except for Standard Securitization Undertakings);

(xviii) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business; provided that such Indebtedness is extinguished within five Business Days of its Incurrence;

(xix) Indebtedness of the Borrower or any Restricted Subsidiary supported by a letter of credit or bank guarantee issued pursuant to the Credit Agreement, in a principal amount not in excess of the stated amount of such letter of credit;

(xx) Indebtedness of Foreign Subsidiaries; provided, however, that the aggregate principal amount of Indebtedness Incurred under this clause (xx), when aggregated with the principal amount of all other Indebtedness then outstanding and Incurred pursuant to this clause (xx), does not exceed the greater of \$250,000,000 and 7.5% of Total Assets of the Foreign Subsidiaries at any one time outstanding (it being understood that any Indebtedness incurred pursuant to this clause (xx) shall cease to be deemed incurred or outstanding for purposes of this clause (xx) but shall be deemed incurred for the purposes of the first paragraph of this covenant from and after the first date on which such Foreign Subsidiary could have incurred such Indebtedness under the first paragraph of this covenant without reliance upon this clause (xx));

(xxi) Indebtedness of the Borrower or any Restricted Subsidiary consisting of (a) the financing of insurance premiums or (b) take-or-pay obligations contained in supply arrangements, in each case, in the ordinary course of business;

(xxii) Indebtedness consisting of Indebtedness issued by the Borrower or a Restricted Subsidiary of the Borrower to current or former officers, directors and employees thereof or any direct or indirect parent thereof, their respective estates, spouses or former spouses, in each case to finance the purchase or redemption of

Equity Interests of the Borrower or any of its direct or indirect parent companies to the extent described in Section 5.03(b)(iv);

(xxiii) Indebtedness incurred in connection with any Project Financing;

(xxiv) Indebtedness incurred on behalf of, or representing Guarantees of Indebtedness of, joint ventures of the Borrower or any Restricted Subsidiary not in excess, at any one time outstanding, of \$300,000,000; and

(xxv) Indebtedness of any Persons that are acquired by the Borrower or any of its Restricted Subsidiaries or merged, consolidated or amalgamated with or into the Borrower or any of its Restricted Subsidiaries in connection with the Post-Closing CMBS Transaction.

(c) Restricted Subsidiaries that are not Guarantors may not incur Indebtedness or issue Disqualified Stock or Preferred Stock under clause (a) of this covenant or clauses (xii) or (xvi)(x) of clause (b) of this covenant if, after giving pro forma effect to such incurrence or issuance (including a pro forma application of the net proceeds therefrom), the aggregate amount of Indebtedness and Disqualified Stock and Preferred Stock of Restricted Subsidiaries that are not Guarantors incurred or issued pursuant to clause (a) of this covenant and clauses (xii) and (xvi)(x) of the second paragraph of this covenant, collectively, would exceed the greater of \$2,000,000,000 and 5.0% of Total Assets.

(d) For purposes of determining compliance with this covenant:

(i) in the event that an item of Indebtedness, Disqualified Stock or Preferred Stock (or any portion thereof) meets the criteria of more than one of the categories of permitted Indebtedness described in clause (b)(i) through (xxv) above or is entitled to be Incurred pursuant to clause (a) of this covenant, the Borrower shall, in its sole discretion, classify or reclassify, or later divide, classify or reclassify, such item of Indebtedness, Disqualified Stock or Preferred Stock (or any portion thereof) in any manner that complies with this covenant; and

(ii) at the time of incurrence, the Borrower shall be entitled to divide and classify an item of Indebtedness in more than one of the types of Indebtedness described in the first and second paragraphs above without giving pro forma effect to the Indebtedness Incurred pursuant to the second paragraph above when calculating the amount of Indebtedness that may be Incurred pursuant to clause (a) above.

(e) Accrual of interest, the accretion of accreted value, the payment of interest or dividends in the form of additional Indebtedness, Disqualified Stock or Preferred Stock, as applicable, amortization of original issue discount, the accretion of liquidation preference and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies shall not be deemed to be an Incurrence of Indebtedness, Disqualified Stock or Preferred Stock for purposes of this covenant. Guarantees of, or obligations in respect of letters of credit relating to, Indebtedness which is otherwise included in the determination of a particular amount of Indebtedness shall not be included in the

determination of such amount of Indebtedness; provided that the Incurrence of the Indebtedness represented by such guarantee or letter of credit, as the case may be, was in compliance with this covenant.

(f) For purposes of determining compliance with any U.S. dollar-denominated restriction on the Incurrence of Indebtedness, the U.S. dollar-equivalent principal amount of Indebtedness denominated in a foreign currency shall be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was Incurred, in the case of term debt, or first committed or first Incurred (whichever yields the lower U.S. dollar equivalent), in the case of revolving credit debt; provided that if such Indebtedness is Incurred to refinance other Indebtedness denominated in a foreign currency, and such refinancing would cause the applicable U.S. dollar-denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such refinancing, such U.S. dollar-denominated restriction shall be deemed not to have been exceeded so long as the principal amount of such refinancing Indebtedness does not exceed the principal amount of such Indebtedness being refinanced.

(g) Notwithstanding any other provision of this covenant, the maximum amount of Indebtedness that the Borrower and its Restricted Subsidiaries may incur pursuant to this covenant shall not be deemed to be exceeded, with respect to any outstanding Indebtedness, solely as a result of fluctuations in the exchange rate of currencies. The principal amount of any Indebtedness Incurred to refinance other Indebtedness, if Incurred in a different currency from the Indebtedness being refinanced, shall be calculated based on the currency exchange rate applicable to the currencies in which such respective Indebtedness is denominated that is in effect on the date of such refinancing.

#### SECTION 5.03 Limitation on Restricted Payments.

(a) The Borrower shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly:

(i) declare or pay any dividend or make any distribution on account of the Borrower's or any of its Restricted Subsidiaries' Equity Interests, including any payment made in connection with any merger, amalgamation or consolidation involving the Borrower (other than (A) dividends or distributions by the Borrower payable solely in Equity Interests (other than Disqualified Stock) of the Borrower; or (B) dividends or distributions by a Restricted Subsidiary so long as, in the case of any dividend or distribution payable on or in respect of any class or series of securities issued by a Restricted Subsidiary other than a Wholly Owned Restricted Subsidiary, the Borrower or a Restricted Subsidiary receives at least its pro rata share of such dividend or distribution in accordance with its Equity Interests in such class or series of securities);

(ii) purchase or otherwise acquire or retire for value any Equity Interests of the Borrower or any direct or indirect parent of the Borrower;

(iii) make any principal payment on, or redeem, repurchase, defease or otherwise acquire or retire for value, in each case prior to any scheduled repayment or

scheduled maturity, any Subordinated Indebtedness or Long-Term Retained Notes of the Borrower or any of its Restricted Subsidiaries (other than the payment, redemption, repurchase, defeasance, acquisition or retirement of (A) Subordinated Indebtedness or Long-Term Retained Notes in anticipation of satisfying a sinking fund obligation, principal installment or final maturity, in each case due within one year of the date of such payment, redemption, repurchase, defeasance, acquisition or retirement and (B) Indebtedness permitted under clauses (vii) and (ix) of Section 5.02(b)); or

(iv) make any Restricted Investment

(all such payments and other actions set forth in clauses (i) through (iv) above being collectively referred to as “Restricted Payments”), unless, at the time of such Restricted Payment (x) no Default shall have occurred and be continuing or would occur as a consequence thereof; (y) immediately after giving effect to such transaction on a pro forma basis, the Borrower could incur \$1.00 of additional Indebtedness under Section 5.02(a); and (z) such Restricted Payment, together with the aggregate amount of all other Restricted Payments made by the Borrower and its Restricted Subsidiaries after the Closing Date (including Restricted Payments permitted by clauses (i), (ii) (with respect to the payment of dividends on Refunding Capital Stock (as defined below) pursuant to clause (C) thereof), (vi)(C), (viii), (xiii)(B) and (xx) of the next clause (b) below, but excluding all other Restricted Payments permitted by clause (b)), is less than the amount equal to the Cumulative Credit.

(b) The foregoing provisions shall not prohibit:

(i) the payment of any dividend or distribution within 60 days after the date of declaration thereof, if at the date of declaration such payment would have complied with the provisions of this Agreement;

(ii)(A) the redemption, repurchase, retirement or other acquisition of any Equity Interests (“Retired Capital Stock”) or Subordinated Indebtedness of the Borrower, any direct or indirect parent of the Borrower or any Guarantor in exchange for, or out of the proceeds of, the substantially concurrent sale of, Equity Interests of the Borrower or any direct or indirect parent of the Borrower or contributions to the equity capital of the Borrower (other than any Disqualified Stock or any Equity Interests sold to a Subsidiary of the Borrower) (collectively, including any such contributions, “Refunding Capital Stock”).

(B) the declaration and payment of dividends on the Retired Capital Stock out of the proceeds of the substantially concurrent sale (other than to a Subsidiary of the Borrower) of Refunding Capital Stock, and

(C) if immediately prior to the retirement of Retired Capital Stock, the declaration and payment of dividends thereon was permitted under clause (vi) of this clause (b) and not made pursuant to clause (ii)(B), the declaration and payment of dividends on the Refunding Capital Stock (other than Refunding Capital Stock the proceeds of which were used to redeem, repurchase, retire or

otherwise acquire any Equity Interests of any direct or indirect parent of the Borrower) in an aggregate amount per year no greater than the aggregate amount of dividends per annum that were declarable and payable on such Retired Capital Stock immediately prior to such retirement;

(iii) the redemption, repurchase, defeasance, or other acquisition or retirement of Subordinated Indebtedness of the Borrower or any Guarantor made by exchange for, or out of the proceeds of the substantially concurrent sale of, new Indebtedness of the Borrower or a Guarantor which is Incurred in accordance with Section 5.02 so long as

(A) the principal amount (or accreted value, if applicable) of such new Indebtedness does not exceed the principal amount (or accreted value, if applicable), plus any accrued and unpaid interest, of the Subordinated Indebtedness being so redeemed, repurchased, defeased, acquired or retired for value (plus the amount of any premium required to be paid under the terms of the instrument governing the Subordinated Indebtedness being so redeemed, repurchased, acquired or retired, any tender premiums, plus any defeasance costs, fees and expenses incurred in connection therewith),

(B) such Indebtedness is subordinated to the Loans or the related Guarantee, as the case may be, at least to the same extent as such Subordinated Indebtedness so purchased, exchanged, redeemed, repurchased, defeased, acquired or retired for value,

(C) such Indebtedness has a final scheduled maturity date equal to or later than the earlier of (x) the final scheduled maturity date of the Subordinated Indebtedness being so redeemed, repurchased, acquired or retired and (y) 91 days following the last maturity date of any Loans then outstanding, and

(D) such Indebtedness has a Weighted Average Life to Maturity at the time Incurred which is not less than the shorter of (x) the remaining Weighted Average Life to Maturity of the Subordinated Indebtedness being so redeemed, repurchased, defeased, acquired or retired and (y) the Weighted Average Life to Maturity that would result if all payments of principal on the Subordinated Indebtedness being redeemed, repurchased, defeased, acquired or retired that were due on or after the date that is one year following the last maturity date of any Loans then outstanding were instead due on such date;

(iv) a Restricted Payment to pay for the repurchase, retirement or other acquisition for value of Equity Interests of the Borrower or any direct or indirect parent of the Borrower held by any future, present or former employee, director or consultant of the Borrower or any direct or indirect parent of the Borrower or any Subsidiary of the Borrower pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or other agreement or arrangement; provided, however, that the aggregate Restricted Payments made under

this clause (iv) do not exceed \$50,000,000 in any calendar year (with unused amounts in any calendar year being permitted to be carried over to succeeding calendar years subject to a maximum (without giving effect to the following proviso) of \$100,000,000 in any calendar year (which shall increase to \$150,000,000 subsequent to the consummation of an underwritten public Equity Offering of common stock); provided, further, however, that such amount in any calendar year may be increased by an amount not to exceed:

(A) the cash proceeds received by the Borrower or any of its Restricted Subsidiaries from the sale of Equity Interests (other than Disqualified Stock) of the Borrower or any direct or indirect parent of the Borrower (to the extent contributed to the Borrower) to members of management, directors or consultants of the Borrower and its Restricted Subsidiaries or any direct or indirect parent of the Borrower that occurs after the Closing Date (provided that the amount of such cash proceeds utilized for any such repurchase, retirement, other acquisition or dividend shall not increase the amount available for Restricted Payments under clause (z) of Section 5.03(a)), plus

(B) the cash proceeds of key man life insurance policies received by the Borrower or any direct or indirect parent of the Borrower (to the extent contributed to the Borrower) or the Borrower's Restricted Subsidiaries after the Closing Date, plus

(C) the amount of any cash bonuses otherwise payable to members of management, directors or consultants of the Borrower and its Restricted Subsidiaries or any direct or indirect parent of the Borrower in connection with Transactions that are foregone in return for the receipt of Equity Interests;

provided that the Borrower may elect to apply all or any portion of the aggregate increase contemplated by clauses (A), (B) and (C) above in any calendar year; and provided, further that cancellation of Indebtedness owing to the Borrower or any Restricted Subsidiary from any present or former employees, directors, officers or consultants of the Borrower, any of its Restricted Subsidiaries or its direct or indirect parents in connection with a repurchase of Equity Interests of the Borrower or any of its direct or indirect parents shall not be deemed to constitute a Restricted Payment for purposes of this covenant or any other provision of this Agreement;

(v) the declaration and payment of dividends or distributions to holders of any class or series of Disqualified Stock of the Borrower or any of its Restricted Subsidiaries issued or incurred in accordance with Section 5.02 to the extent such dividends are included in the definition of "Fixed Charges";

(vi)(A) the declaration and payment of dividends or distributions to holders of any class or series of Designated Preferred Stock (other than Disqualified Stock) issued after the Closing Date;

(B) a Restricted Payment to any direct or indirect parent of the Borrower, the proceeds of which shall be used to fund the payment of dividends to holders of any class or series of Designated Preferred Stock (other than Disqualified Stock) of any direct or indirect parent of the Borrower issued after the Closing Date; provided that the aggregate amount of dividends declared and paid pursuant to this clause (B) does not exceed the net cash proceeds actually received by the Borrower from any such sale of Designated Preferred Stock (other than Disqualified Stock) issued after the Closing Date; and

(C) the declaration and payment of dividends on Refunding Capital Stock that is Preferred Stock in excess of the dividends declarable and payable thereon pursuant to clause (ii) of Section 5.03(b);

provided, however, in the case of each of (A) and (C) above of this clause (vi), that for the most recently ended four full fiscal quarters for which internal financial statements are available immediately preceding the date of issuance of such Designated Preferred Stock, after giving effect to such issuance (and the payment of dividends or distributions) on a pro forma basis, the Borrower would have had a Fixed Charge Coverage Ratio of at least 2.00 to 1.00;

(vii) Investments in Unrestricted Subsidiaries having an aggregate Fair Market Value (as determined in good faith by the Borrower), taken together with all other Investments made pursuant to this clause (vii) that are at that time outstanding, not to exceed \$250,000,000 at the time of such Investment (with the Fair Market Value of each Investment being measured at the time made and without giving effect to subsequent changes in value);

(viii) the payment of dividends on the Borrower's common stock (or a Restricted Payment to any direct or indirect parent of the Borrower to fund the payment by such direct or indirect parent of the Borrower of dividends on such entity's common stock) of up to 6% per annum of the net proceeds received by the Borrower from any public offering of common stock of the Borrower or any direct or indirect parent of the Borrower, other than public offerings with respect to the Borrower's (or such direct or indirect parent's) common stock registered on Form S-4 or Form S-8 and other than any public sale constituting an Excluded Contribution;

(ix) Restricted Payments that are made with Excluded Contributions;

(x) other Restricted Payments in an aggregate amount not to exceed the greater of \$500,000,000 and 2.5% of Total Assets at the time made;

(xi) the distribution, as a dividend or otherwise, of shares of Capital Stock of, or Indebtedness owed to the Borrower or a Restricted Subsidiary of the Borrower by, Unrestricted Subsidiaries;

(xii) the payment of dividends or other distributions to any direct or indirect parent of the Borrower that files a consolidated tax return that includes the

Borrower and its subsidiaries (including, without limitation, by virtue of such parent being the common parent of a consolidated or combined tax group of which the Borrower and/or its Restricted Subsidiaries are members) in an amount not to exceed the amount that the Borrower and its Restricted Subsidiaries would have been required to pay in respect of federal, state or local taxes (as the case may be) if the Borrower and its Restricted Subsidiaries paid such taxes as a stand-alone taxpayer (or standalone group);

(xiii) the payment of Restricted Payment, if applicable:

(A) in amounts required for any direct or indirect parent of the Borrower to pay fees and expenses (including franchise or similar taxes) required to maintain its corporate existence, customary salary, bonus and other benefits payable to, and indemnities provided on behalf of, officers and employees of any direct or indirect parent of the Borrower and general corporate operating and overhead expenses of any direct or indirect parent of the Borrower in each case to the extent such fees and expenses are attributable to the ownership or operation of the Borrower, if applicable, and its Subsidiaries;

(B) in amounts required for any direct or indirect parent of the Borrower, if applicable, to pay interest and/or principal on Indebtedness the proceeds of which have been contributed to the Borrower or any of its Restricted Subsidiaries and that has been guaranteed by, or is otherwise considered Indebtedness of, the Borrower Incurred in accordance with Section 5.02; and

(C) in amounts required for any direct or indirect parent of the Borrower to pay fees and expenses, other than to Affiliates of the Borrower, related to any unsuccessful equity or debt offering of such parent;

(xiv) any Restricted Payment used to fund the Transactions and the payment of fees and expenses incurred in connection with the Transactions or owed by the Borrower or any direct or indirect parent of the Borrower or Restricted Subsidiaries of the Borrower to Affiliates, and any other payments made, including any such payments made to any direct or indirect parent of the Borrower to enable it to make payments, in connection with the consummation of the Transactions or as contemplated by the Merger Documents, whether payable on the Closing Date or thereafter, in each case to the extent permitted by Section 5.05;

(xv) any Restricted Payment of Real Estate Assets that is made for the purpose of transferring such assets to a Real Estate Subsidiary on the Closing Date;

(xvi) any Restricted Payment made under the Operations Management Agreement and any Restricted Payment made in connection with the Post-Closing CMBS Transaction;

(xvii) repurchases of Equity Interests deemed to occur upon exercise of stock options or warrants if such Equity Interests represent a portion of the exercise price of such options or warrants;

(xviii) purchases of receivables pursuant to a Receivables Repurchase Obligation in connection with a Qualified Receivables Financing and the payment or distribution of Receivables Fees;

(xix) Restricted Payments by the Borrower or any Restricted Subsidiary to allow the payment of cash in lieu of the issuance of fractional shares upon the exercise of options or warrants or upon the conversion or exchange of Capital Stock of any such Person;

(xx) the repurchase, redemption or other acquisition or retirement for value of any Subordinated Indebtedness pursuant to the provisions similar to those described in Sections 5.06 and 2.11(b)(ii); provided that all Loans submitted by the Lenders for repayment in connection with a Change of Control or Asset Sale Offer, as applicable, have been repurchased, redeemed or acquired for value;

(xxi) payments or distributions to dissenting stockholders pursuant to applicable law, pursuant to or in connection with a consolidation, amalgamation, merger or transfer of all or substantially all of the assets of the Borrower and its Restricted Subsidiaries, taken as a whole, that complies with Section 5.12, provided that as a result of such consolidation, amalgamation, merger or transfer of assets, the Borrower shall have made a Change of Control Offer (if required by this Agreement) and that all Loans submitted by the Lenders for repayment in connection with such Change of Control Offer have been repurchased, redeemed or acquired for value;

(xxii) payments made to repay, defease, discharge or otherwise refinance Retained Notes or to service Retained Notes; and

(xxiii) Restricted Payments made in connection with the incurrence of Indebtedness under the revolving portion of the Credit Agreement for the account or benefit of the Subsidiaries of the Company other than the Borrower or any of its Subsidiaries (including the distribution of the proceeds of any such Indebtedness and with respect to the issuance of, or payments in respect of drawings under, letters of credit), in each case for general corporate purposes of such Subsidiaries (including, without limitation, for business acquisitions and project development and, in the case of letters of credit, for the back-up or replacement of existing letters of credit) in an aggregate amount not to exceed \$250,000,000 at any time outstanding, so long as such proceeds are not distributed to the stockholders of the Company.

provided, however, that at the time of, and after giving effect to, any Restricted Payment permitted under clauses (vi)(B), (vii), (x), (xi) and (xiii)(B), no Default shall have occurred and be continuing or would occur as a consequence thereof.

(c) On the Closing Date, all of the Borrower's Subsidiaries shall be Restricted Subsidiaries. The Borrower shall not permit any Unrestricted Subsidiary to become a Restricted Subsidiary except pursuant to the definition of "Unrestricted Subsidiary." For purposes of designating any Restricted Subsidiary as an Unrestricted Subsidiary, all outstanding Investments by the Borrower and its Restricted Subsidiaries (except to the extent repaid) in the Subsidiary so designated shall be deemed to be Restricted Payments in an amount determined as set forth in the last sentence of the definition of "Investments." Such designation shall only be permitted if a Restricted Payment or Permitted Investment in such amount would be permitted at such time and if such Subsidiary otherwise meets the definition of an Unrestricted Subsidiary.

(d) Notwithstanding the foregoing provisions of this covenant, the Borrower shall not, and shall not permit any of its Restricted Subsidiaries to, pay any cash dividend or make any cash distribution on, or in respect of, the Borrower's Capital Stock or purchase for cash or otherwise acquire for cash any Capital Stock of the Borrower or any direct or indirect parent of the Borrower for the purpose of paying any cash dividend or making any cash distribution to, or acquiring Capital Stock of any direct or indirect parent of the Borrower for cash from, the Investors, or guarantee any Indebtedness of any Affiliate of the Borrower for the purpose of paying such dividend, making such distribution or so acquiring such Capital Stock to or from the Investors, in each case by means of utilization of the Cumulative Credit, or the exceptions provided by clauses (i), (vii) or (x) of clause (b) of this covenant or clauses (i), (j), (o) or (t) of the definition of "Permitted Investments," if (x) at the time and after giving effect to such payment, the Consolidated Leverage Ratio of the Borrower would be greater than 7.25 to 1.00; (y) prior to or at the time of such payment the Borrower has made an election to pay PIK Interest with respect to any Senior Toggle Loans hereunder or any Senior Toggle Notes or Senior Unsecured Notes with a PIK toggle feature and has not made a subsequent payment of Cash Interest or (z) such payment is not otherwise in compliance with this covenant.

SECTION 5.04 Dividend and Other Payment Restrictions Affecting Subsidiaries. The Borrower shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly, create or otherwise cause or suffer to exist or become effective any consensual encumbrance or consensual restriction on the ability of any Restricted Subsidiary to:

- (a) (i) pay dividends or make any other distributions to the Borrower or any of its Restricted Subsidiaries (1) on its Capital Stock; or (2) with respect to any other interest or participation in, or measured by, its profits; or (ii) pay any Indebtedness owed to the Borrower or any of its Restricted Subsidiaries;
- (b) make loans or advances to the Borrower or any of its Restricted Subsidiaries; or
- (c) sell, lease or transfer any of its properties or assets to the Borrower or any of its Restricted Subsidiaries;

except in each case for such encumbrances or restrictions existing under or by reason of:

- (i) contractual encumbrances or restrictions in effect on the Closing Date, including pursuant to the Credit Agreement, the other Credit Agreement Documents, the Senior Unsecured Notes and the Senior Unsecured Notes Indenture and the Senior Notes and the Senior Notes Indenture;
- (ii) this Agreement and the other Loan Documents;
- (iii) applicable law or any applicable rule, regulation or order;
- (iv) any agreement or other instrument of a Person acquired by the Borrower or any Restricted Subsidiary which was in existence at the time of such acquisition (but not created in contemplation thereof or to provide all or any portion of the funds or credit support utilized to consummate such acquisition), which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person and its Subsidiaries, or the property or assets of the Person and its Subsidiaries, so acquired, and any agreement or other instrument existing on the date of the Post-Closing CMBS Transaction with respect to properties and assets that are subject to the Post-Closing CMBS Transaction;
- (v) contracts or agreements for the sale of assets, including any restriction with respect to a Restricted Subsidiary imposed pursuant to an agreement entered into for the sale or disposition of the Capital Stock or assets of such Restricted Subsidiary;
- (vi) Secured Indebtedness otherwise permitted to be Incurred pursuant to Sections 5.02 and 5.10 that limit the right of the debtor to dispose of the assets securing such Indebtedness;
- (vii) restrictions on cash or other deposits or net worth imposed by customers under contracts entered into in the ordinary course of business;
- (viii) customary provisions in joint venture agreements and other similar agreements entered into in the ordinary course of business;
- (ix) purchase money obligations for property acquired and Capitalized Lease Obligations in the ordinary course of business;
- (x) customary provisions contained in leases, licenses and other similar agreements entered into in the ordinary course of business;
- (xi) any encumbrance or restriction of a Receivables Subsidiary effected in connection with a Qualified Receivables Financing; provided, however, that such restrictions apply only to such Receivables Subsidiary;
- (xii) other Indebtedness, Disqualified Stock or Preferred Stock (A) of any Restricted Subsidiary of the Borrower that is a Guarantor or a Foreign Subsidiary, (B) of any Restricted Subsidiary that is not a Guarantor or a Foreign Subsidiary so

long as such encumbrances and restrictions contained in any agreement or instrument shall not materially affect the Borrower's ability to make anticipated principal or interest payments on the Loans (as determined in good faith by the Borrower) or (C) of any Restricted Subsidiary incurred in connection with any Project Financing, provided that in the case of each of clauses (A) and (B), such Indebtedness, Disqualified Stock or Preferred Stock is permitted to be Incurred subsequent to the Closing Date by Section 5.02;

(xiii) any Restricted Investment not prohibited by Section 5.03 and any Permitted Investment; or

(xiv) any encumbrances or restrictions of the type referred to in clauses (a), (b) and (c) above imposed by any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of the contracts, instruments or obligations referred to in clauses (i) through (xiii) above; provided that such amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings are, in the good faith judgment of the Borrower, no more restrictive with respect to such dividend and other payment restrictions than those contained in the dividend or other payment restrictions prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing.

For purposes of determining compliance with this covenant, (a) the priority of any Preferred Stock in receiving dividends or liquidating distributions prior to dividends or liquidating distributions being paid on common stock shall not be deemed a restriction on the ability to make distributions on Capital Stock and (b) the subordination of loans or advances made to the Borrower or a Restricted Subsidiary of the Borrower to other Indebtedness Incurred by the Borrower or any such Restricted Subsidiary shall not be deemed a restriction on the ability to make loans or advances.

#### SECTION 5.05 Transactions with Affiliates.

(a) The Borrower shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly, make any payment to, or sell, lease, transfer or otherwise dispose of any of its properties or assets to, or purchase any property or assets from, or enter into or make or amend any transaction or series of transactions, contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any Affiliate of the Borrower (each of the foregoing, an "Affiliate Transaction") involving aggregate consideration in excess of \$25,000,000, unless:

(i) such Affiliate Transaction is on terms that are not materially less favorable to the Borrower or the relevant Restricted Subsidiary than those that could have been obtained in a comparable transaction by the Borrower or such Restricted Subsidiary with an unrelated Person; and

(ii) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of \$75,000,000,

the Borrower delivers to the Administrative Agent a resolution adopted in good faith by the majority of the Board of Directors of the Borrower, approving such Affiliate Transaction and set forth in an Officer's Certificate certifying that such Affiliate Transaction complies with clause (i) above.

(b) The foregoing provisions shall not apply to the following:

(i) transactions between or among the Borrower and/or any of its Restricted Subsidiaries (or an entity that becomes a Restricted Subsidiary as a result of such transaction) and any merger, consolidation or amalgamation of the Borrower and any direct parent of the Borrower; provided that such parent shall have no material liabilities and no material assets other than cash, Cash Equivalents and the Capital Stock of the Borrower and such merger, consolidation or amalgamation is otherwise in compliance with the terms of this Agreement and effected for a bona fide business purpose;

(ii) Restricted Payments permitted by Section 5.03 and Permitted Investments;

(iii)(x) the entering into of any agreement (and any amendment or modification of any such agreement so long as, in the good faith judgment of the Board of Directors of the Borrower, any such amendment is not disadvantageous to the Lenders when taken as a whole, as compared to such agreement as in effect on the Closing Date) to pay, and the payment of, management, consulting, monitoring and advisory fees to the Sponsors in an aggregate amount in any fiscal year not to exceed the greater of (A) \$30,000,000 and (B) 1% of EBITDA of the Borrower and its Restricted Subsidiaries for the immediately preceding fiscal year, plus out-of-pocket expense reimbursement; provided, however, that any payment not made in any fiscal year may be carried forward and paid in the following two fiscal years and (y) the payment of the present value of all amounts payable pursuant to any agreement described in clause (iii)(x) in connection with the termination of such agreement;

(iv) the payment of reasonable and customary fees and reimbursement of expenses paid to, and indemnity provided on behalf of, officers, directors, employees or consultants of the Borrower or any Restricted Subsidiary, any direct or indirect parent of the Borrower;

(v) payments by the Borrower or any of its Restricted Subsidiaries to the Sponsors made for any financial advisory, financing, underwriting or placement services or in respect of other investment banking activities, including, without limitation, in connection with acquisitions or divestitures, which payments are (x) made pursuant to the agreements with the Sponsors described in the Senior Unsecured Notes Offering Memorandum or (y) approved by a majority of the Board of Directors of the Borrower in good faith;

(vi) transactions in which the Borrower or any of its Restricted Subsidiaries, as the case may be, delivers to the Administrative Agent a letter from an

Independent Financial Advisor stating that such transaction is fair to the Borrower or such Restricted Subsidiary from a financial point of view or meets the requirements of clause (a) of the preceding paragraph;

(vii) payments or loans (or cancellation of loans) to officers, directors, employees or consultants which are approved by a majority of the Board of Directors of the Borrower in good faith;

(viii) any agreement as in effect as of the Closing Date or any amendment thereto (so long as any such agreement together with all amendments thereto, taken as a whole, is not more disadvantageous to the Lenders in any material respect than the original agreement as in effect on the Closing Date) or any transaction contemplated thereby as determined in good faith by the Borrower;

(ix) the existence of, or the performance by the Borrower or any of its Restricted Subsidiaries of its obligations under the terms of, Merger Documents, any stockholders agreement (including any registration rights agreement or purchase agreement related thereto) to which it is a party as of the Closing Date, and any transaction, agreement or arrangement described in the Senior Unsecured Notes Offering Memorandum and, in each case, any amendment thereto or similar transactions, agreements or arrangements which it may enter into thereafter; provided, however, that the existence of, or the performance by the Borrower or any of its Restricted Subsidiaries of its obligations under, any future amendment to any such existing transaction, agreement or arrangement or under any similar transaction, agreement or arrangement entered into after the Closing Date shall only be permitted by this clause (ix) to the extent that the terms of any such existing transaction, agreement or arrangement together with all amendments thereto, taken as a whole, or new transaction, agreement or arrangement are not otherwise more disadvantageous to the Lenders in any material respect than the original transaction, agreement or arrangement as in effect on the Closing Date;

(x) the execution of the Transactions and the Post-Closing CMBS Transaction, and the payment of all fees and expenses related to the Transactions and the Post-Closing CMBS Transaction, including fees to the Sponsors, which are described in the Senior Unsecured Notes Offering Memorandum or contemplated by the Merger Documents;

(xi) any transfer of Real Estate Assets to a Real Estate Subsidiary on the Closing Date, any transactions made pursuant to any Operations Management Agreement and any transactions in connection with the use of the revolving credit facility under the Credit Agreement for the account or benefit of the Subsidiaries of the Company other than the Borrower and its Subsidiaries (including the distribution of the proceeds of any such revolving Credit Indebtedness and with respect to the issuance of, or payments in respect of drawings under, letters of credit);

(xii)(A) transactions with customers, clients, suppliers or purchasers or sellers of goods or services, or transactions otherwise relating to the purchase or sale of goods or services, in each case in the ordinary course of business and otherwise in compliance with the terms of this Agreement, which are fair to the Borrower and its Restricted Subsidiaries in the reasonable determination of the Board of Directors or the senior management of the Borrower, or are on terms at least as favorable as might reasonably have been obtained at such time from an unaffiliated party or (B) transactions with joint ventures or Unrestricted Subsidiaries entered into in the ordinary course of business and consistent with past practice or industry norm;

(xiii) any transaction effected as part of a Qualified Receivables Financing;

(xiv) the issuance of Equity Interests (other than Disqualified Stock) of the Borrower to any Person;

(xv) the issuances of securities or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of, employment arrangements, stock option and stock ownership plans or similar employee benefit plans approved by the Board of Directors of the Borrower or any direct or indirect parent of the Borrower or of a Restricted Subsidiary of the Borrower, as appropriate, in good faith;

(xvi) the entering into of any tax sharing agreement or arrangement that complies with clause (xii) of Section 5.03;

(xvii) any contribution to the capital of the Borrower;

(xviii) transactions permitted by, and complying with, the provisions of Section 5.12;

(xix) transactions between the Borrower or any of its Restricted Subsidiaries and any Person, a director of which is also a director of the Borrower or any direct or indirect parent of the Borrower; provided, however, that such director abstains from voting as a director of the Borrower or such direct or indirect parent, as the case may be, on any matter involving such other Person;

(xx) pledges of Equity Interests of Unrestricted Subsidiaries;

(xxi) the formation and maintenance of any consolidated group or subgroup for tax, accounting or cash pooling or management purposes in the ordinary course of business;

(xxii) any employment agreements entered into by the Borrower or any of its Restricted Subsidiaries in the ordinary course of business; and

(xxiii) transactions undertaken in good faith (as certified by a responsible financial or accounting officer of the Borrower in an Officer's Certificate) for the

purpose of improving the consolidated tax efficiency of the Borrower and its Subsidiaries and not for the purpose of circumventing any covenant set forth in this Agreement.

SECTION 5.06 Change of Control.

(a) If a Change of Control occurs after the Rollover Date, unless the Borrower have previously or concurrently delivered a prepayment notice with respect to all outstanding Loans as described under Section 2.11(a), the Borrower shall make an offer to prepay all of the Loans pursuant to the offer described below (the "Change of Control Offer") at a price in cash (the "Change of Control Payment") equal to 100.0% of the aggregate principal amount thereof plus accrued and unpaid interest, if any, to the date of purchase. Within thirty days following any Change of Control, the Borrower shall deliver a notice of such Change of Control Offer to the Administrative Agent, and the Administrative Agent shall promptly deliver such notice to each Lender to the address of such Lender appearing in the Register or otherwise in accordance with Section 9.01 with the following information:

(i) that a Change of Control has occurred or shall occur (together with the identification of the transaction or transactions that constitute the related Change of Control) and that a Change of Control Offer is being made pursuant to this Section 5.06 and that all Loans properly accepted for prepayment pursuant to such Change of Control Offer shall be prepaid by the Borrower;

(ii) the purchase price and the purchase date, which shall be no earlier than thirty days nor later than sixty days from the date on which such notice is delivered (the "Change of Control Payment Date");

(iii) that any Loan not properly accepted for prepayment in accordance with Section 5.06 shall remain outstanding and continue to accrue interest;

(iv) that unless the Borrower default on the payment of the Change of Control Payment, all Loans accepted for payment pursuant to the Change of Control Offer shall cease to accrue interest on the Change of Control Payment Date;

(v) that Lenders electing to have any Loans prepaid pursuant to a Change of Control Offer shall be required to notify the Administrative Agent prior to the close of business on the third Business Day preceding the Change of Control Payment Date;

(vi) that Lenders shall be entitled to withdraw their election to require the Borrower to prepay such Loans; provided that the Administrative Agent receives, not later than the close of business on the expiration date of the Change of Control Offer, a facsimile transmission, an electronic mail or letter setting forth the name of such Lender, the principal amount of Loans to be prepaid, and a

statement that such Lender is withdrawing its election to have such Loans prepaid;

(vii) if such notice is delivered prior to the occurrence of a Change of Control, stating that the Change of Control Offer is conditional on the occurrence of such Change of Control; and

(viii) the other instructions, as determined by the Borrower, consistent with this Section 5.06, that a Lender must follow.

The notice of a Change of Control Offer, if delivered in a manner herein provided, shall be conclusive evidence of its delivery, whether or not a Lender receives such notice. If (x) the notice is delivered in a manner herein provided and (y) any Lender fails to receive such notice or the notice received by any Lender is defective, such Lender's failure to receive such notice or such defective notice shall not affect the validity of the proceedings for the prepayment of the Loans as to all other Lenders that properly received such notice without defect.

(b) On the Change of Control Payment Date, the Borrower shall, to the extent permitted by law,

(i) prepay all Loans or portions thereof properly accepted for prepayment in accordance with Section 5.06 pursuant to the Change of Control Offer; and

(ii) deposit with the Administrative Agent an amount equal to the aggregate Change of Control Payment in respect of all Loans or portions thereof accepted for prepayment.

(c) The Borrower shall not be required to make a Change of Control Offer following a Change of Control if a third party makes the Change of Control Offer in the manner, at the times and otherwise in compliance with the requirements set forth in this Agreement applicable to a Change of Control Offer made by the Borrower and prepays all Loans validly tendered and not withdrawn under such Change of Control Offer. Notwithstanding anything to the contrary in the foregoing, a Change of Control Offer may be made in advance of a Change of Control, conditional upon such Change of Control, if a definitive agreement is in place for the Change of Control at the time of making of the Change of Control Offer.

**SECTION 5.07 Compliance Certificate.** The Borrower shall deliver to the Administrative Agent a duly completed Compliance Certificate within five days after the delivery of the financial statements referred to in Section 5.01(a). When any Event of Default has occurred and is continuing under this Agreement, or if the Administrative Agent or the holder of any other evidence of Indebtedness of the Borrower or any Restricted Subsidiary gives any notice or takes any other action with respect to a claimed Event of Default, the Borrower shall promptly (which shall be no more than five Business Days after becoming aware of such Event of Default) deliver to the Administrative Agent by registered or certified mail or by facsimile

transmission an Officer's Certificate specifying such event and what action the Borrower proposes to take with respect thereto.

SECTION 5.08 Further Instruments and Acts. Upon request of the Administrative Agent, the Borrower shall execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purpose of this Agreement.

SECTION 5.09 Future Guarantors. The Borrower shall cause each Wholly Owned Restricted Subsidiary that is a Domestic Subsidiary (unless such Subsidiary is a Receivables Subsidiary or a Domestic Subsidiary that is Wholly Owned by one or more Foreign Subsidiaries and created to enhance the tax efficiency of the Borrower and its Subsidiaries) and that guarantees any Indebtedness of the Borrower or any of the Guarantors to execute and deliver to the Administrative Agent a Guarantee pursuant to which such Subsidiary shall guarantee payment of the Loans and a joinder to the Intercreditor Agreement.

SECTION 5.10 Liens. The Borrower shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly, create, Incur or suffer to exist any Lien (except Permitted Liens) on any asset or property of the Borrower or such Restricted Subsidiary securing Indebtedness of the Borrower or a Restricted Subsidiary unless the Notes are equally and ratably secured with (or on a senior basis to, in the case of obligations subordinated in right of payment to the Notes) the obligations so secured until such time as such obligations are no longer secured by a Lien. Any Lien which is granted to secure the Loans or such Guarantee pursuant to this covenant shall be automatically released and discharged at the same time as the release of the Lien that gave rise to the obligation to secure the Loans or such Guarantee.

SECTION 5.11 Exchange Note Indenture. On or prior to the Rollover Date, the Borrower shall (i) enter into the Senior Notes Indenture and (ii) cause counsel to the Borrower to deliver to the Administrative Agent a legal opinion in form and substance customary for a transaction of that type and to be mutually agreed on by the Borrower and the Administrative Agent.

SECTION 5.12 Merger, Amalgamation, Consolidation or Sale of All or Substantially All Assets.

(a) The Borrower may not, directly or indirectly, consolidate, amalgamate or merge with or into or wind up or convert into (whether or not the Borrower is the surviving Person), or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties or assets in one or more related transactions, to any Person unless:

(i) the Borrower is the surviving person or the Person formed by or surviving any such consolidation, amalgamation, merger, winding up or conversion (if other than the Borrower) or to which such sale, assignment, transfer, lease, conveyance or other disposition shall have been made is a corporation, partnership or limited liability company organized or existing under the laws of the United States, any state thereof, the District of Columbia, or any territory thereof (the Borrower or such Person, as the case may be, being herein called the "Successor Borrower");

provided that in the case where the surviving Person is not a corporation, a co-obligor of the Loans is a corporation;

(ii) the Successor Borrower (if other than the Borrower) expressly assumes all the obligations of the Borrower under this Agreement and the Loans pursuant to an amendment hereto or other documents or instruments in form reasonably satisfactory to the Administrative Agent;

(iii) immediately after giving effect to such transaction (and treating any Indebtedness which becomes an obligation of the Successor Borrower or any of its Restricted Subsidiaries as a result of such transaction as having been Incurred by the Successor Borrower or such Restricted Subsidiary at the time of such transaction) no Default shall have occurred and be continuing;

(iv) immediately after giving pro forma effect to such transaction, as if such transaction had occurred at the beginning of the applicable four-quarter period (and treating any Indebtedness which becomes an obligation of the Successor Borrower or any of its Restricted Subsidiaries as a result of such transaction as having been Incurred by the Successor Borrower or such Restricted Subsidiary at the time of such transaction), either

(A) the Successor Borrower would be permitted to Incur at least \$1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Ratio test set forth in Section 5.02(a); or

(B) the Fixed Charge Coverage Ratio for the Successor Borrower and its Restricted Subsidiaries would be greater than such ratio for the Borrower and its Restricted Subsidiaries immediately prior to such transaction;

(v) if the Borrower is not the Successor Borrower, each Guarantor, unless it is the other party to the transactions described above, shall have by amendment confirmed that its Guarantee shall apply to such Person's obligations under this Agreement and the Loans; and

(vi) the Borrower shall have delivered to the Administrative Agent an Officer's Certificate and an Opinion of Counsel, each stating that such consolidation, merger, amalgamation or transfer and such supplemental indentures (if any) comply with this Agreement.

(b) The Successor Borrower (if other than the Borrower) shall succeed to, and be substituted for, the Borrower under this Agreement and the Loans, and in such event the Borrower shall automatically be released and discharged from its obligations under this Agreement and the Loans. Notwithstanding the foregoing clauses (a)(iii) and (iv), (i) any Restricted Subsidiary may merge, consolidate or amalgamate with or transfer all or part of its properties and assets to the Borrower or to another Restricted Subsidiary, and (ii) the Borrower may merge, consolidate or amalgamate with an Affiliate incorporated solely for the

purpose of reincorporating the Borrower in another state of the United States, the District of Columbia or any territory of the United States or may convert into a limited liability company, so long as the amount of Indebtedness of the Borrower and its Restricted Subsidiaries is not increased thereby. This Section 5.12 shall not apply to a sale, assignment, transfer, conveyance or other disposition of assets between or among the Borrower and its Restricted Subsidiaries.

SECTION 5.13 Asset Sales.

The Borrower shall not, and shall not permit any of its Restricted Subsidiaries to, cause or make an Asset Sale, unless (x) the Borrower or any of its Restricted Subsidiaries, as the case may be, receives consideration at the time of such Asset Sale at least equal to the Fair Market Value (as determined in good faith by the Borrower) of the assets sold or otherwise disposed of, and (y) at least 75% of the consideration therefor received by the Borrower or such Restricted Subsidiary, as the case may be, is in the form of Cash Equivalents; provided that the amount of:

(a) any liabilities (as shown on the Borrower's or such Restricted Subsidiary's most recent balance sheet or in the notes thereto) of the Borrower or any Restricted Subsidiary of the Borrower (other than liabilities that are by their terms subordinated to the Loans or any Guarantee) that are assumed by the transferee of any such assets,

(b) any notes or other obligations or other securities or assets received by the Borrower or such Restricted Subsidiary of the Borrower from such transferee that are converted by the Borrower or such Restricted Subsidiary of the Borrower into cash within 180 days of the receipt thereof (to the extent of the cash received), and

(c) any Designated Non-Cash Consideration received by the Borrower or any of its Restricted Subsidiaries in such Asset Sale having an aggregate Fair Market Value (as determined in good faith by the Borrower), taken together with all other Designated Non-Cash Consideration received pursuant to this clause (c) that is at that time outstanding, not to exceed the greater of 5.0% of Total Assets and \$850,000,000 at the time of the receipt of such Designated Non-Cash Consideration (with the Fair Market Value of each item of Designated Non-Cash Consideration being measured at the time received and without giving effect to subsequent changes in value)

shall be deemed to be Cash Equivalents for the purposes of this provision.

ARTICLE VI  
Covenant Suspension

SECTION 6.01 Covenant Suspension.

(a) If on any date following the Closing Date, (i) the Loans have Investment Grade Ratings from both Rating Agencies, and (ii) no Default has occurred and is continuing under this Agreement then, beginning on that day and continuing at all times thereafter regardless of any subsequent changes in the rating of the Loans (the occurrence of the events

described in the foregoing clauses (i) and (ii) being collectively referred to as a “Covenant Suspension Event”), the covenants set forth in Sections 5.02, 5.03, 5.04, 5.05, 5.13 and 2.11(b)(ii) and clause (4) of Section 5.12(a) (collectively, the “Suspended Covenants”).

(b) If and while the Borrower and its Restricted Subsidiaries are not subject to the Suspended Covenants, the Loans will be entitled to substantially less covenant protection. In the event that the Borrower and its Restricted Subsidiaries are not subject to the Suspended Covenants under this Agreement for any period of time as a result of the foregoing, and on any subsequent date (the “Reversion Date”) one or both of the Rating Agencies withdraw their Investment Grade Rating or downgrade the rating assigned to the Loans below an Investment Grade Rating, then the Borrower and its Restricted Subsidiaries will thereafter again be subject to the Suspended Covenants under this Agreement with respect to future events. The period of time between the Covenant Suspension Event and the Reversion Date is referred to in this description as the “Suspension Period.”

(c) On each Reversion Date, all Indebtedness Incurred, or Disqualified Stock or Preferred Stock issued, during the Suspension Period will be classified as having been Incurred or issued pursuant to Sections 5.02(a) (to the extent such Indebtedness or Disqualified Stock or Preferred Stock would be permitted to be Incurred or issued thereunder as of the Reversion Date and after giving effect to Indebtedness Incurred or issued prior to the Suspension Period and outstanding on the Reversion Date). To the extent such Indebtedness or Disqualified Stock or Preferred Stock would not be so permitted to be Incurred or issued pursuant to the Section 5.02(a), such Indebtedness or Disqualified Stock or Preferred Stock will be deemed to have been outstanding on the Closing Date, so that it is classified as permitted under Section 5.02(b)(iii). Calculations made after the Reversion Date of the amount available to be made as Restricted Payments under Section 5.03 will be made as though Section 5.03 had been in effect since the Closing Date and throughout the Suspension Period. Accordingly, Restricted Payments made during the Suspension Period will reduce the amount available to be made as Restricted Payments under the 5.03(i). As described above, however, no Default or Event of Default will be deemed to have occurred on the Reversion Date as a result of any actions taken by the Issuer or its Restricted Subsidiaries during the Suspension Period.

(d) For purposes of Section 2.11(b)(ii), on the Reversion Date, the unutilized Excess Proceeds amount will be reset to zero.

## ARTICLE VII Events of Default

SECTION 7.01 Events of Default. Each of the events referred to in clauses (a) through (h) below of this section 7.01 shall constitute an “Event of Default”:

(a) there is a default in any payment of interest (including any additional interest) on any Loans when the same becomes due and payable, and such default continues for a period of 30 days,

(b) there is a default in the payment of principal or premium, if any, of any Loan when due at its Stated Maturity, upon optional redemption, upon required repurchase, upon declaration or otherwise,

(c) either of the Borrower or any of the Restricted Subsidiaries of the Borrower fails to comply with any of its agreements in the Loan Documents (other than those referred to in clause (a) or (b) above) and such failure continues for 60 days after the notice specified below,

(d) either of the Borrower or any Significant Subsidiary (or any group of Subsidiaries that together would constitute a Significant Subsidiary) fails to pay any Indebtedness (other than Indebtedness owing to either of the Borrower or a Restricted Subsidiary of the Borrower) within any applicable grace period after final maturity or the acceleration of any such Indebtedness by the lenders thereof because of a default, in each case, if the total amount of such Indebtedness unpaid or accelerated exceeds \$150,000,000 or its foreign currency equivalent,

(e) either of the Borrower or any Significant Subsidiary (or any group of Subsidiaries that together would constitute a Significant Subsidiary) of the Company pursuant to or within the meaning of any Bankruptcy Law:

(i) commences a voluntary case;

(ii) consents to the entry of an order for relief against it in an involuntary case;

(iii) consents to the appointment of a Custodian of it or for any substantial part of its property; or

(iv) makes a general assignment for the benefit of its creditors or takes any comparable action under any foreign laws relating to insolvency,

(f) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:

(i) is for relief against either of the Borrower or any Significant Subsidiary (or any group of Subsidiaries that together would constitute a Significant Subsidiary) of the Company in an involuntary case;

(ii) appoints a Custodian of either of the Borrower or any Significant Subsidiary (or any group of Subsidiaries that together would constitute a Significant Subsidiary) of the Company or for any substantial part of its property; or

(iii) orders the winding up or liquidation of either of the Borrower or any Significant Subsidiary (or any group of Subsidiaries that together would constitute a Significant Subsidiary) of the Company;

or any similar relief is granted under any foreign laws and the order or decree remains unstayed and in effect for 60 days,

(g) either of the Borrower or any Significant Subsidiary (or any group of Subsidiaries that together would constitute a Significant Subsidiary) fails to pay final judgments aggregating in excess of \$150,000,000 or its foreign currency equivalent (net of any amounts which are covered by enforceable insurance policies issued by solvent carriers), which judgments are not discharged, waived or stayed for a period of 60 days following the entry thereof, or

(h) any Guarantee of the Company or a Significant Subsidiary (or any group of Subsidiaries that together would constitute a Significant Subsidiary) ceases to be in full force and effect (except as contemplated by the terms thereof) or the Company or any Guarantor denies or disaffirms its obligations under this Indenture or any Guarantee and such Default continues for 10 days after the notice specified below.

The foregoing shall constitute Events of Default whatever the reason for any such Event of Default and whether it is voluntary or involuntary or is effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body.

A Default under clause (c) above shall not constitute an Event of Default until the Administrative Agent notifies the Borrower or the Lenders of at least 25% in principal amount of the outstanding Loans notify the Borrower and the Administrative Agent of the Default and the Borrower do not cure such Default within the time specified in clause (c) above after receipt of such notice. Such notice must specify the Default, demand that it be remedied and state that such notice is a "Notice of Default." The Borrower shall deliver to the Administrative Agent, within five (5) Business Days after the occurrence thereof, written notice in the form of an Officer's Certificate of any event which is, or with the giving of notice or the lapse of time or both would become, an Event of Default, its status and what action the Borrower are taking or propose to take with respect thereto.

#### SECTION 7.02 Remedies upon Event of Default.

(a) If any Event of Default under Section 7.01(a) or (b) occurs and is continuing, the Administrative Agent shall (i) at the request of the Required Cash Pay Lenders, declare the unpaid principal amount of all outstanding Senior Cash Pay Loans, all interest accrued and unpaid thereon and all other amounts owing or payable hereunder or under any other Loan Document in respect of such Senior Cash Pay Loans to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower and (ii) at the request of the Required Toggle Lenders, declare the unpaid principal amount of all outstanding Senior Toggle Loans, all interest accrued and unpaid thereon and all other amounts owing or payable hereunder or under any other Loan Document in respect of such Senior Toggle Loans to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower.

(b) If any Event of Default under Section 7.01(c) through (h) occurs and is continuing, the Administrative Agent shall, at the request of the Required Lenders, take any or all of the following actions:

(i) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower; and

(ii) exercise on behalf of itself and the Lenders all rights and remedies available to it and the Lenders under the Loan Documents or applicable Law;

provided that upon the occurrence of any Event of Default under Section 7.01(e) or (f) with respect to the Borrower, the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable, in each case without further act of the Administrative Agent or any Lender.

**SECTION 7.03 Application of Funds.** After the exercise of remedies provided for in Section 7.02 (or after the Loans have automatically become immediately due and payable as set forth in the proviso to Section 7.02), any amounts received on account of the Loan Obligations shall be applied by the Administrative Agent in the following order:

*First*, to payment of that portion of the Loan Obligations constituting fees, indemnities, expenses and other amounts (other than principal and interest, but including attorney costs payable under Section 9.05) payable to the Administrative Agent in its capacity as such;

*Second*, to payment of that portion of the Loan Obligations constituting fees, indemnities and other amounts (other than principal and interest) payable to the Lenders (including attorney costs payable under Section 9.05), ratably among them in proportion to the amounts described in this clause Second payable to them;

*Third*, to payment of that portion of the Loan Obligations constituting accrued and unpaid interest on the Loans, ratably among the Lenders;

*Fourth*, to payment of that portion of the Loan Obligations constituting unpaid principal of the Loans, ratably among the Lenders;

*Fifth*, to the payment of all other Loan Obligations of the Loan Parties that are due and payable to the Administrative Agent and the Lenders on such date, ratably based upon the respective aggregate amounts of all such Loan Obligations owing to the Administrative Agent and the Lenders on such date; and

*Last*, the balance, if any, after all of the Loan Obligations have been indefeasibly paid in full, to the Borrower or as otherwise required by Law.

ARTICLE VIII  
The Agents

SECTION 8.01 Appointment. Each Lender hereby irrevocably designates and appoints the Administrative Agent as the agent of such Lender under this Agreement and the other Loan Documents and irrevocably authorizes the Administrative Agent, in such capacity, to take such action on its behalf under the provisions of this Agreement and the other Loan Documents and to exercise such powers and perform such duties as are expressly delegated to the Administrative Agent by the terms of this Agreement and the other Loan Documents, together with such other powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary elsewhere in this Agreement, the Administrative Agent shall not have any duties or responsibilities, except those expressly set forth herein, or any fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against the Administrative Agent.

SECTION 8.02 Delegation of Duties. The Administrative Agent may each execute any of its duties under this Agreement and the other Loan Documents by or through agents or attorneys-in-fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. The Administrative Agent shall not be responsible for the negligence or misconduct of any agents or attorneys-in-fact selected by it with reasonable care.

SECTION 8.03 Exculpatory Provisions. Neither the Administrative Agent nor any of its officers, directors, employees, agents, attorneys-in-fact or Affiliates shall be (a) liable for any action lawfully taken or omitted to be taken by it or such person under or in connection with this Agreement or any other Loan Document (except for its or such person's own gross negligence or willful misconduct) or (b) responsible in any manner to any of the Lenders for any recitals, statements, representations or warranties made by any of the Borrower or any other Loan Party or any officer thereof contained in this Agreement or any other Loan Document or in any certificate, report, statement or other document referred to or provided for in, or received by the Administrative Agent under or in connection with, this Agreement or any other Loan Document or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document or for any failure of the Borrower or any other Loan Party to perform its obligations hereunder or thereunder. The Administrative Agent shall not be under any obligation to any Lender to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the properties, books or records of any Loan Party.

SECTION 8.04 Reliance by Administrative Agent. The Administrative Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, consent, certificate, affidavit, letter, telecopy, telex or teletype message, statement, order or other document or instruction believed by it to be genuine and correct and to have been signed, sent or made by the proper person or persons and upon advice and statements of legal counsel (including counsel to the Borrower), independent accountants and other experts selected by the Administrative Agent. The Administrative Agent may deem and treat the Lender

specified in the Register with respect to any amount owing hereunder as the owner thereof for all purposes unless a written notice of assignment, negotiation or transfer thereof shall have been filed with the Administrative Agent. The Administrative Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless it shall first receive such advice or concurrence of the Required Lenders as it deems appropriate or it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action. The Administrative Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement and the other Loan Documents in accordance with a request of the Required Lenders, and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders and all future holders of the Loans.

**SECTION 8.05 Notice of Default.** The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default hereunder unless the Administrative Agent has received notice from a Lender or the Borrower referring to this Agreement, describing such Default or Event of Default and stating that such notice is a “notice of default.” The Administrative Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Required Lenders, provided that unless and until the Administrative Agent shall have received such directions, the Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable in the best interests of the Lenders except to the extent that this Agreement requires that such action be taken only with the approval of the Required Lenders or each of the Lenders, as applicable.

**SECTION 8.06 Non-Reliance on Administrative Agent and Other Lenders.** Each Lender expressly acknowledges that neither the Administrative Agent nor any of its officers, directors, employees, agents, attorneys-in-fact or Affiliates has made any representations or warranties to it and that no act by the Administrative Agent hereinafter taken, including any review of the affairs of the Borrower or any other Loan Party, shall be deemed to constitute any representation or warranty by the Administrative Agent to any Lender. Each Lender represents to the Administrative Agent that it has, independently and without reliance upon the Administrative Agent or any other Lender, and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, operations, property, financial and other condition and creditworthiness of the Borrower and other Loan Parties and made its own decision to make its Loans hereunder and enter into this Agreement. Each Lender also represents that it will, independently and without reliance upon the Administrative Agent or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigation as it deems necessary to inform itself as to the business, operations, property, financial and other condition and creditworthiness of the Borrower or the other Loan Parties. Except for notices, reports and other documents expressly required to be furnished to the Lenders by the Administrative Agent hereunder, the Administrative Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, assets, operations, properties, financial condition, prospects or creditworthiness of any Borrower or any other Loan Party that may come

into the possession of the Administrative Agent or any of its officers, directors, employees, agents, attorneys-in-fact or Affiliates.

SECTION 8.07 Indemnification. The Lenders agree to indemnify the Administrative Agent in its capacity as such (to the extent not reimbursed by the Borrower and without limiting the obligation of the Borrower to do so), ratably according to its respective portion of the total Loans held on the date on which indemnification is sought, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever that may at any time (including at any time following the payment of the Loans) be imposed on, incurred by or asserted against the Administrative Agent in any way relating to or arising out of the Commitments, this Agreement, any of the other Loan Documents, the Intercreditor Agreement or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by the Administrative Agent under or in connection with any of the foregoing, provided that no Lender shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from the Administrative Agent's gross negligence or willful misconduct as determined by a final judgment of a court of competent jurisdiction. The agreements in this Section 8.07 shall survive the payment of the Loans and all other amounts payable hereunder.

SECTION 8.08 Agent in its Individual Capacity. The Administrative Agent and its Affiliates may make loans to, accept deposits from and generally engage in any kind of business with the Borrower and any other Loan Party as though such persons were not the Administrative Agent hereunder and under the other Loan Documents. With respect to the Loans made by it, the Administrative Agent shall have the same rights and powers under this Agreement and the other Loan Documents as any Lender and may exercise the same as though it were not the Administrative Agent, and the terms "Lender" and "Lenders" shall include the Administrative Agent in its individual capacity.

SECTION 8.09 Successor Agents. The Administrative Agent may at any time give notice of its resignation to the Lenders and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, subject to the reasonable consent of the Borrower so long as no Event of Default under Section 7.01(e) or (f) is continuing, to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Agent gives notice of its resignation, then the retiring Agent may, on behalf of the Lenders, appoint a successor Agent meeting the qualifications set forth above; provided that if the retiring Agent shall notify the Borrower and the Lenders that no qualifying person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (1) the retiring Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents and (2) all payments, communications and determinations provided to be made by, to or through such Agent shall instead be made by or to each Lender directly, until such time as the Required Lenders appoint a successor Agent as provided for above in this Section. Upon the acceptance of a successor's appointment as the Administrative Agent hereunder, such successor shall succeed to and become

vested with all of the rights, powers, privileges and duties of the retiring (or retired) Agent, and the retiring Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrower (following the effectiveness of such appointment) to such Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article VIII and Section 9.05 shall continue in effect for the benefit of such retiring Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Agent was acting as an Agent.

SECTION 8.10 Payments Set Aside. To the extent that any payment by or on behalf of the Borrower is made to the Administrative Agent or any Lender, or the Administrative Agent or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the applicable Overnight Rate from time to time in effect, in the applicable currency of such recovery or payment. The obligations of the Lenders under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

SECTION 8.11 Administrative Agent May File Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise

(i) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders and the Administrative Agent under Article II or Section 9.05) allowed in such judicial proceeding; and

(ii) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, if the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Article II and Section 9.05.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender to authorize the Administrative Agent to vote in respect of the claim of any Lender or in any such proceeding.

SECTION 8.12 [Reserved].

SECTION 8.13 Agents and Arrangers. Neither the Syndication Agent, the Documentation Agents, the Joint Bookrunners nor any of the Joint Lead Arrangers shall have any duties or responsibilities hereunder in its capacity as such.

ARTICLE IX  
Miscellaneous

SECTION 9.01 Notices; Communications.

(a) Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in Section 9.01(b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to any Loan Party or the Administrative Agent, to the address, telecopier number, electronic mail address or telephone number specified for such person on Schedule 9.01; and

(ii) if to any other Lender, to the address, telecopier number, electronic mail address or telephone number specified in its Administrative Questionnaire.

(b) Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices to any Lender pursuant to Article II if such Lender has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic

communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

(c) Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received. Notices sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient). Notices or communications (i) sent to an e-mail address shall be deemed received when delivered and (ii) posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefore.

(d) Any party hereto may change its address or telecopy number for notices and other communications hereunder by notice to the other parties hereto. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, telecopier number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender.

(e) Documents required to be delivered pursuant to Section 5.01 (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically (including as set forth in Section 9.17) and if so delivered, shall be deemed to have been delivered on the date (i) on which the Borrower posts such documents, or provides a link thereto on the Borrower's website on the Internet at the website address listed on Schedule 9.01, or (ii) on which such documents are posted on the Borrower's behalf on an Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); provided, that (A) the Borrower shall deliver paper copies of such documents to the Administrative Agent or any Lender that requests the Borrower to deliver such paper copies until a written request to cease delivering paper copies is given by the Administrative Agent or such Lender, and (B) the Borrower shall notify the Administrative Agent (by telecopier or electronic mail) of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. Except for certificates required by Section 5.07, the Administrative Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Borrower with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

SECTION 9.02 Survival of Agreement. All covenants, agreements, representations and warranties made by the Loan Parties herein, in the other Loan Documents and in the certificates or other instruments prepared or delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the Lenders and shall survive the making by the Lenders of the Loans and the execution and delivery of the Loan Documents, regardless of any investigation made by such persons or on

their behalf, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any Fee or any other amount payable under this Agreement or any other Loan Document is outstanding and unpaid and so long as the Commitments have not been terminated. Without prejudice to the survival of any other agreements contained herein, indemnification and reimbursement obligations contained herein (including pursuant to Sections 2.15, 2.17, 8.07 and 9.05) shall survive the payment in full of the principal and interest hereunder and the termination of the Commitments or this Agreement.

SECTION 9.03 Binding Effect. This Agreement shall become effective when it shall have been executed by the Borrower and the Administrative Agent and when the Administrative Agent shall have received copies hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the Borrower, the Administrative Agent and each Lender and their respective permitted successors and assigns.

SECTION 9.04 Successors and Assigns.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that (i) the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by the Borrower without such consent shall be null and void) except pursuant to the Merger, or in connection with the addition of one or more Domestic Subsidiaries as a joint and several co-borrower hereunder, and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section 9.04. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants (to the extent provided in clause (c) of this Section 9.04), and, to the extent expressly contemplated hereby, the Related Parties of each of the Agents and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement or the other Loan Documents.

(b) (i) Subject to the conditions set forth in clause (b)(ii) below, any Lender may assign to one or more assignees (each, an "Assignee") all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitments and the Loans at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld) of:

(A) prior to the Rollover Date, the Borrower with respect to any assignment if, subsequent thereto, the Lenders on the Closing Date (and their Affiliates that are acceptable to the Borrower) would hold, in aggregate, less than 51.0% of the outstanding Loans; and

(B) the Administrative Agent; provided, that no consent of the Administrative Agent shall be required for an assignment of all or any portion of a Loan to a Lender, an Affiliate of a Lender or an Approved Fund.

(ii) Assignments shall be subject to the following additional conditions:

(A) except in the case of an assignment to a Lender, an affiliate of a Lender or an Approved Fund or an assignment of the entire remaining amount of the assigning Lender's Commitments or Loans of any Class, the amount of the Commitments or Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to the Administrative Agent) shall not be less than \$1,000,000 (and shall be in an amount of an integral multiple thereof), unless each of the Borrower and the Administrative Agent otherwise consent; provided, that (1) no such consent of the Borrower shall be required if an Event of Default under Section 7.01(a), (b), (e) or (f) has occurred and is continuing and (2) such amounts shall be aggregated in respect of each Lender and its Affiliates or Approved Funds (with simultaneous assignments to or by two or more Related Funds shall be treated as one assignment), if any;

(B) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Acceptance via an electronic settlement system acceptable to the Administrative Agent (or, if required by the Administrative Agent, manually), and shall pay to the Administrative Agent a processing and recordation fee of \$3,500 (which fee may be waived or reduced in the sole discretion of the Administrative Agent);

(C) the Assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire and any tax forms required to be delivered pursuant to Section 2.17; and

(D) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loans or the Commitment assigned.

For the purposes of this Section 9.04, "Approved Fund" means any person (other than a natural person) that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course and that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

(iii) Subject to acceptance and recording thereof pursuant to paragraph (b)(v) below, from and after the effective date specified in each Assignment and Acceptance the Assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Acceptance, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.15, 2.16, 2.17 and 9.05). Any assignment or transfer

by a Lender of rights or obligations under this Agreement that does not comply with this Section 9.04 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with clause (c) of this Section 9.04.

(iv) The Administrative Agent, acting for this purpose as an agent of the Borrower, shall maintain at one of its offices a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amount of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, and the Borrower, the Administrative Agent and the Lenders shall treat each person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(v) Upon its receipt of a duly completed Assignment and Acceptance executed by an assigning Lender and an Assignee, the Assignee's completed Administrative Questionnaire (unless the Assignee shall already be a Lender hereunder), all applicable tax forms, the processing and recordation fee referred to in clause (b) of this Section and any written consent to such assignment required by clause (b) of this Section, the Administrative Agent promptly shall accept such Assignment and Acceptance and record the information contained therein in the Register. No assignment, whether or not evidenced by a promissory note, shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this clause (b)(v).

(c) (i) Any Lender may, without the consent of the Borrower or the Administrative Agent, sell participations to one or more banks or other entities (a "Participant") in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Commitments and the Loans owing to it); provided, that (A) such Lender's obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) the Borrower, the Administrative Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and the other Loan Documents and to approve any amendment, modification or waiver of any provision of this Agreement and the other Loan Documents; provided, that (x) such agreement may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver that (1) requires the consent of each Lender directly affected thereby pursuant to clause (i), (ii), (iii) or (vi) of the first proviso to Section 9.08(b) and (2) directly affects such Participant and (y) no other agreement with respect to amendment, modification or waiver may exist between such Lender and such Participant. Subject to paragraph (c)(ii) of this Section 9.04, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.15, 2.16 and 2.17 (subject to the limitations and requirements of those Sections) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section 9.04. To the

extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.06 as though it were a Lender, provided such Participant agrees to be subject to Section 2.18(c) as though it were a Lender.

(ii) Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal and interest amount of each Participant's interest in the Loans held by it (the "Participant Register"). The entries in the Participant Register shall be conclusive, and such Lender shall treat each person whose name is recorded in the Participant Register as the owner of the participation in question for all purposes of this Agreement, notwithstanding notice to the contrary.

(iii) A Participant shall not be entitled to receive any greater payment under Section 2.15, 2.16 or 2.17 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent (not to be unreasonably withheld). A Participant shall not be entitled to the benefits of Section 2.17 to the extent such Participant fails to comply with Section 2.17(e) and (f) as though it were a Lender.

(d) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank and in the case of any Lender that is an Approved Fund, any pledge or assignment to any holders of obligations owed, or securities issued, by such Lender, including to any trustee for, or any other representative of, such holders, and this Section 9.04 shall not apply to any such pledge or assignment of a security interest; provided, that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or Assignee for such Lender as a party hereto.

(e) The Borrower, upon receipt of written notice from the relevant Lender, agrees to issue Notes to any Lender requiring Notes to facilitate transactions of the type described in paragraph (d) above.

(f) Notwithstanding the foregoing, any Conduit Lender may assign any or all of the Loans it may have funded hereunder to its designating Lender without the consent of the Borrower or the Administrative Agent. Each of the Borrower, each Lender and the Administrative Agent hereby confirms that it will not institute against a Conduit Lender or join any other person in instituting against a Conduit Lender any bankruptcy, reorganization, arrangement, insolvency or liquidation proceeding under any state bankruptcy or similar law, for one year and one day after the payment in full of the latest maturing commercial paper note issued by such Conduit Lender; provided, however, that each Lender designating any Conduit Lender hereby agrees to indemnify, save and hold harmless each other party hereto and each Loan Party for any loss, cost, damage or expense arising out of its inability to institute such a proceeding against such Conduit Lender during such period of forbearance.

(g) [Reserved].

(h) Notwithstanding anything to the contrary herein, no assignment may be made or participation sold to an Ineligible Institution. Notwithstanding anything to the contrary herein, the rights of the Lenders to make assignments and grant participations shall be subject to the approval of any Gaming Authority, to the extent required by applicable Gaming Laws.

SECTION 9.05 Expenses; Indemnity.

(a) The Borrower agrees to pay (i) all reasonable documented out-of-pocket expenses (including Other Taxes) incurred by the Administrative Agent and the Joint Lead Arrangers in connection with the preparation of this Agreement and the other Loan Documents, or in connection with the administration of this Agreement and any amendments, modifications or waivers of the provisions hereof or thereof, including the reasonable fees, charges and disbursements of Cahill Gordon & Reindel llp, counsel for the Administrative Agent and the Joint Lead Arrangers, and, if necessary, the reasonable fees, charges and disbursements of one local counsel per jurisdiction, and (ii) all out-of-pocket expenses (including Other Taxes) incurred by the Agents or any Lender in connection with the enforcement or protection of their rights in connection with this Agreement and the other Loan Documents, in connection with the Loans made hereunder, including the reasonable fees, charges and disbursements of counsel for the Agents and the Lenders (including the reasonable fees, charges and disbursements of Cahill Gordon & Reindel llp, counsel for the Agents and the Joint Lead Arrangers, and, if necessary, the reasonable fees, charges and disbursements of one local counsel per jurisdiction and such additional counsel for each of the Lenders to the extent of any conflict of interests).

(b) The Borrower agrees to indemnify the Administrative Agent, the Agents, the Joint Lead Arrangers, each Lender, each of their respective Affiliates and each of their respective directors, partners, officers, employees, agents, trustees and advisors (each such person being called an “Indemnitee”) against, and to hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses, including reasonable counsel fees, charges and disbursements (limited to not more than one counsel, plus, if necessary, one local counsel per jurisdiction) (except the allocated costs of in-house counsel), incurred by or asserted against any Indemnitee arising out of, in any way connected with, or as a result of (i) the execution or delivery of this Agreement or any other Loan Document, the Intercreditor Agreement or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto and thereto of their respective obligations thereunder or the consummation of or otherwise relating to the Transactions and the other transactions contemplated hereby, (ii) the use of the proceeds of the Loans or (iii) any claim, litigation, investigation or proceeding relating to any of the foregoing, whether or not any Indemnitee is a party thereto and regardless of whether such matter is initiated by a third party or by the Company, the Borrower or any of their subsidiaries or Affiliates; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a final, non-appealable judgment of a court of competent jurisdiction to have resulted from (1) the gross negligence or willful misconduct of such Indemnitee (for purposes this proviso only, each of the Administrative Agent, any Joint Lead Arranger or any Lender shall be treated as several and separate Indemnitees, but each of

them together with its respective Related Parties (other than advisors), shall be treated as a single Indemnitee) or (2) any material breach of any Loan Document by such Indemnitee. Subject to and without limiting the generality of the foregoing sentence, the Borrower agrees to indemnify each Indemnitee against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses, including reasonable counsel or consultant fees, charges and disbursements (limited to not more than one counsel, plus, if necessary, one local counsel per jurisdiction) (except the allocated costs of in-house counsel), incurred by or asserted against any Indemnitee arising out of, in any way connected with, or as a result of (A) any claim related in any way to Environmental Laws and the Company, the Borrower or any of their Subsidiaries, or (B) any actual or alleged presence, Release or threatened Release of Hazardous Materials at, under, on, from or to any Real Property; provided, that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from (1) the gross negligence or willful misconduct of such Indemnitee or any of its Related Parties (other than advisors) or (2) any material breach of any Loan Document by such Indemnitee. None of the Indemnitees (or any of their respective affiliates) shall be responsible or liable to the Sponsors, the Company, the Borrower or any of their respective subsidiaries, Affiliates or stockholders or any other person or entity for any special, indirect, consequential or punitive damages, which may be alleged as a result of the Facilities or the Transactions. The provisions of this Section 9.05 shall remain operative and in full force and effect regardless of the expiration of the term of this Agreement, the consummation of the transactions contemplated hereby, the repayment of any of the Obligations, the invalidity or unenforceability of any term or provision of this Agreement or any other Loan Document, or any investigation made by or on behalf of the Administrative Agent, any Joint Lead Arranger or any Lender. All amounts due under this Section 9.05 shall be payable on written demand therefor accompanied by reasonable documentation with respect to any reimbursement, indemnification or other amount requested.

(c) Except as expressly provided in Section 9.05(a) with respect to Other Taxes, which shall not be duplicative of any amounts paid pursuant to Section 2.17, this Section 9.05 shall not apply to Taxes, except taxes that represent damages or losses resulting from a non-Tax claim.

(d) To the fullest extent permitted by applicable law, the Company and the Borrower shall not assert, and hereby waive, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof. No Indemnitee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby.

(e) The agreements in this Section 9.05 shall survive the resignation of the Administrative Agent, the replacement of any Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all the other Obligations and the termination of this Agreement.

SECTION 9.06 Right of Set-off. If an Event of Default shall have occurred and be continuing, each Lender is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by such Lender to or for the credit or the account of the Borrower or any Subsidiary against any of and all the obligations of the Borrower now or hereafter existing under this Agreement or any other Loan Document held by such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement or such other Loan Document and although the obligations may be unmatured. The rights of each Lender under this Section 9.06 are in addition to other rights and remedies (including other rights of set-off) that such Lender may have.

SECTION 9.07 Applicable Law. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (OTHER THAN AS EXPRESSLY SET FORTH IN OTHER LOAN DOCUMENTS) SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK.

SECTION 9.08 Waivers; Amendment.

(a) No failure or delay of the Administrative Agent or any Lender in exercising any right or power hereunder or under any Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent and the Lenders hereunder and under the other Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or any other Loan Document or consent to any departure by the Borrower or any other Loan Party therefrom shall in any event be effective unless the same shall be permitted by clause (b) below, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice or demand on, the Borrower or any other Loan Party in any case shall entitle such person to any other or further notice or demand in similar or other circumstances.

(b) Neither this Agreement nor any other Loan Document nor any provision hereof or thereof may be waived, amended or modified except (x) in the case of this Agreement, pursuant to an agreement or agreements in writing entered into by the Borrower and the Administrative Agent (and consented to by the Required Lenders), and (y) in the case of any other Loan Document, pursuant to an agreement or agreements in writing entered into by each party thereto and consented to by the Required Lenders; provided, however, that no such agreement shall:

(i) decrease or forgive the principal amount of, or extend the final maturity of, or decrease the rate of interest on, any Loan without the prior written consent of each Lender directly adversely affected thereby,

(ii) increase or extend the Commitment of any Lender or decrease the fees of any Lender without the prior written consent of such Lender (it being understood that waivers or modifications of conditions precedent, covenants, Defaults or Events of Default shall not constitute an increase of the Commitments of any Lender),

(iii) amend or modify the provisions of this Section 9.08, of Section 7.02(a) or the definition of the terms "Required Lenders," "Required Cash Pay Lenders," "Required Toggle Lenders," "Majority Lenders" or any other provision hereof specifying the number or percentage of Lenders required to waive, amend or modify any rights hereunder or make any determination or grant any consent hereunder, without the prior written consent of each Lender adversely affected thereby,

(iv) release all or substantially all of the aggregate value of the Guarantees, unless, in each case, to the extent sold or otherwise disposed of in a transaction permitted by this Agreement or the other Loan Documents, without the prior written consent of each Lender; or

(v) amend or modify the provisions of Section 2.21 solely as they pertain to the rights of Lenders to receive Senior Exchange Notes or fix the interest thereof;

provided, further, that (i) no such amendment shall amend, modify or otherwise affect the rights or duties of the Administrative Agent hereunder without the prior written consent of the Administrative Agent acting as such at the effective date of such amendment, as applicable and (ii) in the case of any waiver, amendment or modification that is also being sought with respect to the corresponding provision in the Senior Unsecured Notes Indenture, each Lender agrees that "Required Lenders" shall mean Lenders having Loans and holders of Senior Unsecured Notes representing more than 50% of the sum of all Loans and Senior Unsecured Notes outstanding at such time. Each Lender shall be bound by any waiver, amendment or modification authorized by this Section 9.08 and any consent by any Lender pursuant to this Section 9.08 shall bind any successor or assignee of such Lender.

(c) Notwithstanding the foregoing, this Agreement may be amended (or amended and restated) with the written consent of the Required Lenders, the Administrative Agent and the Borrower (a) to add one or more additional credit facilities to this Agreement and to permit the extensions of credit from time to time outstanding thereunder and the accrued interest and fees in respect thereof to share ratably in the benefits of this Agreement and the other Loan Documents with the Loans and the accrued interest and fees in respect thereof and (b) to include appropriately the Lenders holding such credit facilities in any determination of the Required Lenders.

SECTION 9.09 Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the applicable interest rate, together with all fees and charges that are treated as interest under applicable law (collectively, the “Charges”), as provided for herein or in any other document executed in connection herewith, or otherwise contracted for, charged, received, taken or reserved by any Lender, shall exceed the maximum lawful rate (the “Maximum Rate”) that may be contracted for, charged, taken, received or reserved by such Lender in accordance with applicable law, the rate of interest payable hereunder, together with all Charges payable to such Lender, shall be limited to the Maximum Rate; provided, that such excess amount shall be paid to such Lender on subsequent payment dates to the extent not exceeding the legal limitation.

SECTION 9.10 Entire Agreement. This Agreement, the other Loan Documents and the agreements regarding certain Fees referred to herein constitute the entire contract between the parties relative to the subject matter hereof. Any previous agreement among or representations from the parties or their Affiliates with respect to the subject matter hereof is superseded by this Agreement and the other Loan Documents. Notwithstanding the foregoing, the syndication provisions and the Borrower’s confidentiality obligations in the Commitment Letter and the Fee Letter and the Engagement Letter shall survive the execution and delivery of this Agreement and remain in full force and effect. Nothing in this Agreement or in the other Loan Documents, expressed or implied, is intended to confer upon any party other than the parties hereto and thereto any rights, remedies, obligations or liabilities under or by reason of this Agreement or the other Loan Documents.

SECTION 9.11 WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS. EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS, AS APPLICABLE, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 9.11.

SECTION 9.12 Severability. In the event any one or more of the provisions contained in this Agreement or in any other Loan Document should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby. The parties shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

SECTION 9.13 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall constitute an original but all of which, when taken

together, shall constitute but one contract, and shall become effective as provided in Section 9.03. Delivery of an executed counterpart to this Agreement by facsimile transmission (or other electronic transmission pursuant to procedures approved by the Administrative Agent) shall be as effective as delivery of a manually signed original.

SECTION 9.14 Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and are not to affect the construction of, or to be taken into consideration in interpreting, this Agreement.

SECTION 9.15 Jurisdiction; Consent to Service of Process.

(a) Each of the parties hereto hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of any New York State court or federal court of the United States of America sitting in New York City, and any appellate court from any thereof (collectively, "New York Courts"), in any action or proceeding arising out of or relating to this Agreement or the other Loan Documents, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement shall affect any right that any party may otherwise have to bring any action or proceeding relating to this Agreement or any of the other Loan Documents in the courts of any jurisdiction, except that each of the Loan Parties agrees that (a) it will not bring any such action or proceeding in any court other than New York Courts (it being acknowledged and agreed by the parties hereto that any other forum would be inconvenient and inappropriate in view of the fact that more of the Lenders who would be affected by any such action or proceeding have contacts with the State of New York than any other jurisdiction), and (b) in any such action or proceeding brought against any Loan Party in any other court, it will not assert any cross-claim, counterclaim or setoff, or seek any other affirmative relief, except to the extent that the failure to assert the same will preclude such Loan Party from asserting or seeking the same in the New York Courts.

(b) Each of the parties hereto hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or the other Loan Documents in any New York State or federal court. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(c) Each party hereto irrevocably consents to service of process in the manner provided for notices in Section 9.01. Nothing in this Agreement will affect the right of any party hereto to serve process in any other manner permitted by applicable law.

SECTION 9.16 Confidentiality. Each of the Lenders and each of the Agents agrees that it shall maintain in confidence any information relating to the Company, any Parent Entity, the Borrower and any Subsidiary furnished to it by or on behalf of the Company, any Parent Entity, the Borrower or any Subsidiary (other than information that (a) has become available to the public other than as a result of a disclosure by such party in breach of this Section 9.16, (b) has been independently developed by such Lender or such Agent without violating this Section 9.16 or (c) was or becomes available to such Lender or such Agent from a third party which, to such person's knowledge, had not breached an obligation of confidentiality to the Company, any Parent Entity, the Borrower or any other Loan Party) and shall not reveal the same other than to its affiliates, directors, trustees, officers, employees and advisors with a need to know or to any person that approves or administers the Loans on behalf of such Lender (so long as each such person shall have been instructed to keep the same confidential), except: (A) to the extent necessary to comply with law or any legal process or the requirements of any Governmental Authority, the National Association of Insurance Commissioners or of any securities exchange on which securities of the disclosing party or any Affiliate of the disclosing party are listed or traded, (B) as part of normal reporting or review procedures to, or examinations by, Governmental Authorities or self regulatory authorities, including the National Association of Insurance Commissioners or the National Association of Securities Dealers, Inc., (C) in order to enforce its rights under any Loan Document in a legal proceeding, and (D) to any pledgee under Section 9.04(e) or any other prospective assignee of, or prospective Participant in, any of its rights under this Agreement (so long as such person shall have been instructed to keep the same confidential in accordance with this Section 9.16 or terms substantially similar to this Section) and (E) to any direct or indirect contractual counterparty in Hedging Obligations or such contractual counterparty's professional advisor (so long as such contractual counterparty's professional advisor or professional advisor to such contractual counterparty agrees to be bound by the provisions of this Section 9.16 or terms substantially similar to this Section).

SECTION 9.17 Platform; Borrower Materials. The Borrower hereby acknowledges that (a) the Administrative Agent will make available to the Lenders materials and/or information provided by or on behalf of the Borrower hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on IntraLinks or another similar electronic system (the "Platform"), and (b) certain of the Lenders may be "public-side" Lenders (i.e., Lenders that do not wish to receive material non-public information with respect to the Borrower or its securities) (each, a "Public Lender"). The Borrower hereby agrees that it will use commercially reasonable efforts to identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that (i) all such Borrower Materials shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof, (ii) by marking Borrower Materials "PUBLIC," the Borrower shall be deemed to have authorized the Administrative Agent, the Joint Lead Arrangers and the Lenders to treat such Borrower Materials as either publicly available information or not material information (although it may be sensitive and proprietary) with respect to the Borrower or its securities for purposes of United States Federal and state securities laws, (iii) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Investor;" and (iv) the Administrative Agent and the Joint Lead Arrangers shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Investor."

THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (collectively, the "Agent Parties") have any liability to the Borrower, any Lender or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Borrower's or the Administrative Agent's transmission of Borrower Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Agent Party; provided, however, that in no event shall any Agent Party have any liability to the Borrower, any Lender or any other person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

SECTION 9.18 Release of Guarantees.

Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release any Guarantor from its obligations under the Guarantee pursuant to this Section 9.18. In each case, the Administrative Agent will promptly (and each Lender irrevocably authorizes the Administrative Agent to), at the Borrower's expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release of such Guarantor from its obligations under the Guarantee, in each case in accordance with the terms of the Loan Documents and this Section 9.18.

SECTION 9.19 Judgment Currency. If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder or any other Loan Document in one currency into another currency, the rate of exchange used shall be that at which in accordance with normal banking procedures the Administrative Agent could purchase the first currency with such other currency on the Business Day preceding that on which final judgment is given. The obligation of the Borrower in respect of any such sum due from it to the Administrative Agent or the Lenders hereunder or under the other Loan Documents shall, notwithstanding any judgment in a currency (the "Judgment Currency") other than that in which such sum is denominated in accordance with the applicable provisions of this Agreement (the "Agreement Currency"), be discharged only to the extent that on the Business Day following receipt by the Administrative Agent of any sum adjudged to be so due in the Judgment Currency, the Administrative Agent may in accordance with normal banking procedures purchase this Agreement Currency with the Judgment Currency. If the amount of this Agreement Currency so purchased is less than the sum originally due to the Administrative Agent from the Borrower in this Agreement Currency, such Borrower agrees, as a separate obligation and notwithstanding

any such judgment, to indemnify the Administrative Agent or the person to whom such obligation was owing against such loss. If the amount of this Agreement Currency so purchased is greater than the sum originally due to the Administrative Agent in such currency, the Administrative Agent agrees to return the amount of any excess to such Borrower (or to any other person who may be entitled thereto under applicable law).

SECTION 9.20 USA PATRIOT Act Notice. Each Lender that is subject to the USA PATRIOT Act and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the USA Patriot Act, it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify each Loan Party in accordance with the USA PATRIOT Act.

SECTION 9.21 No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby, the Borrower acknowledges and agrees that: (i) the Loans provided for hereunder and any related arranging or other services in connection therewith (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document) are an arm's-length commercial transaction between the Borrower, the other Loan Parties and their respective Affiliates, on the one hand, and the Agents, the Joint Lead Arrangers and the Lenders, on the other hand, and the Borrower and the other Loan Parties are capable of evaluating and understanding and understand and accept the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents (including any amendment, waiver or other modification hereof or thereof); (ii) in connection with the process leading to such transaction, each Agent, each Joint Lead Arranger and each Lender is and has been acting solely as a principal and is not the financial advisor, agent or fiduciary, for any of the Borrower, any Loan Party or any of their respective Affiliates, stockholders, creditors or employees or any other person; (iii) none of the Agents, any Joint Lead Arranger or any Lender has assumed or will assume an advisory, agency or fiduciary responsibility in favor of any Borrower or any other Loan Party with respect to any of the transactions contemplated hereby or the process leading thereto, including with respect to any amendment, waiver or other modification hereof or of any other Loan Document (irrespective of whether any Agent, any Joint Lead Arranger or any Lender has advised or is currently advising the Borrower or any other Loan Party or their respective Affiliates on other matters) and none of the Agents, any Joint Lead Arranger or any Lender has any obligation to any of the Borrower, the other Loan Parties or their respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; (iv) the Agents, the Joint Lead Arrangers, the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower and the other Loan Parties and their respective Affiliates, and none of the Agents, any Joint Lead Arranger or any Lender has any obligation to disclose any of such interests by virtue of any advisory, agency or fiduciary relationship; and (v) the Agents, the Joint Lead Arrangers and the Lenders have not provided and will not provide any legal, accounting, regulatory or tax advice with respect to any of the transactions contemplated hereby (including any amendment, waiver or other modification hereof or of any other Loan Document) and the Borrower and the other Loan Parties have consulted their own legal, accounting, regulatory and tax advisors to the extent

they deemed appropriate. The Borrower hereby waives and releases, to the fullest extent permitted by law, any claims that it may have against the Agents, the Joint Lead Arrangers and the Lenders with respect to any breach or alleged breach of agency or fiduciary duty.

SECTION 9.22 Application of Gaming Laws

(a) This Agreement and the other Loan Documents are subject to Gaming Laws. Without limiting the foregoing, the Lenders and Agents acknowledge that (i) they are subject to the jurisdiction of the Gaming Authorities and Liquor Authorities, in their discretion, for licensing, qualification or findings of suitability or to file or provide other information, and (ii) all rights, remedies and powers in or under this Agreement and the other Loan Documents and the ownership and operation of facilities are subject to the jurisdiction of the Gaming Authorities and Liquor Authorities, and may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of the Gaming Laws and Liquor Laws and only to the extent that required approvals (including prior approvals) are obtained from the relevant Gaming Authorities and Liquor Authorities.

(b) Lenders and Agents agree to cooperate with all Gaming Authorities and Liquor Authorities in connection with the provision in a timely manner of such documents or other information as may be requested by such Gaming Authorities and Liquor Authorities relating to the Loan or Loan Documents.

Lenders acknowledge and agree that if the Borrower receives a notice from any applicable Gaming Authority that any Lender is a disqualified holder (and such Lender is notified by the Borrower in writing of such disqualification), the Borrower shall, following any available appeal of such determination by such Gaming Authority (unless the rules of the applicable Gaming Authority do not permit such Lender to retain its Loans or Commitments pending appeal of such determination), have the right to (i) cause such disqualified holder to transfer and assign, without recourse all of its interests, rights and obligations in its Loans and Commitments or (ii) in the event that (A) the Borrower is unable to assign such Loan after using its best efforts to cause such an assignment and (B) no Default or Event of Default has occurred and is continuing, prepay such disqualified holder's Loan. Notice to such disqualified holder shall be given ten days prior to the required date of assignment or prepayment, as the case may be, and shall be accompanied by evidence demonstrating that such transfer or prepayment is required pursuant to Gaming Laws. If reasonably requested by any disqualified holder, the Borrower will use commercially reasonable efforts to cooperate with any such holder that is seeking to appeal such determination and to afford such holder an opportunity to participate in any proceedings relating thereto. Notwithstanding anything herein to the contrary, any prepayment of a Loan shall be at a price that, unless otherwise directed by a Gaming Authority, shall be equal to the sum of the principal amount of such Loan and interest to the date such Lender or holder became a disqualified holder (plus any fees and other amounts accrued for the account of such disqualified holder to the date such Lender or holder became a disqualified holder).

SECTION 9.23 Intercreditor Agreement. The terms of this Agreement are subject to the terms of the Intercreditor Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first written above.

HARRAH'S OPERATING COMPANY, INC.

By: /s/ Jonathan S. Halkyard  
Name: Jonathan S. Halkyard  
Title: Senior Vice President CFO & Treasurer

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**LOAN AGREEMENT**

Dated as of January 28, 2008

Between

**THE ENTITIES IDENTIFIED ON THE SIGNATURE PAGES HEREOF AS  
BORROWER,**  
collectively, as Borrower

and

**JPMORGAN CHASE BANK, N.A.,**  
as Lender

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- Exhibit A – Form of Opinion of Interest Rate Cap Provider
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**LOAN AGREEMENT**

**THIS LOAN AGREEMENT**, dated as of January 28, 2008 (as amended, restated, replaced, supplemented or otherwise modified from time to time, this “**Agreement**”), between **JPMORGAN CHASE BANK, N.A.**, a banking association chartered under the laws of the United States of America, having an address at 270 Park Avenue, New York, New York 10017 (“**Lender**”) and **THE ENTITIES IDENTIFIED ON THE SIGNATURE PAGES HEREOF AS BORROWER**, each a Delaware limited liability company having its principal place of business at the addresses set forth on Schedule I attached hereto (collectively, “**Borrower**”).

**WITNESSETH:**

**WHEREAS**, Borrower desires to obtain the Loan (as hereinafter defined) from Lender; and

**WHEREAS**, Lender is willing to make the Loan to Borrower, subject to and in accordance with the terms of this Agreement and the other Loan Documents (as hereinafter defined).

**NOW THEREFORE**, in consideration of the making of the Loan by Lender and the covenants, agreements, representations and warranties set forth in this Agreement, the parties hereto hereby covenant, agree, represent and warrant as follows:

**I. DEFINITIONS; PRINCIPLES OF CONSTRUCTION**

**Section 1.1. Definitions.** For all purposes of this Agreement, except as otherwise expressly required or unless the context clearly indicates a contrary intent:

“**Acceptable Counterparty**” shall mean any counterparty to the Interest Rate Cap Agreement that has and shall maintain, until the expiration of the applicable Interest Rate Cap Agreement, a long-term unsecured debt rating of at least “A+” by S&P and “Aa3” from Moody’s, which rating shall not include a “t” or otherwise reflect a termination risk and is otherwise reasonably acceptable to Lender.

“**Additional Insolvency Opinion**” shall have the meaning set forth in Section 4.1.30(c) hereof.

“**Additional True Lease Opinion**” shall have the meaning set forth in Section 4.1.30(d) hereof.

“**Affiliate**” shall mean, as to any Person, any other Person that, directly or indirectly, is in Control of, is Controlled by or is under common Control with such Person or is a director or officer of such Person or of an Affiliate of such Person.

“**Aggregate Material Adverse Effect**” shall mean any event or condition that, either singly or in the aggregate, could reasonably be expected to have or result in a material adverse effect upon (a) the business, operations, economic performance, prospects, assets or condition (financial or otherwise) of (i) Borrower (taken as a whole), (ii) Guarantor, (iii) Operating Company (taken as a whole), (iv) the Operating Lease or the Operating Lease Guaranty (taken as a whole) or (v) the Properties (taken as a whole), the Hotel Components (taken as a whole) or the Casino Components (taken as a whole); (b) the ability of Borrower (taken as a whole) or Guarantor to perform, in all material respects, its obligations under the Loan Documents (taken as a whole) to which it is a party; (c) the ability of Operating Company (taken as a whole) to perform, in all material respects, the obligations under the Operating Leases (taken as a whole) or the ability of Guarantor (Operating Lease) (taken as a whole) to perform, in all material respects, the obligations under the Operating Lease Guaranty (taken as a whole); (d) the enforceability or validity of (i) the Operating Lease or the Operating Lease Guaranty (taken as a whole), (ii) the Loan Documents (taken as a whole) or the perfection or priority of the Liens created under the Loan Documents (taken as a whole); (e) the value of, or cash flow from, the Properties or the operations thereof (taken as a whole); or (f) the material rights, interests and remedies of Lender under the Loan Documents (taken as a whole).

“**Allocated Loan Amount**” shall mean, for an Individual Property, the amount set forth on Schedule II attached hereto.

“**ALTA**” shall mean American Land Title Association, or any successor thereto.

“**Alteration**” shall mean, with respect to any Individual Property, any alteration, improvement, demolition, construction or removal of all or any portion of the Improvements at such Individual Property.

“**Annual Budget**” shall mean, individually and collectively as the context requires, (a) the Borrower Annual Budget and (b) the Operating Company Annual Budget.

“**Applicable Interest Rate**” shall mean the rate or rates at which the outstanding principal amount of the Loan bears interest from time to time in accordance with the provisions of Section 2.2.3 hereof.

“**Approved Guarantor**” means (x) Holdings, for so long Holdings meets the Minimum Value Test, or (y) any other guarantor that meets the Minimum Value Test and is otherwise reasonably satisfactory to Lender.

“**Assignee**” shall have the meaning set forth in Section 9.5 hereof.

“**Assignment and Acceptance**” shall have the meaning set forth in Section 9.8 hereof.

**“Assignment of Leases”** shall mean, with respect to each Individual Property, that certain first priority Assignment of Leases and Rents, dated as of the date hereof, from Borrower, as assignor, to Lender, as assignee, assigning to Lender all of Borrower’s interest in and to the Leases and Rents of such Individual Property as security for the Loan, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

**“Award”** shall mean any compensation paid by any Governmental Authority in connection with a Condemnation with respect to all or any part of any Individual Property.

**“Bankruptcy Action”** shall mean with respect to any Person (a) such Person filing a voluntary petition under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (b) the filing of an involuntary petition against such Person under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law, or soliciting or causing to be solicited petitioning creditors for any involuntary petition against such Person; (c) such Person filing an answer consenting to or otherwise acquiescing in or joining in any involuntary petition filed against it, by any other Person under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law, or soliciting or causing to be solicited petitioning creditors for any involuntary petition from any Person; (d) such Person consenting to or acquiescing in or joining in an application for the appointment of a custodian, receiver, trustee, or examiner for such Person or any portion of its property; or (e) such Person making an assignment for the benefit of creditors, or admitting, in writing or in any legal proceeding, its insolvency or inability to pay its debts as they become due.

**“Bankruptcy Code”** shall mean Title 11 of the United States Code, 11 U.S.C. §101, *et seq.*, as the same may be amended from time to time, and any successor statute or statutes and all rules and regulations from time to time promulgated thereunder, and any comparable foreign laws relating to bankruptcy, insolvency or creditors’ rights or any other Federal or state bankruptcy or insolvency law.

**“Basic Carrying Costs”** shall mean, for any period, with respect to each Individual Property, the sum of the following costs associated with such Individual Property for such period: (a) Taxes, (b) Insurance Premiums and (c) Ground Rent.

**“Bill’s Lake Tahoe Casino”** shall mean that certain property identified on Schedule II as “Bill’s Lake Tahoe” having a street address of 15 Highway 50, Stateline, Nevada.

**“Borrower”** shall have the meaning set forth in the introductory paragraph hereto, together with its successors and permitted assigns. As used herein, the term “Borrower” shall mean one of the Borrowers individually, or the Borrowers collectively, as the context shall require.

**“Borrower Agent”** shall have the meaning set forth in Section 10.6 hereof.

**“Borrower Annual Budget”** shall mean the operating budget of Borrower, prepared by Borrower for the applicable Fiscal Year or other period.

**“Borrower Entity”** shall have the meaning set forth in Section 11.1 hereof.

“**Business Day**” shall mean any day other than a Saturday, Sunday or any other day on which national banks in New York, New York are not open for business.

“**Capital Expenditures**” shall mean, for any period, the amount expended for items capitalized under GAAP (including expenditures for building improvements or major repairs, leasing commissions, tenant improvements and Fixtures).

“**Capitalized Software Expenditures**” shall mean, for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities) by a Person during such period in respect of licensed or purchased software or internally developed software and software enhancements that, in accordance with GAAP, are or are required to be reflected as capitalized costs on the consolidated balance sheet of such Person.

“**Captive Insurance Company**” shall have the meaning set forth in Section 6.1(c) hereof.

“**Cash Management Account**” shall have the meaning set forth in Section 2.6.3 hereof.

“**Casino Components**” shall mean, collectively, those portions of each Individual Property devoted to the operation of casino gaming operations, including (without limitation) those areas devoted to the conduct of games of chance, facilities associated directly with gaming operations including, without limitation, casino support areas such as surveillance and security areas, cash cages, counting and accounting areas and gaming back-of-the-house areas in each case, to the extent the operation thereof requires a Gaming License under applicable Gaming Laws. The Casino Components are more particularly described and set forth in each Operating Lease, as appropriate.

“**Casualty**” shall have the meaning set forth in Section 6.2 hereof.

“**Casualty Consultant**” shall have the meaning set forth in Section 6.4(b)(iii)(A) hereof.

“**Casualty Retainage**” shall have the meaning set forth in Section 6.4(b)(iv) hereof.

“**Central Bank Pledge**” shall have the meaning set forth in Section 9.5 hereof.

“**Change in Control**” shall mean (1) a “Change in Control” as defined in the Credit Agreement, dated the date hereof, among Hamlet Merger Inc., a Delaware corporation, Harrah’s Operating Company, Inc., a Delaware corporation, the Lenders party thereto from time to time, Bank of America, N.A., as administrative agent and collateral agent for the Lenders, and certain other parties thereto, or (2) a Change in Control as defined in clause (b) of said definition except that references therein to Borrower shall be deemed to refer to Holdings.

“**Closing Date**” shall mean the date of the funding of the Loan.

“**Code**” shall mean the Internal Revenue Code of 1986, as amended, as it may be further amended from time to time, and any successor statutes thereto, and applicable U.S. Department of Treasury regulations issued pursuant thereto in temporary or final form.

“**Collateral**” shall have the meaning set forth in the First Mezzanine Loan Agreement, the Second Mezzanine Loan Agreement, the Third Mezzanine Loan Agreement, the Fourth Mezzanine Loan Agreement, the Fifth Mezzanine Loan Agreement, the Sixth Mezzanine Loan Agreement, the Seventh Mezzanine Loan Agreement, the Eighth Mezzanine Loan Agreement or the Ninth Mezzanine Loan Agreement, as the context shall require.

“**Collateral Assignment of Interest Rate Cap Agreement**” shall mean that certain Collateral Assignment of Interest Rate Cap Agreement, dated as of the date hereof, executed by Borrower in connection with the Loan for the benefit of the Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Collection Account**” shall mean, individually or collectively as the context indicates, (a) those certain segregated Eligible Accounts to be established by each Operating Company with Collection Bank into which Operating Company shall cause all credit card receipts and all Revenues to be deposited pursuant to the terms hereof, and (b) subject to the terms hereof, such replacement collection account or accounts established by Operating Company at any successor Collection Bank designated from time to time in accordance with the terms hereof.

“**Collection Account Agreement**” shall mean, collectively, (i) each of the agreements to be entered into among Lender, Borrower and each Collection Bank in form and substance reasonably satisfactory to Lender and (ii) any agreement entered into by Lender, Borrower and any replacement Collection Bank, in each case as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Collection Banks**” shall mean (a) any Eligible Institution(s) designated by Borrower as Collection Bank and reasonably approved by Lender from time to time in accordance with the terms hereof, or (b) any other financial institution otherwise reasonably approved by Lender and, if a Securitization has occurred, with respect to which a Rating Agency Confirmation has been obtained.

“**Condemnation**” shall mean a temporary or permanent taking by any Governmental Authority as the result or in lieu or in anticipation of the exercise of the right of condemnation or eminent domain, of all or any part of any Individual Property, or any interest therein or right accruing thereto, including any right of access thereto or any change of grade affecting such Individual Property or any part thereof.

“**Condemnation Proceeds**” shall have the meaning set forth in Section 6.4(b) hereof.

“**Consolidated Net Income**” shall mean, with respect to any Person for any period, the aggregate of the Net Income of such Person for such period, on a consolidated basis; provided, however, that, without duplication,

(i) any net after-tax extraordinary, nonrecurring or unusual gains or losses or income or expense or charge (less all fees and expenses relating thereto), including, without limitation, any severance, relocation or other restructuring expenses, any expenses related to any reconstruction, decommissioning, recommissioning or reconfiguration of fixed assets for alternative uses, fees, expenses or charges relating to new product lines, curtailments or modifications to pension and post-retirement employee benefit plans, excess pension charges, acquisition integration costs, facilities opening costs, project start-up costs, business optimization costs, signing, retention or completion bonuses, shall be excluded,

(ii) any net after-tax income or loss from disposed, abandoned, transferred, closed or discontinued operations and any net after-tax gain or loss on disposal of disposed, abandoned, transferred, closed or discontinued operations shall be excluded,

(iii) any net after-tax gain or loss (less all fees and expenses or charges relating thereto) attributable to business dispositions or asset dispositions other than in the ordinary course of business (as determined in good faith by the management of the Borrower) shall be excluded,

(iv) Consolidated Net Income for such period shall not include the cumulative effect of a change in accounting principles during such period,

(v) effects of purchase accounting adjustments (including the effects of such adjustments pushed down to such Person) in component amounts required or permitted by GAAP, resulting from the application of purchase accounting in relation to any consummated acquisition or the amortization or write-off of any amounts thereof, net of taxes, shall be excluded,

(vi) any impairment charges or asset write-offs, in each case pursuant to GAAP, and the amortization of intangibles arising pursuant to GAAP, shall be excluded,

(vii) any non-cash compensation charge or expenses realized or resulting from stock option plans, employee benefit plans or post-employment benefit plans, or grants or sales of stock, stock appreciation or similar rights, stock options, restricted stock, preferred stock or other rights shall be excluded,

(viii) accruals and reserves that are established or adjusted within twelve months after the Closing Date and that are so required to be established or adjusted in accordance with GAAP or as a result of adoption or modification of accounting policies shall be excluded,

(ix) non-cash gains, losses, income and expenses resulting from fair value accounting required by the applicable standard under GAAP and related interpretations shall be excluded,

(x)(i) the non-cash portion of “straight-line” rent expense shall be excluded and (ii) the cash portion of “straight-line” rent expense which exceeds the amount expended in respect of such rent expense shall be included,

(xi) to the extent covered by insurance and actually reimbursed, or, so long as such Person has made a determination that there exists reasonable evidence that such amount will in fact be reimbursed by the insurer and only to the extent that such amount is (i) not denied by the applicable carrier in writing within 180 days and (ii) in fact reimbursed within 365 days of the date of such evidence (with a deduction for any amount so added back to the extent not so reimbursed within 365 days), expenses with respect to liability or casualty events or business interruption shall be excluded, and

(xii) non-cash charges for deferred tax asset valuation allowances shall be excluded.

“**Contribution Agreement**” shall mean that certain Contribution Agreement, dated as of the date hereof, between Borrower and Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Control**” shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management, policies or activities of a Person, whether through ownership of voting securities, by contract or otherwise. “**Controlled**” and “**Controlling**” shall have correlative meanings.

“**Convention Center Parcel**” shall mean the parcel shown on Schedule XXII and comprising a part of the Harrah’s Atlantic City Property.

“**Convention Center Project**” shall mean that certain conference center currently contemplated to be constructed on the Convention Center Parcel by the Borrower and/or the Operating Company owning the Harrah’s Atlantic City Property, and more fully described in the schematic designs for the Convention Center Project provided by Borrower to Lender. The Convention Center Project will not be funded with the proceeds of the Loan (but will be funded by Borrower, including with capital contributions).

“**Counterparty**” shall mean, with respect to the Interest Rate Cap Agreement and any Replacement Interest Rate Cap Agreement, any Acceptable Counterparty.

“**Covered Disclosure Information**” shall have the meaning set forth in Section 9.2(b) hereof.

“**Debt**” shall mean the outstanding principal amount set forth in, and evidenced by, this Agreement and the Notes together with all interest accrued and unpaid thereon (including any interest that would accrue on the outstanding principal amount of the Loan through and including the end of any applicable Interest Period, even if such Interest Period extends beyond any applicable Payment Date, prepayment date or the Maturity Date) and all

other sums due to Lender in respect of the Loan under the Notes, this Agreement, the Mortgages and the other Loan Documents.

“**Debt Service**” shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under this Agreement and the Notes.

“**Debt Service Coverage Ratio**” shall mean a ratio for the applicable period in which:

(a) the numerator is EBITDAR of the Operating Company for the four (4) quarter period preceding the date of determination, as set forth in the financial statements required hereunder; and

(b) the denominator is the sum of (i) the aggregate amount of Debt Service which was due and payable for such preceding four (4) quarter period calculated, for these purposes, assuming that (A) the spread is the Spread and (B) LIBOR is equal to the lesser of (y) LIBOR on the date of determination, or (z) the applicable Strike Price, (ii) the aggregate amount of Mezzanine Debt Service which was due and payable for such preceding four (4) quarter period calculated, for these purposes, assuming that (A) the spread on the Mezzanine Loans is the “Spread” as defined in each Mezzanine Loan Agreement and (B) LIBOR is equal to the lesser of (y) LIBOR on the date of determination, or (z) the applicable Strike Price, and (iii) the aggregate amount of the Permitted Mezzanine Debt Service which was due and payable for such preceding four (4) quarter period (or the annualized amount, if the Permitted Mezzanine Loan were outstanding for less than 12 calendar months) calculated, for these purposes, assuming that (A) the spread on the Permitted Mezzanine Loan is the “Spread” as defined in the documents evidencing the Permitted Mezzanine Loan Documents and (B) LIBOR is equal to the lesser of (y) LIBOR on the date of determination, or (z) the strike price under the related interest rate cap purchased in connection with the Permitted Mezzanine Loan;

provided, however, that, solely for the purpose of Section 2.5, the Debt Service Coverage Ratio shall be determined as described in Section 2.5.1(c).

“**Default**” shall mean the occurrence of any event hereunder or under any other Loan Document which, but for the giving of notice or passage of time, or both, would be an Event of Default.

“**Default Rate**” shall mean a rate per annum equal to the lesser of (a) the Maximum Legal Rate and (b) two percent (2%) above the Applicable Interest Rate.

“**Delinquency**” shall mean, with respect to each Individual Property, the latest date on which Taxes or Other Charges may be paid (with respect to such Individual Property) without the payment of a premium, penalty or interest.

“**Determination Date**” shall mean, with respect to any Interest Period, the date that is two (2) London Business Days prior to the fifteenth (15<sup>th</sup>) day of the calendar month in which such Interest Period commences.

“**Disclosure Document**” shall mean a prospectus, prospectus supplement, private placement memorandum, offering memorandum, offering circular, term sheet, road show presentation materials or other offering documents or marketing materials, in each case in preliminary or final form, used to offer Securities in connection with a Securitization.

“**EBITDAR**” shall mean, with respect to any Person for any period, the Consolidated Net Income of such Person plus the sum of (in each case without duplication and to the extent the respective amounts described in subclauses (i) through (vi) below reduced such Consolidated Net Income (and were not excluded therefrom) for the respective period for which EBITDAR is being determined):

(i) provision for Taxes based on income, profits or capital for such period, including, without limitation, state, franchise and similar taxes and foreign withholding taxes (including penalties and interest related to taxes or arising from tax examinations),

(ii) Interest Expense for such period (net of interest income for such period),

(iii) depreciation and amortization expenses for such period including, but not exclusively, the amortization of intangible assets, deferred financing fees and Capitalized Software Expenditures and amortization of unrecognized prior service costs and actuarial gains and losses related to pensions and other post-employment benefits,

(iv) any expenses or charges (other than depreciation or amortization expense as described in the preceding clause (iii)) related to any acquisition, disposition, recapitalization or the incurrence, modification or repayment of Indebtedness permitted to be incurred by this Agreement (including a refinancing thereof) (whether or not successful), including (y) any amendment or other modification of such Indebtedness, and (z) commissions, discounts, yield and other fees and charges (including any interest expense) related to any such Indebtedness,

(v) restructuring charges or reserves (which, for the avoidance of doubt, shall include, without limitation, the effect of inventory optimization programs, retention, severance, systems establishment costs, contract termination costs, future lease commitments and excess pension charges), to the extent that such expenses, charges or reserves are considered to be extraordinary expenses under GAAP,

(vi) any costs or expense incurred pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement or any stock subscription or shareholder agreement, to the extent that such cost or expenses are funded with cash proceeds contributed to the capital of such Person,

(vii) with respect to the Operating Company, the Fixed Rent payable under the Operating Lease, and

(viii) if the Captive Insurance Company shall be utilized to provide terrorism coverage hereunder, the amount of the premiums expended by Borrower to

obtain such terrorism coverage to the extent such amount exceeds the Terrorism Premium Limit and such excess is retained by the Captive Insurance Company;

provided that EBITDAR shall be reduced by the sum of the following for the respective period for which EBITDAR is being determined:

(A) management fees equal to the greater of (x) 3 percent per annum of gross revenues at the Properties and (y) the actual management fees payable under any management agreement (provided the foregoing shall not be construed as Lender's approval of any management agreement except in accordance with the terms hereof), without double counting actual amounts incurred and otherwise reflected in the calculation of EBITDAR, and

(B) FF&E reserves equal to 3 percent per annum of gross hotel and casino revenues at the Properties without double counting actual amounts incurred and otherwise reflected in the calculation of EBITDAR.

**"EBITDAR (Closing Date)"** shall mean EBITDAR for calendar year 2007, as agreed upon between Borrower and Lender.

**"Eighth Mezzanine Borrower"** shall mean, collectively, the entities set forth on Schedule XX hereto, each a Delaware limited liability company, together with their respective successors and permitted assigns. As used herein, the term "Eighth Mezzanine Borrower" shall mean one of the Eighth Mezzanine Borrowers individually, or the Eighth Mezzanine Borrowers collectively, as the context shall require.

**"Eighth Mezzanine Debt Service"** shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Eighth Mezzanine Notes.

**"Eighth Mezzanine Lender"** shall mean JPMorgan Chase Bank, N.A., in its capacity as the holder of the Eighth Mezzanine Loan, together with its successors and assigns.

**"Eighth Mezzanine Loan"** shall mean that certain loan in the original principal amount of Two Hundred Seventy Five Million and No/100 Dollars (\$275,000,000) of even date herewith made by Eighth Mezzanine Lender to Eighth Mezzanine Borrower.

**"Eighth Mezzanine Loan Agreement"** shall mean that certain Eighth Mezzanine Loan Agreement, dated as of the date hereof, between Eighth Mezzanine Borrower and Eighth Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**"Eighth Mezzanine Loan Documents"** shall mean the Eighth Mezzanine Loan Agreement, the Eighth Mezzanine Notes and all other documents and instruments executed and delivered in connection with the Eighth Mezzanine Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

“**Eighth Mezzanine Notes**” shall mean the “Notes” as defined in the Eighth Mezzanine Loan Agreement.

“**Eligibility Requirements**” means, with respect to any Person, that such Person (a) has total assets (in name or under management) in excess of \$4,000,000,000 and (except with respect to a pension advisory firm or similar fiduciary) capital/statutory surplus or shareholder’s equity of \$1,000,000,000, (b) is regularly engaged in the business of owning and operating commercial real estate properties, (c) is not currently, and its principals are not currently, subject to a Bankruptcy Action and for the immediately preceding 10 years, neither it nor any material subsidiary has been subject to a Bankruptcy Action, and (d) has not been, and its principals have not been, convicted and is not under current indictment for a felony or crime involving moral turpitude, has not been found by a court of competent jurisdiction to have violated federal or state securities laws, and is not an organized crime figure.

“**Eligible Account**” shall mean a separate and identifiable account from all other funds held by the holding institution that is either (a) an account or accounts maintained with a federal or state-chartered depository institution or trust company which complies with the definition of Eligible Institution or (b) a segregated trust account or accounts maintained with a federal or state chartered depository institution or trust company acting in its fiduciary capacity which, in the case of a state chartered depository institution or trust company, is subject to regulations substantially similar to 12 C.F.R. §9.10(b), having in either case a combined capital and surplus of at least \$50,000,000 and subject to supervision or examination by federal and state authority. An Eligible Account will not be evidenced by a certificate of deposit, passbook or other instrument.

“**Eligible Institution**” shall mean a depository institution or trust company, the short term unsecured debt obligations or commercial paper of which are rated at least “A-1” by S&P, “P-1” by Moody’s and “F-1” by Fitch in the case of accounts in which funds are held for thirty (30) days or less (or, in the case of accounts in which funds are held for more than thirty (30) days, the long term unsecured debt obligations of which are rated at least “A” by Fitch and S&P and “A2” by Moody’s). After a Securitization of all or any portion of the Loan, only the ratings of those Rating Agencies rating the Securities shall be taken into account in determining whether institutions or trust companies constitute Eligible Institutions.

“**Embargoed Person**” shall have the meaning set forth in Section 4.1.35 hereof.

“**Environmental Indemnity**” shall mean that certain Environmental Indemnity Agreement, dated as of the date hereof, executed by Borrower and Guarantor in connection with the Loan for the benefit of Lender and the Noteholders, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Equipment**” shall mean, with respect to each Individual Property, any equipment now owned or hereafter acquired by Borrower or Operating Company, which is used at or in connection with the Improvements or such Individual Property or is located thereon or therein, including (without limitation) all Gaming Equipment, all machinery, equipment,

furnishings, and electronic data-processing and other office equipment now owned or hereafter acquired by or on behalf of Borrower or Operating Company and any and all additions, substitutions and replacements of any of the foregoing), together with all attachments, components, parts, equipment and accessories installed thereon or affixed thereto.

“**ERISA**” shall mean the Employee Retirement Income Security Act of 1974, as amended.

“**Event of Default**” shall have the meaning set forth in Section 8.1(a) hereof.

“**Exchange Act**” shall have the meaning set forth in Section 9.2(a) hereof.

“**Exchange Act Filing**” shall have the meaning set forth in Section 5.1.11(f) hereof.

“**FF&E**” shall mean, with respect to each Individual Property, collectively, furnishings, fixtures (other than Fixtures) and Equipment located in the guest rooms, hallways, lobbies, restaurants, lounges, meeting and banquet rooms, parking facilities, public areas or otherwise in any portion of such Individual Property, including (without limitation) all fixed asset supplies (including, but not limited to, linen, china, glassware, tableware, uniforms, other hotel inventory and similar items, whether used in connection with public space or guest rooms), beds, chairs, bookcases, tables, carpeting, drapes, couches, luggage carts, luggage racks, bars, bar fixtures, radios, television sets, intercom and paging equipment, electric and electronic equipment, heating, lighting and plumbing fixtures, fire prevention and extinguishing apparatus, cooling and air-conditioning systems, elevators, escalators, stoves, ranges, refrigerators, laundry machines, tools, machinery, boilers, incinerators, switchboards, conduits, compressors, vacuum cleaning systems, floor cleaning, waxing and polishing equipment, cabinets, lockers, shelving, dishwashers, garbage disposals, washer and dryers, gaming equipment and other casino equipment and all other customary hotel and casino resort equipment and other tangible property owned by Borrower or Operating Company, or in which Borrower or Operating Company has or shall have an interest, now or hereafter located at such Individual Property and useable in connection with the present or future operation and occupancy of such Individual Property; provided, however, that FF&E shall not include items owned by tenants under space Leases (other than the Operating Lease) or by third party operators (other than Operating Company).

“**FF&E Reserve Account**” shall have the meaning set forth in Section 7.3 hereof.

“**FF&E Reserve Fund**” shall have the meaning set forth in Section 7.3 hereof.

“**Fifth Mezzanine Borrower**” shall mean, collectively, the entities set forth on Schedule XVII hereto, each a Delaware limited liability company, together with their respective successors and permitted assigns. As used herein, the term “Fifth Mezzanine Borrower” shall mean one of the Fifth Mezzanine Borrowers individually, or the Fifth Mezzanine Borrowers collectively, as the context shall require.

**“Fifth Mezzanine Debt Service”** shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Fifth Mezzanine Notes.

**“Fifth Mezzanine Lender”** shall mean JPMorgan Chase Bank, N.A., in its capacity as the holder of the Fifth Mezzanine Loan, together with its successors and assigns.

**“Fifth Mezzanine Loan”** shall mean that certain loan in the original principal amount of Two Hundred Seventy Five Million and No/100 Dollars (\$275,000,000) of even date herewith made by Fifth Mezzanine Lender to Fifth Mezzanine Borrower.

**“Fifth Mezzanine Loan Agreement”** shall mean that certain Fifth Mezzanine Loan Agreement, dated as of the date hereof, between Fifth Mezzanine Borrower and Fifth Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**“Fifth Mezzanine Loan Documents”** shall mean the Fifth Mezzanine Loan Agreement, the Fifth Mezzanine Notes and all other documents and instruments executed and delivered in connection with the Fifth Mezzanine Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

**“Fifth Mezzanine Notes”** shall mean the “Notes” as defined in the Fifth Mezzanine Loan Agreement.

**“First Mezzanine Borrower”** shall mean, collectively, the entities set forth on Schedule XIII hereto, each a Delaware limited liability company, together with their respective successors and permitted assigns. As used herein, the term “First Mezzanine Borrower” shall mean one of the First Mezzanine Borrowers individually, or the First Mezzanine Borrowers collectively, as the context shall require.

**“First Mezzanine Debt Service”** shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the First Mezzanine Notes.

**“First Mezzanine Lender”** shall mean JPMorgan Chase Bank, N.A., in its capacity as the holder of the First Mezzanine Loan, together with its successors and assigns.

**“First Mezzanine Loan”** shall mean that certain loan in the original principal amount of Three Hundred Million and No/100 Dollars (\$300,000,000) of even date herewith made by First Mezzanine Lender to First Mezzanine Borrower.

**“First Mezzanine Loan Agreement”** shall mean that certain First Mezzanine Loan Agreement, dated as of the date hereof, between First Mezzanine Borrower and First Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**“First Mezzanine Loan Documents”** shall mean the First Mezzanine Loan Agreement, the First Mezzanine Notes and all other documents and instruments executed and

delivered in connection with the First Mezzanine Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

“**First Mezzanine Notes**” shall mean the “Notes” as defined in the First Mezzanine Loan Agreement.

“**Fiscal Year**” shall mean each twelve (12) month period commencing on January 1 and ending on December 31 during each year of the term of the Loan.

“**Fitch**” shall mean Fitch, Inc.

“**Fixed Rent**” shall mean the Base Rent (as defined in the Operating Lease) payable under the Operating Lease.

“**Fixtures**” shall mean, with respect to each Individual Property, all Equipment now owned, or the ownership of which is hereafter acquired, by Borrower which is so related to the Land and the Improvements forming part of the Individual Property in question that it is deemed fixtures or real property under applicable Legal Requirements, including, without limitation, all building or construction materials intended for construction, reconstruction, alteration, decoration or repair of or installation on the applicable Individual Property, construction equipment, appliances, machinery, plant equipment, fittings, apparatuses, fixtures and other items now or hereafter attached to, installed in or used in connection with (temporarily or permanently) any of the Improvements or the Land, including, but not limited to, engines, devices for the operation of pumps, pipes, plumbing, call and sprinkler systems, fire extinguishing apparatuses and equipment, heating, ventilating, incinerating, electrical, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances and equipment, pollution control equipment, security systems, disposals, dishwashers, refrigerators and ranges, recreational equipment and facilities of all kinds, and water, electrical, storm and sanitary sewer facilities, utility lines and equipment (whether owned individually or jointly with others, and, if owned jointly, to the extent of Borrower’s interest therein) and all other utilities whether or not situated in easements, all water tanks, water supply, water power sites, fuel stations, fuel tanks, fuel supply, and all other structures, together with all accessions, appurtenances, additions, replacements, betterments and substitutions or any of the foregoing and the proceeds thereof.

“**Flamingo Las Vegas**” shall mean that certain Individual Property identified on Schedule II as the “Flamingo Las Vegas” and having a street address of 3555 Las Vegas Boulevard South, Las Vegas, Nevada.

“**Force Majeure**” shall mean any delay caused by reason of strike, lock-out or other labor trouble, casualty, governmental preemption of priorities or other controls in connection with a national or other public emergency or shortages of fuel, supplies or labor resulting therefrom or other causes beyond Borrower’s reasonable control.

“**Foreign Taxes**” shall have the meaning set forth in Section 2.2.3(e) hereof.

**“Fourth Mezzanine Borrower”** shall mean, collectively, the entities set forth on Schedule XVI hereto, each a Delaware limited liability company, together with their respective successors and permitted assigns. As used herein, the term “Fourth Mezzanine Borrower” shall mean one of the Fourth Mezzanine Borrowers individually, or the Fourth Mezzanine Borrowers collectively, as the context shall require.

**“Fourth Mezzanine Debt Service”** shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Fourth Mezzanine Notes.

**“Fourth Mezzanine Lender”** shall mean JPMorgan Chase Bank, N.A., in its capacity as the holder of the Fourth Mezzanine Loan, together with its successors and assigns.

**“Fourth Mezzanine Loan”** shall mean that certain loan in the original principal amount of Two Hundred Seventy Five Million and No/100 Dollars (\$275,000,000) of even date herewith made by Fourth Mezzanine Lender to Fourth Mezzanine Borrower.

**“Fourth Mezzanine Loan Agreement”** shall mean that certain Fourth Mezzanine Loan Agreement, dated as of the date hereof, between Fourth Mezzanine Borrower and Fourth Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**“Fourth Mezzanine Loan Documents”** shall mean the Fourth Mezzanine Loan Agreement, the Fourth Mezzanine Notes and all other documents and instruments executed and delivered in connection with the Fourth Mezzanine Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

**“Fourth Mezzanine Notes”** shall mean the “Notes” as defined in the Fourth Mezzanine Loan Agreement.

**“GAAP”** shall mean generally accepted accounting principles in the United States of America as of the date of the applicable financial report.

**“Gaming Authorities”** shall mean, in any jurisdiction in which Borrower, Operating Company or any of their respective subsidiaries manages or conducts any casino, gaming business or activities, the applicable gaming board, commission, or other governmental gaming regulatory authority, body or agency which (a) has, or may at any time after the Closing Date have, jurisdiction over the gaming activities at any of the Properties or any successor to such authority or (b) is, or may at any time after the Closing Date be, responsible for interpreting, administering and enforcing the Gaming Laws.

**“Gaming Equipment”** shall mean any and all gaming devices, gaming device parts inventory and other related gaming equipment and supplies used in connection with the operation of a casino, including (without limitation), slot machines, gaming tables, cards, dice, chips, tokens, player tracking systems, cashless wagering systems, electronic betting systems, mobile gaming systems and associated equipment which are located at the Casino Components, owned or leased by Operating Company or Borrower and used or useable exclusively in the

present or future operation of slot machines and live games at the Casino Component, together with all improvements and/or additions thereto.

“**Gaming Equipment Facility Agreements**” means, collectively, the Loan Agreements to be entered into as of the date hereof or to be entered into by and between each Borrower and its corresponding Operating Company, as each of the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Gaming Laws**” or “**Gaming Regulations**” shall mean all applicable constitutions, treaties, laws, statutes and municipal ordinances pursuant to which any Gaming Authority possesses regulatory, licensing or permitting authority over gaming, gambling or casino or casino-related activities and all rules, rulings, orders, ordinances and regulations of any Gaming Authority applicable to the gambling, casino, gaming businesses or casino or casino-related activities of Borrower, Operating Company or any of their respective subsidiaries in any jurisdiction, as in effect from time to time, including the policies, interpretations and administration thereof by the Gaming Authorities.

“**Gaming License**” shall mean, in any jurisdiction in which Borrower, Operating Company or any of their respective subsidiaries conducts any casino and gaming business or activities, any license, qualification, franchise, accreditation, approval, registration, permit, finding of suitability or other authorization relating to gaming, the gaming business or the operation of a casino under the Gaming Laws or required by the Gaming Authorities or otherwise necessary for the operation of gaming, the gaming business or a resort casino.

“**Gaming Liquidity Requirement**” shall mean the minimum bankroll requirements for cash and cash equivalents required to be maintained by each Operating Company pursuant to Gaming Laws in an amount no greater than is mandated by applicable law, which requirements may be subject to (a) adjustment in an amount equal to any incremental increase or decrease in the amount of the Gaming Liquidity Requirement that is required to be maintained by Operating Company under applicable Gaming Laws as a result of any increase or decrease in gaming business at the applicable Casino Component, or (b) subject to increase or decrease due to any change in the applicable requirements under Gaming Laws generally.

“**Gaming Operating Reserve**” shall mean, with respect to the Casino Component, such cash funds and reserves that are held and maintained on-site at each Individual Property by Operating Company, in its capacity as the duly licensed operator of the Casino Component, including (without limitation) casino chips, tokens, checks and markers; provided, however, that all such Gaming Operating Reserves (a) are established and maintained in compliance with all applicable Gaming Liquidity Requirements, (b) are solely for use in the day-to-day operation and management of each Casino Component in the ordinary course of business, and (c) in the case of each Individual Property, are in amounts customary and generally comparable for casinos comparable to the Individual Property in question.

“**Governmental Authority**” shall mean any court, board, agency, commission, office or other authority of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence, including,

without limitation, all Gaming Authorities having jurisdiction over the Properties (and any operations conducted thereat), Borrower and Operating Company. For the avoidance of doubt, the term “Governmental Authority” shall include, and be deemed to include, all Gaming Authorities.

“**Ground Lease**” shall mean, individually and collectively, as the context requires, those certain ground leases listed in Schedule IV, as the same may be amended, supplemented, replaced or otherwise modified from time to time in accordance with the provisions hereof.

“**Ground Lease Estoppel Reserve Amount**” shall have the meaning set forth in the Ground Lease Side Letter.

“**Ground Lease Estoppel Trigger Event**” shall have the meaning set forth in the Ground Lease Side Letter.

“**Ground Lease Estoppel Trigger Spread**” shall have the meaning set forth in the Ground Lease Side Letter.

“**Ground Lease Side Letter**” shall mean that certain letter agreement regarding “Ground Lease Side Letter”, dated as of the date hereof, by and between Borrower and Lender, as the same may be amended, supplemented, replaced or otherwise modified from time to time.

“**Ground Lease Subsidiary**” shall mean Tahoe Garage Propco, LLC, a Delaware limited liability company.

“**Ground Rent**” shall mean any rent, additional rent or other charge payable by the tenant under the Ground Lease.

“**Ground Rent Reserve Account**” shall have the meaning set forth in Section 7.4 hereof.

“**Ground Rent Reserve Funds**” shall have the meaning set forth in Section 7.4 hereof.

“**Guarantor**” shall mean, collectively, Guarantor (FF&E), Guarantor (Recourse Carveouts), Guarantor (Operating Lease), Guarantor (Ground Lease Estoppel) and any guarantor under any completion guaranty provided under Section 5.1.21.

“**Guarantor (FF&E)**” shall mean any Approved Guarantor. Initially, Guarantor (FF&E) shall mean Holdings, and its successors. If Holdings fails to meet the Minimum Value Test, then Borrower shall replace Holdings, as the guarantor under the Guaranty (FF&E), with an Approved Guarantor.

“**Guarantor (Ground Lease Estoppel)**” shall mean Holdings, and its successors.

“**Guarantor (Operating Lease)**” shall mean Holdings, and its successors.

**“Guarantor (Recourse Carveouts)”** shall mean Holdings, and its successors.

**“Guaranty”** shall mean, collectively, the Guaranty (FF&E), the Guaranty (Recourse Carveouts), the Guaranty (Ground Lease Estoppel), the Operating Lease Guaranty and any completion guaranty provided under Section 5.1.21.

**“Guaranty (FF&E)”** shall mean that certain Guaranty (FF&E), dated as of the date hereof, from Guarantor (FF&E) to Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

**“Guaranty (Ground Lease Estoppel)”** shall mean that certain Guaranty (Harvey’s—Payment), from Guarantor (Ground Lease Estoppel) to Lender, as the same may be amended, restated, supplemented or modified from time to time.

**“Guaranty (Recourse Carveouts)”** shall mean that certain Guaranty (Recourse Carveouts), dated as of the date hereof, from Guarantor (Recourse Carveouts) to Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

**“Harrah’s Atlantic City Property”** shall mean that certain Individual Property identified on Schedule II as “Harrah’s Atlantic City” and having a street address of 777 Harrah’s Boulevard, Atlantic City, New Jersey.

**“Holdings”** shall mean Harrah’s Entertainment, Inc., and its successors.

**“Hotel Components”** shall mean, collectively, those portions of each Individual Property devoted to the operation of a hotel and related facilities, excluding the Casino Component, but including (without limitation) (a) all guest rooms and suites, hotel amenities, restaurants, conference centers, meeting, banquet and other public rooms, spa, parking spaces and other facilities of the hotel portion of such Individual Property, and (b) any theaters or performing arts spaces in the Individual Property in question. The Hotel Components are more particularly described and set forth in each Operating Lease, as applicable.

**“Improvements”** shall have the meaning set forth in the granting clause of the related Mortgage with respect to each Individual Property.

**“Indebtedness”** of a Person, at a particular date, means the sum (without duplication) at such date of (a) all indebtedness of such Person (including, without limitation, amounts for borrowed money and indebtedness in the form of mezzanine debt and preferred equity); (b) obligations evidenced by bonds, debentures, notes, or other similar instruments; (c) obligations for the deferred purchase price of property or services (including trade obligations); (d) obligations under letters of credit; (e) obligations under acceptance facilities; (f) all guaranties, endorsements (other than for collection or deposit in the ordinary course of business) and other contingent obligations to purchase, to provide funds for payment, to supply funds, to invest in any Person or entity, or otherwise to assure a creditor against loss; and (g) obligations secured by any Liens, whether or not the obligations have been assumed.

**“Indemnified Liabilities”** shall have the meaning set forth in Section 10.13 hereof.

**“Indemnified Person”** shall have the meaning set forth in Section 9.2(b), hereof.

**“Independent Director”** or **“Independent Manager”** shall mean a natural person who is not and will not be while serving and has not been during the five years preceding his or her initial appointment to such position any of the following: (a) a stockholder (other than a stockholder who owns a de minimis amount of shares and receive de minimis income therefrom, or who indirectly owns stock through its interest in one or more mutual funds), member (other than as a Special Member or Springing Member of Borrower), director, manager (except in his or her capacity as an Independent Manager on the Board of Managers of Borrower), officer, employee, partner, attorney, trustee or counsel of Borrower or any Affiliate of Borrower or any direct or indirect parent of either of them, including Holdings, (b) a creditor, customer (other than a retail customer of an Individual Property), supplier or other Person who derives any of its purchases or revenues from its activities with Borrower or any Affiliate of Borrower, including Holdings, (c) a Person or other entity controlling or under common control with any such stockholder, partner, member, director, manager or officer, customer, supplier or other Person excluded from serving as Independent Director or Independent Manager described in the foregoing subclause (a) or subclause (b), or (d) a member of the immediate family by blood or marriage of any such stockholder, member, manager, director, officer, employee, partner, attorney, customer, supplier or other Person excluded from serving as Independent Director or Independent Manager in subclause (a) or subclause (b). A natural person who satisfies the foregoing definition other than subclause (b) above shall not be disqualified from serving as an Independent Manager, if such individual is an independent director provided by a nationally recognized company that provides professional independent directors and managers, it being hereby acknowledged and agreed that Corporation Service Company satisfies such criteria. Further, a natural person who otherwise satisfies the foregoing definition except for subclause (a) by reason of being the independent director of a “special purpose entity” affiliated with the Borrower shall not be disqualified from serving as an Independent Director of the Borrower if such individual is either (i) a Professional Independent Director or (ii) the fees and other income that such individual earns from serving as independent director of affiliates of the Borrower in any given year constitute in the aggregate less than five percent (5%) of such individual’s annual income for that year. Notwithstanding the immediately preceding sentence, an Independent Director may not simultaneously serve as Independent Director of the Borrower and independent director of a special purpose entity that owns a direct or indirect equity interest in the Borrower or a direct or indirect interest in any co-borrower with the Borrower. For purposes of this paragraph, a “special purpose entity” is an entity, whose organizational documents contain restrictions on its activities and impose requirements intended to preserve such entity’s separateness that are substantially similar to the “special purpose entity” provisions of this Agreement. Notwithstanding anything herein to the contrary, an Independent Director may not simultaneously serve as Independent Director of a Borrower and an independent director of a special purpose entity that owns a direct or indirect equity interest in any Borrower; provided, however, that one Independent Director of Borrower (but not both Independent Directors simultaneously) may serve as an independent director of each Mezzanine Borrower.

**“Individual Material Adverse Effect”** shall mean any event or condition that, either singly or in the aggregate, could reasonably be expected to have or result in a material adverse effect upon (a) the business, operations, economic performance, prospects, assets or condition (financial or otherwise) of (i) any Borrower, (ii) Guarantor, (iii) any Operating Company, (iv) any Operating Lease or Operating Lease Guaranty or (v) any Individual Property or any Hotel Component or Casino Component thereon; (b) the ability of any Borrower or Guarantor to perform, in all material respects, its obligations under each of the Loan Documents to which it is a party; (c) the ability of any Operating Company to perform, in all material respects, its obligations under its Lease; (d) the enforceability or validity of (i) any Operating Lease or Operating Lease Guaranty, or (ii) any Loan Document or the perfection or priority of any Lien created under any Loan Document; (e) the value of, or cash flow from, any Individual Property or the operations thereof; or (f) the material rights, interests and remedies of Lender under any of the Loan Documents.

**“Individual Property”** shall mean, individually, any one of the properties identified on Schedule II (it being, the Improvements thereon and all Fixtures and all Equipment, FF&E and personal property owned by Borrower and encumbered by a Mortgage, together with all rights pertaining to such property and Improvements, as more particularly described in the Granting Clauses of each Mortgage and referred to therein as the “Property”). For all purposes herein and in the other Loan Documents and to the extent not prohibited by the Ground Lease, the premises leased by Ground Lease Subsidiary or Borrower, as applicable, under the Ground Lease shall constitute a part of the Individual Property known as “Harvey’s Lake Tahoe”, “Harrah’s Lake Tahoe” and “Bill’s Lake Tahoe”, except that such ground leased premises shall not be subject to a lien of a Mortgage or an Operating Lease unless and until required pursuant hereto or pursuant to the Ground Lease Side Letter.

**“Insolvency Opinion”** shall mean that certain non-consolidation opinion letter dated the date hereof delivered by Cleary Gottlieb Steen & Hamilton LLP in connection with the Loan.

**“Institutional Lender”** shall mean any Person reasonably acceptable to Lender in all respects that is either (a) a real estate investment trust, bank, saving and loan association, investment bank, insurance company, trust company, commercial credit corporation, pension plan, pension fund or pension advisory firm, mutual fund, government entity or plan, provided that any such Person referred to in this clause (a) satisfies the Eligibility Requirements; (b) an investment company, money management firm or “qualified institutional buyer” within the meaning of Rule 144A under the Securities Act of 1933, as amended, or an institutional “accredited investor” within the meaning of Regulation D under the Securities Act of 1933, as amended, provided that any such Person referred to in this clause (b) satisfies the Eligibility Requirements; (c) an institution substantially similar to any of the foregoing entities described in clauses (a) or (b) that satisfies the Eligibility Requirements; (d) any entity controlled by any of the entities described in clauses (a) or (c) above; or (e) an investment fund, limited liability company, limited partnership or general partnership where a Permitted Fund Manager or an entity that is otherwise an Institutional Lender under clauses (a), (b), (c) or (d) of this definition acts as the general partner, managing member or fund manager and at least fifty percent (50%) of

the equity interests in such investment fund are owned, directly or indirectly, by one or more entities that are otherwise Institutional Lenders under clauses (a), (b), (c) or (d) of this definition.

**“Insurance Premiums”** shall have the meaning set forth in Section 6.1(b) hereof.

**“Insurance Proceeds”** shall have the meaning set forth in Section 6.4(b) hereof.

**“Insured Personal Property”** shall include, collectively, (i) “Personal Property” as defined in the granting clauses of the Mortgage with respect to each Individual Property, (ii) “Equipment” as defined in the granting clauses of the Mortgage with respect to each Individual Property, (iii) FF&E, and (iv) Equipment.

**“Interest Expense”** shall mean, with respect to any Person for any period, the sum of (a) gross interest expense of such Person for such period on a consolidated basis, including (i) the amortization of debt discounts, (ii) the amortization of all fees payable in connection with the incurrence of Indebtedness to the extent included in interest expense and (iii) the portion of any payments or accruals with respect to equipment financing and equipment leases allocable to interest expense, (b) capitalized interest of such Person, and (c) commissions, discounts, yield and other fees and charges incurred in connection with any indebtedness which are payable to any Person other than Borrower. For purposes of the foregoing, interest on equipment financing or equipment leases shall be deemed to accrue at an interest rate reasonably determined by the Borrower to be the rate of interest implicit in such equipment financing or equipment lease in accordance with GAAP.

**“Interest Period”** shall mean (a) for the first interest period hereunder, (i) if the Closing Date occurs on or before the fourteenth (14<sup>th</sup>) day of a calendar month, the period commencing on the Closing Date and ending on (and including) the fourteenth (14<sup>th</sup>) day of the calendar month in which the Closing Date occurs, and (ii) if the Closing Date occurs on or after the fifteenth (15<sup>th</sup>) day of a calendar month, the period commencing on the Closing Date and ending on (and including) the fourteenth (14<sup>th</sup>) day of the following calendar month and (b) for each interest period thereafter commencing February 15, 2008, the period commencing on the fifteenth (15<sup>th</sup>) day of each calendar month and ending on (and including) the fourteenth (14<sup>th</sup>) day of the following calendar month. Each Interest Period as set forth in clause (b) above shall be a full month and shall not be shortened by reason of any payment of the Loan prior to the expiration of such Interest Period. Notwithstanding the foregoing, Lender shall have the right, in connection with a Securitization, to change the Interest Period and Payment Date, provided that in doing so, Lender shall not increase Borrower’s costs hereunder (other than the direct costs of implementing such change, such as legal fees, which Borrower hereby agrees to pay).

**“Interest Rate Cap Agreement”** shall mean, as applicable, an Interest Rate Cap Agreement (together with the confirmation and schedules relating thereto) in form and substance reasonably satisfactory to Lender between Borrower and an Acceptable Counterparty or a Replacement Interest Rate Cap Agreement.

**“IP License”** shall mean, collectively, those certain License Agreements, dated as of the date hereof, by and between IP Licensor and Borrower.

**“IP Licensor”** shall mean Harrah’s License Company, LLC, a Nevada limited liability company.

**“JPM”** shall mean JPMorgan Chase Bank, N.A. and its successors in interest.

**“Lease”** shall mean any lease (including the Operating Lease), sublease or subsublease, letting, license, concession or other agreement (whether written or oral and whether now or hereafter in effect) pursuant to which any Person is granted a possessory interest in, or right to use or occupy all or any portion of any space in any Individual Property (other than short term arrangements with transient hotel guests entered into in the usual course of business), and (a) every modification, amendment or other agreement relating to such lease, sublease, subsublease, or other agreement entered into in connection with such lease, sublease, subsublease, or other agreement and (b) every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto (including the Operating Lease Guaranty).

**“Legal Requirements”** shall mean, with respect to each Individual Property, all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions of Governmental Authorities affecting such Individual Property or any part thereof (including, without limitation, all Gaming Laws), or affecting the construction, use, alteration or operation thereof, or any part thereof, whether now or hereafter enacted and in force, and all permits, licenses and authorizations and regulations relating thereto (including, without limitation, all Gaming Licenses and Operating Permits), and all covenants, agreements, restrictions and encumbrances contained in any instruments, either of record or known to Borrower or Operating Company, at any time in force affecting such Individual Property or any part thereof, including, without limitation, any which may (a) require repairs, modifications or alterations in or to such Individual Property or any part thereof, or (b) in any way limit the use and enjoyment thereof. Legal Requirements shall include any (x) judicial, administrative or other governmental or quasi governmental order, injunction, writ, judgment, decree, ruling, interpretation, finding or other directive, whether domestic or foreign; (y) arbitrator’s, mediator’s or referee’s decision, finding, award or recommendation; or (z) charter, rule, regulation or other organizational or governance document of any self-regulatory or governing body or organization. For the avoidance of doubt, the term “Legal Requirements” shall include, and be deemed to include, all applicable Gaming Laws and Gaming Regulations.

**“Lender”** shall have the meaning set forth in the introductory paragraph hereto, together with its successors and assigns.

**“Lender’s Share”** shall mean a fraction, the numerator of which is the outstanding principal amount of the Loan and the denominator of which is the sum of the outstanding principal amounts of the Loan and the Mezzanine Loans (in each case, as of the date of determination).

“**Liabilities**” shall have the meaning set forth in Section 9.2(b) hereof.

“**LIBOR**” shall mean, with respect to each Interest Period, the rate (expressed as a percentage per annum and rounded to the next nearest 1/100 of 1%) for deposits in U.S. dollars, for a one-month period, that appears on Reuters Screen LIBOR01 Page (or the successor thereto) as of 11:00 a.m., London time, on the related Determination Date. If such rate does not appear on Reuters Screen LIBOR01 Page as of 11:00 a.m., London time, on such Determination Date, LIBOR shall be the arithmetic mean of the offered rates (expressed as a percentage per annum) for deposits in U.S. dollars for a one-month period that appear on the Reuters Screen Libor Page as of 11:00 a.m., London time, on such Determination Date, if at least two such offered rates so appear. If fewer than two such offered rates appear on the Reuters Screen Libor Page as of 11:00 a.m., London time, on such Determination Date, Lender shall request the principal London office of any four major reference banks in the London interbank market selected by Lender to provide such bank’s offered quotation (expressed as a percentage per annum) to prime banks in the London interbank market for deposits in U.S. dollars for a one-month period as of 11:00 a.m., London time, on such Determination Date for the amounts of not less than U.S. \$1,000,000. If at least two such offered quotations are so provided, LIBOR shall be the arithmetic mean of such quotations. If fewer than two such quotations are so provided, Lender shall request any three major banks in New York City selected by Lender to provide such bank’s rate (expressed as a percentage per annum) for loans in U.S. dollars to leading European banks for a one-month period as of approximately 11:00 a.m., New York City time on the applicable Determination Date for amounts of not less than U.S. \$1,000,000. If at least two such rates are so provided, LIBOR shall be the arithmetic mean of such rates. LIBOR shall be determined conclusively by Lender or its agent. Notwithstanding the foregoing, for the Interest Period ending February 14, 2008, LIBOR is 3.31%.

“**LIBOR Loan**” shall mean the Loan at such time as interest thereon accrues at a rate of interest based upon LIBOR.

“**Lien**” shall mean, with respect to each Individual Property and the Collateral, any mortgage, deed of trust, lien, pledge, hypothecation, assignment, security interest, or any other encumbrance, charge or restriction on transfer of, on or affecting Borrower, any Individual Property or any portion thereof or any interest therein, including, without limitation, any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, the filing of any financing statement, and mechanic’s, materialmen’s and other similar liens and encumbrances, in each case whether arising by contract, operation of law, or otherwise.

“**Loan**” shall mean the loan made by Lender to Borrower pursuant to this Agreement.

“**Loan Adjustment**” shall have the meaning set forth in Section 2.1.6 hereof.

“**Loan Amount**” shall mean, as determined from time to time, the outstanding principal amount of the Loan.

“**Loan Documents**” shall mean, collectively, this Agreement, the Notes, the Mortgages, the Assignments of Leases, the Environmental Indemnity, the O&M Agreement, the Guaranty (Recourse Carveouts), the Guaranty (FF&E), the Guaranty (Ground Lease Estoppel), the Pledge of Ground Lease Subsidiary, the Pledge of Gaming Equipment Facility Agreements, the Collateral Assignment of Interest Rate Cap Agreement, the Ground Lease Side Letter, the Contribution Agreement and all other documents executed and/or delivered in connection with the Loan.

“**Loan Party**” shall mean, collectively, Borrower, Principal and Guarantor.

“**London Business Day**” shall mean any day other than a Saturday, Sunday or any other day on which commercial banks in London, England are not open for business.

“**Major Lease**” shall mean any of the following: (a) with respect to any Individual Property, any Lease (i) covering in excess of forty thousand (40,000) net rentable square feet at such Individual Property or (ii) made with a Tenant that is a Tenant under another Lease at such Individual Property (or with a Tenant that is an Affiliate of a Tenant under another Lease at such Individual Property) if any such Leases, together, cover in excess of forty thousand (40,000) net rentable square feet or more at such Individual Property, (b) any Lease of space at any Individual Property with an Affiliate of Borrower, or (c) any Lease that is not the result of arm’s length negotiations; provided, however, that the Operating Lease shall not constitute a Major Lease for purposes of this Agreement.

“**Material Alteration**” shall mean any Alteration with respect to all or a portion of any Individual Property that (i) when aggregated with all other Alterations at such Individual Property then being conducted involve an estimated total cost in excess of an amount equal to ten percent (10%) of the sum of the Allocated Loan Amount for such Individual Property and the “Allocated Loan Amounts” under (and as defined in each of) the Mezzanine Loan Agreements for such Individual Property or (ii) when aggregated with all other Alterations at the Properties, including such Individual Property, then being conducted, involve an estimated total cost in excess of an amount equal to five percent (5%) of the sum of the Loan Amount and the Mezzanine Loan Amount (and, as used herein, “**Threshold Amount**” shall mean whichever of said 5% or 10% amount shall have been exceeded, provided that if both shall have been exceeded, then the lower of such two amounts shall be the “Threshold Amount”); provided, that, in determining whether one or more Alterations comprise a Material Alteration, there shall not be included (a) merely decorative work such as painting, wall papering, carpeting and replacement of FF&E to the extent the same are of a routine and recurring nature and performed in the ordinary course of business; (b) tenant improvement work performed by a tenant pursuant to the terms of any Lease (other than the Operating Lease) entered into in accordance with the terms hereof, so long as such work does not adversely affect any structural component of any Improvements, any utility or HVAC system contained in any Improvements or the exterior of any building constituting a part of any Improvements, (c) any Alterations which are performed in connection with the Restoration of any portion of any Individual Property after the occurrence of a Casualty or Condemnation in accordance with the terms and provisions of this Agreement, or (d) the Tower Project or the Convention Center Project.

**“Maturity Date”** shall mean the Scheduled Maturity Date or such other date on which the final payment of principal of the Notes becomes due and payable as therein or herein provided, whether at such Scheduled Maturity, by declaration of acceleration, or otherwise.

**“Maximum Legal Rate”** shall mean the maximum nonusurious interest rate, if any, that at any time or from time to time may be contracted for, taken, reserved, charged or received on the indebtedness evidenced by the Note and as provided for herein or the other Loan Documents, under the laws of such state or states whose laws are held by any court of competent jurisdiction to govern the interest rate provisions of the Loan.

**“Mezzanine Borrowers”** shall mean, collectively, First Mezzanine Borrower, Second Mezzanine Borrower, Third Mezzanine Borrower, Fourth Mezzanine Borrower, Fifth Mezzanine Borrower, Sixth Mezzanine Borrower, Seventh Mezzanine Borrower, Eighth Mezzanine Borrower, Ninth Mezzanine Borrower and any New Mezzanine Borrower.

**“Mezzanine Debt Service”** shall mean, with respect to any particular period of time, the sum of (a) the First Mezzanine Debt Service, (b) the Second Mezzanine Debt Service, (c) the Third Mezzanine Debt Service, (d) the Fourth Mezzanine Debt Service, (e) the Fifth Mezzanine Debt Service, (f) the Sixth Mezzanine Debt Service, (g) the Seventh Mezzanine Debt Service, (h) the Eighth Mezzanine Debt Service, (i) the Ninth Mezzanine Debt Service, and (j) debt service on any New Mezzanine Loan.

**“Mezzanine Lenders”** shall mean, collectively, First Mezzanine Lender, Second Mezzanine Lender, Third Mezzanine Lender, Fourth Mezzanine Lender, Fifth Mezzanine Lender, Sixth Mezzanine Lender, Seventh Mezzanine Lender, Eighth Mezzanine Lender, Ninth Mezzanine Lender and Lender, as lender under any New Mezzanine Loan.

**“Mezzanine Loan Agreements”** shall mean collectively, the First Mezzanine Loan Agreement, the Second Mezzanine Loan Agreement, the Third Mezzanine Loan Agreement, the Fourth Mezzanine Loan Agreement, the Fifth Mezzanine Loan Agreement, the Sixth Mezzanine Loan Agreement, the Seventh Mezzanine Loan Agreement, the Eighth Mezzanine Loan Agreement, the Ninth Mezzanine Loan Agreement and any New Mezzanine Loan Agreement.

**“Mezzanine Loan Amount”** shall mean, as determined from time to time, the outstanding principal amount of the Mezzanine Loans.

**“Mezzanine Loan Documents”** shall mean, collectively, the First Mezzanine Loan Documents, the Second Mezzanine Loan Documents, the Third Mezzanine Loan Documents, the Fourth Mezzanine Loan Documents, the Fifth Mezzanine Loan Documents, the Sixth Mezzanine Loan Documents, the Seventh Mezzanine Loan Documents, the Eighth Mezzanine Loan Documents, the Ninth Mezzanine Loan Documents and any loan documents entered into in connection with any New Mezzanine Loan.

**“Mezzanine Loans”** shall mean, collectively, the First Mezzanine Loan, the Second Mezzanine Loan, the Third Mezzanine Loan, the Fourth Mezzanine Loan, the Fifth

Mezzanine Loan, the Sixth Mezzanine Loan, the Seventh Mezzanine Loan, the Eighth Mezzanine Loan, the Ninth Mezzanine Loan and any New Mezzanine Loan.

**“Mezzanine Notes”** shall mean collectively, the First Mezzanine Notes, the Second Mezzanine Notes, the Third Mezzanine Notes, the Fourth Mezzanine Notes, the Fifth Mezzanine Notes, the Sixth Mezzanine Notes, the Seventh Mezzanine Notes, the Eighth Mezzanine Notes, the Ninth Mezzanine Notes and any notes issued pursuant to any New Mezzanine Loan Agreement.

**“Minimum Value Test”** shall mean, with respect to any Person, that the greater of the book value or the fair market value of the assets of such Person (excluding, for purposes of making such determination, the value of the Properties) exceeds Five Billion and no/100 Dollars (\$5,000,000,000.00) in the aggregate, as certified to Lender in an Officer’s Certificate prepared in good faith based on the most recent financial statements of such Person.

**“Monthly Disbursements”** shall have the meaning provided in Section 2.6.2.

**“Monthly FF&E Reserve Amount”** means the monthly deposit for FF&E required pursuant to Section 7.3 of this Agreement.

**“Monthly Ground Rent Reserve Amount”** means the monthly deposit for Ground Rent required pursuant to Section 7.4 of this Agreement.

**“Monthly Tax and Insurance Amount”** means the monthly deposit for Taxes and Insurance required pursuant to Section 7.2 of this Agreement.

**“Moody’s”** shall mean Moody’s Investors Service, Inc.

**“Mortgage”** shall mean, with respect to each Individual Property, that certain first priority Mortgage (or Deed of Trust or Deed to Secure Debt) and Security Agreement, dated the date hereof, executed and delivered by Borrower as security for the Loan and encumbering such Individual Property and any first priority Mortgage (Deed of Trust or Deed to Secure Debt) and Security Agreement delivered pursuant to the Ground Lease Side Letter, as each of the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

**“Net Income”** shall mean, with respect to any Person, the net income (loss) of such Person, determined in accordance with GAAP and before any reduction in respect of preferred stock dividends.

**“Net Proceeds”** shall have the meaning set forth in Section 6.4(b) hereof.

**“Net Proceeds Deficiency”** shall have the meaning set forth in Section 6.4(b)(vi) hereof.

**“New Mezzanine Borrower”** shall have the meaning set forth in Section 2.1.7.

“**New Mezzanine Loan**” shall have the meaning set forth in Section 2.1.7.

“**Ninth Mezzanine Borrower**” shall mean, collectively, the entities set forth on Schedule XXI hereto, each a Delaware limited liability company, together with their respective successors and permitted assigns. As used herein, the term “Ninth Mezzanine Borrower” shall mean one of the Ninth Mezzanine Borrowers individually, or the Ninth Mezzanine Borrowers collectively, as the context shall require.

“**Ninth Mezzanine Debt Service**” shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Ninth Mezzanine Notes.

“**Ninth Mezzanine Lender**” shall mean JPMorgan Chase Bank, N.A., in its capacity as the holder of the Ninth Mezzanine Loan, together with its successors and assigns.

“**Ninth Mezzanine Loan**” shall mean that certain loan in the original principal amount of Two Hundred Seventy Five Million and No/100 Dollars (\$275,000,000) of even date herewith made by Ninth Mezzanine Lender to Ninth Mezzanine Borrower.

“**Ninth Mezzanine Loan Agreement**” shall mean that certain Ninth Mezzanine Loan Agreement, dated as of the date hereof, between Ninth Mezzanine Borrower and Ninth Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Ninth Mezzanine Loan Documents**” shall mean the Ninth Mezzanine Loan Agreement, the Ninth Mezzanine Notes and all other documents and instruments executed and delivered in connection with the Ninth Mezzanine Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

“**Ninth Mezzanine Notes**” shall mean the “Notes” as defined in the Ninth Mezzanine Loan Agreement.

“**Note**” or “**Notes**” shall mean, collectively, Note A-1, Note A-2, Note A-3, Note A-4, Note A-5, Note A-6, Note A-7, Note A-8 and Note A-9.

“**Note A-1**” shall mean that certain Promissory Note A-1, dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of Six Hundred Million Sixty Six Thousand Six Hundred Sixty Six and 67/100 Dollars (\$600,066,666.67), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Note A-2**” shall mean that certain Promissory Note A-2, dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of Six Hundred Million Sixty Six Thousand Six Hundred Sixty Six and 67/100 Dollars (\$600,066,666.67), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Note A-3**” shall mean that certain Promissory Note A-3, dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of Six Hundred Million

Sixty Six Thousand Six Hundred Sixty Six and 67/100 Dollars (\$600,066,666.67), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Note A-4**” shall mean that certain Promissory Note A-4, dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of Six Hundred Million Sixty Six Thousand Six Hundred Sixty Six and 67/100 Dollars (\$600,066,666.67), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Note A-5**” shall mean that certain Promissory Note A-5, dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of Six Hundred Million Sixty Six Thousand Six Hundred Sixty Six and 66/100 Dollars (\$600,066,666.66), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Note A-6**” shall mean that certain Promissory Note A-6, dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of Six Hundred Million Sixty Six Thousand Six Hundred Sixty Six and 66/100 Dollars (\$600,066,667.66), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Note A-7**” shall mean that certain Promissory Note A-7, dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of One Hundred Thirty Three Million Two Hundred Thousand and No/100 Dollars (\$133,200,000), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Note A-8**” shall mean that certain Promissory Note A-8, dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of One Hundred Thirty Three Million Two Hundred Thousand and No/100 Dollars (\$133,200,000), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Note A-9**” shall mean that certain Promissory Note A-9, dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of One Hundred Thirty Three Million Two Hundred Thousand and No/100 Dollars (\$133,200,000), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Noteholders**” shall mean, collectively, the holders of the Notes from time to time and a “**Noteholder**” shall mean any holder of a Note from time to time (provided that the transfer of a Note shall not result in any prior Noteholder’s loss of any indemnification provided for hereunder to a Noteholder).

“**OC Accounts**” shall have the meaning set forth in Section 2.6.1(c).

“**O&M Agreement**” shall mean, with respect to each Individual Property (to the extent required by the environmental reports referenced in Section 3.1.3(e) hereof), that certain Operations and Maintenance Agreement, dated as of the date hereof, between Borrower and Lender given in connection with the Loan, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

**“Officer’s Certificate”** shall mean a certificate delivered to Lender by Borrower which is signed by an authorized senior officer of Borrower or the general partner or managing member of Borrower, as applicable.

**“Off-Shore Accounts”** shall mean the accounts more particularly described on Schedule V.

**“Operating Company”** shall mean, collectively, the tenants under the Operating Leases, and their successors and permitted assigns.

**“Operating Company Annual Budget”** shall mean, individually and collectively as the context requires, with respect to each Operating Company, the operating budget of such Operating Company, including all planned Capital Expenditures, prepared by such Operating Company for the applicable Fiscal Year or other period.

**“Operating Lease”** shall mean, collectively, those certain Lease Agreements listed on Schedule VI, dated as of the date hereof, having a term of fifteen (15) years commencing on the Closing Date, and any similar Lease Agreement executed and delivered pursuant to the Ground Lease Side Letter, as the same may be amended, supplemented, replaced or otherwise modified from time to time in accordance with the provisions hereof.

**“Operating Lease Guaranty”** shall mean, collectively, those certain Lease Guaranty Agreements listed on Schedule VIA, executed and delivered by Guarantor (Operating Lease), dated as of the date hereof, unconditionally guaranteeing the payment and performance by the Operating Company of all of its obligations under the Operating Lease, and any similar Lease Guaranty Agreement executed and delivered pursuant to the Ground Lease Side Letter, as such Lease Guaranty Agreements may be amended, supplemented, replaced or otherwise modified from time to time in accordance with the provisions hereof.

**“Operating Permits”** shall have the meaning set forth in Section 4.1.22 hereof.

**“O’Shea’s”** shall mean the property described as “Parcel 2” on Schedule XXVI hereto.

**“Other Borrower Collateral”** shall have the meaning set forth in Section 11.2.1 hereof.

**“Other Borrowers”** shall have the meaning set forth in Section 11.1 hereof.

**“Other Charges”** shall mean all ground rents, maintenance charges, impositions other than Taxes, and any other charges, including, without limitation, vault charges and license fees for the use of vaults, chutes and similar areas adjoining any Individual Property, now or hereafter levied or assessed or imposed against such Individual Property or any part thereof.

**“Participant”** shall have the meaning set forth in Section 9.6 hereof.

**“Participant Register”** shall have the meaning set forth in Section 9.6 hereof.

**“Payment Date”** shall mean the ninth (9<sup>th</sup>) calendar day of each calendar month during the term of the Loan, and if such day is not a Business Day, then the Business Day immediately preceding such day, commencing on March 9, 2008 and continuing to and including the Maturity Date. Notwithstanding the foregoing, the Payment Date in the final Interest Period shall be the Maturity Date (i.e., the second to last Business Day in such Interest Period rather than the ninth calendar day of such month).

**“Permitted Encumbrances”** shall mean, with respect to an Individual Property, collectively (a) the Liens and security interests created by the Loan Documents; (b) all Liens, encumbrances and other matters disclosed in the Title Insurance Policies relating to such Individual Property or any part thereof; (c) Liens, if any, for Taxes and Other Charges imposed by any Governmental Authority not yet due or delinquent; (d) the Operating Lease; (e) such other title and survey exceptions as Lender has approved or may approve in writing in Lender’s reasonable discretion; (f) any Lien being contested by Borrower in good faith by appropriate proceedings, provided that (i) no Default or Event of Default has occurred and remains uncured, (ii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any applicable material instrument to which Borrower is subject and shall not constitute a default thereunder and such proceeding shall be conducted in accordance with all applicable statutes, laws and ordinances, (iii) no Individual Property nor any part thereof or interest therein will be in imminent danger of being sold, forfeited, terminated, cancelled or lost, (iv) such proceeding shall suspend the enforcement of the contested Lien against Borrower and any Individual Property, and (v) Borrower shall furnish such security as may be required by GAAP or as may be reasonably requested by Lender; (g) statutory Liens for amounts not yet due and payable, provided that no Individual Property nor any part thereof or interest therein will be in imminent danger of being sold, forfeited, terminated, cancelled or lost; (h) Liens incurred in the ordinary course of business in connection with workers’ compensation, unemployment insurance and other types of social security; (i) any Lien securing the financing of FF&E (including equipment leases) entered into by Borrower or Operating Company in the ordinary course of business, subject to the limitations specified in the definitions of “Permitted Indebtedness” and “Permitted Indebtedness (Operating Company)”, as applicable; (j) rights of tenants under Leases, as tenants only; (k) rights of hotel guests at the Hotel Components of the Properties; (l) zoning restrictions, easements, rights-of-way, restrictions on use of real property and other similar encumbrances incurred or entered into in the ordinary course of business which do not, in each case, have an Individual Material Adverse Effect, and (m) liens securing equipment financing leases and/or equipment acquisition financings permitted hereunder as “Permitted Indebtedness (Operating Company),” subject to the final sentence of said definition, or as “Permitted Indebtedness”.

**“Permitted Fund Manager”** means any Person that on the date of determination (a) is one of the entities listed on Schedule VII or any other nationally-recognized manager of investment funds investing in debt or equity interests relating to commercial real estate, (b) is investing through a fund with committed capital of at least \$1,000,000,000, (c) is not subject to a Bankruptcy Action, (d) has not been, and none of its material subsidiaries has been, subject to a Bankruptcy Action for the preceding 5 years, (e) has not been convicted and is not under current indictment for a felony or crime involving moral turpitude, (f) has not been found by a court of

competent jurisdiction to have violated federal or state securities laws, and (g) is not an organized crime figure (as determined by Lender in its reasonable discretion).

**“Permitted Indebtedness”** shall mean debt incurred by Borrower which, if incurred by Operating Company, would constitute Permitted Indebtedness (Operating Company) (other than indebtedness described in clause (c) of the definition of Permitted Indebtedness (Operating Company)), and shall include ordinary administrative costs of Borrower.

**“Permitted Indebtedness (Operating Company)”** shall mean, collectively, (a) trade and operational debt (including equipment financing leases, such as leases with providers of Gaming Equipment) relating to the operation of the Properties and the routine administration of Operating Company incurred in the ordinary course of business with trade creditors and in amounts as are normal and reasonable under the circumstances, are not evidenced by a note, are required to be paid within ninety (90) days after same are incurred (except in the case of operating leases) and are paid when due, (b) accrued and unpaid payroll, benefits and payroll taxes with respect to employees of Operating Company or its Affiliates engaged with respect to the Properties incurred in the ordinary course of business and paid when due, (c) debt owed to affiliates, provided such debt is made subject to an intercreditor and standstill agreement in favor of Lender in form and substance reasonably satisfactory to Lender, and (d) such other Indebtedness specifically permitted pursuant to the Operating Lease. In no event shall the Permitted Indebtedness (Operating Company) and Permitted Indebtedness of each Operating Company and Borrower on an aggregate basis, excluding for purposes of this sentence the Indebtedness described in subclause (b) of the preceding sentence, exceed five percent (5%) of the sum of the Loan Amount and the Mezzanine Loan Amount in the aggregate (each as determined from time to time).

**“Permitted Investments”** shall mean any one or more of the following obligations or securities acquired at a purchase price of not greater than par, including those issued by any Servicer, the trustee under any Securitization or any of their respective Affiliates, payable on demand or having a maturity date not later than the Business Day immediately prior to the first Payment Date following the date of acquiring such investment and meeting one of the appropriate standards set forth below:

(i) obligations of, or obligations fully guaranteed as to payment of principal and interest by, the United States or any agency or instrumentality thereof, provided such obligations are backed by the full faith and credit of the United States of America including, without limitation, obligations of: the U.S. Treasury (all direct or fully guaranteed obligations), the Farmers Home Administration (certificates of beneficial ownership), the General Services Administration (participation certificates), the U.S. Maritime Administration (guaranteed Title XI financing), the Small Business Administration (guaranteed participation certificates and guaranteed pool certificates), the U.S. Department of Housing and Urban Development (local authority bonds) and the Washington Metropolitan Area Transit Authority (guaranteed transit bonds); provided, however, that the investments described in this clause (i) must (A) have a predetermined fixed dollar amount of principal due at maturity that cannot vary or change, (B) if rated by S&P, not have an “r” highlighter affixed to their rating, (C) if such investments have a variable rate of interest, have an interest rate tied to a single interest rate index plus a fixed

spread (if any) and must move proportionately with that index, and (D) not be subject to liquidation prior to their maturity;

(ii) Federal Housing Administration debentures;

(iii) obligations of the following United States government sponsored agencies: Federal Home Loan Mortgage Corp. (debt obligations), the Farm Credit System (consolidated systemwide bonds and notes), the Federal Home Loan Banks (consolidated debt obligations), the Federal National Mortgage Association (debt obligations), the Student Loan Marketing Association (debt obligations), the Financing Corp. (debt obligations), and the Resolution Funding Corp. (debt obligations); provided, however, that the investments described in this clause (iii) must (A) have a predetermined fixed dollar amount of principal due at maturity that cannot vary or change, (B) if rated by S&P, not have an "r" highlighter affixed to their rating, (C) if such investments have a variable rate of interest, have an interest rate tied to a single interest rate index plus a fixed spread (if any) and must move proportionately with that index, and (D) not be subject to liquidation prior to their maturity;

(iv) federal funds, unsecured certificates of deposit, time deposits, bankers' acceptances and repurchase agreements with maturities of not more than 365 days of any bank, the short term obligations of which at all times are rated in the highest short term rating category by each Rating Agency (or, if not rated by all Rating Agencies, rated by at least one Rating Agency in the highest short term rating category and otherwise acceptable to each other Rating Agency, as confirmed in writing that such investment would not, in and of itself, result in a downgrade, qualification or withdrawal of the initial or, if higher, then current ratings assigned to the certificates); provided, however, that the investments described in this clause (iv) must (A) have a predetermined fixed dollar amount of principal due at maturity that cannot vary or change, (B) if rated by S&P, not have an "r" highlighter affixed to their rating, (C) if such investments have a variable rate of interest, have an interest rate tied to a single interest rate index plus a fixed spread (if any) and must move proportionately with that index, and (D) not be subject to liquidation prior to their maturity;

(v) fully Federal Deposit Insurance Corporation-insured demand and time deposits in, or certificates of deposit of, or bankers' acceptances issued by, any bank or trust company, savings and loan association or savings bank, the short term obligations of which at all times are rated in the highest short term rating category by each Rating Agency (or, if not rated by all Rating Agencies, rated by at least one Rating Agency in the highest short term rating category and otherwise acceptable to each other Rating Agency, as confirmed in writing that such investment would not, in and of itself, result in a downgrade, qualification or withdrawal of the initial or, if higher, then current ratings assigned to the certificates); provided, however, that the investments described in this clause (v) must (A) have a predetermined fixed dollar of principal due at maturity that cannot vary or change, (B) if rated by S&P, not have a "r" highlighter affixed to their rating, (C) if such investments have a variable rate of interest, have an interest rate tied to a single interest rate index plus a fixed spread (if any) and must move proportionately with that index, and (D) not be subject to liquidation prior to their maturity;

(vi) debt obligations with maturities of not more than 365 days and at all times rated by each Rating Agency (or, if not rated by all Rating Agencies, rated by at least one Rating Agency and otherwise acceptable to each other Rating Agency, as confirmed in writing that such investments would not, in and of itself, result in a downgrade, qualification or withdrawal of the

initial or, if higher, then current ratings assigned to the certificates) in its highest long-term unsecured debt rating category; provided, however, that the investments described in this clause (vi) must (A) have a predetermined fixed dollar amount of principal due at maturity that cannot vary or change, (B) if rated by S&P, not have an “r” highlighter affixed to their rating, (C) if such investments have a variable rate of interest, have an interest rate tied to a single interest rate index plus a fixed spread (if any) and must move proportionately with that index, and (D) not be subject to liquidation prior to their maturity;

(vii) commercial paper (including both non-interest-bearing discount obligations and interest-bearing obligations payable on demand or on a specified date not more than one year after the date of issuance thereof) with maturities of not more than 365 days and that at all times is rated by each Rating Agency (or, if not rated by all Rating Agencies, rated by at least one Rating Agency and otherwise acceptable to each other Rating Agency, as confirmed in writing that such investment would not, in and of itself, result in a downgrade, qualification or withdrawal of the initial or, if higher, then current ratings assigned to the certificates) in its highest short-term unsecured debt rating; provided, however, that the investments described in this clause (vii) must (A) have a predetermined fixed dollar amount of principal due at maturity that cannot vary or change, (B) if rated by S&P, not have a “r” highlighter affixed to their rating, (C) if such investments have a variable rate of interest, have an interest rate tied to a single interest rate index plus a fixed spread (if any) and must move proportionately with that index, and (D) not be subject to liquidation prior to their maturity;

(viii) units of taxable money market funds or mutual funds, which funds are regulated investment companies, seek to maintain a constant net asset value per share and have the highest rating from each Rating Agency (or, if not rated by all Rating Agencies, rated by at least one Rating Agency and otherwise acceptable to each other Rating Agency, as confirmed in writing that such investment would not, in and of itself, result in a downgrade, qualification or withdrawal of the initial or, if higher, then current ratings assigned to the certificates) for money market funds or mutual funds; and

(ix) any other security, obligation or investment which has been approved as a Permitted Investment in writing by (a) Lender and (b) each Rating Agency, as evidenced by a written confirmation that the designation of such security, obligation or investment as a Permitted Investment will not, in and of itself, result in a downgrade, qualification or withdrawal of the initial or, if higher, then current ratings assigned to the certificates by such Rating Agency;

*provided, however*, that such instrument continues to qualify as a “cash flow investment” pursuant to Code Section 860G(a)(6) earning a passive return in the nature of interest and no obligation or security shall be a Permitted Investment if (A) such obligation or security evidences a right to receive only interest payments or (B) the right to receive principal and interest payments on such obligation or security are derived from an underlying investment that provides a yield to maturity in excess of 120% of the yield to maturity at par of such underlying investment.

“**Permitted Mezzanine Debt Loan-to-Value Ratio**” shall mean the ratio, as of a particular date, in which (a) the numerator is equal to the sum of (i) the outstanding principal amount of the Loan, (ii) the outstanding principal amount of the Mezzanine Loans, and any New Mezzanine Loan, plus (iii) the amount of the Permitted Mezzanine Loan, and (b) the

denominator is equal to the appraised value of the Properties subject to the Lien of the Mortgage as determined by Lender based on Appraisals obtained by Lender (at Borrower's sole cost and expense) and satisfactory to Lender and dated no earlier than ninety (90) days prior to the date of determination or such other Appraisals as are approved by Lender in its sole discretion.

**"Permitted Mezzanine Debt Service"** shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Permitted Mezzanine Loan Documents.

**"Permitted Mezzanine DSCR"** shall mean, for the applicable period, the ratio of (a) EBITDAR for such period from the Properties to (b) the sum of (i) the Debt Service and Mezzanine Debt Service for such period, plus (ii) principal and/or interest due and payable (or, for purposes of the calculation to be made pursuant to Section 2.8(d), that would have been due and payable had the Permitted Mezzanine Loan then been in place) for such period on the Permitted Mezzanine Loan at the interest rate set forth in the Permitted Mezzanine Loan Documents or, if the Permitted Mezzanine Loan is a floating rate loan, assuming that (A) the spread on the Permitted Mezzanine Loan is the "Spread" as defined in the documents evidencing the Permitted Mezzanine Loan and (B) LIBOR is equal to the lesser of (y) LIBOR on the date of determination, or (z) the strike price under the related interest rate cap purchased in connection with the Permitted Mezzanine Loan.

**"Permitted Mezzanine Loan"** shall have the meaning set forth in Section 2.8 hereof.

**"Permitted Mezzanine Loan Documents"** shall have the meaning set forth in Section 2.8(g) hereof.

**"Permitted Mezzanine Loan Election"** shall have the meaning set forth in Section 2.8 hereof.

**"Permitted Mezzanine Loan Lender"** shall have the meaning set forth in Section 2.8 hereof.

**"Person"** shall mean any individual, corporation, partnership, joint venture, limited liability company, estate, trust, unincorporated association, any federal, state, county or municipal government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

**"Physical Conditions Report"** shall mean, with respect to each Individual Property, a report prepared by a company satisfactory to Lender regarding the physical condition of such Individual Property, satisfactory in form and substance to Lender in its sole discretion.

**"Pledge Agreement"** shall have the meaning set forth in the First Mezzanine Loan Agreement, the Second Mezzanine Loan Agreement, the Third Mezzanine Loan Agreement, the Fourth Mezzanine Loan Agreement, the Fifth Mezzanine Loan Agreement, the Sixth Mezzanine Loan Agreement, the Seventh Mezzanine Loan Agreement, the Eighth

Mezzanine Loan Agreement or the Ninth Mezzanine Loan Agreement, as the context shall require.

**“Pledge of Gaming Equipment Facility Agreements”** means each of the Security Agreements, entered into as of the date hereof or to be entered into, by each Borrower in favor of Lender, dated as of the date hereof, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**“Pledge of Ground Lease Subsidiary”** means the Pledge and Security Agreement (Interests in Tahoe Garage Propco, LLC), dated as of the date hereof, by Tahoe Propco, LLC in favor of Lender by as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**“Policies”** shall have the meaning specified in Section 6.1(b) hereof.

**“Prepayment Date”** shall have the meaning specified in Section 2.4.1 hereof.

**“Prescribed Laws”** shall mean, collectively, (a) the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56) (The USA PATRIOT Act), as amended, (b) Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, and relating to Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, (c) the International Emergency Economic Power Act, 50 U.S.C. §1701 et. seq. and (d) all other Legal Requirements relating to money laundering or terrorism.

**“Prime Rate”** shall mean the annual rate of interest publicly announced by Citibank, N.A. in New York, New York, as its base rate, as such rate shall change from time to time. If Citibank, N.A. ceases to announce a base rate, Prime Rate shall mean the rate of interest published in The Wall Street Journal from time to time as the “Prime Rate.” If more than one “Prime Rate” is published in The Wall Street Journal for a day, the average of such “Prime Rates” shall be used, and such average shall be rounded up to the nearest one-eighth of one percent (0.125%). If The Wall Street Journal ceases to publish the “Prime Rate,” Lender shall select an equivalent publication that publishes such “Prime Rate,” and if such “Prime Rates” are no longer generally published or are limited, regulated or administered by a governmental or quasi-governmental body, then Lender shall select a comparable interest rate index.

**“Prime Rate Loan”** shall mean the Loan at such time as interest thereon accrues at a rate of interest based upon the Prime Rate.

**“Prime Rate Spread”** shall mean the difference (expressed as the number of basis points) between (a) LIBOR plus the Spread on the date LIBOR was last applicable to the Loan and (b) the Prime Rate on the date that LIBOR was last applicable to the Loan; provided, however, in no event shall such difference be a negative number.

**“Principal”** shall mean First Mezzanine Borrower.

**“Projections”** shall have the meaning set forth in Section 9.10 hereof.

“**Properties**” shall mean, collectively, each and every Individual Property which is subject to the terms of this Agreement.

“**Provided Information**” shall mean any and all financial and other information provided at any time by, or on behalf of, Borrower with respect to the Properties, Borrower, any Affiliates of Borrower, including Holdings, Guarantor and/or Operating Company.

“**Qualified Transferee**” means (a) any of the Mezzanine Lenders, (b) Apollo Management, L.P., TPG Capital, L.P. f/k/a Texas Pacific Group, their respective Affiliates and senior or executive principals of Apollo Management, L.P. or TPG Capital, L.P. who are the holders from time to time of voting interests in Holdings, and investment funds Controlled by either of them (but excluding for purposes of this clause (b) “portfolio companies” of the foregoing), or (c) one or more of the following:

- (i) a real estate investment trust, bank, saving and loan association, investment bank, insurance company, trust company, commercial credit corporation, pension plan, pension fund or pension advisory firm, mutual fund, government entity or plan, provided that any such Person referred to in this clause (i) satisfies the Eligibility Requirements;
- (ii) an investment company, money management firm or “qualified institutional buyer” within the meaning of Rule 144A under the Securities Act of 1933, as amended, or an institutional “accredited investor” within the meaning of Regulation D under the Securities Act of 1933, as amended, provided that any such Person referred to in this clause (ii) satisfies the Eligibility Requirements;
- (iii) an institution substantially similar to any of the foregoing entities described in clauses (c)(i) or (c)(ii) that satisfies the Eligibility Requirements;
- (iv) any entity Controlled by any of the entities described in clause (a), (b) or clauses (c)(i) or (c)(iii) above, or Holdings or any entity Controlled by Holdings (provided in each case there shall have occurred no Change in Control);
- (v) a Qualified Trustee in connection with a securitization of, the creation of collateralized debt obligations (“**CDO**”) secured by or financing through an “owner trust” of, any Mezzanine Loan (collectively, “**Securitization Vehicles**”), so long as (A) the special servicer or manager of such Securitization Vehicle has the Required Special Servicer Rating and (B) the entire “controlling class” of such Securitization Vehicle, other than with respect to a CDO Securitization Vehicle, is held by one or more entities that are otherwise Qualified Transferees under clauses (c)(i), (ii), (iii) or (iv) of this definition; provided that the operative documents of the related Securitization Vehicle require that (1) in the case of a CDO Securitization Vehicle, the “equity interest” in such Securitization Vehicle is owned by one or more entities that are Qualified Transferees under clauses (c)(i), (ii), (iii) or (iv) of this definition and (2) if any of the relevant trustee, special servicer, manager fails to meet the requirements of this clause (v), such Person must be replaced by a Person meeting the requirements of this clause (v) within thirty (30) days; or

(vi) an investment fund, limited liability company, limited partnership or general partnership where a Permitted Fund Manager or an entity that is otherwise a Qualified Transferee under clauses (c)(i), (ii), (iii) or (iv) of this definition acts as the general partner, managing member or fund manager and at least 50% of the equity interests in such investment vehicle are owned, directly or indirectly, by one or more entities that are otherwise Qualified Transferees under clauses (c)(i), (ii), (iii) or (iv) of this definition;

provided, however, that no Transferee shall be a Qualified Transferee if (and for so long as) such Transferee is, or is Controlled by, an Embargoed Person or a Person that has been found “unsuitable,” for any reason, by a Gaming Authority.

“**Qualified Trustee**” means (a) a corporation, national bank, national banking association or a trust company, organized and doing business under the laws of any state or the United States of America, authorized under such laws to exercise corporate trust powers and to accept the trust conferred, having a combined capital and surplus of at least \$100,000,000 and subject to supervision or examination by federal or state authority, (b) an institution insured by the Federal Deposit Insurance Corporation or (c) an institution whose long-term senior unsecured debt is rated either of the then in effect top two rating categories of each of the Rating Agencies.

“**Rating Agencies**” shall mean each of S&P, Moody’s and Fitch, or any other nationally recognized statistical rating agency which has been approved by Lender and that rates a Securitization of the Loan (or any component thereof).

“**Rating Agency Confirmation**” means, collectively, a written affirmation from each of the Rating Agencies that the credit rating of the Securities given by such Rating Agency of such Securities immediately prior to the occurrence of the event with respect to which such Rating Agency Confirmation is sought will not be qualified, downgraded or withdrawn as a result of the occurrence of such event, which affirmation may be granted or withheld in such Rating Agency’s sole and absolute discretion. In the event that, at any given time, no such Securities shall have been issued and are then outstanding, then the term Rating Agency Confirmation shall be deemed instead to require the written approval of Lender based on its good faith determination of whether the Rating Agencies would issue a Rating Agency Confirmation if any such Securities were outstanding.

“**Regulation AB**” shall have the meaning set forth in Section 5.1.11(f) hereof.

“**Regulation S-K**” shall mean Regulation S-K under the Securities Act of 1933 and the Securities Exchange Act of 1934, as amended.

“**Regulation S-X**” shall mean Regulation S-X under the Securities Act of 1933 and the Securities Exchange Act of 1934, as amended.

“**Related Loan**” shall have the meaning set forth in Section 5.1.11(f) hereof.

“**Related Property**” shall have the meaning set forth in Section 5.1.11(f) hereof.

**“Release Price”** shall mean, in connection with a release of an Individual Property from the Lien of a Mortgage as provided in Section 2.5, an amount equal to one hundred ten percent (110%) of the applicable Allocated Loan Amount for the first and second Individual Properties released, 115% of the applicable Allocated Loan Amount for the third and fourth Individual Properties released and 110% of the applicable Allocated Loan Amount for any Individual Property thereafter released; provided if the Paris Las Vegas property becomes an Individual Property as contemplated by the last paragraph of Section 2.5.2, then such Individual Property shall have a Release Price of 120% of its Allocated Loan Amount and each other Individual Property shall have a Release Price of 110% of its Allocated Loan Amount.

**“REMIC Trust”** shall mean a “real estate mortgage investment conduit” (within the meaning of Section 860D of the Code) that holds the Note.

**“Rents”** shall mean, with respect to each Individual Property, and without duplication, all rents, rent equivalents, moneys payable as damages or in lieu of rent or rent equivalents, royalties (including, without limitation, all oil and gas-or other mineral royalties and bonuses), income, receivables, receipts, revenues, deposits (including, without limitation, security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, and other consideration of whatever form or nature received by or paid to or for the account of or benefit of Borrower or the Operating Company (or employees of Borrower or the Operating Company) from any and all sources arising from or attributable to such Individual Property, and proceeds, if any, from business interruption or other loss of income or insurance, including, without limitation, all hotel receipts, revenues and credit card receipts collected from guest rooms, restaurants, bars, meeting rooms, banquet rooms and recreational facilities, all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of property or rendering of services by Borrower or any operator or manager of the Hotel Components or the commercial spaces located in the Improvements or acquired from others (including, without limitation, from the rental of any office space, retail space, guest rooms or other space, halls, stores and offices, and deposits securing reservations of such space), license, lease, sublease and concession fees and rentals, health club membership fees, food and beverage wholesale and retail sales, service charges, vending machine sales and proceeds, if any, from business interruption or other loss of income insurance.

**“Replacement Interest Rate Cap Agreement”** means an interest rate cap agreement from an Acceptable Counterparty with terms identical to the Interest Rate Cap Agreement except that the same shall be effective in connection with replacement of the Interest Rate Cap Agreement following a downgrade, withdrawal or qualification of the long-term unsecured debt rating of the Counterparty; provided that to the extent any such interest rate cap agreement does not meet the foregoing requirements, a “Replacement Interest Rate Cap Agreement” shall be such interest rate cap agreement approved in writing by each of the Rating Agencies and Lender with respect thereto.

**“Reserve Account”** shall mean any one of the Tax and Insurance Escrow Account, the FF&E Reserve Account, the Ground Rent Reserve Account and any other escrow fund or reserve account established pursuant to the Loan Documents.

**“Reserve Funds”** shall mean, collectively, the Tax and Insurance Escrow Fund, the FF&E Reserve Fund, the Ground Rent Reserve Fund, the Ground Lease Estoppel Reserve Amount and any other escrow fund established pursuant to the Loan Documents.

**“Restoration”** shall mean the repair and restoration of an Individual Property after a Casualty or Condemnation as nearly as possible to the condition the Individual Property was in immediately prior to such Casualty or Condemnation, with such alterations as may be reasonably approved by Lender.

**“Revenue”** shall mean all Rents and items of income or revenue (of any kind) collected by Borrower or Operating Company.

**“S&P”** shall mean Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc.

**“Sale or Pledge”** shall mean a voluntary or involuntary sale, conveyance, assignment, transfer, encumbrance or pledge of a legal or beneficial interest.

**“Scheduled Maturity Date”** shall mean February 13, 2013.

**“Second Mezzanine Borrower”** shall mean, collectively, the entities set forth on Schedule XIV hereto, each a Delaware limited liability company, together with their respective successors and permitted assigns. As used herein, the term “Second Mezzanine Borrower” shall mean one of the Second Mezzanine Borrowers individually, or the Second Mezzanine Borrowers collectively, as the context shall require.

**“Second Mezzanine Debt Service”** shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Second Mezzanine Notes.

**“Second Mezzanine Lender”** shall mean JPMorgan Chase Bank, N.A., in its capacity as the holder of the Second Mezzanine Loan, together with its successors and assigns.

**“Second Mezzanine Loan”** shall mean that certain loan in the original principal amount of Two Hundred Seventy Five Million and No/100 Dollars (\$275,000,000) of even date herewith made by Second Mezzanine Lender to Second Mezzanine Borrower.

**“Second Mezzanine Loan Agreement”** shall mean that certain Second Mezzanine Loan Agreement, dated as of the date hereof, between Second Mezzanine Borrower and Second Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**“Second Mezzanine Loan Documents”** shall mean the Second Mezzanine Loan Agreement, the Second Mezzanine Notes and all other documents and instruments executed and delivered in connection with the Second Mezzanine Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

**“Second Mezzanine Notes”** shall mean the “Notes” as defined in the Second Mezzanine Loan Agreement.

**“Securities”** shall have the meaning set forth in Section 9.1 hereof.

**“Securities Act”** shall have the meaning set forth in Section 9.2(a) hereof.

**“Securitization”** shall have the meaning set forth in Section 9.1 hereof.

**“Servicer”** shall have the meaning set forth in Section 9.4 hereof.

**“Servicing Agreement”** shall have the meaning set forth in Section 9.4 hereof.

**“Seventh Mezzanine Borrower”** shall mean, collectively, the entities set forth on Schedule XIX hereto, each a Delaware limited liability company, together with their respective successors and permitted assigns. As used herein, the term “Seventh Mezzanine Borrower” shall mean one of the Seventh Mezzanine Borrowers individually, or the Seventh Mezzanine Borrowers collectively, as the context shall require.

**“Seventh Mezzanine Debt Service”** shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Seventh Mezzanine Notes.

**“Seventh Mezzanine Lender”** shall mean JPMorgan Chase Bank, N.A., in its capacity as the holder of the Seventh Mezzanine Loan, together with its successors and assigns.

**“Seventh Mezzanine Loan”** shall mean that certain loan in the original principal amount of Two Hundred Seventy Five Million and No/100 Dollars (\$275,000,000) of even date herewith made by Seventh Mezzanine Lender to Seventh Mezzanine Borrower.

**“Seventh Mezzanine Loan Agreement”** shall mean that certain Seventh Mezzanine Loan Agreement, dated as of the date hereof, between Seventh Mezzanine Borrower and Seventh Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**“Seventh Mezzanine Loan Documents”** shall mean the Seventh Mezzanine Loan Agreement, the Seventh Mezzanine Notes and all other documents and instruments executed and delivered in connection with the Seventh Mezzanine Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

**“Seventh Mezzanine Notes”** shall mean the “Notes” as defined in the Seventh Mezzanine Loan Agreement.

“**Severed Loan Documents**” shall have the meaning set forth in Section 8.2(c) hereof.

“**Significant Obligor**” shall have the meaning set forth in Section 5.1.11(f) hereof.

“**Sixth Mezzanine Borrower**” shall mean, collectively, the entities set forth on Schedule XVIII hereto, each a Delaware limited liability company, together with their respective successors and permitted assigns. As used herein, the term “Sixth Mezzanine Borrower” shall mean one of the Sixth Mezzanine Borrowers individually, or the Sixth Mezzanine Borrowers collectively, as the context shall require.

“**Sixth Mezzanine Debt Service**” shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Sixth Mezzanine Notes.

“**Sixth Mezzanine Lender**” shall mean JPMorgan Chase Bank, N.A., in its capacity as the holder of the Sixth Mezzanine Loan, together with its successors and assigns.

“**Sixth Mezzanine Loan**” shall mean that certain loan in the original principal amount of Two Hundred Seventy Five Million and No/100 Dollars (\$275,000,000) of even date herewith made by Sixth Mezzanine Lender to Sixth Mezzanine Borrower.

“**Sixth Mezzanine Loan Agreement**” shall mean that certain Sixth Mezzanine Loan Agreement, dated as of the date hereof, between Sixth Mezzanine Borrower and Sixth Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Sixth Mezzanine Loan Documents**” shall mean the Sixth Mezzanine Loan Agreement, the Sixth Mezzanine Notes and all other documents and instruments executed and delivered in connection with the Sixth Mezzanine Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

“**Sixth Mezzanine Notes**” shall mean the “Notes” as defined in the Sixth Mezzanine Loan Agreement.

“**Special Member**” shall mean a Springing Member in a given Delaware limited liability company who has become a member in such limited liability company to the extent so provided in such limited liability company’s operating agreement.

“**Special Purpose Entity**” shall mean a corporation, limited partnership or limited liability company which at all times on and after the date hereof:

(a) is organized solely for the purpose of (i) acquiring, developing, owning, holding, selling, leasing, transferring, exchanging, managing and operating the Properties, entering into this Agreement with the Lender, refinancing the Properties in connection with a permitted repayment of the Loan, and transacting lawful business that is incident, necessary and

appropriate to accomplish the foregoing; or (ii) acting as a general partner of the limited partnership that owns the Properties or member of the limited liability company that owns the Properties;

(b) is not engaged and will not engage in any business unrelated to (i) the acquisition, development, ownership, management or operation of the Properties, (ii) acting as general partner of the limited partnership that owns the Properties or (iii) acting as a member of the limited liability company that owns the Properties, as applicable;

(c) does not have and will not have any assets other than those related to the Properties or its partnership interest in the limited partnership or the member interest in the limited liability company that owns the Properties or acts as the general partner or managing member thereof, as applicable;

(d) has not engaged, sought or consented to and will not engage in, seek or consent to any dissolution, winding up, liquidation, consolidation, merger, sale of all or substantially all of its assets, transfer of partnership or membership interests (if such entity is a general partner in a limited partnership or a member in a limited liability company) or amendment of its limited partnership agreement, articles of incorporation, articles of organization, certificate of formation or operating agreement (as applicable) with respect to the matters set forth in this definition;

(e) if such entity is a limited partnership, has, as its only general partners, Special Purpose Entities that are corporations, limited partnerships or limited liability companies;

(f) if such entity is a corporation, has at least two (2) Independent Directors, and has not caused or allowed and will not cause or allow the board of directors of such entity to take any action requiring the unanimous affirmative vote of one hundred percent (100%) of the members of its board of directors unless two Independent Directors shall have participated in such vote;

(g) if such entity is a limited liability company with more than one member, has at least one member that is a Special Purpose Entity that is a Delaware corporation or limited liability company that has at least two Independent Directors;

(h) if such entity is a limited liability company with only one member, is a limited liability company organized in the State of Delaware that has (i) as its only member a non-managing member, (ii) at least two Independent Managers and has not caused or allowed and will not cause or allow the board of managers of such entity to take any action requiring the unanimous affirmative vote of one hundred percent (100%) of the managers unless two Independent Managers shall have participated in such vote and (iii) at least one springing member that will become the non-managing member of such entity upon the dissolution of the existing non-managing member;

(i) if such entity is (i) a limited liability company, has articles of organization, a certificate of formation and/or an operating agreement, as applicable, (ii) a limited partnership,

has a limited partnership agreement, or (iii) a corporation, has a certificate of incorporation or articles that, in each case, provide that such entity will not, while any obligations remain outstanding under the Loan Documents: (A) dissolve, merge, liquidate, consolidate; (B) sell all or substantially all of its assets or the assets of the Borrower (as applicable), except as permitted in connection with the release of an Individual Property as provided in Section 2.5.1; (C) engage in any other business activity, or amend its organizational documents with respect to the matters set forth in this definition without the consent of the Lender; or (D) without the affirmative vote of two Independent Directors and of all other directors of the corporation (that is such entity or the general partner or managing or co-managing member of such entity), file a bankruptcy or insolvency petition or otherwise institute insolvency proceedings with respect to itself or to any other entity in which it has a direct or indirect legal or beneficial ownership interest;

(j) is and will remain solvent and pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from and to the extent of its assets as the same shall become due, and is maintaining and will maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations; provided, however, that the foregoing shall not require the Member to make additional capital contributions to the company;

(k) has not failed and will not fail to correct any known misunderstanding regarding the separate identity of such entity;

(l) has maintained and will maintain its bank accounts, books and records separate from any other Person and will file its own tax returns separate from those of any other Person, except to the extent the company is treated as a “disregarded entity” for tax purposes and is not required to file tax returns under applicable law;

(m) has maintained and will maintain its own records, books, resolutions and agreements;

(n) has not commingled and will not commingle its funds or assets with assets of any other Person;

(o) has held and will hold its assets in its own name;

(p) has conducted and will conduct its business in its own name;

(q) has maintained and will maintain its financial statements, accounting records and other entity documents separate and apart from any other Person and will have its assets listed on the financial statement of any other Person; provided, however, that the company’s assets may be included in a consolidated financial statement of its Affiliate, provided, that, (i) appropriate notation shall be made on such consolidated financial statements to indicate the separateness of the company from such Affiliate and to indicate the company’s assets and credit are not available to satisfy the debts and other obligations of such Affiliate or any other Person and (ii) such assets shall also be listed on the company’s own separate balance sheet;

(r) has paid and will pay its own liabilities and expenses, including the salaries of its own employees (if any), out of its own funds and assets, and has maintained and will maintain a sufficient number of employees (if any) in light of its contemplated business operations;

(s) has observed and will observe all partnership, corporate or limited liability company formalities necessary to maintain its separate existence;

(t) has and will not incur, create, or assume any Indebtedness other than (i) the Loan, (ii) Permitted Indebtedness and (iii) certain Indebtedness to Affiliates that was incurred in connection with the formation of Borrower and Operating Company and the transfer of the Properties to Borrower and was satisfied and/or released in full prior to the funding of the Loan hereunder;

(u) has not and will not assume or guarantee or become obligated for the debts of any other Person or hold out its credit as being available to satisfy the obligations of any other Person except as co-borrowers of the Loan;

(v) has not and will not acquire obligations or securities of its partners, members or shareholders or any Affiliate (other than the Gaming Equipment Facility Agreements);

(w) has allocated and will allocate fairly and reasonably any overhead expenses that are shared with any Affiliate, including, but not limited to, paying for shared office space and services performed by any employee of an Affiliate;

(x) maintains and uses and will maintain and use separate stationery, invoices and checks, if any, bearing its name. The stationery, invoices, and checks, if any, utilized by the Special Purpose Entity or utilized to collect its funds or pay its expenses shall bear its own name and shall not bear the name of any other entity unless such entity is clearly designated as being the Special Purpose Entity's agent;

(y) has not pledged and will not pledge its assets for the benefit of any Person except as co-borrowers of the Loan;

(z) has held itself out and identified itself and will hold itself out to the public and all other Persons and identify itself as a separate and distinct entity under its own name or in a name franchised or licensed to it by an entity other than an Affiliate of Borrower and not as a division or part of any other Person;

(aa) has maintained and will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;

(bb) has not made and will not make loans to any Person or hold evidence of indebtedness issued by any other Person or entity (other than cash and investment-grade

securities issued by an entity that is not an Affiliate of or subject to common ownership with such entity and other than the Gaming Equipment Facility Agreements);

(cc) correct any known misunderstanding regarding its separate identity and has not identified and will not identify its partners, members or shareholders, or any Affiliate of any of them, as a division or part of it, and has not identified itself and shall not identify itself as a division of any other Person;

(dd) except for capital contributions or capital distributions permitted under the terms and conditions of this Agreement and properly reflected on the books and records of this company, has not entered into or been a party to, and will not enter into or be a party to, any transaction with its partners, members, shareholders or Affiliates except in the ordinary course of its business and on terms which are commercially reasonable and are no less favorable to it than would be obtained in a comparable arm's-length transaction with an unrelated third party (including an appropriate shared services agreement with Affiliates);

(ee) has not and will not have any obligation to, and will not, indemnify its partners, officers, directors or members, as the case may be, unless such an obligation is fully subordinated to the Debt and will not constitute a claim against it in the event that cash flow in excess of the amount required to pay the Debt is insufficient to pay such obligation;

(ff) if such entity is a corporation, it shall consider the interests of its creditors in connection with all corporate actions;

(gg) does not and will not have any of its obligations guaranteed by any Affiliate (except each Borrower as a co-borrower under the Loan);

(hh) has complied and will comply with all of the terms and provisions contained in its organizational documents. The statement of facts contained in its organizational documents are true and correct and will remain true and correct; and

(ii) form, acquire, or hold any subsidiary (whether corporate, partnership, limited liability company, or other) or own any equity interest in any other entity (other than, with respect to Borrower, its interest in Ground Lease Subsidiary).

“**SPE Party**” shall mean Borrower and any other Person that is required to be a “Special Purpose Entity” under applicable Rating Agency criteria so as to make Borrower a Special Purpose Entity.

“**Spread**” shall mean (i) unless and until a Ground Lease Estoppel Trigger Event exists, 3.00% and (ii) upon the occurrence of a Ground Lease Estoppel Trigger Event, the Ground Lease Estoppel Trigger Spread.

“**Spread Maintenance Outside Date**” shall mean February 10, 2009.

“**Spread Maintenance Premium**” shall mean, in connection with any repayment of any of the outstanding principal amount of the Loan prior to and including the Spread

Maintenance Outside Date (whether a voluntary or mandatory prepayment), an amount equal to the product of (a) the principal amount of such prepayment, (b) the Spread and (c) a fraction, the numerator of which shall be the actual number of days from (but excluding) the date of such prepayment (or, if later, the last date of the Interest Period during which interest on the amount of such payment shall have been paid by Borrower, as required in this Agreement) through (and including) the Spread Maintenance Outside Date and the denominator of which is three hundred sixty (360).

“**Springing Member**” shall mean a Person who has signed the limited liability company agreement of a given Delaware limited liability company, which agreement provides that, upon the withdrawal, dissolution or disassociation of the last remaining member of such limited liability company (subject to applicable Gaming Laws), such Person shall become a member of such limited liability company having no economic interest therein.

“**State**” shall mean, with respect to an Individual Property, the State or Commonwealth in which such Individual Property or any part thereof is located.

“**Strike Price**” shall mean four and one-half percent (4.5%).

“**Survey**” shall mean a survey of the Individual Property in question prepared pursuant to the requirements contained in Section 4.1.27 hereof.

“**Syndication**” shall have the meaning set forth in Section 9.5 hereof.

“**Tax and Insurance Escrow Fund**” shall have the meaning set forth in Section 7.2 hereof.

“**Taxes**” shall mean all real estate and personal property taxes, assessments, water rates or sewer rents, now or hereafter levied or assessed or imposed against any Individual Property or part thereof.

“**Terrorism Premium Limit**” with respect to all Properties in the aggregate shall mean \$8 million. If the Captive Insurance Company shall be utilized to provide terrorism coverage hereunder, then the Terrorism Premium Limit shall be applicable, but the only amounts taken into account in determining whether more than the Terrorism Premium Limit is expended shall be reinsurance premiums paid to third parties.

“**Third Mezzanine Borrower**” shall mean, collectively, the entities set forth on Schedule XV hereto, each a Delaware limited liability company, together with their respective successors and permitted assigns. As used herein, the term “Third Mezzanine Borrower” shall mean one of the Third Mezzanine Borrowers individually, or the Third Mezzanine Borrowers collectively, as the context shall require.

“**Third Mezzanine Debt Service**” shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Third Mezzanine Notes.

“**Third Mezzanine Lender**” shall mean JPMorgan Chase Bank, N.A., in its capacity as the holder of the Third Mezzanine Loan, together with its successors and assigns.

“**Third Mezzanine Loan**” shall mean that certain loan in the original principal amount of Two Hundred Seventy Five Million and No/100 Dollars (\$275,000,000) of even date herewith made by Third Mezzanine Lender to Third Mezzanine Borrower.

“**Third Mezzanine Loan Agreement**” shall mean that certain Third Mezzanine Loan Agreement, dated as of the date hereof, between Third Mezzanine Borrower and Third Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Third Mezzanine Loan Documents**” shall mean the Third Mezzanine Loan Agreement, the Third Mezzanine Notes and all other documents and instruments executed and delivered in connection with the Third Mezzanine Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

“**Third Mezzanine Notes**” shall mean the “Notes” as defined in the Third Mezzanine Loan Agreement.

“**Threshold Amount**” shall have the meaning set forth in the definition of Material Alteration.

“**Title Insurance Policies**” shall mean, with respect to each Individual Property, an ALTA mortgagee title insurance policy in a form acceptable to Lender (or, if an Individual Property is in a State which does not permit the issuance of such ALTA policy, such form as shall be permitted in such State and acceptable to Lender) issued with respect to such Individual Property and insuring the lien of the Mortgage encumbering such Individual Property.

“**Tower Project**” shall mean that certain “New Atlantic City Tower Project” more fully described in (a) the Site, Design and Floor Plans, dated October 5, 2005, and prepared by Paul Steelman Design Group, and (b) Harrah’s Hotel/Podium/Garage Expansion: Summary of Project Costs, each delivered to Lender. The Tower Project will include a podium (of approximately 175,000 square feet) connecting the current Bayview Tower to a new approximately nine hundred (900) room tower to be built. The Tower Project will not be funded with the proceeds of the Loan (but will be funded by Borrower or Operating Company, including with capital contributions).

“**Transfer**” shall mean to, directly or indirectly, sell, assign, convey, mortgage, transfer, pledge, hypothecate, encumber, grant a security interest in, exchange or otherwise dispose of any beneficial interest or grant any option or warrant with respect to, or where used as a noun, a direct or indirect sale, assignment, conveyance, transfer, pledge or other disposition of any beneficial interest by any means whatsoever whether voluntary, involuntary, by operation of law or otherwise. A Transfer shall include, but not be limited to, (a) an installment sales agreement wherein Borrower agrees to sell an Individual Property or any part thereof for a price to be paid in installments; and (b) an agreement by Borrower leasing all or a substantial part of an Individual Property for other than actual occupancy by a space tenant thereunder or a sale,

assignment or other transfer of, or the grant of a security interest in, Borrower's right, title and interest in and to any Leases or any Rents; (c) if a Person restricted or affected by the provisions of this Agreement is a corporation, any merger, consolidation or sale or pledge of such corporation's stock or the creation or issuance of new stock; (d) if a Person restricted or affected by the provisions of this Agreement is a limited or general partnership or joint venture, any merger or consolidation or the change, removal, resignation or addition of a general partner or the sale or pledge of the partnership interest of any general partner or any profits or proceeds relating to such partnership interest, or the sale or pledge of limited partnership interests or any profits or proceeds relating to such limited partnership interest or the creation or issuance of new limited partnership interests; (e) if a Person restricted or affected by the provisions of this Agreement is a limited liability company, any merger or consolidation or the change, removal, resignation or addition of a managing member or non-member manager (or if no managing member, any member) or the sale or pledge of the membership interest of a managing member (or if no managing member, any member) or any profits or proceeds relating to such membership interest, or the sale or pledge of non-managing membership interests or the creation or issuance of new non-managing membership interests; or (f) if a Person restricted or affected by the provisions of this Agreement is a trust or nominee trust, any merger, consolidation or the sale or pledge of the legal or beneficial interest in such Person or the creation or issuance of new legal or beneficial interests.

**"Transferee"** shall mean the Person to whom a Transfer is being effected.

**"TRIA"** shall mean the Terrorism Risk Insurance Act of 2002, as in effect as of the date hereof and, for purposes of this Agreement, without giving effect to any amendments that would impair in any respects the intended benefits to Lender under the terms hereof.

**"Trigger Event"** shall mean, as of the end of any calendar quarter, any period of time during which EBITDAR from the Properties, calculated for the trailing twelve (12) month period immediately prior to the applicable calculation date, is less than eighty-five percent (85%) of the EBITDAR (Closing Date), as determined by Lender.

**"Trigger Event Cure"** shall mean that EBITDAR (excluding, in making such calculation, any capital contributions made to or for the benefit of Borrower or Operating Company, or payments made on the account of Borrower or Operating Company by any Affiliate of Borrower or Operating Company) from the Properties, calculated for the trailing twelve (12) month period immediately prior to the applicable calculation date, is equal to or greater than eighty-five percent (85%) of the EBITDAR (Closing Date) for two (2) consecutive calendar quarters.

**"True Lease Opinion"** shall mean that certain true lease opinion letter dated the date hereof delivered by Cleary Gottlieb Steen & Hamilton LLP in connection with the Loan.

**"UCC"** or **"Uniform Commercial Code"** shall mean the Uniform Commercial Code as in effect in the applicable State in which an Individual Property is located.

**"U.S. Obligations"** shall mean non-redeemable securities evidencing an obligation to timely pay principal and/or interest in a full and timely manner that are direct

obligations of the United States of America for the payment of which its full faith and credit is pledged or other “government securities” within the meaning of Section 2(a)(16) of the Investment Company Act of 1940, as amended.

“**Windstorm Insurance Intercreditor Agreement**” means that certain Windstorm Insurance Intercreditor Agreement, dated as of the date hereof, by and among Lender, the Mezzanine Lenders, each of the “Other Owners” named therein and made a party thereto, Holdings, Bank of America, N.A., and the “Other Secured Parties” named therein and made a party thereto, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**Section 1.2. Principles of Construction.** All references to sections and schedules are to sections and schedules in or to this Agreement unless otherwise specified. All uses of the word “including” shall mean “including, without limitation” unless the context shall indicate otherwise. Unless otherwise specified, the words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. Unless otherwise specified, all meanings attributed to defined terms herein shall be equally applicable to both the singular and plural forms of the terms so defined. With respect to cross-references contained herein to the Mezzanine Loan Documents or to any Mezzanine Loan Document (including with respect to any cross-references to defined terms therein), unless otherwise specifically provided herein, such cross-references shall be with respect to the Mezzanine Loan Documents or such Mezzanine Loan Document, as the case may be, in existence as of the date hereof, and no modification or amendment to such cross-referenced sections of the Mezzanine Loan Documents or any Mezzanine Loan Document shall be binding upon Lender unless Lender shall have expressly agreed in writing to be bound by such modification or amendment.

## **II. GENERAL TERMS**

### **Section 2.1. Loan Commitment; Disbursement to Borrower.**

**2.1.1 Agreement to Lend and Borrow.** Subject to and upon the terms and conditions set forth herein, Lender hereby agrees to make and Borrower hereby agrees to accept the Loan on the Closing Date.

**2.1.2 Single Disbursement to Borrower.** Borrower may request and receive only one borrowing hereunder in respect of the Loan and any amount borrowed and repaid hereunder in respect of the Loan may not be reborrowed.

**2.1.3 The Note, Mortgages and Loan Documents.** The Loan shall be evidenced by the Note (in the aggregate principal amount of Four Billion and no/100 Dollars (\$4,000,000,000) and secured by the Mortgages, the Assignments of Leases and the other Loan Documents.

**2.1.4 Use of Proceeds.** Borrower shall use the proceeds of the Loan to (a) acquire the Properties and/or repay and discharge any existing loans relating to the Properties, (b) pay all past-due Basic Carrying Costs, if any, with respect to the Properties,

(c) make deposits into the Reserve Funds on the Closing Date in the amounts provided herein, (d) pay costs and expenses incurred in connection with the closing of the Loan, as approved by Lender, (e) fund any working capital requirements of the Properties and (f) distribute the balance, if any, to Borrower.

**2.1.5 Component Notes.** Lender shall have the right at any time to modify the Loan in order to create an additional note or additional notes, adjust the interest rate spread on the Notes or notes, reduce the number of notes, reallocate the principal balances of the Notes or notes or eliminate the component note structure of the Loan provided that (a) the aggregate stated principal amount of the Loan on the date of each such adjustment shall equal the aggregate stated principal amount of the Loan immediately prior to such adjustment, and (b) the weighted average spread of the Loan on the date of such adjustment shall equal the weighted average spread which was applicable to the Loan immediately prior to such adjustment (Borrower acknowledging that such new notes or modified notes may, in connection with the application of principal to such new notes or modified note following the occurrence of an Event of Default, but not otherwise, subsequently cause the weighted average spread of such new notes or modified notes to change). In connection with any such modification of the Note and notes, or the creation of additional note(s), (i) Borrower shall cooperate with all reasonable requests of Lender and shall execute and deliver such documents as shall reasonably be requested by Lender in connection therewith, all in form and substance reasonably satisfactory to Lender and, to the extent applicable, the Rating Agencies, including, without limitation, (y) revised title insurance policies and Interest Rate Protection Agreements, and (z) such amendments to the Loan Documents as are reasonably requested; (ii) Lender shall have received opinions of legal counsel with respect to due execution, authority and enforceability of the amended Loan Documents, and additional or updated nonconsolidation opinions for the Loan, each in form reasonably acceptable to Lender and prospective investors and in form acceptable to the Rating Agencies; and (iii) Lender shall pay the actual, reasonable out of pocket costs and expenses incurred by Borrower in connection with the foregoing, including, without limitation, the actual, reasonable out-of-pocket legal fees incurred by Borrower in connection with any of the foregoing matters. For the avoidance of doubt, and notwithstanding anything to the contrary contained herein, such modifications and any modifications under Sections 2.1.6 and 2.1.7 below shall not, absent an Event of Default, adversely affect the overall economics to Borrower of the Loan, taken as a whole, or expose Borrower to any additional costs (other than as set forth above) or increased risk of any liability (beyond that or greater than that existing in the Loan Documents in effect on the date hereof), and Borrower shall not be required to execute any document or agreement which would materially decrease its rights or materially increase its obligations relative to those set forth herein and in the other Loan Documents.

**2.1.6 Adjustment of Mortgage Loan and Mezzanine Loans.** Lender shall have the right at any time to adjust the respective principal amounts of the Loan and the Mezzanine Loans (or either one of them) and/or to adjust the interest rate spread on the Loan and the Mezzanine Loans (or either one of them) (such adjustment, a “**Loan Adjustment**”), provided that (a) the aggregate stated principal amount of the Loan and the Mezzanine Loans on the date of each such Loan Adjustment shall equal the aggregate stated principal amount

of the Loan and the Mezzanine Loans immediately prior to such Loan Adjustment, and (b) Lender shall have the right to adjust the interest rate spread on the Loan and the Mezzanine Loans, provided that the weighted average spread of the Loan and the Mezzanine Loans on the date of each such Loan Adjustment shall equal the weighted average spread which was applicable to the Loan and the Mezzanine Loans immediately prior to such Loan Adjustment (it being acknowledged that the weighted average spread will remain constant except in connection with the application of principal to such new notes or modified notes following the occurrence of an Event of Default). In connection with any Loan Adjustment, (i) Borrower and Mezzanine Borrowers shall cooperate with all reasonable requests of Lender and shall execute and deliver such documents as shall reasonably be requested by Lender in connection therewith, all in form and substance reasonably satisfactory to Lender and, to the extent applicable, the Rating Agencies, including, without limitation, (y) revised title insurance policies, mezzanine endorsements, UCC policies and Interest Rate Protection Agreements, and (z) such amendments to the Loan Documents and the Mezzanine Loan Documents as are reasonably requested in connection with the Loan Adjustment (provided that such amendments do not or would not (i) materially decrease the rights of the Borrower or Mezzanine Borrowers, or, absent an Event of Default, materially increase the obligations of the Borrower or the Mezzanine Borrowers, as the case may be, under the Loan Documents or the Mezzanine Loan Documents (as applicable) or (ii) absent an Event of Default, expose the Borrower or any of the Mezzanine Borrowers to additional costs or increased risk of any liability under the Loan Documents or the Mezzanine Loan Documents (as applicable) (beyond that or greater than that existing in the Loan Documents, or the Mezzanine Loan Documents, as applicable, on the date hereof); (ii) Lender shall have received opinions of legal counsel with respect to due execution, authority and enforceability of the amended Loan Documents or Mezzanine Loan Documents, as appropriate, and additional or updated nonconsolidation opinions for the Loan and the Mezzanine Loans, each in form reasonably acceptable to Lender and prospective investors and in form acceptable to the Rating Agencies; and (iii) Lender shall pay the actual, reasonable out-of-pocket costs and expenses incurred by Borrower in connection with the foregoing, including, without limitation, the actual, reasonable out-of-pocket legal fees incurred by Borrower in connection with any of the foregoing matters.

**2.1.7 Creation of New Mezzanine Loans.** Lender shall at all times have the right to create one or more additional mezzanine loans (each, a “**New Mezzanine Loan**”), adjust the respective principal amounts of the Loan and the Mezzanine Loans (or either one of them) upon the creation of the New Mezzanine Loan and/or to adjust the interest rate spread on the Loan and the Mezzanine Loans (or either one of them) upon the creation of the New Mezzanine Loan, and to reallocate the principal balance and the interest rate spreads of the Loan, the Mezzanine Loans and any New Mezzanine Loan amongst each other (or any one of them), provided that (a) the aggregate stated principal amount of the Loan, the Mezzanine Loans and the New Mezzanine Loans on the date of such adjustment (and the creation of the New Mezzanine Loan) shall equal the aggregate stated principal amount of the Loan, the Mezzanine Loans and the New Mezzanine Loan(s) immediately prior to such adjustment, (b) Lender shall have the right to adjust the interest rate spread on the Loan, the Mezzanine Loans and the New Mezzanine Loan(s), provided that the weighted average spread of the Loan, the Mezzanine Loans and the New Mezzanine Loan(s) on the

date of such adjustment shall equal the weighted average spread which was applicable to the Loan and the Mezzanine Loans (and the New Mezzanine Loans, if applicable) immediately prior to such adjustment (it being acknowledged that the weighted average spread will remain constant except in connection with the application of principal to such new notes or modified notes following the occurrence of an Event of Default), and (c) the terms and provisions of each of the Loan and the Mezzanine Loans (and the New Mezzanine Loans, if applicable) shall otherwise remain unchanged. In connection with any New Mezzanine Loan, (i) Borrower shall cause the formation of one or more special purpose, bankruptcy remote entities as required by Lender in order to serve as the borrower under any New Mezzanine Loan (each, a “**New Mezzanine Borrower**”) and the applicable organizational documents of Borrower and each Mezzanine Borrower (and of each previously created New Mezzanine Borrower, if applicable) shall be amended and modified as necessary or required in the formation of any New Mezzanine Borrower; (ii) Borrower and Mezzanine Borrowers (and each previously created New Mezzanine Borrower, if applicable) shall cooperate with all reasonable requests of Lender and shall execute and deliver such documents as shall reasonably be requested by Lender in connection therewith, all in form and substance reasonably satisfactory to Lender and, to the extent applicable, the Rating Agencies, including, without limitation, (x) revised title insurance policies, mezzanine endorsements, UCC policies and Interest Rate Protection Agreements, (y) in connection with the creation of any New Mezzanine Loan, a promissory note and loan documents necessary to evidence such New Mezzanine Loan, and (z) such amendments to the Loan Documents and the Mezzanine Loan Documents (and the loan documents of any previously created New Mezzanine Borrower, if applicable) as are reasonably necessary in connection with the creation of such New Mezzanine Loan (provided that such amendments do not or would not (i) materially decrease the rights of the Borrower or Mezzanine Borrowers (and any previously created New Mezzanine Borrowers, if applicable), or, absent an Event of Default, materially increase the obligations of the Borrower or the Mezzanine Borrowers (and any previously created New Mezzanine Borrowers, if applicable), as the case may be, under such borrower’s applicable loan documents, or (ii) absent an Event of Default, expose the Borrower or any of the Mezzanine Borrowers (or any previously created New Mezzanine Borrowers, if applicable) to additional costs or increased risk of any liability under such borrower’s applicable loan documents (beyond that or greater than that existing in the existing loan documents on the date hereof)); (iii) Lender shall have received opinions of legal counsel with respect to due execution, authority and enforceability of the amended Loan Documents, the amended Mezzanine Loan Documents and the loan documents for the New Mezzanine Loan, as appropriate, and additional or updated nonconsolidation opinions for the Loan, the Mezzanine Loans and each such New Mezzanine Loan, as appropriate, each in form reasonably acceptable to Lender and prospective investors and in form acceptable to the Rating Agencies; and (iv) Lender shall pay the actual, reasonable out-of-pocket costs and expenses incurred by Borrower in connection with the foregoing, including, without limitation, the actual, reasonable out-of-pocket legal fees incurred by Borrower in connection with any of the foregoing matters.

## **Section 2.2. Interest Rate.**

**2.2.1 Interest Generally.** Except as herein provided with respect to interest accruing at the Default Rate, interest on the principal balance of the Loan outstanding from time to time shall accrue from the Closing Date up to and including the Maturity Date (including, without limitation, all interest that would accrue on the outstanding principal balance of the Loan through the end of the Interest Period during which the Maturity Date occurs (even if such period extends beyond the Maturity Date)) at the Applicable Interest Rate. Interest on the outstanding principal balance of the Loan existing on the commencement of an Interest Period shall accrue for the entire Interest Period and shall be owed by Borrower for the entire Interest Period regardless of whether any principal portion of the Loan is repaid prior to the expiration of such Interest Period.

**2.2.2 Interest Calculation.** Interest on the outstanding principal balance of the Loan shall be calculated by multiplying (a) the actual number of days elapsed in the period for which the calculation is being made by (b) a daily rate based on a three hundred sixty (360) day year (that is, the Applicable Interest Rate or the Default Rate, as then applicable, expressed as an annual rate divided by 360) by (c) the outstanding principal balance.

**2.2.3 Determination of Interest Rate.** (a) The Applicable Interest Rate with respect to the Loan shall be: (i) LIBOR plus the Spread with respect to the applicable Interest Period for a LIBOR Loan or (ii) the Prime Rate plus the Prime Rate Spread for a Prime Rate Loan if the Loan is converted to a Prime Rate Loan pursuant to the provisions of Section 2.2.3(c) or Section 2.2.3(f).

(b) Subject to the terms and conditions of this Section 2.2.3, the Loan shall be a LIBOR Loan and Borrower shall pay interest on the outstanding principal amount of the Loan at LIBOR plus the Spread for the applicable Interest Period. Any change in the rate of interest hereunder due to a change in the Applicable Interest Rate shall become effective as of the opening of business on the first day on which such change in the Applicable Interest Rate shall become effective. Each determination by Lender of the Applicable Interest Rate shall be conclusive and binding for all purposes, absent manifest error.

(c) In the event that Lender shall have determined (which determination shall be conclusive and binding upon Borrower absent manifest error) that by reason of circumstances affecting the interbank eurodollar market, adequate and reasonable means do not exist for ascertaining LIBOR, then Lender shall forthwith give notice by telephone of such determination, confirmed in writing, to Borrower at least one (1) Business Day prior to the last day of the related Interest Period. If such notice is given, the related outstanding LIBOR Loan shall be converted, on the last day of the then current Interest Period, to a Prime Rate Loan.

(d) If, pursuant to the terms of this Agreement, any portion of the Loan has been converted to a Prime Rate Loan and Lender shall determine (which determination shall be conclusive and binding upon Borrower absent manifest error) that the event(s) or circumstance(s) which resulted in such conversion shall no longer be applicable, Lender shall give notice by

telephone of such determination, confirmed in writing, to Borrower at least one (1) Business Day prior to the last day of the related Interest Period. If such notice is given, the related outstanding Prime Rate Loan shall be converted to a LIBOR Loan on the last day of the then current Interest Period.

(e) With respect to a LIBOR Loan, all payments made by Borrower hereunder shall be made free and clear of, and without reduction for or on account of, income, stamp or other taxes, levies, imposts, duties, charges, fees, deductions, reserves or withholdings imposed, levied, collected, withheld or assessed by any Governmental Authority and imposed on any non-U.S. Lender due to a change in U.S. law after the date such non-U.S. Lender acquired its interest in the Loan (such non-excluded taxes, levies, imposts, duties, charges, fees, deductions, reserves or withholdings being referred to collectively as “**Foreign Taxes**”), excluding (i) income and franchise taxes, (ii) any Taxes imposed by reason of any connection between the non-U.S. Lender and the taxing jurisdiction other than entering into this Agreement and receiving payments hereunder, and (iii) any Taxes imposed by reason of the non-U.S. Lender’s failure to complete and deliver to the Borrower, prior to the date on which the first payment to such Lender is due hereunder and (so long as it remains eligible to do so) from time to time thereafter, (x) (i) an Internal Revenue Service Form W-9 (or successor form) establishing that the Lender is not subject to U.S. backup withholding tax, (ii) an Internal Revenue Service Form W-8BEN (or successor form) certifying that such Lender is entitled to benefits under an income tax treaty to which the United States is a party that reduces the rate of withholding tax on payments of interest to zero, or (iii) an Internal Revenue Service Form W-8ECI certifying that the income receivable pursuant to this Agreement is effectively connected with the conduct of a trade or business in the United States, as appropriate; and (y) any successor or additional form required by the Internal Revenue Service or any taxing authority reasonably requested by the Borrower in order to secure an exemption from, or reduction in the rate of, Foreign Taxes. If any Foreign Taxes are required to be withheld from any amounts payable to Lender hereunder, the amounts so payable to Lender shall be increased to the extent necessary to yield to Lender (after payment of all Foreign Taxes) interest or any such other amounts payable hereunder at the rate or in the amounts specified hereunder. Whenever any Foreign Tax is payable pursuant to applicable law by Borrower, as promptly as possible thereafter, Borrower shall send to Lender an original official receipt, if available, or certified copy thereof showing payment of such Foreign Tax. Borrower hereby indemnifies Lender for any incremental Foreign Taxes, interest or penalties that may become payable by Lender which may result from any failure by Borrower to pay any such Foreign Tax when due to the appropriate taxing authority or any failure by Borrower to remit to Lender the required receipts or other required documentary evidence thereof (provided such documents are reasonably available to the Borrower).

(f) If any requirement of law or any change therein or in the interpretation or application thereof, shall hereafter make it unlawful for Lender to make or maintain a LIBOR Loan as contemplated hereunder and the events giving rise thereto affect similarly situated banks or financial institutions generally, (i) the obligation of Lender hereunder to make a LIBOR Loan or to convert a Prime Rate Loan to a LIBOR Loan shall be canceled forthwith and (ii) any outstanding LIBOR Loan shall be converted automatically to a Prime Rate Loan on the next succeeding Payment Date or within such earlier period as required by law.

(g) In the event that any change in any requirement of law or in the interpretation or application thereof, or compliance by Lender with any request or directive (whether or not having the force of law) hereafter issued from any central bank or other Governmental Authority and the events giving rise thereto affect similarly situated banks or financial institutions generally:

(i) shall hereafter impose, modify or hold applicable any reserve, special deposit, compulsory loan or similar requirement against assets held by, or deposits or other liabilities in or for the account of, advances or loans by, or other credit extended by, or any other acquisition of funds by, the office of Lender that holds the Loan which is not otherwise included in the determination of LIBOR hereunder;

(ii) shall hereafter require the Lender to hold additional capital against the Loan in excess of that currently required by Governmental Authorities to be held against loans similar in nature to the Loan; or

(iii) shall hereafter impose on Lender any other condition affecting loans to borrowers subject to LIBOR-based interest rates and Lender determines that, by reason thereof, the cost to Lender of making or maintaining the Loan to Borrower is increased, or any amount received by Lender hereunder in respect of any portion of the Loan is reduced, in each case by an amount deemed by Lender in good faith to be material;

then, in any such case, Borrower shall promptly pay Lender, upon demand, any additional amounts necessary to compensate Lender for such additional cost or reduced amount receivable which Lender deems to be material as determined in good faith by Lender. If Lender becomes entitled to claim any additional amounts pursuant to this Section 2.2.3(g), Lender shall provide Borrower with not less than ninety (90) days notice specifying in reasonable detail the event by reason of which it has become so entitled and the additional amount required to fully compensate Lender for such additional cost or reduced amount. A certificate as to any additional costs or amounts payable pursuant to the foregoing sentence submitted by Lender to Borrower shall be conclusive in the absence of manifest error. This provision shall survive payment of the Note and the satisfaction of all other obligations of Borrower under this Agreement and the Loan Documents.

(h) Lender shall not be entitled to claim compensation pursuant to this Section 2.2.3 for any Foreign Taxes or other amounts incurred or which accrued more than ninety (90) days before the date Lender notified Borrower of the change in law or other circumstance on which such claim of compensation is based and delivered to Borrower a written statement setting forth in reasonable detail the basis for calculating the additional amounts owed to Lender under this Section 2.2.3, which statement shall be conclusive and binding upon all parties hereto absent manifest error.

(i) For purposes of this Section 2.2.3, the term "Lender" shall be deemed to include each Noteholder and Lender's (as well as each Noteholder's) present and future participants in the Loan to the extent of Foreign Taxes imposed by reason of such Noteholder or participant's interest in the Loan and each such Noteholder's or participant's increased costs or

reduction in amount received or receivable hereunder or any reduced rate of return, in each case payable by Borrower under this [Section 2.2.3](#).

**2.2.4 Additional Costs.** Lender will use reasonable efforts (consistent with legal and regulatory restrictions) to maintain the availability of the LIBOR Loan and to avoid or reduce any increased or additional costs payable by Borrower under [Section 2.2.3](#), including, if requested by Borrower, a transfer or assignment of the Loan to a branch, office or Affiliate of Lender in another jurisdiction, or a redesignation of its lending office with respect to the Loan, in order to maintain the availability of the LIBOR Loan or to avoid or reduce such increased or additional costs, provided that the transfer or assignment or redesignation (a) would not result in any material additional costs, expenses or risk to Lender that are not reimbursed by Borrower and (b) would not be disadvantageous in any other material respect to Lender as determined by Lender in its sole but reasonable discretion.

**2.2.5 Default Rate.** In the event that, and for so long as, any Event of Default shall have occurred and be continuing, the outstanding principal balance of the Loan and, to the extent permitted by law, all accrued and unpaid interest in respect of the Loan and any other amounts due pursuant to the Loan Documents, shall accrue interest at the Default Rate, calculated from the date such payment was due without regard to any grace or cure periods contained herein.

**2.2.6 Usury Savings.** This Agreement, the Note and the other Loan Documents are subject to the express condition that at no time shall Borrower be obligated or required to pay interest on the principal balance of the Loan at a rate which could subject Lender to either civil or criminal liability as a result of being in excess of the Maximum Legal Rate. If, by the terms of this Agreement or the other Loan Documents, Borrower is at any time required or obligated to pay interest on the principal balance due hereunder at a rate in excess of the Maximum Legal Rate, the Applicable Interest Rate or the Default Rate, as the case may be, shall be deemed to be immediately reduced to the Maximum Legal Rate and all previous payments in excess of the Maximum Legal Rate shall be deemed to have been payments in reduction of principal and not on account of the interest due hereunder. All sums paid or agreed to be paid to Lender for the use, forbearance, or detention of the sums due under the Loan, shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Loan until payment in full so that the rate or amount of interest on account of the Loan does not exceed the Maximum Legal Rate of interest from time to time in effect and applicable to the Loan for so long as the Loan is outstanding.

**2.2.7 Interest Rate Cap Agreement.** (a) On or prior to 5:00 p.m. (New York time) on the Closing Date, Borrower shall enter into an Interest Rate Cap Agreement with a LIBOR strike price equal to the required Strike Price. The Interest Rate Cap Agreement (i) shall be in a form and substance reasonably acceptable to Lender, (ii) shall be with an Acceptable Counterparty, (iii) shall direct such Acceptable Counterparty to pay directly to an account pledged to Lender any amounts due Borrower under such Interest Rate Cap Agreement unless and until otherwise instructed by Lender (it being agreed as between Lender and Borrower that Lender will so instruct the Counterparty at such time as the Debt

shall no longer exist, provided that the Debt shall be deemed to exist if the Properties transferred by judicial or non-judicial foreclosure or deed-in-lieu thereof), (iv) shall be for a period equal to the term of the Loan and (v) shall have an initial notional amount equal to the principal balance of the Loan. Borrower shall collaterally assign to Lender, pursuant to the Collateral Assignment of Interest Rate Cap Agreement, all of its right, title and interest to receive any and all payments under the Interest Rate Cap Agreement, and shall deliver to Lender an executed counterpart of such Interest Rate Cap Agreement (which shall, by its terms, authorize the assignment to Lender and require that payments be paid directly into an account pledged to Lender as provided above in this Section 2.2.7). Provided no Event of Default has occurred and is continuing, amounts contained in the foregoing pledged account shall be released to Borrower on a monthly basis to the extent not applied toward debt service on the Loan.

(b) Borrower shall comply with all of its obligations under the terms and provisions of the Interest Rate Cap Agreement. All amounts paid by the Counterparty under the Interest Rate Cap Agreement to Borrower or Lender shall be deposited immediately into a Collection Account. Borrower shall take all actions reasonably requested by Lender to enforce Lender's rights under the Interest Rate Cap Agreement in the event of a default by the Counterparty and shall not waive, amend or otherwise modify any of its rights thereunder.

(c) In the event of any downgrade, withdrawal or qualification of the rating of the Counterparty by S&P or Moody's to below the ratings set forth in the definition of "Acceptable Counterparty", Borrower (i) shall replace the Interest Rate Cap Agreement with a Replacement Interest Rate Cap Agreement (or cause the Counterparty or an Affiliate thereof to post collateral acceptable to Lender and the Rating Agencies) not more than fifteen (15) Business Days following receipt of notice of such downgrade, withdrawal or qualification (and meeting the requirements set forth in this Section 2.2.7) from an Acceptable Counterparty, (ii) if a new cap is provided to Lender, then if requested by Lender shall provide to Lender an opinion of counsel to such Acceptable Counterparty in the form and containing the substance of the form of opinion set forth in Exhibit A (which such changes as shall be reasonably approved by Lender), and (iii) shall collaterally assign to Lender, pursuant to an assignment in the form of the Collateral Assignment of Interest Rate Cap Agreement, all of its right, title and interest to receive any and all payments under the Replacement Interest Rate Cap Agreement.

(d) In the event that Borrower fails to purchase and deliver to Lender the Interest Rate Cap Agreement or fails to maintain the Interest Rate Cap Agreement in accordance with the terms and provisions of this Agreement, Lender may purchase the Interest Rate Cap Agreement and the cost incurred by Lender in purchasing such Interest Rate Cap Agreement shall be paid by Borrower to Lender with interest thereon at the Default Rate from the date such cost was incurred by Lender until such cost is reimbursed by Borrower to Lender.

(e) In connection with any Interest Rate Cap Agreement provided to Lender as herein required, if requested by Lender, Borrower shall obtain and deliver to Lender an opinion from counsel (which counsel may be in-house counsel for the Counterparty) for the Counterparty (upon which Lender and its successors and assigns may rely) in the form and

containing the substance of the form of opinion set forth in Exhibit A (which such changes as shall be reasonably approved by Lender).

(f) In connection with any prepayment of the Loan, provided no Event of Default shall have occurred and be continuing, Borrower may reduce the amount of any Interest Rate Cap Agreement (so that the same shall be in an initial notional amount equal to the principal balance of the Loan following such prepayment), provided that such reduction shall not affect any of the other terms of the Interest Rate Cap Agreement or the Collateral Assignment of Interest Rate Cap Agreement (or Lender's rights in respect thereof).

**Section 2.3. Loan Payment.**

**2.3.1 Payments Generally.** Borrower shall make a payment to Lender of interest only on the Closing Date for the initial Interest Period. On the date hereof, Borrower shall make a payment to Lender of interest accruing hereunder during the period from the Closing Date up to and including the initial Interest Period, calculated in the manner set forth herein, and on the Payment Date occurring in March 2008 and on each Payment Date thereafter to and including the Maturity Date, Borrower shall make a payment to Lender of interest accruing hereunder during the entire Interest Period in which such Payment Date occurs, calculated in the manner set forth herein. All amounts due pursuant to this Agreement and the other Loan Documents shall be payable without setoff, counterclaim, defense or any other deduction whatsoever. Each payment shall be applied *pro rata* and *pari passu* (a) first to accrued and unpaid interest on all of the Notes and (b) the balance shall be applied to principal of all the Notes.

**2.3.2 Payment on Maturity Date.** Borrower shall pay to Lender on the Maturity Date the outstanding principal balance of the Loan, all accrued and unpaid interest and all other amounts due hereunder and under the Note, the Mortgage and the other Loan Documents, including, without limitation, all interest that would accrue on the outstanding principal balance of the Loan through and including the end of the Interest Period in which the Maturity Date occurs (even if such Interest Period extends beyond the Maturity Date).

**2.3.3 Late Payment Charge.** If any principal, interest or any other sums due under the Loan Documents, other than the payment of principal due on the Maturity Date, is not paid by Borrower by the date on which it is due, Borrower shall pay to Lender upon demand an amount equal to the lesser of one percent (1%) of such unpaid sum or the maximum amount permitted by applicable law in order to defray the expense incurred by Lender in handling and processing such delinquent payment and to compensate Lender for the loss of the use of such delinquent payment; provided, however that, except with respect to the payment of any monthly Debt Service payments with respect to which no notice or demand shall be required, no such late payment charge shall be due unless such payment of principal, interest or other sum shall be delinquent for more than five (5) Business Days following the date of demand therefor. Any such amount shall be secured by the Mortgages and the other Loan Documents to the extent permitted by applicable law.

**2.3.4 Method and Place of Payment.** Except as otherwise specifically provided herein, all payments and prepayments under this Agreement and the Note shall be made to Lender not later than 3:00 P.M., New York City time, on the date when due and shall be made in lawful money of the United States of America in immediately available funds at Lender's office or as otherwise directed by Lender, and any funds received by Lender after such time shall, for all purposes hereof, be deemed to have been paid on the next succeeding Business Day.

**Section 2.4. Prepayments.**

**2.4.1 Voluntary Prepayments.** Borrower may, at its option, prepay the Debt in whole or in part, provided, the following conditions are satisfied:

(a) No Event of Default shall have occurred and be continuing (unless, in the case of a prepayment upon the release of an Individual Property, the Event of Default relates solely to such Individual Property and therefore would be fully cured by the release of such Individual Property);

(b) Borrower shall provide prior written notice to Lender specifying the date upon which the prepayment is to be made (the "**Prepayment Date**"), which notice shall be delivered to Lender not less than ten (10) days prior to such Prepayment Date, and which notice shall be irrevocable (or such shorter period of time as may be permitted by Lender in its sole discretion) (Lender hereby agreeing that Borrower may revoke any notice of prepayment up until the date that is one (1) Business Day prior to the proposed Prepayment Date (provided that Borrower shall be required to pay Lender, promptly upon demand, any actual, out-of-pocket expenses incurred by Lender resulting from any such revocation));

(c) each such prepayment, in the case of partial prepayments, shall be in an amount not less than Five Million and no/100 Dollars (\$5,000,000.00), unless the outstanding principal balance of the Loan (prior to such prepayment) shall be less than Five Million and no/100 Dollars (\$5,000,000.00), in which event the amount of the prepayment shall be in such amount as shall prepay the Debt and all other amounts due in connection therewith in full, as more fully provided herein;

(d) if such prepayment is made on or prior to the Payment Date occurring in the Interest Period in which such prepayment was made, then, in connection with such prepayment, Borrower shall pay to Lender, simultaneously with such prepayment, all interest on the principal balance of the Note then being prepaid which would have accrued through the end of the Interest Period then in effect notwithstanding that such Interest Period extends beyond the Prepayment Date;

(e) if such prepayment is made after a Payment Date occurring in the Interest Period in which such prepayment was made, but prior to the last two (2) Business Days in such Interest Period, Borrower shall make such prepayment without paying any interest thereon (Borrower having already paid interest on such amount on the Payment Date occurring in such Interest Period);

(f) if such prepayment is made on either of the last two (2) Business Days in an Interest Period, Borrower will pay to Lender, simultaneously with such prepayment, interest on the principal amount of the Loan prepaid through the last day of the Interest Period immediately following the Interest Period in which such prepayment occurs, calculated at the Applicable Interest Rate;

(g) if such prepayment is a prepayment of the Loan in full, Lender shall have received a written consent to the repayment from the lender under each Mezzanine Loan (and, if any, a Permitted Mezzanine Loan) or receipt by Lender of other evidence satisfactory to Lender that all conditions imposed under the terms of each Mezzanine Loan and Permitted Mezzanine Loan shall have been complied with by the borrower thereunder or otherwise waived by the applicable lender, including the simultaneous pro rata prepayment of each Mezzanine Loan if required thereunder; and

(h) if such prepayment is made on or prior to the Spread Maintenance Outside Date, then in connection with any such prepayment, Borrower shall pay to Lender, simultaneously with such prepayment, the Spread Maintenance Premium in respect of such prepayment.

Any prepayment received by Lender on other than a Payment Date (but not any amount received between a Payment Date and the second to last Business Day in an Interest Period) shall be held by Lender in an interest-bearing account as collateral security for the Loan and shall be applied to the Debt on the next occurring Payment Date (with all interest and other income earned on such amount being for the account of Borrower and being remitted by Lender to Borrower promptly following such next Payment Date). Any prepayment made pursuant to this Section 2.4.1 shall be applied *pro rata* and *pari passu* (a) first to accrued and unpaid interest on all of the Notes and (b) the balance shall be applied to principal of all the Notes.

**2.4.2 Mandatory Prepayments from Net Proceeds.** On the next occurring Payment Date following the date on which Lender actually receives any Net Proceeds, if Lender is not obligated to make such Net Proceeds available to Borrower for the Restoration of any Individual Property, Borrower shall prepay, or authorize Lender to apply Net Proceeds as a prepayment of, the outstanding principal balance of the Note in an amount equal to, (x) if no Event of Default shall have occurred and be continuing, the product of (i) a fraction, the numerator of which is outstanding principal amount of the Loan and the denominator is the outstanding principal amount of the Loan and the Mezzanine Loans times (ii) the Net Proceeds, together with interest accruing on such amount calculated through and including the end of the Interest Period in which such Payment Date occurs (with the balance of the Net Proceeds to be paid over to the First Mezzanine Lender, for application in accordance with the First Mezzanine Loan Agreement), and (y) if an Event of Default shall have occurred and be continuing, 100% of the Net Proceeds. No Spread Maintenance Premium shall be due in connection with any prepayment made pursuant to this Section 2.4.2. Any prepayment received by Lender pursuant to this Section 2.4.2 on a date other than a Payment Date shall be held by Lender as collateral security for the Loan in an interest bearing account, with such interest accruing to the benefit of Borrower, and shall be applied by Lender on the next Payment Date. Following the prepayment made as described in this Section 2.4.2, the Allocated Loan Amount for the affected Individual

Property, as set forth in this Agreement, shall be reduced in an amount equal to such prepayment. Any prepayment of the Notes made pursuant to this Section 2.4.2 shall be applied pro rata and pari passu (a) first to accrued and unpaid interest on all of the Notes and (b) the balance shall be applied to principal of all the Notes.

**2.4.3 Prepayments After Default.** If, following the occurrence and during the continuance of an Event of Default, payment of all or any part of the Debt is tendered by Borrower or any other Person and accepted by Lender or otherwise recovered by Lender (including through application of any Reserve Funds), Borrower shall pay to Lender, in addition to the outstanding principal balance, (a) all accrued and unpaid interest at the Default Rate (including, without limitation, (i) in the event that such prepayment is received on a Payment Date or on any date in any Interest Period prior to a Payment Date, interest accruing (at the Default Rate) on such amount calculated through and including the end of the Interest Period in which such payment occurs, or (ii) in the event that such prepayment is received on a date after a Payment Date up to (and including) the last day of the Interest Period in which such Payment Date occurs, interest accruing (at the Default Rate) on such amount calculated through and including the end of the Interest Period in which the next Payment Date occurs, (b) the Spread Maintenance Premium, if such prepayment is made prior to the Spread Maintenance Outside Date, and (c) any and all other amounts payable under the Loan Documents. Any payment under this Section 2.4.3 shall be applied in such order, priority and proportions as Lender may direct in its sole and absolute discretion.

**Section 2.5. Release of Properties.**

Except as set forth in this Section 2.5, no repayment or prepayment of all or any portion of the Note shall cause, give rise to a right to require, or otherwise result in, the release or assignment in lieu of the release of any Lien of any Mortgage on any Individual Property.

**2.5.1 Release of Individual Property.** Borrower may obtain the release of an Individual Property from the Lien of the Mortgage thereon (and related Loan Documents, including, in the case of a release of the Individual Property comprising “Harrah’s Lake Tahoe”, “Harvey’s Lake Tahoe” and “Bill’s Lake Tahoe”, a release of the Pledge of Ground Lease Subsidiary) and the release of Borrower’s obligations under the Loan Documents with respect to such Individual Property (other than those expressly stated to survive), upon the satisfaction of each of the following conditions:

(a) No Event of Default shall have occurred and be continuing (unless, in the case of a prepayment upon the release of an Individual Property, the Event of Default relates solely to such Individual Property and therefore would be fully cured by the release of such Individual Property);

(b) Borrower shall submit to Lender, not less than ten (10) Business Days prior to the date of such release, a release of Lien (and related Loan Documents) for such Individual Property for execution by Lender. Such release shall be in a form appropriate in each jurisdiction in which the Individual Property is located and that contains standard provisions, if any, protecting the rights of the releasing lender;

(c) After giving effect to such release, the Debt Service Coverage Ratio for the Properties then remaining subject to the Liens of the Mortgages (including giving pro forma effect to the payment of the Release Price and any additional prepayment(s) made by Borrower in connection with such release) shall be equal to or greater than the greatest of (i) the Debt Service Coverage Ratio for the twelve (12) full calendar months immediately preceding the release of the Individual Property (assuming the contemplated release had not occurred, i.e., for all Properties subject to the Liens of the Mortgage prior to the proposed release), (ii) 90% of the Debt Service Coverage Ratio as of the Closing Date, and (iii) 1.0;

(d)(i) The Individual Property to be released shall be conveyed to a Person other than a Borrower or Mezzanine Borrower, and other than to an Affiliate of Borrower unless, in the latter case, such Affiliate is refinancing the Loan with a construction or development loan (or repaying the Loan with equity contributions to such Affiliate) and (ii) it is such Affiliate's immediate intention to materially redevelop such Individual Property, which loan (or equity contribution) and intention shall be described in reasonable detail and represented to in an Officer's Certificate submitted to Lender concurrently with (or prior to) the materials described in clause (b) of this Section 2.5.1;

(e) Lender shall have received a wire transfer of immediately available federal funds in an amount equal to the Release Price for the applicable Individual Property, together with (i) all accrued and unpaid interest calculated at the Applicable Interest Rate on the amount of principal being prepaid as provided in Sections 2.4.1(d) or (e), as applicable, (ii) the Spread Maintenance Premium, if applicable and (iii) all other sums due under this Agreement, the Note or the other Loan Documents in connection with a partial prepayment;

(f) Lender shall have received a written consent to the transfer from the lender under each Mezzanine Loan (and, if any, a Permitted Mezzanine Loan) or receipt by Lender of other evidence satisfactory to Lender that all conditions imposed under the terms of each Mezzanine Loan and Permitted Mezzanine Loan shall have been complied with by the borrower thereunder or otherwise waived by the applicable lender; and

(g) Lender shall have received payment of all Lender's reasonable out-of-pocket costs and expenses, including reasonable counsel fees and disbursements incurred in connection with the release of the Individual Property from the lien of the related Mortgage and the review and approval of the documents and information required to be delivered in connection therewith. Lender acknowledges that it shall not charge any fee (other than costs and expenses, as provided in the preceding sentence) in connection with the release of an Individual Property.

**2.5.2 Release of Convention Center Parcel.** At any time after the date hereof, Borrower may obtain the release of the Convention Center Parcel and the release of Borrower's obligations under the Loan Documents with respect to such parcel of land (other than those expressly stated to survive), without the payment of a Release Price and upon the satisfaction of each of the following conditions:

- (a) No Event of Default shall have occurred and be continuing (unless, in the case of a release of the Convention Center Parcel, the Event of Default relates solely to such parcel and therefore would be fully cured by the release of the Convention Center Parcel);
- (b) Borrower shall submit to Lender, not less than ten (10) Business Days prior to the date of such release, a release of Lien (and related Loan Documents) for the Convention Center Parcel for execution by Lender. Such release shall be in a form appropriate in the jurisdiction in which the Convention Center Parcel is located and that contains standard provisions, if any, protecting the rights of the releasing lender;
- (c) The Convention Center Parcel shall be conveyed to a Person other than a Borrower or any Mezzanine Borrower;
- (d) Borrower will enter into a restrictive covenant agreement, restricting the use of the Convention Center Parcel to the development of a Convention Center and ancillary uses which agreement shall be in form and substance reasonably satisfactory to Lender;
- (e) Prior to the transfer and release of the Convention Center Parcel, each applicable municipal authority exercising jurisdiction over the Convention Center Parcel shall have approved a lot-split ordinance or other applicable action under local law dividing the Convention Center Parcel from the remainder of the Harrah's Atlantic City Property, and a separate tax identification number has been issued for the Convention Center Parcel (with the result that, upon the transfer and release of the Convention Center Parcel, no part of the remaining Harrah's Atlantic City Property shall be part of a tax lot which includes any portion of the Convention Center Parcel);
- (f) All requirements under all laws, statutes, rules and regulations (including, without limitation, all zoning and subdivision laws, setback requirements, sideline requirements, parking ratio requirements, use requirements, building and fire code requirements, environmental requirements and wetlands requirements) applicable to the Harrah's Atlantic City Property necessary to accomplish the lot split shall have been fulfilled, and all necessary variances, if any, shall have been obtained, and Borrower shall have delivered to Lender either (1) letters or other evidence from the appropriate municipal authorities confirming such compliance with laws, or (2) a zoning report or legal opinion confirming such compliance with laws, in each case in substance reasonably satisfactory to Lender;
- (g) As a result of the lot split, the remaining Harrah's Atlantic City Property with all easements appurtenant and other Permitted Encumbrances thereto will not be in violation of any then applicable law, statute, rule or regulation (including, without limitation, all zoning and subdivision laws, setback requirements, sideline requirements, parking ratio requirements, use requirements, building and fire code requirements, environmental requirements and wetland requirements) and all necessary variances, if any, shall have been obtained and evidence thereof has been delivered to Lender which in form and substance is appropriate for the jurisdiction in which the Harrah's Atlantic City Property is located;
- (h) If reasonably necessary, appropriate reciprocal easement agreements for the benefit and burden of the remaining Harrah's Atlantic City Property and the Convention

Center Parcel requiring no cost or expense to Borrower regarding the use of common facilities of such parcels, including, but not limited to, roadways, parking areas, utilities and community facilities, in a form and substance that would be reasonably acceptable to an ordinary prudent lender and which easements will not materially adversely affect the remaining Harrah's Atlantic City Property, shall be declared and recorded, and the remaining Harrah's Atlantic City Property and the Convention Center Parcel shall be in compliance with all applicable covenants under all easements and property agreements contained in the Permitted Encumbrances for the Harrah's Atlantic City Property;

(i) Borrower has delivered an Officer's Certificate to the effect that, to such officer's knowledge after diligent inquiry, the conditions in subsection (a)-(h) hereof have occurred or shall occur concurrently with the transfer and release of the Convention Center Parcel;

(j) Borrower shall execute such documents and instruments and obtain such opinions of counsel as are typical for similar transactions, including, if a Securitization shall have occurred, an opinion that the release of the Convention Center Parcel will not be a "significant modification" of the Loan within the meaning of Section 1.1001-3 of the regulations of the United States Department of the Treasury; and

(k) Lender shall have received payment of all Lender's reasonable out-of-pocket costs and expenses, including reasonable counsel fees and disbursements incurred in connection with the release of the Convention Center Parcel from the lien of the related Mortgage and the review and approval of the documents and information required to be delivered in connection therewith. Lender acknowledges that it shall not charge any fee (other than costs and expenses, as provided in the preceding sentence) in connection with the release of the Convention Center Parcel; and

(l) Lender shall have received evidence reasonably satisfactory to it that the Mezzanine Borrowers shall have satisfied all of the conditions to the proposed release set forth in and each of the Mezzanine Loan Agreements.

Borrower agrees that it shall promptly use all reasonable best efforts to substitute, and Lender agrees (subject to the terms set forth below in this paragraph) that it shall accept the substitution of, the properties commonly known as "Paris Las Vegas" and "Harrah's Laughlin" for the Individual Properties referred to as "Harrah's Lake Tahoe", "Harvey's Lake Tahoe", "Bill's Lake Tahoe" and "Showboat Atlantic City" and the portion of the Flamingo Las Vegas Property known as O'Shea's in a reasonably satisfactory manner, provided that Lender's obligation to accept such substitution shall be conditioned on the following:

(i) that no Event of Default shall exist, either before or after giving effect to such substitution (unless such Event of Default would be fully cured by the substitution);

(ii) the satisfaction, with respect to both "Paris Las Vegas" and "Harrah's Laughlin", of the closing conditions set forth in Article III hereof, except that references therein to the Closing Date shall be to the date of such substitution;

(iii) delivery of such agreements, instruments, title insurance policies, surveys, resolutions, certificates and opinions (including, without limitation, substitute notes, amendments to the Loan Documents (including amendments to adjust the Allocated Loan Amounts, the EBITDAR (Closing Date) and any other items that need to be adjusted to reflect the substitution), the Operating Lease, the Operating Lease Guaranty and the Windstorm Insurance Intercreditor Agreement, an appropriate subdivision and a reciprocal easement agreement in respect of O'Shea's, written assurances that the substitution will have no negative effects on the existing title insurance policies, updated "tie-in" endorsements for the title insurance policies and any endorsements to owner title policies, an Additional True Lease Opinion and an Additional Insolvency Opinion), in each case as are reasonably required by Lender in connection with such substitution;

(iv) with respect to the release of O'Shea's, delivery of evidence reasonably satisfactory to Lender that such release will not have either an Individual Material Adverse Effect on the remainder of the Flamingo Las Vegas Property or an Aggregate Material Adverse Effect (it being understood that, for purposes of such determinations, O'Shea's shall be deemed to have closed as of the Closing Date and to have no value) and that the remainder of the Flamingo Las Vegas Property satisfies the conditions set forth in Sections 3.1.3(b), (c) and (f) and the representations and warranties set forth in Sections 4.1.4, 4.1.16, 4.1.22, 4.1.39 and 4.1.40 shall continue to be true and complete with respect to the remainder of the Flamingo Las Vegas Property;

(v) the satisfaction, with respect to "Harrah's Lake Tahoe", "Harvey's Lake Tahoe", "Bill's Lake Tahoe", "Showboat Atlantic City" and O'Shea's, of the conditions set forth above in Section 2.5.1(b) and (f) with respect to released Individual Properties to the extent applicable;

(vi) the conveyance of "Harrah's Lake Tahoe", "Harvey's Lake Tahoe", "Bill's Lake Tahoe", "Showboat Atlantic City" and O'Shea's to a Person other than a Borrower or Mezzanine Borrower;

(vii) unless otherwise extended by Lender, the substitution shall be completed on or prior to May 28, 2008; and

(viii) the payment by Borrower of all Lender's reasonable out-of-pocket costs and expenses in connection with the substitution contemplated by this paragraph, including reasonable counsel fees and disbursements, up to an aggregate amount of \$300,000, it being acknowledged that costs incurred to obtain title insurance and surveys in respect of the substituted properties shall be paid by Borrower directly and shall not be taken into account for purposes of the foregoing limitation on the reimbursement of Lender's expenses.

Lender acknowledges that it shall not charge any fee (other than costs and expenses, as provided in the preceding sentence) in connection with the release of an Individual Property in accordance with this paragraph. In addition, if all of "Harrah's Lake Tahoe", "Harvey's Lake Tahoe", "Bill's Lake Tahoe" and "Showboat Atlantic City" can be transferred from Borrower as contemplated above, but O'Shea's cannot (including by reason of an inability to get a separate gaming license

for O'Shea's independent of the "Flamingo Las Vegas"), then Borrower and Lender shall nevertheless proceed to consummate the swap without transferring O'Shea's (subject to Borrower's ongoing right to obtain the release of O'Shea's from the Lien of the Mortgage in accordance with the following sentence). Upon the satisfaction of such conditions set forth above in this paragraph (including clauses (i) through (viii) hereof), Borrower will have the right to choose between an immediate release of O'Shea's from the Lien of the Mortgage on the date of the swap or a free release subsequent to the date of the swap without conditions (in either case, subject to the conditions set forth above in this Section 2.5.2, except that the limitation on Borrower's payment of Lender's costs and expenses set forth in clause (viii) above shall not apply to any such costs and expenses incurred by Lender in connection with such release), and, pending such release, EBITDAR shall be computed without regard to O'Shea's; provided further, the Operating Company in respect of the "Flamingo Las Vegas" Individual Property, both before and after such release, shall be permitted to provide management and other similar services for O'Shea's and shall be reimbursed for the allocable share of expenses attributable to O'Shea's.

**2.5.3 Release on Payment in Full.** Lender shall, upon the written request and at the expense of Borrower, upon payment in full of all principal and interest due on the Loan and all other amounts due and payable under the Loan Documents in accordance with the terms and provisions of the Note and this Agreement, release the Lien of the Mortgage on each Individual Property not theretofore released.

## **Section 2.6. Cash Management.**

### **2.6.1 Establishment of Collection Accounts.**

(a) In accordance with the provisions of the Operating Lease, (i) Operating Company will establish within thirty (30) days after the Closing Date and will maintain for the benefit of Borrower, as lessor under the Operating Lease, the Collection Accounts with Collection Banks throughout the term of the Loan and (ii) the rights of Borrower (as landlord) under the Operating Lease have been collaterally assigned to Lender or will be collaterally assigned to Lender within such 30-day period. All Revenues, other than amounts retained on-site by each Operating Company as a Gaming Operating Reserve and amounts collected and maintained in Off-Shore Accounts, will be deposited in the Collection Accounts.

(b) Operating Company shall be responsible for payment of any federal, state or local income or other tax applicable to the interest or income earned on the Collection Accounts (and Operating Company shall be entitled to all such interest and income). The Collection Accounts shall be assigned the federal tax identification numbers of each Operating Company which are as set forth in Schedule III attached hereto. Borrower shall cause Operating Company to provide Lender, at any time upon request of Lender, with a Form W-8 or W-9 to evidence that Operating Company is not subject to any back-up withholding under the Code. All costs and expenses for establishing and maintaining the Collection Accounts shall be at Borrower's or Operating Company's sole cost and expense.

(c) Borrower hereby represents and warrants as follows: when established, the Collection Accounts will be the only accounts maintained by Operating Company or Borrower in any jurisdiction that include funds arising out of, or are otherwise attributable to, the Properties or relate to the operation and management of any of the Properties other than accounts (collectively, the “OC Accounts”) that contain amounts theretofore released from Collection Accounts in accordance herewith, and other than Off-Shore Accounts, which shall not be subject to this Agreement); and Borrower maintains no accounts that include funds arising out of, or are otherwise attributable to, any of the Properties or relate to the operation and management of any of the Properties or otherwise (except for accounts containing funds released from the Collection Accounts as herein provided and the Off-Shore Accounts). Borrower shall not (and Borrower shall not permit Operating Company to), without the prior consent of Lender (not to be unreasonably withheld, conditioned or delayed), open any accounts or new accounts or in any way alter the flow of funds and payment into such Collection Accounts, including, without limitation, changing the source, type or currency of any payments currently deposited and maintained in any such account (it being understood that the foregoing restriction shall not preclude Operating Company or Borrower from accepting and depositing in any Collection Accounts any capital contributions, or any disbursements from any Collection Accounts in accordance with the provisions of this Agreement). Borrower shall not (and Borrower shall not permit Operating Company to), without the prior consent of Lender (not to be unreasonably withheld, conditioned or delayed), establish and maintain any accounts with financial institutions outside of the United States of America, other than the Off-Shore Accounts.

(d) Borrower shall, or shall cause Operating Company to, deliver irrevocable written instructions to each tenant under any Lease at any of the Properties, in form and substance reasonably acceptable to Lender, directing each such tenant to deliver all Rents payable thereunder directly to the Collection Account. Borrower shall, or shall cause Operating Company to, deliver irrevocable written instructions to each of the credit card companies or credit card clearing banks delivering receipts to any of the Collection Accounts, in form and substance reasonably acceptable to Lender, directing each such credit card company or credit card clearing bank to deliver all receipts payable with respect to any of the Properties directly to the Collection Accounts.

(e) Borrower and its Affiliates shall deposit (and Borrower shall cause each Operating Company to deposit) all Revenue received by, paid or payable to or paid for the benefit of Borrower or Operating Company or in connection with any of the Properties (of whatever kind and nature), other than (x) each Gaming Operating Reserve and (y) amounts theretofore released from a Collection Account in accordance herewith, into the Collection Accounts within three (3) Business Days after receipt. Borrower shall diligently and continuously use all commercially reasonable efforts to cause (and shall cause each Operating Company to use all commercially reasonable efforts to cause) any other Person to deposit all Revenue received by, paid or payable to or paid for the benefit of Borrower or Operating Company or in connection with any of the Properties (of whatever kind and nature), other than (x) each Gaming Operating Reserve and (y) amounts theretofore released from a Collection Account in accordance herewith, into the Collection Accounts within three (3) Business Days after receipt.

**2.6.2 Disbursements from, Security Interest in, Collection Accounts.** The Operating Lease provides, among other things, that all Revenues shall be collaterally assigned by Operating Company to Borrower as additional security for Operating Company's obligations under the Operating Lease and that Borrower shall have the right to collaterally assign and pledge such Revenues to Lender as additional security for the Loan. In furtherance thereof, Lender and Borrower agree as follows:

(a) Borrower hereby grants to Lender a first priority security interest in and to all right, title and interest of Borrower in the Collection Accounts and all deposits at any time contained therein and the proceeds thereof (whether now owned or existing or hereafter acquired or arising and regardless of where located). Except as otherwise provided in subparagraphs (b) and (c) hereof, all amounts collected in the Collection Accounts shall be transferred on each Business Day to (or as directed by) Operating Company for use or distribution by the Operating Company in its discretion free of any rights or encumbrances of Lender.

(b) Upon the occurrence and during the continuance of an Event of Default hereunder or under any of the Mezzanine Loan Documents, and provided no Event of Default (as such term is defined in the Operating Lease) shall have occurred and be continuing under any Operating Lease, Borrower shall direct and cause Collection Bank to deposit directly into the Cash Management Account, all Rent payable under the applicable Operating Lease for the next thirty (30) days (it being the intent and agreement that, during the continuance of an Event of Default, the Cash Management Account shall at all times contain such amounts sufficient to cover the ensuing 30-day period), including the Monthly Tax and Insurance Amount, the Monthly Ground Rent Amount and the Monthly FF&E Reserve Amount (the amounts described in the preceding sentence, collectively, the "**Monthly Disbursements**"); provided that, notwithstanding the foregoing, Lender may not apply such Monthly Disbursements to the payment of amounts due hereunder in an amount in excess of the amounts owed by the Operating Company under the Operating Lease. In the event Borrower shall have failed to so instruct Collection Bank, Lender shall have the right to so direct the Collection Bank on behalf of Borrower. Any amounts not required to be so deposited into the Cash Management Account shall be transferred on each Business Day thereafter to (or as directed by) Operating Company for use or distribution by the Operating Company in its discretion free of any rights or encumbrances of Lender. If no Event of Default has occurred and is continuing hereunder but an Event of Default has occurred and is continuing under any of the Mezzanine Loan Documents, to the extent Monthly Disbursements are not applied to the payment of amounts due hereunder, such excess shall be remitted to First Mezzanine Lender (or to an account designated by First Mezzanine Lender); provided that, notwithstanding the foregoing, Lender shall not remit any such amounts in excess of the amounts owed by the Operating Company under the Operating Lease. If an Event of Default has occurred and is continuing hereunder, to the extent Monthly Disbursements are not applied to the payment of amounts due hereunder, Lender shall have the right to retain such excess as collateral for the Loan and/or apply such excess to the payment of the Debt.

(c) Upon the occurrence and during the continuance of an Event of Default (as such term is defined in the Operating Lease) under any Operating Lease, Borrower shall notify Collection Bank to transfer to the Cash Management Account on each Business Day in

immediately available funds by federal wire transfer all amounts on deposit in each Collection Account and, in the event Borrower shall have failed to do so, Lender shall have the right to so direct the Collection Bank on behalf of Borrower, to transfer to the Cash Management Account on each Business Day in immediately available funds by federal wire transfer, all amounts on deposit in each Collection Account up to the aggregate amount owed by Operating Company under the Operating Lease, including, without limitation, any damages pursuant to Section 12.2(a) thereof, and thereafter (as well as pending the determination of such damages) Operating Company shall not receive any monies from the Collection Account except to the extent they exceed the aggregate amount owed by Operating Company under the Operating Lease (or pending such determination, such aggregate amount estimated by Borrower and Mortgagee), including, without limitation, any damages pursuant to Section 12.2(a) thereof. Lender shall have the right to retain all amounts to be paid into the Cash Management Account in accordance with the first sentence of this Section 2.6.2(c) as collateral for the Loan and/or apply such amounts to the payment of the Debt.

(d) Borrower and its Affiliates shall (and Borrower shall cause Operating Company to) execute and deliver such documents, instruments, certificates, assignments and other writings, and do such other acts necessary or desirable, to evidence, preserve and/or protect, maintain and perfect Lender's security interest in the Collection Accounts.

**2.6.3 Cash Management Account.** (a) Lender or Servicer may establish and maintain (upon the occurrence of an Event of Default, or at such time as Lender or Servicer shall determine) a segregated Eligible Account (the "**Cash Management Account**") to be held by Servicer in trust for the benefit of Lender. The Cash Management Account shall be under the sole dominion and control of Lender (which may be exercised through Servicer). Lender (and its agents, including Servicer) shall have the sole right to make withdrawals from the Cash Management Account in accordance with the terms and conditions of this Agreement and the other Loan Documents, except as otherwise expressly provided in this Agreement or the other Loan Documents.

(b) Borrower hereby grants to Lender a first priority security interest in the Cash Management Account and all deposits at any time contained therein and the proceeds thereof and will take all actions necessary to maintain in favor of Lender a perfected first priority security interest in the Cash Management Account, including, without limitation, executing and filing UCC 1 Financing Statements and continuations thereof upon Lender's request therefor. All costs and expenses for establishing and maintaining the Cash Management Account (and any sub account thereof) shall be at Borrower's sole cost and expense.

(c) Borrower shall be responsible for payment of any federal, state or local income or other tax applicable to the interest or income earned on the Cash Management Account and any sub-account thereof. The Cash Management Account and any sub-account thereof shall be assigned the federal tax identification numbers of each Borrower set forth on Schedule I attached hereto. Borrower shall provide Lender, at any time upon request of Lender, with a Form W-8 or W-9 to evidence that Borrower is not subject to any back-up withholding under the Code.

(d) Upon the occurrence and during the continuance of an Event of Default, all funds on deposit in the Cash Management Account shall be applied by Lender in such order and priority as Lender shall determine.

(e) The insufficiency of funds on deposit in the Cash Management Account shall not relieve Borrower from the obligation to make any payments, as and when due pursuant to this Agreement and the other Loan Documents, and such obligations shall be separate and independent, and not conditioned on any event or circumstance whatsoever.

**Section 2.7. Intentionally Omitted.**

**Section 2.8. Permitted Mezzanine Loan.** Borrower shall have the one-time right, upon thirty (30) days prior written notice to Lender (the "**Permitted Mezzanine Loan Election**"), to obtain a loan ("**Permitted Mezzanine Loan**") secured by a pledge of the ownership interests in the indirect owners of Borrower (above the level of the Ninth Mezzanine Borrower) provided that the following conditions precedent are satisfied:

(a) no Default or Event of Default shall have occurred and remains uncured;

(b) as of the date the Permitted Mezzanine Loan is advanced, the Permitted Mezzanine Debt Loan-to-Value Ratio for the Properties subject to the Lien of the Mortgage is equal to or less than eighty percent (80%);

(c) as of the date the Permitted Mezzanine Loan is advanced, Permitted Mezzanine DSCR for the four-quarter period preceding such date for the Properties then subject to the Lien of the Mortgage(s) is equal to or greater than 1.2 to 1.0;

(d) the Permitted Mezzanine Loan shall be evidenced by one (1) Loan, that may be advanced in multiple draws provided that Borrower complies with the requirements set forth in this Section 2.8 with respect to each draw;

(e) the Permitted Mezzanine Loan shall be issued by one (1) lender (the "**Permitted Mezzanine Loan Lender**") which shall be an Institutional Lender; provided, however, that such single Lender that is an Institutional Lender may grant participations in such Permitted Mezzanine Loan or syndicate the Permitted Mezzanine Loan to multiple lenders so long as at least fifty-one percent (51%) of such participants and syndicate lenders are Institutional Lenders and, in addition, so long a single lender serves as agent with respect to all approvals, consents and other matters relating to the Permitted Mezzanine Loan;

(f) the Permitted Mezzanine Loan shall have the same maturity date as the Maturity Date under the Loan, or a maturity date extending beyond the Maturity Date under the Loan;

(g) the Permitted Mezzanine Loan (including all of the terms, provisions and conditions of the Permitted Mezzanine Loan, including, without limitation, the loan documents evidencing and securing the Permitted Mezzanine Loan ("**Permitted Mezzanine Loan Documents**")) shall be acceptable to Lender in its reasonable discretion (it being agreed that

with respect (only) to Lender's approval of the form of loan documents that loan documents in substantially the same form as the Ninth Mezzanine Loan Documents, appropriately modified to reflect subordination to the Mortgage Loan and the Mezzanine Loans still outstanding, shall be deemed to be acceptable);

(h) the Permitted Mezzanine Loan Lender shall enter into a co-lender or intercreditor agreement substantially on the standard CMSA form (or the form entered into by Lender and the Mezzanine Lenders in connection with the closing of the Loan) or in form and substance reasonably acceptable to Lender, acknowledging the subordination of the Permitted Mezzanine Loan in all respects to each of the Mezzanine Loans and the Mortgage Loan (and Lender agrees to enter into such co-lender or intercreditor agreement upon request);

(i) the Permitted Mezzanine Loan shall be a fixed rate loan, or a floating rate loan containing an interest rate that is capped at an amount that satisfies the debt service coverage ratio requirement set forth in subparagraph (c) above, with interest due and payable monthly (i.e., interest does not accrue) and such interest rate shall not be subject to adjustment except after an event of default (Borrower agreeing to cause the purchase of an interest rate cap to reflect the foregoing);

(j) if requested by Lender, Borrower shall execute amendments to the Loan Documents reasonably requested by Lender, to reflect the existence of such Permitted Mezzanine Loan, provided that any such amendments or agreements will not alter the payment terms of the Loan set forth in this Agreement or the other Loan Documents or materially and adversely affect Borrower or impose additional material obligations or liabilities upon Borrower;

(k) if required by Lender, Borrower shall deliver (i) Additional Insolvency Opinions and, if the Loan Documents are amended pursuant to Section 2.8(k), opinions regarding due execution and enforceability with respect to the Properties, Borrower, Mezzanine Borrowers, Holdings, Guarantor and their respective Affiliates and the Loan Documents, and such related matters as Lender shall reasonably require, and (ii) revised organizational documents for Borrower, which opinions and organizational documents shall be reasonably satisfactory to Lender;

(l) all necessary or appropriate governmental or other third party consents (including any approvals, notices, filings or other actions under or pursuant to the Gaming Laws or other Legal Requirements) required to be obtained or taken by Borrower, any Mezzanine Borrower or the Permitted Mezzanine Borrower for the execution, delivery and performance by the Permitted Mezzanine Borrower of the Permitted Mezzanine Loan shall have been obtained or taken; and

(m) all reasonable out-of-pocket costs and expenses (including reasonable attorneys' fees and expenses) incurred by Lender in connection with this Section 2.8 shall be paid by Borrower (but no approval or consent fees shall be payable in connection therewith).

### **III. CONDITIONS PRECEDENT**

**Section 3.1. Conditions Precedent to Closing.** The obligation of Lender to make the Loan hereunder is subject to the fulfillment by Borrower or waiver by Lender of the following conditions precedent no later than the Closing Date:

**3.1.1 Representations and Warranties; Compliance with Conditions.** The representations and warranties of Borrower contained in this Agreement and the other Loan Documents shall be true and correct in all material respects on and as of the Closing Date with the same effect as if made on and as of such date, and no Default or an Event of Default shall have occurred and be continuing; and Borrower shall be in compliance in all material respects with all terms and conditions set forth in this Agreement and in each other Loan Document on its part to be observed or performed.

**3.1.2 Loan Agreement and Note.** Lender shall have received a copy of this Agreement and the Note, in each case, duly executed and delivered on behalf of Borrower.

**3.1.3 Delivery of Loan Documents; Title Insurance; Reports; Leases.**

(a) **Mortgages, Assignments of Leases.** Lender shall have received from Borrower fully executed and acknowledged counterparts of the Mortgages and the Assignments of Leases and evidence that counterparts of the Mortgages and Assignments of Leases have been delivered to the title company for recording, in the reasonable judgment of Lender, so as to effectively create upon such recording valid and enforceable Liens upon each Individual Property, of the requisite priority, in favor of Lender (or such other trustee as may be required or desired under local law), subject only to the Permitted Encumbrances and such other Liens as are permitted pursuant to the Loan Documents. Lender shall have also received from Borrower fully executed counterparts of the other Loan Documents.

(b) **Title Insurance.** Lender shall have received Title Insurance Policies issued by a title company reasonably acceptable to Lender and dated as of the Closing Date, with reinsurance and direct access agreements reasonably acceptable to Lender. Such Title Insurance Policies shall (i) provide coverage in amounts reasonably satisfactory to Lender, (ii) insure Lender that the relevant Mortgage creates a valid lien on the Individual Property encumbered thereby of the requisite priority, free and clear of all exceptions from coverage other than Permitted Encumbrances and standard exceptions and exclusions from coverage (as modified by the terms of any endorsements), (iii) contain such endorsements and affirmative coverages as Lender may reasonably request, and (iv) name Lender as the insured. The Title Insurance Policies shall be assignable. Lender also shall have received evidence that all premiums in respect of such Title Insurance Policies have been paid.

(c) **Survey.** Lender shall have received a current Survey for each Individual Property, certified to the title company and Lender and their successors and assigns, in form and content reasonably satisfactory to Lender and prepared by a professional and properly licensed land surveyor satisfactory to Lender in accordance with the Accuracy Standards for ALTA/ACSM Land Title Surveys as adopted by ALTA, American Congress on Surveying & Mapping and National Society of Professional Surveyors in 2005. Each such Survey shall

reflect the same legal description contained in the Title Insurance Policies relating to such Individual Property and shall include, among other things, a metes and bounds description (or other description reasonably satisfactory to Lender) of the real property comprising part of such Individual Property reasonably satisfactory to Lender. The surveyor's seal shall be affixed to each Survey and the surveyor shall provide a certification for each Survey in form and substance reasonably acceptable to Lender.

(d) **Insurance.** Lender shall have received valid certificates of insurance for the Policies required hereunder, satisfactory to Lender in its reasonable discretion, and evidence of the payment of all Insurance Premiums payable for the existing policy period.

(e) **Environmental Reports.** Lender shall have received a Phase I environmental report (and, if recommended by the Phase I environmental report, a Phase II environmental report) in respect of each Individual Property, in each case satisfactory in form and substance to Lender. Lender acknowledges that the foregoing condition has been satisfied, provided that the underground storage tank at Harrah's Las Vegas shall be registered if and to the extent the same is required under Legal Requirements and Lender shall have received and reasonably approved the O&M Plans contemplated pursuant to the above-referenced environmental reports in respect of Flamingo Las Vegas and Harrah's Las Vegas.

(f) **Zoning.** With respect to each Individual Property, Lender shall have received, at Lender's option, either (i) (A) letters or other evidence with respect to each Individual Property from the appropriate municipal authorities (or other Persons) concerning applicable zoning and building laws, and (B) an ALTA 3.1 zoning endorsement for the applicable Title Insurance Policy or (ii) a zoning report, in each case in substance reasonably satisfactory to Lender.

(g) **Encumbrances.** Borrower shall have taken or caused to be taken such actions in such a manner so that Lender has a valid and perfected first priority Lien as of the Closing Date with respect to each Mortgage on the applicable Individual Property, subject only to applicable Permitted Encumbrances and such other Liens as are permitted pursuant to the Loan Documents, and Lender shall have received satisfactory evidence thereof.

**3.1.4 Related Documents.** Each additional document not specifically referenced herein, but relating to the transactions contemplated herein, shall be in form and substance reasonably satisfactory to Lender, and shall have been duly authorized, executed and delivered by all parties thereto and Lender shall have received and approved certified copies thereof.

**3.1.5 Delivery of Organizational Documents.** Borrower shall deliver or cause to be delivered to Lender copies certified by Borrower of all organizational documentation related to Borrower and each Loan Party and/or the formation, structure, existence, good standing and/or qualification to do business, as Lender may request in its sole discretion, including, without limitation, good standing certificates, qualifications to do business in the appropriate jurisdictions, resolutions authorizing the entering into of the Loan and incumbency certificates as may be requested by Lender.

**3.1.6 Opinions of Borrower's Counsel.** Lender shall have received opinions from Borrower's counsel with respect to non-consolidation and the due execution, authority, enforceability of the Loan Documents and such other matters as Lender may require, including True Lease Opinions, and all such opinions shall be in form, scope and substance satisfactory to Lender and Lender's counsel in their reasonable discretion.

**3.1.7 Budgets.** Borrower shall have delivered, and Lender shall have approved in its reasonable discretion, the Annual Budget for the current Fiscal Year.

**3.1.8 Basic Carrying Costs.** Borrower shall have paid all Basic Carrying Costs relating to the Properties which are in arrears, including, without limitation, (a) accrued but unpaid Insurance Premiums, (b) currently due Taxes (including any in arrears) and (c) currently due Other Charges, which amounts shall be funded with proceeds of the Loan.

**3.1.9 Completion of Proceedings.** All corporate and other proceedings taken or to be taken in connection with the transactions contemplated by this Agreement and other Loan Documents and all documents incidental thereto shall be satisfactory in form and substance to Lender, and Lender shall have received all such counterpart originals or certified copies of such documents as Lender may reasonably request.

**3.1.10 Payments.** All payments, deposits or escrows required to be made or established by Borrower under this Agreement, the Note and the other Loan Documents on or before the Closing Date shall have been paid.

**3.1.11 Windstorm Insurance Intercreditor Agreement; IP License.** The Windstorm Insurance Intercreditor Agreement and the IP License shall have been executed by all parties thereto and delivered to Lender.

**3.1.12 Transaction Costs.** Borrower shall have paid or reimbursed Lender for all title insurance premiums, recording and filing fees, costs of environmental reports, Physical Conditions Reports, appraisals and other reports, the reasonable fees and costs of Lender's counsel and all other third party out-of-pocket expenses reasonably incurred in connection with the origination of the Loan.

**3.1.13 Material Adverse Change.** There shall have been no material adverse change in the financial condition or business condition of Borrower, any Loan Party or the Properties since the date of the most recent financial statements delivered to Lender. The income and expenses of the Properties, the occupancy thereof, and all other features of the transaction shall be as represented to Lender without material adverse change. None of Borrower, any Loan Party or any of their respective constituent Persons shall be the subject of any bankruptcy, reorganization, or insolvency proceeding.

**3.1.14 Leases and Rent Roll.** Lender shall have received copies of all Leases and certified copies of any Leases as requested by Lender. Lender shall have received a current certified rent roll of the Properties, reasonably satisfactory in form and substance to Lender.

**3.1.15 Tax Lot.** Lender shall have received evidence that each Individual Property constitutes one (1) or more separate tax lots, which evidence shall be reasonably satisfactory in form and substance to Lender.

**3.1.16 Physical Conditions Reports.** Lender shall have received Physical Conditions Reports with respect to each Individual Property, which reports shall be reasonably satisfactory in form and substance to Lender. Lender acknowledges that the foregoing condition has been satisfied.

**3.1.17 Operating Leases; Operating Lease Guaranty.** Lender shall have received copies of the Operating Leases and each Operating Lease Guaranty which shall be reasonably satisfactory in form and substance to Lender.

**3.1.18 Appraisal.** Lender shall have received an appraisal of each Individual Property, which shall be reasonably satisfactory in form and substance to Lender.

**3.1.19 Financial Statements.** Lender shall have received a balance sheet with respect to each Individual Property for the two most recent Fiscal Years and statements of income and statements of cash flows with respect to each Individual Property for the three most recent Fiscal Years, each in form and substance reasonably satisfactory to Lender.

**3.1.20 Interest Rate Cap and Further Documents.** Lender or its counsel shall have received a fully executed Interest Rate Cap Agreement and a Collateral Assignment of Interest Rate Cap Agreement, together with an opinion of counsel in form and substance satisfactory to it, or shall have received reasonably satisfactory evidence that same will be delivered promptly following the Closing Date.

**3.1.21 Gaming Authority Approvals.** Borrower and Operating Company shall have obtained all Operating Permits from Gaming Authorities that are required in order to permit the closing of the Loan and the Mezzanine Loan (if required), or in connection with the Operating Lease or the Operating Lease Guaranty (if required), or to permit the conveyances of any of the Properties to Borrower (effected immediately prior hereto) and the operation of the Properties as currently conducted.

#### **IV. REPRESENTATIONS AND WARRANTIES**

**Section 4.1. Borrower Representations.** Borrower represents and warrants as of the date hereof and as of the Closing Date, except as disclosed in Schedule XXIII, that:

**4.1.1 Organization.** (a) Borrower has been duly organized and is validly existing and in good standing with requisite power and authority to own the Individual Properties and to transact the businesses in which it is (or each of them is) now engaged. Borrower is duly qualified to do business and is in good standing in each jurisdiction where it is required to be so qualified in connection with its properties, businesses and operations. Borrower possesses all rights, licenses, permits and authorizations (governmental or otherwise) necessary to entitle it to own its properties and to transact the businesses in which it is now engaged and the failure to possess which would reasonably be expected to have an Individual Material Adverse Effect. The

sole business of Borrower is the ownership of the Properties. The ownership interests of Borrower are as set forth on the organizational chart attached hereto as Schedule VIII.

(b) Each Operating Company has been duly organized and is validly existing and in good standing with requisite power and authority to own its properties or assets, including the Gaming Equipment, and to transact the businesses in which it is now engaged. Each Operating Company is duly qualified to do business and is in good standing in each jurisdiction where it is required to be so qualified in connection with its properties, businesses and operations, including the operation of the Casino Components at each Individual Property. Each Operating Company possesses all rights, licenses, permits and authorizations (governmental or otherwise) necessary to entitle it to operate the Properties currently operated by each such Operating Company and to transact the businesses in which it is now engaged and the failure to possess which would reasonably be expected to have an Individual Material Adverse Effect. The sole business of each Operating Company is the management and operation of the Individual Property or Properties currently operated by each such Operating Company. The ownership interests of each Operating Company are as set forth on the organizational chart attached hereto as Schedule VIII.

**4.1.2 Proceedings.** Borrower and Operating Company have taken all necessary action to authorize the execution, delivery and performance of this Agreement and the other Loan Documents. This Agreement and such other Loan Documents have been duly executed and delivered by or on behalf of Borrower and Operating Company, and constitute legal, valid and binding obligations of Borrower and Operating Company enforceable against Borrower and Operating Company (as applicable) in accordance with their respective terms, subject only to applicable bankruptcy, insolvency and similar laws affecting rights of creditors generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

**4.1.3 No Conflicts; Approvals.** (a) The execution, delivery and performance of this Agreement and the other Loan Documents by Borrower and Operating Company will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance (other than pursuant to the Loan Documents) upon any of the property or assets of Borrower or Operating Company pursuant to the terms of any indenture, mortgage, deed of trust, loan agreement, partnership agreement, management agreement, material lease or other material agreement or instrument to which Borrower or Operating Company (as applicable) is a party or by which any of Borrower's or Operating Company's property or assets is or are subject, nor will such action result in any violation of the provisions of any statute or any order, rule or regulation of any Governmental Authority having jurisdiction over Borrower or Operating Company any of Borrower's or Operating Company's properties or assets, and any consent, approval, authorization, order, registration or qualification of or with any such Governmental Authority required for the execution, delivery and performance by Borrower and Operating Company of this Agreement or any other Loan Documents (and the execution by Lender of the remedies provided in the Loan Documents, subject to the limitations thereon pursuant to applicable Gaming Laws) has been obtained and is in full force and effect.

(b) Borrower and Operating Company have obtained all consents and approvals, including all approvals of Governmental Authorities including Gaming Authorities, if required, in connection with the execution, delivery and performance of the Loan Documents (including by Lender and each Mezzanine Lender), the Operating Lease, the Operating Lease Guaranty, the IP License and the operation of the business currently conducted at any of the Properties, and shall promptly execute any and all such instruments and documents, deliver any certificates and do all such other acts or things required by the Gaming Authorities to maintain or keep current such approvals.

**4.1.4 Litigation.** There are no actions, suits or proceedings at law or in equity by or before any Governmental Authority or other agency now pending or, to Borrower's knowledge, threatened against or affecting any Loan Party, any Affiliates of Borrower, including Holdings, Operating Company or any Individual Property, or any prior owner or other holder of any interest in any Individual Property, which actions, suits or proceedings, if determined against any Loan Party, Holdings, Operating Company, any other Affiliate or any Individual Property, (taking into account the reasonably estimated damages payable in connection therewith), is reasonably likely to materially adversely affect the condition (financial or otherwise) or business of any Loan Party, any Affiliate of Borrower that is a direct or indirect owner of Borrower, including Holdings and Operating Company, or the condition or ownership of any Individual Property, or any of the material rights, interests and remedies of Lender under the Loan Documents (taken as a whole). None of the actions described on Schedule XXIV, if determined adversely to Borrower, Operating Company and/or any of their respective Affiliates, as applicable, would result in the payment by Borrower, Operating Company or such Affiliate of an amount in excess of Ten Million and no/100 Dollars (\$10,000,000.00), except to the extent covered by insurance.

**4.1.5 Agreements.** Neither Borrower nor Operating Company is in default, in any material respect, in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any material agreement or instrument to which it is a party or by which Borrower, Operating Company or any of the Properties are bound. Neither Borrower nor Operating Company has any material financial obligation under any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which Borrower or Operating Company is a party or by which Borrower, Operating Company or the Properties is otherwise bound, other than (a) obligations incurred in the ordinary course of the operation of the Properties as permitted pursuant to clause (t) of the definition of "Special Purpose Entity" set forth in Section 1.1 hereof, (b) obligations under the Loan Documents and the Operating Lease and in the case of Borrower, Permitted Indebtedness and, in the case of Operating Company, Permitted Indebtedness (Operating Company).

**4.1.6 Title.** (a) Borrower has good, marketable and insurable fee simple title to the real property comprising part of each Individual Property and that is owned in fee, and good title to the balance of such Individual Property, free and clear of all Liens whatsoever except the Permitted Encumbrances, such other Liens as are permitted pursuant to the Loan Documents and the Liens created by the Loan Documents. Borrower has good, marketable and insurable leasehold title to the real property comprising part of each Individual Property and that is ground leased to Borrower (pursuant to the provisions of a Ground Lease), and good title to

the balance of such Individual Property, free and clear of all Liens whatsoever except the Permitted Encumbrances, such other Liens as are permitted pursuant to the Loan Documents and the Liens created by the Loan Documents. Each Operating Company has good, marketable and insurable leasehold title to the real property demised to it, free and clear of all Liens whatsoever except the Permitted Encumbrances and such other Liens as are permitted pursuant to or created by the Loan Documents. To Borrower's best knowledge, the Permitted Encumbrances in the aggregate do not materially and adversely affect the value, operation or use of any of the Properties (as currently used) or Borrower's ability to repay the Loan. Each Mortgage, when properly recorded in the appropriate records, together with any Uniform Commercial Code financing statements required to be filed in connection therewith, will create (a) a valid, perfected first priority lien on each Individual Property, subject only to Permitted Encumbrances and the Liens created by the Loan Documents and (b) perfected security interests in and to, and perfected collateral assignments of, all personality (including the Leases), all in accordance with the terms thereof, in each case subject only to any applicable Permitted Encumbrances, such other Liens as are permitted pursuant to the Loan Documents and the Liens created by the Loan Documents. Except as insured over by the Title Insurance Policy to the reasonable satisfaction of Lender, there are no claims for payment for work, labor or materials affecting any of the Properties which are or may become a Lien prior to, or of equal priority with, the Liens created by the Loan Documents.

(b) Each Operating Company has good, marketable title to the Gaming Equipment, free and clear of all Liens whatsoever (except equipment financing and leasing arrangements entered into by Operating Company in the ordinary course of its business (subject to the limitations set forth in the definition of "Permitted Indebtedness (Operating Company)").

**4.1.7 Solvency.** Borrower has (a) not entered into the transaction or executed the Note, this Agreement or any other Loan Documents with the actual intent to hinder, delay or defraud any creditor and (b) received reasonably equivalent value in exchange for its obligations under such Loan Documents. The fair saleable value of Borrower's assets exceeds and will, immediately following the making of the Loan, exceed Borrower's total liabilities, including, without limitation, subordinated, unliquidated, disputed and contingent liabilities. The fair saleable value of Borrower's assets is and will, immediately following the making of the Loan, be greater than Borrower's probable liabilities, including the maximum amount of its contingent liabilities on its debts as such debts become absolute and matured. Borrower's assets do not and, immediately following the making of the Loan will not, constitute unreasonably small capital to carry out its business as conducted or as proposed to be conducted. Borrower does not intend to, and does not believe that it will, incur debt and liabilities (including contingent liabilities and other commitments) beyond its ability to pay such debt and liabilities as they mature (taking into account the timing and amounts of cash to be received by Borrower and the amounts to be payable on or in respect of obligations of Borrower). No petition in bankruptcy has been filed against Borrower, Operating Company, any Loan Party or any constituent Person, and none of Borrower, Operating Company, any Loan Party or any constituent Person has ever made an assignment for the benefit of creditors or taken advantage of any insolvency act for the benefit of debtors. None of Borrower, Operating Company, any Loan Party or any of their respective constituent Persons are contemplating either the filing of a petition by it under any state or federal bankruptcy or insolvency laws or the liquidation of all or a major portion of Borrower's,

Operating Company's or any Loan Party's assets or properties, and Borrower has no knowledge of any Person contemplating the filing of any such petition against it, Operating Company, any Loan Party or such constituent Persons.

**4.1.8 Full and Accurate Disclosure.** No statement of fact made by Borrower in this Agreement or in any of the other Loan Documents contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained herein or therein not misleading. There is no material fact presently known to Borrower which has not been disclosed to Lender which has, nor as far as Borrower can foresee, might reasonably be expected to have an Individual Material Adverse Effect or an Aggregate Material Adverse Effect.

**4.1.9 No Plan Assets.** Borrower is not an "employee benefit plan," as defined in Section 3(3) of ERISA, subject to Title I of ERISA, and none of the assets of Borrower constitutes or will constitute "plan assets" of one or more such plans within the meaning of 29 C.F.R. Section 2510.3-101. In addition, (a) Borrower is not a "governmental plan" within the meaning of Section 3(32) of ERISA and (b) transactions by or with Borrower are not subject to any state statute regulating investments of, or fiduciary obligations with respect to, governmental plans similar to the provisions of Section 406 of ERISA or Section 4975 of the Code currently in effect, which prohibit or otherwise restrict the transactions contemplated by this Loan Agreement.

**4.1.10 Compliance.** Except as disclosed in the zoning reports obtained by Lender in connection with the origination of the Loan, Borrower, Operating Company and each Individual Property (including the use thereof) comply in all material respects with all applicable Legal Requirements, including, without limitation, building and zoning ordinances and codes and Prescribed Laws. Borrower and Operating Company are not in default or violation of (i) any material order, writ, injunction, decree or demand of any Gaming Authority or (ii) any material order, writ, injunction, decree or demand of any other Governmental Authority. There has not been committed by Borrower, Operating Company or any other Person in occupancy of or involved with the operation or use of the Properties any act or omission affording the federal government or any other Governmental Authority the right of forfeiture as against any Individual Property or any part thereof or any monies paid in performance of Borrower's obligations under any of the Loan Documents.

**4.1.11 Financial Information.** All financial data, including, without limitation, the statements of cash flow and income and operating expense, that have been delivered to Lender in connection with the Loan, the Properties and each Loan Party (i) are true, complete and correct in all material respects, (ii) accurately represent in all material respects the financial condition of the Properties as of the date of such reports, and (iii) to the extent prepared or audited by an independent certified public accounting firm, have been prepared in accordance with GAAP throughout the periods covered, except as disclosed therein. Except for Permitted Encumbrances, Borrower does not have any contingent liabilities, liabilities for taxes, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments that are known to Borrower and reasonably likely to have a materially adverse effect on Borrower, any Loan Party, any Individual Property or the operation thereof as mixed-

use hotel and casino properties, except as referred to or reflected in said financial statements. Borrower has no Indebtedness other than the Loan. Except for Permitted Indebtedness (Operating Company), Operating Company does not have any Indebtedness or contingent liabilities, or due and unpaid liabilities for taxes, that are known to Borrower or Operating Company and reasonably likely to have a materially adverse effect on Borrower, any Loan Party, any Individual Property or the operation thereof as mixed-use hotel and casino properties, except as referred to or reflected in said financial statements. Since the date of such financial statements, there has been no material adverse change in the financial condition, operation or business of Borrower or Operating Company from that set forth in said financial statements.

**4.1.12 Condemnation.** No Condemnation or other similar proceeding has been commenced or, to Borrower's best knowledge, is threatened or contemplated with respect to all or any portion of any Individual Property or for the relocation of roadways providing access to any Individual Property.

**4.1.13 Federal Reserve Regulations.** No part of the proceeds of the Loan will be used for the purpose of purchasing or acquiring any "margin stock" within the meaning of Regulation U of the Board of Governors of the Federal Reserve System or for any other purpose which would be inconsistent with such Regulation U or any other Regulations of such Board of Governors, or for any purposes prohibited by Legal Requirements or by the terms and conditions of this Agreement or the other Loan Documents.

**4.1.14 Utilities and Public Access.** Each Individual Property has rights of access to public ways and is served by water, sewer, sanitary sewer and storm drain facilities adequate to service such Individual Property for its respective intended uses. All public utilities necessary or convenient to the full use and enjoyment of each Individual Property are located either in the public right-of-way abutting such Individual Property (which are connected so as to serve such Individual Property without passing over other property) or in recorded easements serving such Individual Property and such easements are set forth in and insured by the Title Insurance Policies. All roads necessary for the use of each Individual Property for their current respective purposes have been completed and dedicated to public use and accepted by all Governmental Authorities.

**4.1.15 Not a Foreign Person.** Borrower is not a "foreign person" within the meaning of §1445(f)(3) of the Code.

**4.1.16 Separate Lots.** Each Individual Property is comprised of one (1) or more parcels which constitute a separate tax lot or lots and does not constitute a portion of any other tax lot not a part of such Individual Property.

**4.1.17 Assessments.** There are no pending or, to Borrower's knowledge, proposed special or other assessments for public improvements or otherwise affecting any Individual Property, nor are there any contemplated improvements to any Individual Property that may result in such special or other assessments.

**4.1.18 Enforceability.** The Loan Documents are not subject to any right of rescission, set-off, counterclaim or defense by Borrower, any Affiliates of Borrower including

Holdings, Operating Company or Guarantor, including the defense of usury, nor would the operation of any of the terms of the Loan Documents, or the exercise of any right thereunder, render the Loan Documents unenforceable (subject to principles of equity and bankruptcy, insolvency and other laws generally affecting creditors' rights and the enforcement of debtors' obligations), and Borrower, any Affiliates of Borrower including Holdings, Operating Company and Guarantor have not asserted any right of rescission, set-off, counterclaim or defense with respect thereto.

**4.1.19 No Prior Assignment.** There are no prior assignments of the Leases (including the Operating Leases) or of the Rents (or any Revenue) due and payable or to become due and payable which are presently outstanding.

**4.1.20 Insurance.** Borrower (or Operating Company) has obtained and has delivered to Lender certified copies of all Policies reflecting the insurance coverages, amounts and other requirements set forth in this Agreement. No material claims have been made under any such Policies except such as have been disclosed to Lender, and no Person, including Borrower and Operating Company, has done, by act or omission, anything which would impair the coverage of any such Policies.

**4.1.21 Use of Properties.** Each Individual Property is used exclusively as a mixed-use hotel and casino operation, and other appurtenant and related uses.

**4.1.22 Gaming Licenses and Operating Permits.**

(a) Schedule IX contains a correct and complete list of all Gaming Licenses and other material licenses, certification and permits for each of the Properties (and the holder thereof).

(b) Borrower possesses all licenses, permits, franchises, authorizations, certificates, approvals and consents, including, without limitation, all certificates of occupancy, which are material to the ownership and use of each of the Properties, and Operating Company possesses all licenses, permits, franchises, authorizations, certificates, approvals and consents, including, without limitation, all environmental, liquor, Gaming Licenses, health and safety licenses of all Governmental Authorities which are material to the conduct of their business and the use, occupation and operation of each of the Properties and the failure to possess which would have an Individual Material Adverse Effect (collectively, "**Operating Permits**"); each such Operating Permit is and will be in full force and effect (unless, in the case of any Operating Permit, such Operating Permit is no longer necessary or advisable for the conduct of Borrower's or Operating Company's business); Borrower, Operating Company and each of its Affiliates are in compliance in all material respects with all such Operating Permits, and no event (including, without limitation, any material violation of any law, rule or regulation) has occurred which would be reasonably likely to lead to the revocation or termination of any such Operating Permit or the imposition of any material restriction thereon.

(c) Operating Company and each of its Affiliates possesses all Gaming Licenses which are material to the conduct of their business and the ownership, use, occupation

and operation of each of the Properties. Further, Borrower hereby represents and warrants as follows:

(i) Each Gaming License is in full force and effect (except for such Gaming Licenses as are no longer necessary or advisable for the conduct of Borrower's or Operating Company's business); Operating Company and each of its Affiliates, respective directors, members, managers, officers, key personnel and Persons holding a five percent (5%) or greater equity or economic interest directly or indirectly in Operating Company is in compliance in all material respects with all such Gaming Licenses (to the extent required by Legal Requirements), and no event (including, without limitation, any material violation of any Legal Requirements) has occurred which would be reasonably likely to lead to the revocation or termination of any such Gaming Licenses or the imposition of any restriction thereon;

(ii) Borrower has no reason to believe that it and Operating Company will not be able to maintain in effect all Gaming Licenses necessary for the lawful conduct of their business or operations wherever now conducted and as planned to be conducted, including the ownership and operation of the Casino Components, pursuant to all applicable Legal Requirements;

(iii) All Gaming Licenses are in full force and effect and have not been amended or otherwise modified, rescinded, revoked or assigned in any manner that would reasonably be expected to have an Individual Material Adverse Effect;

(iv) Neither Borrower nor Operating Company is in default in any material respect under, or in violation in any material respect of, any Gaming License (and no event has occurred, and no condition exists, which, with the giving of notice or passage of time or both, would constitute a default thereunder or violation thereof that has caused or would reasonably be expected to cause the loss of any Gaming License) (unless, in the case of any Gaming License, such Gaming License is no longer necessary or advisable for the conduct of Borrower's or Operating Company's business);

(v) Neither Borrower nor Operating Company has received any notice of any violation of Legal Requirements which has caused or would reasonably be expected to cause any Gaming License to be suspended, forfeited, modified in any manner that would have an Individual Material Adverse Effect, not renewed, rescinded or revoked (unless, in the case of any Gaming License, such Gaming License is no longer necessary or advisable for the conduct of Borrower's or Operating Company's business);

(vi) No condition exists or event has occurred which would reasonably be expected to result in the suspension, revocation, impairment, forfeiture, rescission or non-renewal of any Gaming License (unless, in the case of any Gaming License, such Gaming License is no longer necessary or advisable for the conduct of Borrower's or Operating Company's business); and

(vii) The continuation, validity and effectiveness of all Gaming Licenses will not be adversely affected by the transactions contemplated by this Agreement.

(d) There is no proceeding, investigation, or disciplinary action (including, without limitation, before any Gaming Authority, under any Gaming Law or under any Gaming License or other Operating Permit) pending or, to Borrower's knowledge, threatened against any of Borrower, Operating Company or, to Borrower's knowledge, any of their respective directors, members, managers, officers, key personnel or Persons holding a five percent (5%) or greater direct or indirect equity or economic interest in Borrower or Operating Company and that could reasonably be expected to have an Individual Material Adverse Effect.

(e) There is no proceeding (including, without limitation, before any Gaming Authority, under any Gaming Law or under any Gaming License or other Operating Permit) pending or, to Borrower's knowledge, threatened either (a) in connection with, or that seeks to restrain, enjoin, prevent the consummation of or otherwise challenge, any of the Loan Documents or any of the transactions contemplated therein, or (b) that could reasonably be expected to have an Individual Material Adverse Effect.

(f) Neither the execution, delivery or performance of any of the Loan Documents (nor the Securitization or any participations in the Loan, or the creation or sale of any of the Mezzanine Loans) will (i) require the consent of any Gaming Authority not heretofore obtained or (ii) allow or result in the imposition of any material penalty under, or the revocation or termination of, any Gaming License or any material impairment of the rights of the holder of any Gaming License.

**4.1.23 Flood Zone.** None of the Improvements on any Individual Property are located in an area as identified by the Federal Emergency Management Agency as an area having special flood hazards or, if so located, the flood insurance required pursuant to Section 6.1(a)(i) is in full force and effect with respect to each such Individual Property.

**4.1.24 Physical Condition.** Except as disclosed in the engineering reports obtained by Lender in connection with the Properties, to Borrower's knowledge, each Individual Property, including, without limitation, all buildings, improvements, parking facilities, sidewalks, storm drainage systems, roofs, plumbing systems, HVAC systems, fire protection systems, electrical systems, equipment, elevators, exterior sidings and doors, landscaping, irrigation systems and all structural components, are in good condition, order and repair in all material respects; there exists no structural or other material defects or damages in any Individual Property, whether latent or otherwise, and Borrower has not received notice from any insurance company or bonding company of any defects or inadequacies in any Individual Property, or any part thereof, which would adversely affect the insurability of the same or cause the imposition of extraordinary premiums or charges thereon or of any termination or threatened termination of any policy of insurance or bond.

**4.1.25 Boundaries.** To Borrower's knowledge, all of the improvements which were included in determining the appraised value of each Individual Property lie wholly within the boundaries and building restriction lines of such Individual Property. No improvements on adjoining properties encroach upon any Individual Property, and no easements or other encumbrances upon an Individual Property encroach upon any of the improvements, so as to

affect the value or marketability of the applicable Individual Property (except those which, in each case, are insured against by the Title Insurance Policy).

**4.1.26 Leases.** (a) The Operating Leases (together with any certificates and notifications entered into in connection therewith) and the Operating Lease Guaranty provided to Lender on the Closing Date are true, correct, accurate and complete copies of such documents and constitute the entire agreement between the parties thereto with respect to the subject matter therein and there are no written agreements modifying, amending, supplementing or restating such documents. Except as set forth on Schedule X, the Properties are not subject to any space Leases other than the Operating Lease and space Leases providing for occupancy of less than one hundred (100) square feet. Each Operating Lease is a “true lease” for all purposes of the Bankruptcy Code (including Section 365(d) and 502(b)(6) thereof) and applicable Legal Requirements, and no Operating Lease constitutes a financing or conveys any interest in the Properties other than the leasehold interest therein demised thereby. Borrower is the owner and lessor of landlord’s interest in the Operating Lease and the Operating Lease Guaranty. Currently, no Person has any possessory interest in any Individual Property or right to occupy the same except under and pursuant to the provisions of the Operating Lease, any other space Leases listed on Schedule X and, with respect to a right to occupancy only (and not a possessory interest), hotel guests. Each Operating Lease and Operating Lease Guaranty is in full force and effect and there are no material events of default thereunder by any party thereto and there are no conditions that, with the passage of time or the giving of notice, or both, would constitute such a default thereunder. No Rent under any Operating Lease has been paid more than one (1) month in advance of its due date and no Rents or charges under the Operating Lease have been waived, released or otherwise discharged or compromised. There has been no prior sale, transfer or assignment, hypothecation or pledge of any Operating Lease, Operating Lease Guaranty or of the Rents. No Operating Company has assigned the Operating Lease or sublet all or any portion of any Individual Property except pursuant to the Operating Lease and the terms hereof.

(b) The Properties are not subject to any space Leases other than the Leases described in Schedule X attached hereto. Operating Company is the owner and lessor of landlord’s interest in all such space Leases. No Person has any possessory interest in any Individual Property except under and pursuant to the provisions of the space Leases, and no Person has any right to occupy any portion of any Individual Property except under and pursuant to the provisions of the space Leases and hotel guests. The current space Leases are in full force and effect and, except as shown in Schedule X attached hereto, to Borrower’s knowledge, there are no material defaults thereunder by either party and there are no conditions that, with the passage of time or the giving of notice, or both, would constitute defaults thereunder. No Rent has been paid more than one (1) month in advance of its due date. Except as shown in Schedule X attached hereto, all work to be performed by Borrower (or Operating Company) under each space Lease has been performed as and to the extent required and has been accepted by the applicable tenant, and any payments, free rent, partial rent, rebate of rent or other payments, credits, allowances or abatements required to be given by Borrower (or Operating Company) to any tenant has already been received by such tenant. There has been no prior sale, transfer or assignment, hypothecation or pledge of any space Lease or of the Rents received therein which is still in effect. To Borrower’s knowledge, except as shown on Schedule X, no tenant listed on Schedule X has assigned its space Lease or sublet all or any portion of the premises demised

thereby, no such tenant holds its leased premises under assignment or sublease, nor does anyone except such tenant and its employees occupy such leased premises. No tenant under any space Lease has a right or option pursuant to such Lease or otherwise to purchase all or any part of the leased premises or the building of which the leased premises are a part. No tenant under any space Lease has any right or option for additional space in the Improvements except pursuant to such tenant's space Lease.

**4.1.27 Trade Name; Other Intellectual Property.** Each Borrower and Operating Company owns and possesses or licenses (as the case may be) all such patents, patent rights, trademarks, trademark rights, trade names, trade name rights, service marks, service mark rights, websites, domain names and copyrights, as more particularly described on Schedule XI, as Borrower and Operating Company consider necessary for the conduct of their respective businesses as now conducted without, individually or in the aggregate, any infringement upon rights of other Persons, in each case except as could not reasonably be expected to materially and adversely (i) affect the value of any of the Properties, (ii) impair the use and operation of any of the Properties or (iii) impair Borrower's and Operating Company's ability to pay their respective obligations (under the Loan Documents or the Operating Lease) in a timely manner.

**4.1.28 Principal Place of Business; State of Organization.** (a) Borrower's principal place of business as of the date hereof is the address set forth in Schedule I. Each Borrower is organized under the laws of the State of Delaware.

(b) Operating Company's principal place of business as of the date hereof is the address set forth in Schedule I. Each Operating Company is organized under the laws of the state of Delaware.

**4.1.29 Filing and Recording Taxes.** All transfer taxes, deed stamps, intangible taxes or other amounts in the nature of transfer taxes required to be paid by any Person under applicable Legal Requirements currently in effect in connection with the transfer of the Properties to Borrower have been paid. All mortgage, mortgage recording, stamp, intangible or other similar tax required to be paid by any Person under applicable Legal Requirements currently in effect in connection with the execution, delivery, recordation, filing, registration, perfection or enforcement of any of the Loan Documents, including, without limitation, the Mortgages, have been paid, and, under current Legal Requirements, each of the Mortgages is enforceable in accordance with their respective terms by Lender (or any subsequent holder thereof), subject to principles of equity and bankruptcy, insolvency and other laws generally applicable to creditors' rights and the enforcement of debtors' obligations.

**4.1.30 Special Purpose Entity/Separateness.** (a) Until the Debt has been paid in full, Borrower hereby represents, warrants and covenants that Borrower and each SPE Party is, shall be and shall continue to be a Special Purpose Entity.

(b) The representations, warranties and covenants set forth in Section 4.1.30(a) shall survive for so long as any amount remains payable to Lender under this Agreement or any other Loan Document.

(c) All of the assumptions made in the Insolvency Opinion, including, but not limited to, any exhibits attached thereto, are true and correct and any assumptions made in any subsequent non-consolidation opinion required to be delivered in connection with the Loan Documents (an “**Additional Insolvency Opinion**”), including, but not limited to, any exhibits attached thereto, will have been and shall be true and correct. Borrower has complied and will comply with, and Borrower shall cause each SPE Party and Operating Company to comply with, all of the assumptions made with respect to the SPE Parties and Operating Company in the Insolvency Opinion. The SPE Parties will have complied and will comply with all of the assumptions made with respect to the SPE Parties in any Additional Insolvency Opinion. Each entity with respect to which an assumption shall be made in any Additional Insolvency Opinion will have complied and will comply with all of the assumptions made with respect to it in any Additional Insolvency Opinion.

(d) All of the assumptions made in the True Lease Opinion, including, but not limited to, any exhibits attached thereto, are true and correct and any assumptions made in any subsequent true lease opinion required to be delivered in connection with the Loan Documents (an “**Additional True Lease Opinion**”), including, but not limited to, any exhibits attached thereto, will have been and shall be true and correct. Each SPE Party has complied and will comply with, and Borrower shall cause Operating Company to comply with, all of the assumptions made with respect to such SPE Parties and Operating Company in the True Lease Opinion. Each SPE Party will have complied and will comply with all of the assumptions made with respect to such SPE Parties in any Additional True Lease Opinion. Each entity with respect to which an assumption shall be made in any Additional True Lease Opinion will have complied and will comply with all of the assumptions made with respect to it in any Additional True Lease Opinion.

**4.1.31 Operating Leases; Operating Lease Guaranty.** The Operating Leases and the Operating Lease Guaranty are in full force and effect and there is no default thereunder by any party thereto and no event has occurred that, with the passage of time and/or the giving of notice would constitute a default thereunder.

**4.1.32 Illegal Activity.** No portion of any Individual Property has been or will be purchased with proceeds of any illegal activity.

**4.1.33 IP License.** The IP License in full force and effect and there is no default thereunder by any party thereto and no event has occurred that, with the passage of time and/or the giving of notice would constitute a default thereunder.

**4.1.34 Investment Company Act.** Borrower is not an “investment company” or a company “controlled” by an “investment company,” within the meaning of the Investment Company Act of 1940, as amended.

**4.1.35 Embargoed Person.** At all times throughout the term of the Loan, including after giving effect to any Transfers permitted pursuant to the Loan Documents, (a) none of the funds or other assets of Borrower, Holdings, Operating Company and Guarantor constitute property of, or are beneficially owned, directly or indirectly, by any person, entity or

government subject to trade restrictions under U.S. law, including, but not limited to, the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701 et seq., The Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., and any Executive Orders or regulations promulgated thereunder with the result that the investment in any Loan Party or Operating Company, as applicable (whether directly or indirectly), is prohibited by law or the Loan made by the Lender is in violation of law (“**Embargoed Person**”); (b) no Embargoed Person has any interest of any nature whatsoever in any Loan Party, Holdings or Operating Company, as applicable, with the result that the investment in any Loan Party, Holdings or Operating Company, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law; and (c) none of the funds of any Loan Party, Holdings or Operating Company, as applicable, have been derived from any unlawful activity with the result that the investment in Loan Party, Holdings or Operating Company, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law.

**4.1.36 Operating Lease Subsidiary.** Tahoe Propco, LLC is the owner of one hundred percent (100%) of the equity interests of Ground Lease Subsidiary; Ground Lease Subsidiary does not own any assets other than its interests in the Ground Lease and does not have any liabilities other than liabilities under the Ground Lease; Ground Lease Subsidiary does not engage in any business other than that related to its ownership of interests in the Ground Lease.

**4.1.37 Taxes including Gaming Taxes and Fees.** Borrower and each of its Affiliates, and Operating Company and each of its Affiliates, have filed or caused to be filed all Federal, state, local and foreign tax returns (including, without limitation, all reports relating to gaming taxes and fees to the Gaming Authorities) which are required to be filed by them, on or prior to the date hereof, other than tax returns in respect of taxes that (i) are not franchise, capital or income taxes, (ii) in the aggregate are not material and (iii) would not, if unpaid, result in the imposition of any material Lien on any property or assets of Borrower (or any of its Affiliates) or Operating Company (or any of its Affiliates). All such filed tax returns were, to Borrower’s knowledge, true, correct and complete when filed. Borrower and its Affiliates, and Operating Company and its Affiliates, have paid or caused to be paid all taxes shown to be due and payable on such filed returns or on any assessments received by them, other than any taxes or assessments the validity of which Borrower or such Affiliate (or Operating Company and its Affiliates, as applicable) is contesting in good faith by appropriate proceedings, and with respect to which Borrower or such Affiliates (or Operating Company and its Affiliates, as applicable) shall have set aside adequate reserves. Neither Borrower nor any of its Affiliates (nor Operating Company or any of its Affiliates, as applicable) has as of the date hereof requested or been granted any extension of time to file any Federal, state, local or foreign tax return. Neither Borrower nor Operating Company is party to (or has any obligation under) any tax sharing agreement.

**4.1.38 Ground Lease.** Borrower hereby represents and warrants to Lender the following with respect to the Ground Lease:

(a) **Recording; Modification.** A memorandum of the Ground Lease has been duly recorded. There have not been amendments or modifications to the terms of the Ground Lease since its recordation, with the exception of written instruments which have been recorded

or memoranda of record reflecting such amendments. The Ground Lease may not be modified or amended (or voluntarily terminated or surrendered by Borrower or Ground Lease Subsidiary, as applicable) without the prior written consent of Lender, except for amendments to effect the changes described on Schedule XXVII hereto and any other changes reasonably approved by Lender in connection with the mortgaging of the ground leased property to Lender.

(b) No Liens. Except for the Permitted Encumbrances, Ground Lease Subsidiary's interest in the Ground Lease is not subject to any Liens or encumbrances other than the ground lessor's related fee interest.

(c) Default. As of the date hereof, the Ground Lease is in full force and effect and no default has occurred under the Ground Lease and there is no existing condition which, but for the passage of time or the giving of notice, could result in a default under the terms of the Ground Lease.

(d) Estoppel. Borrower reasonably believes it can obtain a duly executed ground lease estoppel and an amendment to the Ground Lease from the ground lessor thereunder in form and substance reasonably satisfactory to Lender, taking into account applicable rating agency criteria, in exchange for a payment to such ground lessor in an amount of no more than Four Million and no/100 Dollars (\$4,000,000.00) and certain other concessions that would not have an Individual Material Adverse Effect on the properties known as "Harrah's Lake Tahoe", "Harvey's Lake Tahoe" or "Bill's Lake Tahoe".

**4.1.39 REA**. Each REA is in full force and effect and neither Borrower nor, to Borrower's actual knowledge, any other party to the REA, is in default in any material respect thereunder, and to the best of Borrower's actual knowledge, there are no conditions which, with the passage of time or the giving of notice, or both, would constitute a material default thereunder. To Borrower's actual knowledge, no REA has been modified, amended or supplemented except as disclosed in any Title Insurance Policy.

**4.1.40 Operation of Properties.**

(a) The operation, management and use of each Individual Property by Borrower and Operating Company is in compliance in all material respects with applicable Legal Requirements, including all applicable Gaming Laws, and all other federal, state, or local governmental authorities including, without limitation, those requirements relating to such Individual Property's physical structure and environment, except to the extent that non-compliance would not reasonably be expected to have an Individual Material Adverse Effect.

(b) The licenses, permits, and regulatory agreements, approvals and registrations relating to each Individual Property, including the Gaming Licenses, (i) may not be, and have not been, transferred to any location other than any Individual Property; have not been pledged as collateral security for any other loan or indebtedness; and are held free from restrictions or known conflicts that would materially impair the use or operation of any Individual Property as intended, (b) are in full force and effect and in good standing and (c) are not provisional, conditional or probationary in any manner.

(c) None of Borrower, Holdings, Guarantor or Operating Company is currently the subject of any proceeding by any Governmental Authority, and no notice of any violation has been received from a Governmental Authority that, in either case, would reasonably be expected to have an Individual Material Adverse Effect or an Aggregate Material Adverse Effect.

(d) None of Borrower or Operating Company has received a statement of charges or deficiencies and no penalty enforcement actions have been undertaken against any of them relating to any Individual Property by any Governmental Authority during the last three (3) calendar years which caused or could cause an Individual Material Adverse Effect or an Aggregate Material Adverse Effect.

(e) Each Operating Lease and Operating Lease Guaranty is in full force and effect and no party to either agreement has defaulted thereunder in any material respect.

(f) None of Borrower or Operating Company has pledged its receivables relating to any of the Properties as collateral security for any other loan or indebtedness.

**Section 4.2. Survival of Representations.** Borrower agrees that all of the representations and warranties of Borrower set forth in Section 4.1 and elsewhere in this Agreement and in the other Loan Documents shall survive for so long as any amount remains owing to Lender under this Agreement or any of the other Loan Documents by Borrower. All representations, warranties, covenants and agreements made in this Agreement or in the other Loan Documents by Borrower shall be deemed to have been relied upon by Lender notwithstanding any investigation heretofore or hereafter made by Lender or on its behalf.

## **V. BORROWER COVENANTS**

**Section 5.1. Affirmative Covenants.** From the date hereof and until payment and performance in full of all obligations of Borrower under the Loan Documents or the earlier release of the Liens of all Mortgages encumbering the Properties (and all related obligations) in accordance with the terms of this Agreement and the other Loan Documents, Borrower hereby covenants and agrees with Lender that:

**5.1.1 Existence; Compliance with Legal Requirements.** Borrower shall, and shall cause Operating Company to, do or cause to be done all things necessary to preserve, renew and keep in full force and effect their existence, rights, licenses, permits and franchises and comply with all Legal Requirements applicable to Borrower, Operating Company and the Properties, including, without limitation, Prescribed Laws. There shall never be committed by Borrower and Borrower shall not permit any other Person in occupancy of or involved with the operation or use of the Properties, including Operating Company, to commit any act or omission affording the federal government or any state or local government the right of forfeiture against any Individual Property or any part thereof or any monies paid in performance of Borrower's obligations under any of the Loan Documents. Borrower hereby covenants and agrees not to commit, permit or suffer to exist any act or omission affording such right of forfeiture. Borrower shall at all times maintain, preserve and protect all franchises and trade names and preserve all the remainder of its property used or useful in the conduct of its business and shall keep the Properties in good working order and repair. Borrower shall keep the Properties insured at all

times as (and in the amounts) provided elsewhere in this Agreement. Borrower shall operate any Individual Property that is the subject of the O&M Agreement in accordance with the terms and provisions thereof in all material respects. After prior notice to Lender, Borrower, at its own expense, may contest by appropriate legal proceeding promptly initiated and conducted in good faith and with due diligence, the validity of any Legal Requirement, the applicability of any Legal Requirement to Borrower or any Individual Property or any alleged violation of any Legal Requirement, provided that (i) no Event of Default has occurred and remains uncured; (ii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any applicable material instrument to which Borrower is subject and shall not constitute a default thereunder and such proceeding shall be conducted in accordance with all Legal Requirements; (iii) no Individual Property nor any material part thereof or interest therein will be in imminent danger of being sold, forfeited, terminated, cancelled or lost; (iv) Borrower shall promptly upon receipt of a final, non-appealable determination thereof comply with any such Legal Requirement determined to be valid or applicable or cure any violation of any such Legal Requirement; (v) such proceeding shall suspend the enforcement of the contested Legal Requirement against Borrower and any Individual Property; and (vi) Borrower shall furnish such security as may be required in the proceeding, or as may be reasonably requested by Lender, to insure compliance with such Legal Requirement, together with all interest and penalties payable in connection therewith. Lender may apply any such security, as necessary to cause compliance with such Legal Requirement at any time when, in the reasonable judgment of Lender, the validity, applicability or violation of such Legal Requirement is finally established or any Individual Property (or any part thereof or interest therein) shall be in imminent danger of being sold, forfeited, terminated, cancelled or lost.

**5.1.2 Taxes and Other Charges.** Borrower shall pay or cause to be paid all Taxes and Other Charges now or hereafter levied or assessed or imposed against the Properties or any part thereof as the same become due and payable; provided, however, Borrower's obligation to directly pay or cause to be paid Taxes shall be suspended for so long as Borrower complies with the terms and provisions of Section 7.2 hereof. Borrower will deliver to Lender receipts for payment or other evidence satisfactory to Lender that the Taxes and Other Charges have been so paid or are not then delinquent no later than the date on which the Taxes and/or Other Charges would otherwise be delinquent if not paid. Borrower shall furnish to Lender receipts for the payment of the Taxes and the Other Charges prior to the date the same shall become delinquent provided, however, Borrower is not required to furnish such receipts for payment of Taxes in the event that such Taxes have been paid by Lender pursuant to Section 7.2 hereof. Borrower shall not suffer and shall promptly cause to be paid and discharged any Lien or charge whatsoever which may be or become a Lien or charge against the Properties other than Permitted Encumbrances, and shall promptly pay or cause to be paid for all utility services provided to the Properties. After prior notice to Lender, Borrower, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any Taxes or Other Charges, provided that (a) no Default or Event of Default has occurred and remains uncured; (b) such proceeding shall be permitted under and be conducted in accordance with the provisions of any applicable material other instrument to which Borrower is subject and shall not constitute a default thereunder and such proceeding shall be conducted in accordance with all Legal Requirements; (c) no Individual Property nor any part thereof or interest therein will be in

imminent danger of being sold, forfeited, terminated, cancelled or lost; (d) Borrower shall promptly upon receipt of a final, non-appealable determination thereof pay the amount of any such Taxes or Other Charges, together with all costs, interest and penalties which may be payable in connection therewith; (e) such proceeding shall suspend the collection of such contested Taxes or Other Charges from the applicable Individual Property; and (f) Borrower shall furnish such security as may be required in the proceeding, or as may be reasonably requested by Lender, to insure the payment of any such Taxes or Other Charges, together with all interest and penalties thereon. Lender may pay over any such cash deposit or part thereof held by Lender to the claimant entitled thereto at any time when, in the judgment of Lender, the entitlement of such claimant is established or any Individual Property (or part thereof or interest therein) shall be in danger of being sold, forfeited, terminated, cancelled or lost or there shall be any danger of the Lien of any Mortgage being primed by any related Lien.

**5.1.3 Litigation.** Borrower shall give prompt notice to Lender of any litigation or governmental proceedings pending or, to Borrower's knowledge, threatened against Borrower, Operating Company, Holdings or Guarantor which, in any such case, might materially adversely affect Borrower's, Operating Company's, Holdings's or Guarantor's condition (financial or otherwise) or business or any Individual Property. Borrower shall not, without the prior written consent of Lender (which may be furnished or withheld at its sole and absolute discretion), give its consent or approval to the settlement of any claim against Borrower, other than a fully insured third party claim, in any amount greater than Five Million and no/100 Dollars (\$5,000,000.00).

**5.1.4 Access to Properties.** Borrower shall permit agents, representatives and employees of Lender and any Noteholder, and prospective purchasers of any Note or any interest therein, to inspect the Properties or any part thereof at reasonable hours upon reasonable advance notice, and Borrower shall cause Operating Company to permit such access by Lender, in each case subject to the rights of tenants under Leases and Hotel guests.

**5.1.5 Notice of Default.** Borrower shall promptly advise Lender of any material Default or Event of Default of which Borrower has knowledge.

**5.1.6 Cooperate in Legal Proceedings.** Borrower shall cooperate fully with Lender with respect to any proceedings before any court, board or other Governmental Authority which may in any way affect the rights of Lender hereunder or any rights obtained by Lender under any of the other Loan Documents and, in connection therewith, permit Lender, at its election, to participate in any such proceedings.

**5.1.7 Perform Loan Documents.** Borrower shall observe, perform and satisfy all the terms, provisions, covenants and conditions of, and shall pay when due all costs, fees and expenses to the extent required under the Loan Documents executed and delivered by, or applicable to, Borrower.

**5.1.8 Award and Insurance Benefits.** Borrower shall cooperate with Lender in obtaining for Lender the benefits of any Awards or Insurance Proceeds lawfully or equitably payable in connection with any Individual Property, and Lender shall be reimbursed for any

actual, reasonable out-of-pocket expenses incurred in connection therewith (including actual, reasonable out-of-pocket attorneys' fees and disbursements, and, if reasonably required, the payment by Borrower of the expense of an appraisal on behalf of Lender in case of Casualty or Condemnation affecting any Individual Property or any part thereof) out of such Insurance Proceeds.

**5.1.9 Further Assurances.** Borrower shall and shall cause Guarantor and Operating Company to, at Borrower's sole cost and expense:

(a) furnish to Lender all instruments, documents, boundary surveys, footing or foundation surveys, certificates, plans and specifications, appraisals, title and other insurance reports and agreements, and each and every other document, certificate, agreement and instrument, in each case in such party's possession, not subject to confidentiality restrictions barring the delivery of such materials, and which are either required to be furnished by Borrower or Operating Company pursuant to the terms of the Loan Documents or which are reasonably requested by Lender in connection therewith;

(b) execute and deliver to Lender such documents, instruments, certificates, assignments and other writings, and do such other acts necessary or desirable, to evidence, preserve and/or protect the collateral at any time securing or intended to secure the obligations of Borrower under the Loan Documents, as Lender may reasonably require; and

(c) do and execute all and such further lawful and reasonable acts, conveyances and assurances for the better and more effective carrying out of the intents and purposes of this Agreement and the other Loan Documents, as Lender shall reasonably require from time to time.

**5.1.10 Supplemental Mortgage Affidavits.** Borrower represents that it has paid all state, county and municipal recording and all other taxes imposed upon the execution and recordation of the Mortgages. If at any time Lender determines, based on applicable law, that Lender is not being afforded the maximum amount of security available from any one or more of the Properties as a direct or indirect result of applicable taxes not having been paid with respect to any Individual Property, Borrower agrees that Borrower will execute, acknowledge and deliver to Lender, immediately upon Lender's request, supplemental affidavits increasing the amount of the Debt attributable to any such Individual Property (as set forth as the Allocated Loan Amount on Schedule II annexed hereto) for which all applicable taxes have been paid to an amount determined by Lender to be equal to the lesser of (a) the greater of the fair market value of the applicable Individual Property (i) as of the date hereof and (ii) as of the date such supplemental affidavits are to be delivered to Lender, and (b) the amount of the Debt attributable to any such Individual Property (as set forth as the Allocated Loan Amount on Schedule II annexed hereto), and Borrower shall, on demand, pay any additional taxes.

**5.1.11 Financial Reporting.** (a) Borrower will keep or will cause to be kept and maintained on a Fiscal Year basis, in accordance with GAAP (or such other accounting basis acceptable to Lender), books, records and accounts reflecting all of the financial affairs of Borrower and all items of income and expense in connection with the operation on an individual

basis of the Properties. Lender (at Lender's sole cost and expense) shall have the right from time to time at all times during normal business hours upon reasonable notice to examine the books, records and accounts of Borrower at the office of Borrower or any other Person maintaining such books, records and accounts and to make such copies or extracts thereof as Lender shall desire. After the occurrence and during the continuance of an Event of Default, Borrower shall pay any costs and expenses incurred by Lender to examine Borrower's or to the extent permitted under the Operating Lease, Operating Company's accounting records with respect to the Properties, as Lender shall determine to be necessary or appropriate in the protection of Lender's interest.

(b) Borrower will furnish to Lender annually, by no later than April 30, 2009, and thereafter within no more than one hundred twenty (120) days following the end of each Fiscal Year of Borrower, a complete copy of the annual financial statements of the Operating Company and Borrower (and of no other entity or Person), audited by a "Big Four" accounting firm or other independent certified public accountant acceptable to Lender in accordance with GAAP (or such other accounting basis acceptable to Lender) covering the Properties on a combined basis for such Fiscal Year (and no other Persons, Properties or assets) and containing statements of profit and loss for the Operating Companies, Borrower and the Properties (on a combined basis) and a balance sheet for the Operating Company, Borrower and the Properties (on a combined basis), in each case showing no other assets than the Properties (and the interests of Operating Company and Borrower therein). In addition, Borrower will furnish to Lender by no later than April 30, 2008 (i) a "balance sheet only audit" prepared by a "Big Four" accounting firm or other independent certified public accountant acceptable to Lender (for the Fiscal Year ending December 31, 2007) and (ii) a complete copy of annual financial statements for the Operating Company and Borrower prepared in accordance with GAAP (or such other accounting basis acceptable to Lender), covering the Operating Companies, each Borrower and the Properties on a combined basis for such Fiscal Year (ending December 31, 2007) and containing statements of profit and loss for the Operating Companies, each Borrower and the Properties (in each case, on a combined basis), and a balance sheet for the Operating Companies, Borrowers and the Properties (in each case, on a combined basis). All such statements (including statements for the Fiscal Year ending December 31, 2007, and thereafter for all statements provided yearly to Lender) shall set forth the financial condition and the results of operations for the Properties for such Fiscal Year, and shall include, but not be limited to, amounts representing Borrower's reasonable and good faith determination of aggregate annual EBITDAR from all of the Properties and capital expenditures (allocated between maintenance and growth) at the Properties (it being acknowledged that Borrower's statement of EBITDAR pursuant to the above provisions of this sentence and the balance of this Section 5.1.11 shall not be binding on Lender and shall be subject to Lender's reasonable review). All such statements (including statements for the Fiscal Year ending December 31, 2007, and thereafter for all statements provided yearly to Lender) shall also set forth unaudited schedules for each Individual Property, detailing the statements of profit and loss and a balance sheet for each Individual Property, as well as gross revenues, gross hotel and casino revenues, EBITDAR and capital expenditures (allocated between maintenance and growth). The annual financial statements, as described above, shall be accompanied by (1) a comparison of the budgeted income and expenses and the actual income and expenses for the prior Fiscal Year, (2) in the case of any financial statements for Fiscal Year 2008 and thereafter, an unqualified opinion of a "Big Four" accounting firm or other independent certified public accountant reasonably acceptable to Lender, (3) room rate reports and RevPAR

calculations, and (4) an Officer's Certificate certifying (A) that each annual financial statement presents fairly the financial condition and the results of operations of the Operating Companies, Borrowers and the Properties being reported upon, (B) that such financial statements have been prepared in accordance with GAAP (or such other accounting basis acceptable to Lender) and (C) as of the date thereof whether there exists an event or circumstance which constitutes a Default or Event of Default, and if such Default or Event of Default exists, the nature thereof, the period of time it has existed and the action then being taken to remedy the same. Any audits performed by Borrower (and any audited materials and other information provided to Lender, as required hereunder in order for Borrower to comply with the requirements of this subparagraph (b)) may be performed with respect to the Properties on a "combining basis" (so that a single audit of the Properties, rather than individual audits of each of the separate Properties, may be performed and provided).

(c) Borrower will furnish, or cause to be furnished, to Lender on or before sixty (60) days after the end of each fiscal quarter the following items, accompanied by an Officer's Certificate stating that such items fairly present the financial condition and results of the Operating Company, Borrower and the Properties, subject to normal year-end adjustments, as applicable: (i) quarterly and year-to-date operating statements (including Capital Expenditures) noting such information as is necessary and sufficient to fairly represent the financial position and results of operation of the Properties during such quarter, and containing a comparison of budgeted income and expenses and the actual income and expenses together with a detailed explanation of any variances of ten percent (10%) or more between budgeted and actual amounts for such periods, all in form reasonably satisfactory to Lender; and (ii) a calculation reflecting the Debt Service Coverage Ratio, gross revenues, gross hotel and casino revenues, EBITDAR and capital expenditures (allocated between maintenance and growth), in each case for the immediately preceding twelve (12) month period as of the last day of such quarter (it being acknowledged that Borrower's statement of EBITDAR pursuant to the above provisions of this sentence and the balance of this Section 5.1.11 shall not be binding on Lender and shall be subject to Lender's reasonable review). Borrower shall provide the statements and calculations required hereunder on both a "combined basis" for all Properties and on an Individual Property-by-Individual Property basis. In addition, such Officer's Certificate shall also state that the representations and warranties of Borrower set forth in Section 4.1.30 are true and correct as of the date of such certificate and that there are no trade payables outstanding for more than ninety (90) days. In addition, prior to a Securitization or Syndication, Borrower shall be obligated to provide the statements and calculations, as well as the Officer's Certificate, described in this subparagraph (c) to Lender on a monthly basis (such requirements to be modified as appropriate to reflect the fact that the information shall be required to be provided monthly (e.g., monthly rent rolls, monthly and year-to-date operating statements, a calculation reflecting the Debt Service Coverage Ratio for the immediately preceding twelve (12) month period as of the last day of such month), in each case within no more than thirty (30) days following the end of each calendar month.

(d) For the partial year period commencing on the date hereof, and for each Fiscal Year thereafter, Borrower shall submit to Lender for informational purposes only an Annual Budget not later than the commencement of such period or Fiscal Year in form reasonably satisfactory to Lender.

(e) Intentionally Omitted.

(f) If, at the time one or more Disclosure Documents are being prepared for a public Securitization, Lender expects that Borrower alone or Borrower and one or more Affiliates of Borrower collectively, or the Properties and Related Properties collectively, will be a “**Significant Obligor**”, as that term is defined in Item 1101(k) of Regulation AB (as defined below), Borrower shall furnish to Lender upon request (i) the selected financial data or, if applicable, net operating income, required under Item 1112(b)(1) of Regulation AB, if Lender expects that the principal amount of the Loan together with any other loans made to an Affiliate of Borrower or secured by a Related Property, that is included in a Securitization with the Loan (each, a “**Related Loan**”) as of the cut-off date for such Securitization may, or if the principal amount of the Loan together with any Related Loans as of the cut-off date for such Securitization and at any time during which the Loan and any Related Loans are included in a Securitization does, equal or exceed ten percent (10%) (but less than twenty percent (20%)) of the aggregate principal amount of all mortgage loans included or expected to be included, as applicable, in the Securitization or (ii) the financial statements required under Item 1112(b)(2) of Regulation AB, if Lender expects that the principal amount of the Loan together with any Related Loans as of the cut-off date for such Securitization may, or if the principal amount of the Loan together with any Related Loans as of the cut-off date for such Securitization and at any time during which the Loan and any Related Loans are included in a Securitization does, equal or exceed twenty percent (20%) of the aggregate principal amount of all mortgage loans included or expected to be included, as applicable, in the Securitization. Such financial data or financial statements shall be furnished to Lender (A) within ten (10) Business Days after written notice from Lender in connection with the preparation of Disclosure Documents for the Securitization, (B) not later than thirty (30) days after the end of each fiscal quarter of Borrower and (C) not later than sixty (60) days after the end of each fiscal year of Borrower; provided, however, that Borrower shall not be obligated to furnish financial data or financial statements pursuant to clauses (B) or (C) of this sentence with respect to any period for which a filing pursuant to the Exchange Act in connection with or relating to the Securitization (an “**Exchange Act Filing**”) is not required. If requested by Lender, in writing, Borrower shall use commercially reasonable efforts to furnish to Lender financial data and/or financial statements for any tenant of any of the Properties (other than a tenant that is a reporting company under the Exchange Act) if, in connection with a Securitization, Lender expects there to be, with respect to such tenant or group of affiliated tenants, a concentration within all of the mortgage loans included or expected to be included, as applicable, in the Securitization such that such tenant or group of affiliated tenants would constitute a Significant Obligor. “**Related Property**” shall mean a parcel of real property, together with improvements thereon and personal property related thereto, that is “related”, within the meaning of the definition of Significant Obligor, to any of the Properties. “**Regulation AB**” shall mean Regulation AB under the Securities Act and the Exchange Act, as such Regulation may be amended from time to time.

(g) All financial data and financial statements provided by Borrower and Operating Company hereunder pursuant to Section 5.1.11(f) shall be prepared in accordance with GAAP, and all such financial statements shall meet the requirements of Regulation AB, Regulation S-X, Regulation S-K to the extent applicable and any other applicable legal requirements. All financial statements referred to in clause (ii) of Section 5.1.11(f) shall be

audited by independent accountants of Borrower reasonably acceptable to Lender in accordance with Regulation AB, Regulation S-X, Regulation S-K to the extent applicable and all other applicable legal requirements, shall be accompanied by the manually executed report of the independent accountants thereon, which report shall meet the requirements of Regulation AB, Regulation S-X, Regulation S-K to the extent applicable and all other applicable legal requirements, and shall be further accompanied by a manually executed written consent of the independent accountants, in form and substance reasonably acceptable to Lender, to the inclusion of such financial statements in any Disclosure Document and any Exchange Act Filing and to the use of the name of such independent accountants and the reference to such independent accountants as “experts” in any Disclosure Document and Exchange Act Filing, all of which shall be provided at the same time as the related financial statements are required to be provided, in each case if applicable (i.e., in the case of a public securitization). All financial data and financial statements (audited or unaudited) provided by Borrower under this Section 5.1.11(g) shall be accompanied by an Officer’s Certificate which shall state that such financial statements meet the requirements set forth in the first sentence of this Section 5.1.11(g) to the extent applicable.

(h) If requested by Lender, Borrower shall provide Lender, promptly upon request, with any other or additional financial statements, or financial, statistical or operating information, as Lender shall reasonably determine to be required pursuant to Regulation AB, Regulation S-X, Regulation S-K or any amendment, modification or replacement thereto or other legal requirements in connection with any Disclosure Document or any Exchange Act Filing or as shall otherwise be reasonably requested by the Lender.

(i) In the event Lender reasonably determines, in connection with a Securitization, that the financial data and financial statements required in order to comply with Regulation AB, Regulation S-X, Regulation S-K or any amendment, modification or replacement thereto or other legal requirements are other than as provided herein, then notwithstanding the provisions of Sections 5.1.11(f) and (g), Lender may request, and Borrower shall promptly provide, such other financial statements as Lender determines to be necessary or appropriate for such compliance.

(j) Any reports, statements or other information required to be delivered under this Agreement shall be delivered (i) in paper form, and (ii) if requested by Lender and within the capabilities of Borrower’s data systems without change or modification thereto, in electronic form and prepared using a Microsoft Word for Windows or WordPerfect for Windows files (which files may be prepared using a spreadsheet program and saved as word processing files). Borrower agrees that Lender may disclose information regarding any of the Properties, Borrower and Operating Company that is provided to Lender pursuant to this Section in connection with the Securitization to such parties reasonably requesting such information in connection with such Securitization.

**5.1.12 Business and Operations.** Borrower will, and will cause Operating Company to, continue to engage in the businesses presently conducted by it as and to the extent the same are necessary for the ownership, maintenance, management and operation of the Properties. Borrower will and will cause Operating Company to qualify to do business and will

remain in good standing under the laws of each jurisdiction as and to the extent the same are required for the ownership, maintenance, management and operation of the Properties.

**5.1.13 Title to the Properties.** Borrower will warrant and defend (a) the title to each Individual Property and every part thereof, subject only to Liens permitted hereunder (including Permitted Encumbrances) and (b) the validity and priority of the Liens of the Mortgages and the Assignments of Leases, subject only to Liens permitted hereunder (including Permitted Encumbrances), in each case against the claims of all Persons whomsoever. Borrower shall reimburse Lender for any actual out-of-pocket losses, costs, damages or expenses (including reasonable attorneys' fees and court costs) incurred by Lender if an interest in any Individual Property, other than as permitted hereunder, is claimed by another Person.

**5.1.14 Costs of Enforcement.** In the event (a) that any Mortgage encumbering any Individual Property is foreclosed in whole or in part or that any such Mortgage is put into the hands of an attorney for collection, suit, action or foreclosure, (b) of the foreclosure of any mortgage prior to or subsequent to any Mortgage encumbering any Individual Property in which proceeding Lender is made a party, or (c) of the bankruptcy, insolvency, rehabilitation or other similar proceeding in respect of Borrower or Operating Company or an assignment by Borrower or Operating Company for the benefit of its creditors, Borrower, its successors or assigns, shall be chargeable with and agrees to pay all reasonable out-of-pocket costs of collection and defense, including reasonable out-of-pocket attorneys' fees and costs, incurred by Lender or Borrower in connection therewith and in connection with any appellate proceeding or post-judgment action involved therein, together with all required service or use taxes.

**5.1.15 Estoppel Statement.** (a) After request by Lender, Borrower shall within ten (10) Business Days (but, provided there exists no Default or Event of Default, no more often than twice during the course of each Fiscal Year of Borrower) furnish Lender with a statement, duly acknowledged and certified, setting forth (i) the original principal amount of the Loan, (ii) the unpaid principal amount of the Loan, (iii) the Interest Rate of the Loan, (iv) the date installments of interest and/or principal were last paid, (v) any offsets or defenses to the payment of the Debt, if any, and (vi) that the Note, this Agreement, the Mortgages and the other Loan Documents are valid, legal and binding obligations and have not been modified or if modified, giving particulars of such modification.

(b) Borrower shall exercise reasonable best efforts to deliver to Lender upon request, tenant estoppel certificates from each space tenant leasing space at the Properties, and shall exercise reasonable best efforts to deliver an estoppel certificate from each ground lessor, each in form and substance reasonably satisfactory to Lender, provided that Borrower shall not be required to deliver such certificates more frequently than two (2) times in any calendar year.

(c) After request by Borrower, but not more than twice during the course of each year, Lender shall furnish Borrower with a statement setting forth (i) the original principal amount of the Loan, (ii) the unpaid principal amount of the Loan, (iii) the Interest Rate of the Loan, (iv) the date installments of interest and/or principal were last paid, and (v) that the Loan Documents have not been modified or if modified, giving particulars of such modification.

**5.1.16 Loan Proceeds.** Borrower shall use the proceeds of the Loan received by it on the Closing Date only for the purposes set forth in Section 2.1.4.

**5.1.17 Performance by Borrower.** Borrower shall in a timely manner observe, perform and fulfill each and every covenant, term and provision of each Loan Document executed and delivered by, or applicable to, Borrower, and shall not enter into or otherwise suffer or permit any amendment, waiver, supplement, termination or other modification of any Loan Document executed and delivered by, or applicable to, Borrower without the prior consent of Lender.

**5.1.18 Confirmation of Representations.** Borrower shall deliver, in connection with any Securitization, (a) one or more Officer's Certificates certifying as to the accuracy of all representations made by Borrower in the Loan Documents as of the date of the closing of such Securitization in all relevant jurisdictions, and (b) certificates of the relevant Governmental Authorities in all relevant jurisdictions indicating the good standing and qualification of Borrower and Holdings as of the date of the Securitization.

**5.1.19 No Joint Assessment.** Borrower shall not suffer, permit or initiate the joint assessment of any Individual Property (a) with any other real property constituting a tax lot separate from such Individual Property, and (b) which constitutes real property with any portion of such Individual Property which may be deemed to constitute personal property, or any other procedure whereby the lien of any taxes which may be levied against such personal property shall be assessed or levied or charged to such real property portion of the Individual Property, except as required by Legal Requirements.

**5.1.20 Leasing Matters.** (a) Borrower shall not (and shall cause Guarantor (Operating Lease) not to), without the prior written consent of Lender (and, if a Securitization shall have occurred, Borrower shall have obtained and delivered to Lender a Rating Agency Confirmation) restate, materially modify, materially amend or materially supplement (or permit the restatement, material modification, amendment or supplement of) any Operating Lease or Operating Lease Guaranty (provided, that any modification, amendment or supplement affecting any of the economic terms of any Operating Lease or any of the terms of the Operating Lease Guaranty shall be deemed to be material for purposes hereof), terminate or accept the surrender (or permit the termination or surrender) of any Operating Lease or Operating Lease Guaranty, or release or materially waive (or permit the release or material waiver of) the Operating Company or Guarantor (Operating Lease) from the performance or observance of any obligation or condition under the Operating Leases or Operating Lease Guaranty. In connection with a material modification, Lender may request, and in such event, Borrower shall not effect such modification without, an Additional True Lease Opinion in form and substance reasonably satisfactory to Lender issued by Borrower's counsel (at Borrower's expense). Borrower shall not permit the prepayment of any rents under the Operating Leases for more than one (1) month prior to the due date thereof. Notwithstanding the foregoing, Lender's consent shall not be required in connection with any modification, amendment or waiver of any provision of the Operating Lease as may be reasonably necessary to comply with the requirements of this Agreement or any other Loan Document or that makes the provisions of the Operating Lease consistent with the provisions of this Agreement or any other Loan Document. Notwithstanding

anything contained in this Section 5.1.20(a) to the contrary, (x) Lender's consent to any amendment, modification or supplement of the Operating Lease (or any new Operating Lease) or the Operating Lease Guaranty may also be conditioned on the delivery by Borrower, upon the reasonable request of Lender, of an Additional Insolvency Opinion and/or an Additional True Lease Opinion acceptable to Lender (and, if a Securitization shall have occurred, acceptable to the Rating Agencies), and (y) Lender's consent to any assignment of any Operating Lease or Operating Lease Guaranty (or of any interest therein) or any material amendment, material modification or material supplement of any Operating Lease shall also be conditioned on the delivery by Borrower, upon the reasonable request of Lender, of an Additional Insolvency Opinion and an Additional True Lease Opinion acceptable to Lender (and, if a Securitization shall have occurred, acceptable to the Rating Agencies).

(b) Borrower shall not permit (or consent to) an assignment by any Operating Company of any such Operating Company's interest(s) under any Operating Lease and Borrower shall not assign any of its interests in the Operating Lease Guaranty without, in each case, Lender's prior written consent (and, if a Securitization shall have occurred, at Lender's request, without Borrower providing to Lender a Rating Agency Confirmation and an Additional True Lease Opinion).

(c) All space Leases and all renewals of space Leases executed after the date hereof entered into by Operating Company shall (i) provide for rental rates, rent credits and free rent periods comparable to existing local market rates for comparable properties, (ii) be on commercially reasonable terms, (iii) provide that such Lease is subordinate to the Mortgage encumbering the Individual Property in question and that the lessee will attorn to Lender and any purchaser at a foreclosure sale; (iv) not contain any terms which would materially adversely affect Lender's rights under the Loan Documents; (v) not grant to the Tenants thereunder any option or right to purchase the applicable Individual Property (or any portion thereof); and (v) in the case of Major Leases, have initial terms less than twenty (20) consecutive years, in each case (unless otherwise consented to by Lender pursuant to clause (d) below).

(d) (i) Any Major Lease entered into by Operating Company with respect to an Individual Property executed after the date hereof (and any renewal of any Major Lease with respect to an Individual Property), and any space Lease or space Lease renewal proposed to be entered into by Operating Company after the date hereof and that does not meet the criteria set forth in Sections 5.1.20(a) and subparagraph (c) above, shall be subject to the prior written approval of Lender, which approval shall not be unreasonably withheld, conditioned or delayed. Borrower shall not terminate or accept the surrender of (and shall not permit Operating Company to terminate or accept the surrender of) a Major Lease (unless by reason of a tenant default) without the consent of Lender.

(ii) Every submission to Lender of any proposed Major Lease (or Major Lease renewal, amendment, modification or termination) for Lender's approval shall be forwarded to Lender together with a notice from Borrower (in bold typeface) that states **"YOUR FAILURE TO RESPOND TO THIS NOTICE AND REQUEST FOR APPROVAL WITHIN TEN (10) BUSINESS DAYS OF YOUR RECEIPT OF THIS NOTICE SHALL CONSTITUTE YOUR DEEMED CONSENT TO THE MATTERS DESCRIBED IN OR THAT ARE THE SUBJECT**

OF THIS NOTICE". If Lender responds to Borrower's request by identifying missing documents or materials that are incomplete or inaccurate (and that are the subject of the request for approval), then Borrower shall re-submit such documents or materials to Lender for its approval together with a second notice from Borrower that complies with this section.

(ii) If Lender fails to approve or disapprove any such proposed request or submission attached to a first notice or request sent by Borrower (or the matters that are the subject of the re-submitted notice or request for approval) within ten (10) Business Days of receipt of same, Borrower shall re-submit such instruments or materials to Lender for Lender's approval and give Lender a second notice (in bold typeface) that states "SECOND NOTICE — YOUR FAILURE TO RESPOND TO THIS NOTICE AND REQUEST FOR APPROVAL WITHIN FIVE (5) BUSINESS DAYS OF YOUR RECEIPT OF THIS NOTICE SHALL CONSTITUTE YOUR DEEMED CONSENT TO THE MATTERS DESCRIBED IN OR THAT ARE THE SUBJECT OF THIS NOTICE". If Lender fails to respond to such second notice within five (5) Business Days of receipt of same, then Lender's consent to the proposed request or submission that is the subject of such notice shall be deemed granted.

(e) Borrower shall and shall cause Operating Company to (i) observe and perform the obligations imposed upon the lessor under the Leases in a commercially reasonable manner; (ii) enforce the terms, covenants and conditions contained in the Leases upon the part of the lessee thereunder to be observed or performed in a commercially reasonable manner and in a manner not to impair the value of the Individual Property involved; (iii) not collect any of the rents more than one (1) month in advance (other than security deposits); (iv) not execute any other assignment of lessor's interest in the Leases or the Rents (except as contemplated by the Loan Documents); (v) not alter, modify or change the terms of the Leases in a manner inconsistent with the provisions of the Loan Documents; and (vi) execute and deliver at the request of Lender all such further assurances, confirmations and assignments in connection with the Leases as Lender shall from time to time reasonably require.

(f) Upon request, Borrower shall furnish Lender with executed copies of all new Leases or Lease renewals or amendments.

(g) Notwithstanding anything to the contrary contained herein, Borrower shall not enter into (or permit Operating Company to enter into) a lease of all or substantially all of any Individual Property without Lender's prior consent.

(h) Provided the foregoing requirements have been complied with and no Event of Default then exists, (i) Lender agrees to enter into a Recognition Agreement with the Tenants under Major Leases defined in clause (a)(i) or (a)(ii) of the definition thereof, in each case on the form annexed as Schedule XII hereto (with such changes as shall be negotiated by Lender in good faith) and, in such event, no fee shall be charged by Lender in connection with any such Recognition Agreement (except that Borrower shall reimburse Lender for any reasonable, out-of-pocket fees and expenses incurred by Lender in connection with same) and (ii) if requested by Borrower, Lender agrees to not unreasonably withhold its consent to entering into (and shall enter into) a Recognition Agreement with other Tenants, excluding Tenants described in any of clauses (b) and (c) of the definition thereof (as to which Lender shall have no obligation

whatsoever to grant nondisturbance), in each case on the form annexed as Schedule XII hereto (with such changes as shall be negotiated by Lender in good faith) and, in such event, no fee shall be charged by Lender in connection with any such Recognition Agreement (except that Borrower shall reimburse Lender for any reasonable, out-of-pocket fees and expenses incurred by Lender in connection with same).

**5.1.21 Alterations.** (a) Borrower shall cause all Alterations with respect to any portion of any of the Properties to be conducted and performed with due diligence in a good and workmanlike manner, and all materials used and work done shall be in accordance with all applicable Legal Requirements. In addition, with respect to the Convention Center Project and the Tower Project, to the extent such projects are pursued, Borrower agrees to (i) diligently pursue each such project to completion in a timely manner, subject to delays arising from Force Majeure events, (ii) cause the work to be performed in connection with each such project in substantial conformance with the plans and specifications for such project and otherwise in conformity with this Agreement, (iii) provide Lender with reasonably detailed monthly progress reports (and such information as Lender shall reasonably request from time to time) regarding the status of the Convention Center Project and the Tower Project, (iv) upon the substantial completion of each such project, provide Lender with evidence of the substantial completion of each such project, copies of final unconditional lien waivers from the general contractors, construction managers or subcontractors for such project (if requested by Lender) and evidence of the final payment of all amounts due in connection with each such project, and a title search for the affected Individual Property indicating that such Individual Property is free from all liens, claims and other encumbrances not previously approved by Lender, and (v) upon final completion of each such project, provide Lender with a final survey acceptable to Lender showing the "as-built" location of the completed Improvements and all easements appurtenant thereto, "as-built" plans and specifications for Lender's file and a certificate of occupancy to the extent issued by the relevant Governmental Authority.

(b) Borrower shall obtain Lender's prior consent to (i) any Material Alterations (unless collateral or a completion guaranty is provided as set forth in subparagraph (c) below) or (ii) any Alterations to any of the Improvements (even if otherwise described in clause (i) above) that is reasonably likely to have an Individual Material Adverse Effect. Lender's consent shall not be required for any Alterations other than the Alterations described in the preceding sentence. Notwithstanding any provision hereof to the contrary, without Lender's consent, not to be unreasonably withheld or delayed, in no event shall Borrower close or shutter, or undertake or permit any Tenant or other Person to undertake, an Alteration that, alone or together with other work then being undertaken, closes or shutters, more than ten percent (10%) of the income-generating space in any Individual Property at any one time. Prior to undertaking any Alteration with respect to an Individual Property in excess of five percent (5%) of the sum of the Allocated Loan Amount for such Individual Property and the "Allocated Loan Amounts" under (and as defined in each of) the Mezzanine Loan Agreements for such Individual Property, to afford Lender a prior and reasonable opportunity to determine whether or not the proposed Alteration would have an Individual Material Adverse Effect, Borrower will deliver such plans, specifications, project schedules, logistical plans, construction budgets (including a statement of sources and uses) and such other information as Lender may reasonably request in respect of such Alteration for review by Lender (and its consultants). All reasonable out-of-pocket costs

and expenses incurred by Lender in connection with reviewing said Alterations proposal, including, without limitation, reasonable counsel fees and disbursements and Lender's consultants, shall be paid by Borrower. The above-referenced submission to Lender shall be delivered with a notice from Borrower (in bold typeface) that states "YOUR FAILURE TO RESPOND TO THIS NOTICE AND REQUEST FOR APPROVAL WITHIN TEN (10) BUSINESS DAYS OF YOUR RECEIPT OF THIS NOTICE SHALL CONSTITUTE YOUR DEEMED CONSENT TO THE MATTERS DESCRIBED IN OR THAT ARE THE SUBJECT OF THIS NOTICE". If Lender responds to Borrower's request by identifying missing documents or materials that are incomplete or inaccurate (and that are the subject of the request for approval), then Borrower shall re-submit such documents or materials to Lender for its approval together with a second notice from Borrower that complies with this Section. If Lender fails to approve or disapprove any such proposed request or submission attached to a first notice or request sent by Borrower (or the matters that are the subject of the re-submitted notice or request for approval) within ten (10) Business Days of receipt of same, Borrower shall re-submit such instruments or materials to Lender for Lender's approval and give Lender a second notice (in bold typeface) that states "SECOND NOTICE — YOUR FAILURE TO RESPOND TO THIS NOTICE AND REQUEST FOR APPROVAL WITHIN TEN (10) BUSINESS DAYS OF YOUR RECEIPT OF THIS NOTICE SHALL CONSTITUTE YOUR DEEMED CONSENT TO THE MATTERS DESCRIBED IN OR THAT ARE THE SUBJECT OF THIS NOTICE". If Lender fails to respond to such second notice within ten (10) Business Days of receipt of same, then Lender's consent to the proposed request or submission that is the subject of such notice shall be deemed granted.

(c) With respect to any Material Alteration, unless otherwise consented to by Lender, Borrower shall promptly deliver to Lender as security for the payment of such amounts and as additional security for Borrower's obligations under the Loan Documents any of the following: (A) cash, (B) U.S. Obligations, (C) other securities having a rating acceptable to Lender and that the applicable Rating Agencies have confirmed in writing will not, in and of itself, result in a downgrade, withdrawal or qualification of the initial, or, if higher, then current ratings assigned to any Securities or any class thereof in connection with any Securitization, (D) a completion and performance bond or an irrevocable letter of credit (payable on sight draft only) issued by an Eligible Institution, or (E) a completion guaranty from an Approved Guarantor in the form attached hereto as Exhibit B (with such changes as Lender shall approve), together with evidence reasonably satisfactory to Lender that the Approved Guarantor has reasonable liquidity taking into account the nature and amount of the guaranteed obligations under such completion guaranty (it being agreed that, if the Approved Guarantor in question is Holdings, then the amounts available for repayment of such obligations under any revolving credit facility in effect at such time in favor of Harrah's Operating Company, Inc. will be taken into account in determining whether Holdings has reasonable liquidity) and with, if required by applicable Rating Agency requirements, an Additional Insolvency Opinion. Such security, including the amount of the guaranteed obligations under any completion guaranty delivered as aforesaid, shall be in an amount equal to the sum of (i) the excess of the total unpaid amounts with respect to alterations to the Improvements on the applicable Individual Property (other than such amounts to be paid or reimbursed by tenants under the Leases) over the Threshold Amount and (ii) the costs of collection, and, upon the occurrence and during the continuance of an Event

of Default, Lender may apply such security from time to time at the option of Lender to pay for such alterations.

**5.1.22 Operation of Property.** (a) Borrower shall cause each of the Properties to be operated, in all material respects, in accordance with the Operating Leases and in accordance with all applicable Legal Requirements, including Gaming Laws, and all Gaming Licenses and other Operating Permits and in a manner consistent with their respective use as of the Closing Date. Borrower shall cause Operating Company to post all required bonds, if any, with any Gaming Authority as and in the amounts required under all applicable Legal Requirements (and shall, if Lender makes a request therefor, promptly provide Lender with copies of all such bonds).

(b) Borrower shall not, without Lender's prior written consent, permit Operating Company to assign or transfer, and Operating Company shall not, without Lender's prior written consent, assign or transfer, or delegate any responsibilities with respect to, any material Gaming License or Operating Permit.

(c) Borrower shall cause Operating Company to make all filings required under the Gaming Laws, or in connection with any Gaming Licenses or Operating Permits, including in connection with the origination of the Loan and the Mezzanine Loan, and shall deliver copies of such filings as Lender shall reasonably request to Lender, promptly upon request. Borrower will timely pay all fees, investigative fees and costs required by the Gaming Authorities with respect to any such approvals and licenses. Borrower will diligently and comprehensively respond to any inquiries and requests from the Gaming Authorities and promptly file or cause to be filed any additional information required in connection with any required filings as soon as practicable after receipt of requests therefor.

(d) Upon request of Lender, Borrower shall deliver to Lender (or cause Operating Company to deliver to Lender) such evidence of compliance (by Borrower, Operating Company and each Individual Property) with all Legal Requirements, including Gaming Laws as shall be reasonably requested by Lender. Borrower shall immediately deliver to Lender (and shall cause Operating Company to deliver to Lender) any notice of material non-compliance or material violation of any Legal Requirement, or of any material inquiry or investigation commenced by the Gaming Authorities in connection with any of the Properties. Borrower shall immediately notify Lender if it or Operating Company believe that any material license, including any Gaming License, is being or could be revoked or suspended, or that any action is pending, being considered or being, or could be, taken to revoke or suspend Borrower's or Operating Company's material licenses, including the Gaming Licenses, or to fine, penalize or impose remedies upon Borrower or Operating Company, or that any action is pending, being considered, or being, or could be, taken to discontinue, suspend, deny, decrease or recoup any payments due, made or coming due to Borrower or Operating Company, in each case if same might reasonably be expected to have an Individual Material Adverse Effect. Borrower shall immediately deliver to Lender any notice received by Borrower or Operating Company alleging or relating to the material non-compliance by Borrower or Operating Company with any Legal Requirements, including Gaming Laws.

(e) In the event that any of the Operating Leases expire or are terminated (without limiting any obligation of Borrower to obtain Lender's consent to any termination or modification of any of the Operating Leases in accordance with the terms and provisions of this Agreement), Borrower shall promptly enter into a replacement Operating Lease (in form and substance satisfactory to Lender) with Operating Company or another operating company reasonably satisfactory to Lender, provided Borrower will obtain a Rating Agency Confirmation as a condition to the effectiveness of such replacement Operating Lease and that Borrower will cause Guarantor (Operating Lease) to execute and deliver an operating lease guaranty in the same form and substance as the Operating Lease Guaranty,

(f) Borrower shall: (i) promptly perform and/or observe, in all material respects, all of the covenants and agreements required to be performed and observed by it under the Operating Lease and do all things necessary to preserve and to keep unimpaired its material rights thereunder; (ii) promptly notify Lender of any material default under any Operating Lease or Operating Lease Guaranty of which it is aware; (iii) promptly deliver to Lender a copy of each financial statement, business plan, capital expenditures plan, notice, report and estimate received by it under each Operating Lease; and (iv) enforce the performance and observance of all of the material covenants and agreements required to be performed and/or observed by each Operating Company under each Operating Lease and by each Guarantor (Operating Lease) under each Operating Lease Guaranty, in a commercially reasonable manner.

(g) Borrower shall cause the Hotel Components to be at all times open for business as a hotel and the Casino Components to be open for business as a casino, except to the extent necessary to undertake any alterations or repairs (subject to the provisions of this Agreement with respect to the performance of any such alterations or repairs). Borrower shall cause each Individual Property to be at all times operated, managed and maintained, at all times and in the manner and accordance with the standards required pursuant to the Operating Leases and all applicable Legal Requirements in all material respects.

(h) If Borrower shall be in material default under any Operating Lease, then, subject to the terms of such Operating Lease, Borrower shall (subject to any applicable Legal Requirements) grant Lender the right (but not the obligation), to cause the default or defaults under such Operating Lease to be remedied and otherwise exercise any and all rights of Borrower under such Operating Lease, as may be necessary to prevent or cure any default provided such actions are necessary to protect Lender's interest under the Loan Documents, and Lender shall have the right to enter all or any portion of the affected Individual Property at such times and in such manner as Lender deems necessary, to prevent or to cure any such default. The actions or payments of Lender to cure any default by Borrower under any Operating Lease shall not remove or waive, as between Borrower and Lender, any default that may occur or occurred under this Agreement by virtue of such default by Borrower under such Operating Lease. All out-of-pocket sums reasonably expended by Lender to cure any such default shall be paid by Borrower to Lender, upon demand, with interest on such sum at the rate set forth in this Agreement from the date such sum is expended to and including the date the reimbursement payment is made to Lender. All such indebtedness shall be deemed to be secured by the Mortgage.

(i) Borrower shall notify Lender promptly in writing of (i) the occurrence, to Borrower's knowledge, of any material default by any party to any Operating Lease or any Operating Lease Guaranty, (ii) the occurrence, to Borrower's knowledge, of any event that, with the passage of time or service of notice, or both, would constitute a material default by any party under any Operating Lease or any Operating Lease Guaranty, and (iii) the receipt by Borrower or its Affiliate of any notice (written or otherwise) from any party under any Operating Lease or any Operating Lease Guaranty noting or claiming the occurrence of any material default by Borrower under such Operating Lease or such Operating Lease Guaranty.

(j) Borrower shall (subject to any applicable Legal Requirements) promptly execute, acknowledge and deliver to Lender such instruments as may reasonably be required to permit Lender to cure any material default under any Operating Lease or permit Lender to take such other action required to enable Lender to cure or remedy the matter in default and preserve the value of the security interest of Lender under the Loan Documents with respect to each of the Properties. Upon the occurrence and during the continuance of an Event of Default, Borrower irrevocably appoints Lender as its true and lawful attorney-in-fact to do, in its name or otherwise, any and all acts and to execute any and all documents that are necessary to preserve any rights of Borrower under or with respect to any Operating Lease, including, without limitation, the right to effectuate any extension or renewal of any Operating Lease, or to preserve any rights of Borrower whatsoever in respect of any part of any Operating Lease (and the above powers granted to Lender are coupled with an interest and shall be irrevocable).

(k) With respect to any Operating Lease or any Operating Lease Guaranty, Borrower shall, from time to time, upon ten (10) Business Days' prior written request from Lender, execute, acknowledge and deliver to Lender, a statement containing the following: (A) a statement that such Operating Lease or such Operating Lease Guaranty is unmodified and in full force and effect or, if there have been modifications, that the Operating Lease or the Operating Lease Guaranty is in full force and effect as modified and setting forth such modifications, (B) a statement that Borrower is not in default thereunder beyond any applicable grace, cure or notice period or, if any such default shall exist thereunder, a description of such default and the steps being taken to cure such default, (C) a statement that, to Borrower's knowledge, either the other party thereto is not in default thereunder beyond any applicable grace, cure or notice period or, if any such default shall exist thereunder, a description of such default and the steps being taken to cure such default and (D) such other information with respect to the Operating Lease or the Operating Lease Guaranty as Lender shall reasonably request.

(l) With respect to any Operating Lease, Borrower shall, from time to time, upon ten (10) Business Days of Lender's prior written request from Lender, provide Lender with a statement from each Operating Company containing the following: (A) a statement that such Operating Lease is unmodified and in full force and effect or, if there have been modifications, that the Operating Lease is in full force and effect as modified and setting forth such modifications, (B) a statement that the Operating Company is not in default thereunder beyond any applicable grace, cure or notice period or, if any such default shall exist thereunder, a description of such default and the steps being taken to cure such default, (C) a statement that, to Operating Company's knowledge, the Borrower is not in default thereunder beyond any applicable grace, cure or notice period or, if any such default shall exist thereunder, a description

of such default and the steps being taken to cure such default and (D) such other information with respect to Operating Company, any Operating Lease and/or any Operating Lease Guaranty as Lender shall reasonably request.

(m) With respect to any Operating Lease Guaranty, Borrower shall, from time to time, upon ten (10) Business Days of Lender's prior written request from Lender, provide Lender with a statement from Guarantor (Operating Lease) containing the following: (A) a statement that such Operating Lease Guaranty is unmodified and in full force and effect or, if there have been modifications, that the Operating Lease Guaranty is in full force and effect as modified and setting forth such modifications; (B) a statement that Guarantor (Operating Lease) is not in default thereunder beyond any applicable grace, cure or notice period or, if any such default shall exist thereunder, a description of such default and the steps being taken to cure such default and (C) such other information with respect to Guarantor (Operating Lease) and/or Operating Lease Guaranty as Lender shall reasonably request.

(n) Each Operating Lease and any and all rights and interests (whether choate or inchoate and including, without limitation, all mechanic's and materialmen's liens under applicable law) owed, claimed or held, by any Operating Company thereunder or otherwise are and shall be in all respects subordinate and inferior to the liens and security interests created, or to be created, for the benefit of Lender, and securing the repayment of the Note and the performance of the obligations under the Loan Agreement and the other Loan Documents.

(o) Upon the occurrence of an Event of Default under the Loan Documents, Operating Company shall, at the request of Lender, continue to perform all of Operating Company's obligations under the terms of the Operating Leases. Further, upon and after foreclosure, deed in lieu of foreclosure or other similar transfer of any of the Properties to Lender, its designee or nominee, Operating Company shall not exercise any right to terminate the Operating Lease other than due to any default or breach by Lender, its designee or nominee first occurring thereafter pursuant to the terms of the Operating Lease and, at the request of Lender, shall continue to operate and manage any one or more of the Properties and maintain all applicable Gaming Approvals with respect thereto, either in accordance with the terms of the Operating Lease or pursuant to a replacement operating lease (or, to the extent permitted by applicable Legal Requirements, a management agreement) in form and substance reasonably acceptable to Lender provided that (i) to the extent such continued operation is conducted pursuant to the Operating Lease, Operating Company shall be obligated to pay the rental rate specified therein, (ii) to the extent such continued operation is conducted pursuant to a management agreement in accordance with applicable Legal Requirements, Lender, its designee or nominee shall pay to Operating Company a then market rate management fee which is reasonable and customary for similar properties in similar locations as the Individual Property in question, and (iii) all other terms and arrangements shall be usual and customary for similar properties in similar locations as such Individual Property and, to the extent required under applicable Gaming Laws, subject to the prior review and/or approval of the Gaming Authorities. In addition, upon the occurrence of an Event of Default under the Loan Documents, and promptly upon receipt of a written request therefor, each Operating Company shall deliver to Lender copies of all customer lists in each such Operating Company's possession (relating to each of the casinos and the hotels at each of the Properties, as applicable).

(p) Notwithstanding the foregoing or any provision hereof or of any of the Loan Documents to the contrary, at any time after foreclosure, deed in lieu of foreclosure or other similar transfer of any Individual Property to Lender, its designee or nominee, at the option of Lender exercised by written notice to Operating Company, Lender, its designee or nominee shall have the right to terminate the Operating Lease and/or, if applicable, any Management Agreement with Operating Company without penalty or termination fee (except that Operating Company shall be entitled to receive any unpaid amounts that relate to the period prior to such termination) and, in connection with the foregoing, Operating Company shall transfer its responsibility for the management of the applicable Individual Property to a replacement operator selected by Lender.

**Section 5.2. Negative Covenants.** From the date hereof until payment and performance in full of all obligations of Borrower under the Loan Documents or the earlier release of the Liens of all Mortgages in accordance with the terms of this Agreement and the other Loan Documents, Borrower covenants and agrees with Lender that it will not do, directly or indirectly, any of the following (without, in each case, the prior written consent of Lender):

**5.2.1 Operation of Property.** (a) Borrower shall not, without Lender's prior consent: (i) surrender, terminate or cancel (or permit to be surrendered, terminated or canceled) any of the Operating Leases; (ii) reduce or consent to the reduction of (or permit the reduction or the consent to the reduction) of the term of any of the Operating Leases or any Operating Lease Guaranty; (iii) decrease or consent to any decrease (or permit to be decreased or the consent to the decrease) of the amount of any rent or other charges payable under any of the Operating Leases; (iv) Transfer, convey, assign, sell, mortgage, encumber, pledge, hypothecate, grant a security interest in, grant an option or options with respect to, or otherwise dispose of (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, whether or not for consideration) the Properties or any collateral for the Loan (or permit Operating Company to do so), in each case without the prior written consent of Lender or except as expressly permitted in Section 5.2.10, or (v) otherwise modify, change, supplement, alter or amend, or waive or release (or permit to be modified, changed, supplemented, altered, amended, waived or released) any of the rights and remedies of Borrower or any Operating Company under any of the Operating Leases in any material respect or any Operating Lease Guaranty (provided that Lender shall not unreasonably withhold its consent to any modification, change, supplement, alteration, amendment, waiver or release of the Operating Lease as may be reasonably necessary to comply with the requirements of this Agreement or any other Loan Document).

(b) During the continuance of an Event of Default, Borrower shall not exercise any rights, make any decisions, grant any approvals or otherwise take any action under any Operating Lease, Operating Lease Guaranty or any management agreement without, in each instance, the prior written consent of Lender, which consent may be withheld in Lender's sole discretion.

**5.2.2 Liens.** (a) Borrower shall not create, incur, assume or suffer to exist any Lien on any portion of any Individual Property or permit any such action to be taken, except:

- (i) Permitted Encumbrances;
- (ii) Liens created by or permitted pursuant to the Loan Documents; and
- (iii) Liens for Taxes or Other Charges not yet due.

(b) Borrower shall not incur any Indebtedness other than the Loan and Permitted Indebtedness. Borrower shall not permit any Operating Company to incur Indebtedness in excess of other than Permitted Indebtedness (Operating Company).

**5.2.3 Dissolution.** Borrower shall not, and shall not permit Operating Company to, (a) engage in any dissolution, liquidation or consolidation or merger with or into any other business entity, (b) engage in any business activity not related to (i) in the case of Borrower, the ownership and operation of the Properties and (ii) in the case of Operating Company, the leasing and operation of the Properties, (c) transfer, lease or sell, in one transaction or any combination of transactions, the assets or all or substantially all of the properties or assets of Borrower except to the extent permitted by the Loan Documents, (d) modify (in any material respect), amend (in any material respect), waive or terminate its organizational documents or its qualification and good standing in any jurisdiction or (e) cause Holdings to (i) dissolve, wind up or liquidate or take any action, or omit to take an action, as a result of which Holdings would be dissolved, wound up or liquidated in whole or in part, or (ii) amend (in any material respect), modify (in any material respect), waive or terminate the certificate of incorporation or bylaws of the Holdings, in each case, without obtaining the prior consent of Lender.

**5.2.4 Change in Business.** Borrower shall not enter into any line of business other than the ownership and operation of the Properties and activities reasonably ancillary thereto, or make any material change in the scope or nature of its business objectives, purposes or operations, or undertake or participate in activities other than the continuance of its present business.

**5.2.5 Debt Cancellation.** Borrower shall not, and shall not permit Operating Company to, cancel or otherwise forgive or release any claim or debt (other than termination of Leases in accordance herewith) owed to Borrower by any Person, except for adequate consideration and in the ordinary course of Borrower's business.

**5.2.6 Zoning.** Borrower shall not, and shall not permit Operating Company to, initiate or consent to any zoning reclassification of any portion of any Individual Property or seek any variance under any existing zoning ordinance or use or permit the use of any portion of any Individual Property in any manner that could result in such use becoming a non-conforming use under any zoning ordinance or any other applicable land use law, rule or regulation, without the prior consent of Lender.

**5.2.7 Ground Lease.** Borrower shall not (and, for so long as Ground Lease Subsidiary is the lessee under the Ground Lease, shall cause Ground Lease Subsidiary to not) (a) fail to pay any rent, additional rent or other charge mentioned in or made payable under any Ground Lease as and when such rent or other charge is due (unless waived in writing by the ground lessor under such Ground Lease), (b) permit to occur any event of default (beyond any applicable notice, grace or cure periods) by any Borrower or Ground Lease Subsidiary, as applicable, as tenant under the related Ground Lease, in the observance or performance of any term, covenant or condition of such Ground Lease on the part of such Borrower or Ground Lease Subsidiary, as applicable, to be observed or performed (unless waived in writing by the ground lessor under such Ground Lease), (c) permit any one or more of the events referred to in any Ground Lease to occur which would cause such Ground Lease to terminate without notice or action by the ground lessor under such Ground Lease or which would entitle such ground lessor to terminate such Ground Lease and the term thereof by giving notice to the related Borrower or Ground Lease Subsidiary, as applicable, as tenant thereunder (unless waived in writing by the ground lessor under such Ground Lease), (d) permit the leasehold estate created by any Ground Lease to be surrendered or any Ground Lease to be terminated or canceled for any reason or under any circumstances whatsoever or (e) permit any of the terms, covenants or conditions of any Ground Lease to be materially modified, materially changed, materially supplemented, materially altered, or materially amended without the consent of Lender except as otherwise may be permitted by this Agreement.

**5.2.8 Principal Place of Business and Organization.** Borrower shall not, nor shall Borrower permit Operating Company to, change the place of its organization as set forth in Section 4.1.28 without the consent of Lender, which consent shall not be unreasonably withheld. Upon Lender's request, Borrower shall (and shall cause Operating Company to) execute and deliver additional financing statements, security agreements and other instruments which may be necessary to effectively evidence or perfect Lender's security interest in any of the Properties as a result of such change of place of organization.

**5.2.9 ERISA.** (a) Borrower shall not engage in any transaction which would cause any obligation, or action taken or to be taken, hereunder (or the exercise by Lender of any of its rights under the Note, this Agreement or the other Loan Documents) to be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under ERISA.

(b) Borrower further covenants and agrees to deliver to Lender such certifications or other evidence from time to time throughout the term of the Loan, as requested by Lender in its sole discretion, that (i) Borrower is not an "employee benefit plan" as defined in Section 3(3) of ERISA, which is subject to Title I of ERISA, or a "governmental plan" within the meaning of Section 3(32) of ERISA; (ii) Borrower is not subject to any state statute regulating investments of, or fiduciary obligations with respect to, governmental plans; and (iii) one or more of the following circumstances is true:

(A) Equity interests in Borrower are publicly offered securities, within the meaning of 29 C.F.R. §2510.3-101(b)(2);

(B) Less than twenty-five percent (25%) of each outstanding class of equity interests in Borrower is held by “benefit plan investors” within the meaning of 29 C.F.R. §2510.3-101(f)(2); or

(C) Borrower qualifies as an “operating company” or a “real estate operating company” within the meaning of 29 C.F.R. §2510.3-101(c) or (e).

**5.2.10 Transfers.** (a) Without the prior consent of Lender and except to the extent otherwise set forth in this Section 5.2.10, Borrower shall not, and shall not permit any other Person holding any direct or indirect legal, economic, beneficial or other ownership interest in Borrower or one or more of the Properties to, (1) Transfer all or any part of one or more of the Properties, (2) permit any Transfer (directly or indirectly) of any direct or indirect interest in Borrower, or (3) permit any Transfer (directly or indirectly) of any direct or indirect interest in Operating Company or any transfer or assignment or subletting (of all or substantially of any Individual Property) by any Operating Company under any Operating Lease.

(b) A Transfer of (but not a mortgage, pledge, hypothecation, encumbrance or grant of a security interest in) an indirect beneficial interest in Borrower consisting of ownership interests in or at any level above the level of Ninth Mezzanine Borrower shall be permitted without Lender’s consent (but subject to the last sentence of Section 5.2.10(d)), provided that (i) immediately prior to such Transfer, no Event of Default shall have occurred and be continuing, (ii) Borrower is at all times Controlled and at least fifty percent (50%) owned (directly or indirectly) by Qualified Transferees, (iii) subsequent to such Transfer, Borrower will continue to be a Special Purpose Entity, (iv) if (1) such Transfer causes the Transferee to own, in the aggregate with the ownership interests of its Affiliates, more than a forty nine percent (49%) interest in Borrower (and the Transferee (together with the ownership interests of its Affiliates) did not, prior to such Transfer, own more than a forty nine percent (49%) interest in Borrower), or (2) such Transfer, together with all other Transfers by Borrower, whether in a single Transfer or in a series of Transfers and whether or not effected simultaneously, results in a Transfer of more than forty nine percent (49%) of the aggregate interests in Borrower, then, if required by applicable Rating Agency requirements, an acceptable non-consolidation opinion is delivered to the holder of the Loan and to each of the Rating Agencies concerning, as applicable, Borrower, the new Transferee and/or their respective owners, and (v) subsequent to such Transfer, the beneficial ownership of Borrower and Operating Company will be substantially identical. For purposes hereof, Control shall not be deemed absent solely because other parties have veto rights with respect to major decisions. Further, a Change in Control shall be deemed a Transfer hereunder and, unless clauses (ii) through (v) of this Section 5.2.10(b) shall be satisfied, the same shall be an Event of Default hereunder (and for the sake of clarity, nothing else contained in this Section 5.2.10 or this Agreement shall be deemed to limit or qualify the above terms of this sentence).

(c) A Transfer of (but not a mortgage, pledge, hypothecation, encumbrance or grant of a security interest in) a direct or indirect beneficial interest in Operating Company shall be permitted without Lender’s consent (but subject to the last sentence of Section 5.2.10(d)), provided that (i) immediately prior to such Transfer, no Event of Default shall have occurred and

be continuing, (ii) Operating Company is at all times Controlled and at least fifty percent (50%) owned (directly or indirectly) by Qualified Transferees, and (iii) subsequent to such Transfer, the beneficial ownership of Borrower and Operating Company will be substantially identical. For purposes hereof, Control shall not be deemed absent solely because other parties have veto rights with respect to major decisions.

(d) In the event that a permitted Transfer of more than a forty nine percent (49%) interest in Borrower is made pursuant to this Section 5.2.10, at Borrower's request, Lender shall release Guarantor from (i) the obligations and liabilities under any Guaranty for obligations and liabilities that occurred subsequent to such Transfer, provided that a replacement guarantor(s) reasonably satisfactory to Lender shall have executed and delivered to Lender replacement guarantees in form and substance substantially similar to the applicable Guaranty, pursuant to which such replacement guarantor(s) expressly assumes all of Guarantor's obligations under the applicable Guaranty for obligations and liabilities arising from and after the date of such Transfer, and (ii) the obligations and liabilities under any Guaranty for obligations and liabilities that occurred either prior or subsequent to such Transfer, provided that a replacement guarantor(s) reasonably satisfactory to Lender shall have executed and delivered to Lender replacement guarantees in form and substance substantially similar to the applicable Guaranty, pursuant to which such replacement guarantor(s) expressly assumes all of Guarantor's obligations under the applicable Guaranty, including those which occurred prior to the Transfer. Notwithstanding the foregoing or anything else that may be construed to the contrary, in no event may Borrower effect a Transfer, or permit or suffer any Transfer, that would result in any loss or impairment of any Gaming License or in any similar event that would have an Individual Property Material Adverse Effect or Aggregate Property Material Adverse Effect.

(e) Notwithstanding the foregoing or anything herein to the contrary, but subject to the final sentence of Section 5.2.10(d), nothing contained in this Agreement or the other Loan Documents shall in any way restrict or prohibit, nor shall any notice to Lender or consent of Lender or Rating Agency Confirmation be required in connection with the Transfer or issuance in the ordinary course of any securities in any Person whose securities are publicly traded on a national exchange (except to the extent that the same would cause a Change in Control) or with an initial public offering of securities issued by Holdings or of subsidiary of Holdings (other than the Borrower and any Mezzanine Borrower (provided that, in the case of an issuance by a subsidiary, such issuance would not cause a Change of Control)).

(f) Assumptions of the Loan shall be permitted, provided that the following conditions are satisfied and/or occur to Lender's satisfaction:

(i) an assumption of this Agreement, the Note, the Mortgages and the other Loan Documents as so modified by the proposed transferee, subject to the provisions of Section 9.3 hereof;

(ii) payment of all of reasonable out-of-pocket costs and expenses incurred in connection with such Transfer including, without limitation, the cost of any legal fees and expenses, Rating Agency fees and expenses or required legal opinions;

(iii) the payment of a non-refundable assumption fee equal to Lender's Share of One Million and No/100 Dollars (\$1,000,000) per transaction (effecting an assumption of the Loan) or series of related transactions (effected to implement an assumption of the Loan);

(iv) the delivery of an Additional Insolvency Opinion reflecting the proposed transfer satisfactory in form and substance to Lender; and the delivery of an Additional True Lease Opinion in form and substance satisfactory to Lender;

(v) the proposed Transferee being Controlled and at least 50% owned, directly or indirectly, by one or more Qualified Transferees;

(vi) the Operating Company being Controlled and at least 50% owned, directly or indirectly, by one or more Qualified Transferees, having sufficient experience (or having a manager that has sufficient experience) in the management of properties similar to the Properties, and such Operating Company or its manager not having materially less than the same level of experience in the operation of properties similar to the Properties as the current Operating Company under the Operating Lease and, in each case, Lender shall be provided with reasonable evidence thereof (and Lender reserves the right to approve the Transferee(s) without approving the substitution of the Operating Company) and the operating tenant shall be either the Operating Company or, if permitted by applicable Legal Requirements, a manager acceptable to Lender under a management agreement acceptable to Lender; provided that so long as the Operating Lease is in force and effect and the current Operating Company shall continue to be the tenant thereunder and owned and Controlled by the same Person(s) that currently own and Control the Operating Company, the condition with respect to the Operating Company set forth in this subclause (vi) shall be deemed to have been met in all respects;

(vii) the delivery of evidence reasonably satisfactory to Lender that the single purpose nature and bankruptcy remoteness of Borrower, its shareholders, partners or members, as the case may be, following such transfers are in accordance with the then current standards of Lender and the Rating Agencies; and the Transferee(s)' continued compliance with the representations and covenants set forth in Section 4.1.30 and Section 5.2.9 hereof;

(viii) Borrower's delivery to Lender of evidence reasonably satisfactory to Lender of any required approval or consent of any Governmental Authority, including the Gaming Authorities, that has direct or indirect authority or oversight over Borrower, the Properties, Operating Company or the operations conducted at the Properties to the change in ownership and/or operator of the Properties (or any part thereof);

(ix) prior to any release of the Guarantor, a substitute guarantor reasonably acceptable to Lender shall have assumed all of the obligations of the Guarantor under the Guaranty (FF&E), the Guaranty (Recourse Carveouts), the Guaranty (Operating Lease), the Guaranty (Ground Lease Estoppel), any completion guaranty

provided under Section 5.1.21 and the Environmental Indemnity or executed replacement guaranties and an environmental indemnity reasonably satisfactory to Lender;

(x) receipt of evidence satisfactory to Lender that all of the entities which own interests in the Transferee similar to the interests in Borrower owned by the First Mezzanine Borrower (1) shall assume the First Mezzanine Loan and all the agreements of First Mezzanine Borrower under the First Mezzanine Loan Documents (and without limiting the foregoing, all of the ownership interests in the New Mortgage Borrower, all payments thereon and all proceeds thereof shall be pledged to Lender on terms no less favorable than the pledge of the Collateral under the applicable Pledge Agreement), (2) shall each be a bankruptcy-remote single purpose entity, and (3) shall otherwise have a legal, financial and ownership structure that is (a) substantially the same as the First Mezzanine Borrower or (b) at least as favorable to the First Mezzanine Lender, as determined by the First Mezzanine Lender in its reasonable discretion, as the legal, financial and ownership structure of First Mezzanine Borrower;

(xi) receipt of evidence satisfactory to Lender that all of the entities which own interests in the transferee similar to the interests in First Mezzanine Borrower owned by the Second Mezzanine Borrower (1) shall assume the Second Mezzanine Loan (if still outstanding) and all the agreements of Second Mezzanine Borrower under the Second Mezzanine Loan Documents (and without limiting the foregoing, all of the ownership interests in First Mezzanine Borrower, all payments thereon and all proceeds thereof shall be pledged to Lender on terms no less favorable than the pledge of the Collateral under the applicable Pledge Agreement), (2) shall each be a bankruptcy-remote single purpose entity, and (3) shall otherwise have a legal, financial and ownership structure that is (a) substantially the same as the Second Mezzanine Borrower or (b) at least as favorable to the Second Mezzanine Lender, as determined by the Second Mezzanine Lender in its reasonable discretion, as the legal, financial and ownership structure of Second Mezzanine Borrower;

(xii) receipt of evidence satisfactory to Lender that all of the entities which own interests in the transferee similar to the interests in Second Mezzanine Borrower owned by the Third Mezzanine Borrower (1) shall assume the Third Mezzanine Loan (if still outstanding) and all the agreements of Third Mezzanine Borrower under the Third Mezzanine Loan Documents (and without limiting the foregoing, all of the ownership interests in Second Mezzanine Borrower, all payments thereon and all proceeds thereof shall be pledged to Lender on terms no less favorable than the pledge of the Collateral under the applicable Pledge Agreement), (2) shall each be a bankruptcy-remote single purpose entity, and (3) shall otherwise have a legal, financial and ownership structure that is (a) substantially the same as the Third Mezzanine Borrower or (b) at least as favorable to the Third Mezzanine Lender, as determined by the Third Mezzanine Lender in its reasonable discretion, as the legal, financial and ownership structure of Third Mezzanine Borrower;

(xiii) receipt of evidence satisfactory to Lender that all of the entities which own interests in the transferee similar to the interests in Third Mezzanine

Borrower owned by the Fourth Mezzanine Borrower (1) shall assume the Fourth Mezzanine Loan (if still outstanding) and all the agreements of Fourth Mezzanine Borrower under the Fourth Mezzanine Loan Documents (and without limiting the foregoing, all of the ownership interests in Third Mezzanine Borrower, all payments thereon and all proceeds thereof shall be pledged to Lender on terms no less favorable than the pledge of the Collateral under the applicable Pledge Agreement), (2) shall each be a bankruptcy-remote single purpose entity, and (3) shall otherwise have a legal, financial and ownership structure that is (a) substantially the same as the Fourth Mezzanine Borrower or (b) at least as favorable to the Fourth Mezzanine Lender, as determined by the Fourth Mezzanine Lender in its reasonable discretion, as the legal, financial and ownership structure of Fourth Mezzanine Borrower;

(xiv) receipt of evidence satisfactory to Lender that all of the entities which own interests in the transferee similar to the interests in Fourth Mezzanine Borrower owned by the Fifth Mezzanine Borrower (1) shall assume the Fifth Mezzanine Loan (if still outstanding) and all the agreements of Fifth Mezzanine Borrower under the Fifth Mezzanine Loan Documents (and without limiting the foregoing, all of the ownership interests in Fourth Mezzanine Borrower, all payments thereon and all proceeds thereof shall be pledged to Lender on terms no less favorable than the pledge of the Collateral under the applicable Pledge Agreement), (2) shall each be a bankruptcy-remote single purpose entity, and (3) shall otherwise have a legal, financial and ownership structure that is (a) substantially the same as the Fifth Mezzanine Borrower or (b) at least as favorable to the Fifth Mezzanine Lender, as determined by the Fifth Mezzanine Lender in its reasonable discretion, as the legal, financial and ownership structure of Fifth Mezzanine Borrower;

(xv) receipt of evidence satisfactory to Lender that all of the entities which own interests in the transferee similar to the interests in Fifth Mezzanine Borrower owned by the Sixth Mezzanine Borrower (1) shall assume the Sixth Mezzanine Loan (if still outstanding) and all the agreements of Sixth Mezzanine Borrower under the Sixth Mezzanine Loan Documents (and without limiting the foregoing, all of the ownership interests in Fifth Mezzanine Borrower, all payments thereon and all proceeds thereof shall be pledged to Lender on terms no less favorable than the pledge of the Collateral under the applicable Pledge Agreement), (2) shall each be a bankruptcy-remote single purpose entity, and (3) shall otherwise have a legal, financial and ownership structure that is (a) substantially the same as the Sixth Mezzanine Borrower or (b) at least as favorable to the Sixth Mezzanine Lender, as determined by the Sixth Mezzanine Lender in its reasonable discretion, as the legal, financial and ownership structure of Sixth Mezzanine Borrower;

(xvi) receipt of evidence satisfactory to Lender that all of the entities which own interests in the transferee similar to the interests in Sixth Mezzanine Borrower owned by the Seventh Mezzanine Borrower (1) shall assume the Seventh Mezzanine Loan (if still outstanding) and all the agreements of Seventh Mezzanine Borrower under the Seventh Mezzanine Loan Documents (and without limiting the foregoing, all of the ownership interests in Sixth Mezzanine Borrower, all payments thereon and all proceeds

thereof shall be pledged to Lender on terms no less favorable than the pledge of the Collateral under the applicable Pledge Agreement), (2) shall each be a bankruptcy-remote single purpose entity, and (3) shall otherwise have a legal, financial and ownership structure that is (a) substantially the same as the Seventh Mezzanine Borrower or (b) at least as favorable to the Seventh Mezzanine Lender, as determined by the Seventh Mezzanine Lender in its reasonable discretion, as the legal, financial and ownership structure of Seventh Mezzanine Borrower;

(xvii) receipt of evidence satisfactory to Lender that all of the entities which own interests in the transferee similar to the interests in Seventh Mezzanine Borrower owned by the Eighth Mezzanine Borrower (1) shall assume the Eighth Mezzanine Loan (if still outstanding) and all the agreements of Eighth Mezzanine Borrower under the Eighth Mezzanine Loan Documents (and without limiting the foregoing, all of the ownership interests in Seventh Mezzanine Borrower, all payments thereon and all proceeds thereof shall be pledged to Lender on terms no less favorable than the pledge of the Collateral under the applicable Pledge Agreement), (2) shall each be a bankruptcy-remote single purpose entity, and (3) shall otherwise have a legal, financial and ownership structure that is (a) substantially the same as the Eighth Mezzanine Borrower or (b) at least as favorable to the Eighth Mezzanine Lender, as determined by the Eighth Mezzanine Lender in its reasonable discretion, as the legal, financial and ownership structure of Eighth Mezzanine Borrower;

(xviii) receipt of evidence satisfactory to Lender that all of the entities which own interests in the transferee similar to the interests in Eighth Mezzanine Borrower owned by the Ninth Mezzanine Borrower (1) shall assume the Ninth Mezzanine Loan (if still outstanding) and all the agreements of Ninth Mezzanine Borrower under the Ninth Mezzanine Loan Documents (and without limiting the foregoing, all of the ownership interests in Eighth Mezzanine Borrower, all payments thereon and all proceeds thereof shall be pledged to Lender on terms no less favorable than the pledge of the Collateral under the applicable Pledge Agreement), (2) shall each be a bankruptcy-remote single purpose entity, and (3) shall otherwise have a legal, financial and ownership structure that is (a) substantially the same as the Ninth Mezzanine Borrower or (b) at least as favorable to the Ninth Mezzanine Lender, as determined by the Ninth Mezzanine Lender in its reasonable discretion, as the legal, financial and ownership structure of Ninth Mezzanine Borrower;

(xix) a written consent to the transfer from the lender under each Mezzanine Loan (and, if any, a Permitted Mezzanine Loan) or receipt by Lender of other evidence satisfactory to Lender that all conditions imposed under the terms of each Mezzanine Loan and Permitted Mezzanine Loan shall have been complied with by the borrower thereunder or otherwise waived by the applicable lender; and

(xx) subsequent to such assumption of the Loan, the beneficial ownership of Borrower and Operating Company will be substantially identical.

(g) Restrictions on Transfers set forth herein or in the Mortgage shall not apply to (i) the pledge by First Mezzanine Borrower of the ownership interests in Borrower as security for the First Mezzanine Loan pursuant to the First Mezzanine Loan Agreement, (ii) the pledge by Second Mezzanine Borrower of the ownership interests in First Mezzanine Borrower as security for the Second Mezzanine Loan pursuant to the Second Mezzanine Loan Agreement, (iii) the pledge by Third Mezzanine Borrower of the ownership interests in Second Mezzanine Borrower as security for the Third Mezzanine Loan pursuant to the Third Mezzanine Loan Agreement, (iv) the pledge by Fourth Mezzanine Borrower of the ownership interests in Third Mezzanine Borrower as security for the Fourth Mezzanine Loan pursuant to the Fourth Mezzanine Loan Agreement, (v) the pledge by Fifth Mezzanine Borrower of the ownership interests in Fourth Mezzanine Borrower as security for the Fifth Mezzanine Loan pursuant to the Fifth Mezzanine Loan Agreement, (vi) the pledge by Sixth Mezzanine Borrower of the ownership interests in Fifth Mezzanine Borrower as security for the Sixth Mezzanine Loan pursuant to the Sixth Mezzanine Loan Agreement, (vii) the pledge by Seventh Mezzanine Borrower of the ownership interests in Sixth Mezzanine Borrower as security for the Seventh Mezzanine Loan pursuant to the Seventh Mezzanine Loan Agreement, (viii) the pledge by Eighth Mezzanine Borrower of the ownership interests in Seventh Mezzanine Borrower as security for the Eighth Mezzanine Loan pursuant to the Eighth Mezzanine Loan Agreement, (ix) the pledge by Ninth Mezzanine Borrower of the ownership interests in Eighth Mezzanine Borrower as security for the Ninth Mezzanine Loan pursuant to the Ninth Mezzanine Loan Agreement, (x) any pledge pursuant to a New Mezzanine Loan or (xi) the Transfer or pledge of any direct or indirect interest in Holdings, provided that no Change in Control shall occur.

(h) Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Debt immediately due and payable upon a Transfer without Lender's consent. This provision shall apply to every Transfer regardless of whether voluntary or not, or whether or not Lender has consented to any previous Transfer.

**5.2.11 Operating Lease Subsidiary.** Borrower shall not Transfer any of its interests in Ground Lease Subsidiary without the prior written consent of Lender; Borrower shall not permit Ground Lease Subsidiary to own any assets other than its interests in the Ground Lease or to incur any liabilities other than liabilities under the Ground Lease; Borrower shall not permit Ground Lease Subsidiary to engage in any business other than that related to its ownership of interests in the Ground Lease.

**Section 5.3. General.** For avoidance of doubt, all requirements contained in this Article V with respect to the Operating Company shall mean that it shall be a Default or Event of Default hereunder if Operating Company fails to perform in the specified manner, but Lender acknowledges that Operating Company is not a party to this Agreement and that Borrower does not control Operating Company.

#### **VI. INSURANCE; CASUALTY; CONDEMNATION**

**Section 6.1. Insurance.** (a) Borrower shall obtain and maintain, or cause to be maintained, insurance for Borrower and the Properties providing at least the following coverages:

(i) comprehensive all risk insurance on the Improvements and the Insured Personal Property, contingent liability from Operation of Building Laws, Demolition Costs and Increased Cost of Construction Endorsements, in each case (A) in an amount equal to one hundred percent (100%) of the "Full Replacement Cost," which for purposes of this Agreement shall mean actual replacement value (exclusive of costs of excavations, foundations, underground utilities and footings) with a waiver of depreciation, but the amount shall in no event be less than the outstanding principal balance of the Loan; (B) containing an agreed amount endorsement with respect to the Improvements and Insured Personal Property waiving all co-insurance provisions; (C) providing for no deductible in excess of Five Million and No/100 Dollars (\$5,000,000.00) per occurrence in respect of physical damage plus two days in respect of Business Interruption combined, except in respect of terrorism coverage, where the deductible may be up to \$10,000,000 per occurrence, in respect of earthquake coverage, where the deductible may be up to \$50,000,000 per occurrence for all insured locations in Nevada and \$25,000,000 per occurrence for all other insured locations, named storm coverage (including flood as a result of named storm), where the deductible may be up to \$50,000,000 per occurrence for all insured locations in New Jersey and \$10,000,000 per occurrence for all other insured locations; or, if greater, in respect of terrorism, earthquake, named storm (including flood as a result of named storm) insurance, 5% of the total insured value per insured location per occurrence for all such insurance coverage; and (D) containing an "Ordinance or Law Coverage" or "Enforcement" endorsement in amounts as reasonably required by Lender if any of the Improvements or the use of the Individual Property shall at any time constitute legal non-conforming structures or uses. In addition, Borrower shall obtain: (w) terrorism insurance in amounts equal to the lesser of (1) the outstanding aggregate principal balance of the Note and the Mezzanine Notes or (2) \$1,500,000,000, to the extent available for a premium not in excess of the Terrorism Premium Limit, (x) if any portion of the Improvements is currently or at any time in the future located in a federally designated "special flood hazard area", flood hazard insurance in an amount equal to the lesser of (1) the outstanding aggregate principal balance of the Note and the Mezzanine Notes or (2) \$250,000,000.00 per occurrence and in the aggregate; (y) earthquake insurance in amounts equal to the lesser of (1) the outstanding aggregate principal balance of the Note and the Mezzanine Notes or (2) \$250,000,000 per occurrence and in the aggregate or such other reasonable amount as Lender shall require and in form and substance

satisfactory to Lender in the event the Individual Property is located in an area with a high degree of seismic activity (it being understood and agreed by Borrower that, in the case of Bill's Lake Tahoe Casino, Borrower shall be required to obtain and maintain earthquake insurance in an amount no less than the product of (i) the "Probable Maximum Loss" for such Individual Property times (ii) the sum of the replacement cost for such Individual Property and the business income insurance proceeds that would be payable in respect of such Individual Property for a period of twenty-four (24) months); and (z) coastal windstorm insurance in form and substance satisfactory to Lender in the event the Individual Property is located in any coastal region, in an amount equal to the lesser of (1) the outstanding aggregate principal balance of the Note and the Mezzanine Notes or (2) \$750,000,000.00 per occurrence on a blanket policy basis for all of the insured locations or (3) such other reasonable amount as Lender shall require; it being understood and agreed that coverage is being provided under a blanket policy and on a per occurrence limitation for all insured locations as defined under the policy which includes those collateralized under this agreement, as well as other locations and exposures. In addition to the foregoing, with respect to the flood and coastal windstorm coverages required pursuant to the above, Borrower shall cause the execution and delivery, by each current and future owner of any property located in the Atlantic City, New Jersey area insured under the policy insuring one or more of the Properties and each current and future creditor (other than lenders providing financing concurrently with the making of the Loan) which has a security interest in, or any other loss payee of, the proceeds of any such policy, of the Windstorm Insurance Intercreditor Agreement requiring application of any proceeds from such coverages to the repayment and/or restoration of the Properties (in accordance herewith) subject to the Lien of the Mortgages at the time in question prior to any other application and shall use commercially reasonable efforts to cause each of the insurance companies providing such coverage to make such payment directly to Lender for application as aforesaid. Except as specifically provided in subclauses (w), (x), (y) and (z) of the preceding sentence, the insurance required pursuant to such subclauses (w), (x), (y) and (z) hereof shall otherwise be on terms consistent with the comprehensive all risk insurance policy required under this subsection (i);

(ii) commercial general liability insurance (including liquor law liability) against claims for personal injury, bodily injury, death or property damage occurring upon, in or about the Individual Property, such insurance (A) to be on the so-called "occurrence" form with a combined limit of not less than Two Million and No/100 Dollars (\$2,000,000) in the aggregate and One Million and No/100 Dollars (\$1,000,000) per occurrence (and, if on a blanket policy, containing an "Aggregate Per Location" endorsement); (B) to continue at not less than the aforesaid limit until required to be changed by Lender in writing by reason of changed economic conditions making such protection inadequate; (C) to cover at least the following hazards: (1) premises and operations; (2) products and completed operations on an "if any" basis; (3) independent contractors; (4) blanket contractual liability for all legal contracts; and (5) contractual liability covering the indemnities contained in Article 8 of the Mortgages to the extent the same is available and (D) with deductions and self-insured retentions reasonably acceptable to Lender.

(iii) business income insurance on an actual loss sustained basis for the period of restoration (A) with loss payable to Lender; (B) covering all risks required to be covered by the insurance provided for in subsection (i) above; (C) containing an extended period of indemnity endorsement which provides that after the physical loss to the Improvements and Insured Personal Property has been repaired, the continued loss of income will be insured until such income either returns to the same level it was at prior to the loss, or the expiration of twelve (12) months from the date that the applicable Individual Property is repaired or replaced and full operations are resumed, whichever first occurs, and notwithstanding that the policy may expire prior to the end of such period; and (D) in an amount equal to one hundred percent (100%) of the projected Revenue from each Individual Property for a period of 24 months (in addition to the 12 month extended period of indemnity referred to in clause (C) above) from the date of such Casualty (assuming such Casualty had not occurred) and notwithstanding that the policy may expire at the end of such period. The amount of such business income insurance shall be determined prior to the date hereof and at least once each year thereafter based on Borrower's reasonable estimate of the Revenue from each Individual Property for the succeeding twenty-four (24) month period (in addition to the 12 month extended period of indemnity referred to in clause (C) above). All proceeds payable to Lender pursuant to this subsection shall be held by Lender and shall be applied at Lender's sole discretion to (I) the obligations secured by the Loan Documents from time to time due and payable hereunder and under the Note or (II) operating expenses of the applicable Individual Property approved by Lender in its sole discretion; provided, however, that nothing herein contained shall be deemed to relieve Borrower of its obligations to pay the obligations secured by the Loan Documents on the respective dates of payment provided for in the Note and the other Loan Documents except to the extent such amounts are actually paid out of the proceeds of such business income insurance;

(iv) at all times during which structural construction, repairs or alterations are being made with respect to the Improvements, and only if the property and liability coverage forms do not otherwise apply, (A) owner's contingent or protective liability insurance covering claims not covered by or under the terms or provisions of the above mentioned commercial general liability insurance policy; and (B) the insurance provided for in subsection (i) above written in a so-called builder's risk completed value form, including coverage for 100% of the total construction costs (1) on a non-reporting basis, (2) against all risks insured against pursuant to subsection (i) above, (3) including permission to occupy the Individual Property, and (4) with an agreed amount endorsement waiving co-insurance provisions;

(v) if an Individual Property includes commercial property, worker's compensation insurance, employers' liability and employment practices liability with respect to any employees of Borrower, as required by any Governmental Authority or Legal Requirement and in amounts reasonably required by Lender, comprehensive boiler and machinery insurance, if applicable, in amounts as shall be reasonably required by Lender on terms consistent with the commercial property insurance policy required under subsection (i) above;

(vi) umbrella liability insurance in an amount not less than Two Hundred Million and No/100 Dollars (\$200,000,000.00) per occurrence on terms consistent with the commercial general liability insurance policy required under subsection (ii) above;

(vii) motor vehicle liability coverage for all owned and non-owned vehicles, including rented and leased vehicles containing minimum limits per occurrence, including umbrella coverage, of Fifty Million and No/100 Dollars (\$50,000,000.00);

(viii) if an Individual Property is or becomes a legal “non-conforming” use, ordinance or law coverage and insurance coverage to compensate for the cost of demolition or rebuilding of the undamaged portion of the Individual Property along with any reduced value and the increased cost of construction in amounts as reasonably requested by Lender;

(ix) the commercial property and business income insurance required under Sections 6.1(a)(i) and (iii) above shall cover perils of terrorism and acts of terrorism (both Certified and Non-Certified) and Borrower shall maintain commercial property and business income insurance for loss resulting from perils and acts of terrorism on terms (including amounts) consistent with those required under Sections 6.1(a)(i) and (iii) above at all times during the term of the Loan; provided, however, that Borrower shall not be obligated to spend, for all insured locations per annum, more than the Terrorism Premium Limit to maintain the aforesaid insurance and, in the event that the cost of such insurance premiums (for each Individual Property, to obtain and maintain the aforesaid insurance) exceeds the Terrorism Premium Limit, in each case for each Individual Property, on a per annum basis, then Borrower shall obtain and maintain such insurance covering perils of terrorism and acts of terrorism in such maximum amounts as may be obtained for such Individual Property (covering the risks described in this paragraph (x)) upon payment of the Terrorism Premium Limit, in each case for each such Individual Property;

(x) crime coverage in an amount not less than Twenty-Five Million and No/100 Dollars to (\$25,000,000) protect against employee dishonesty and related incidents; and

(xi) upon sixty (60) days’ notice, such other reasonable insurance and in such reasonable amounts as Lender from time to time may reasonably request against such other insurable hazards which at the time are commonly insured against for property similar to the Individual Property located in or around the region in which the Individual Property is located.

(b) All insurance provided for in Section 6.1(a) shall be obtained under valid and enforceable policies (collectively, the “**Policies**” or in the singular, the “**Policy**”), and shall be subject to the approval of Lender as to insurance companies, amounts, deductibles, loss payees and insureds. The Policies shall be issued by (i) financially sound and responsible insurance companies authorized to do business in the State and having a claims paying ability rating of “A-” or better by S&P and, if rated by Moody’s, a claims paying ability rating of “A2”

or better (and the equivalent thereof); provided, however, that if the insurance required to be provided pursuant to this Section 6.1 shall be obtained from a syndicate of insurers, then at least seventy-five percent (75%) of the coverage (if there are four (4) or fewer members of the syndicate) or at least sixty percent (60%) of the coverage (if there are five (5) or more members of the syndicate) is provided by insurers having such ratings (but in no event shall the rating of any insurer in such syndicate be less than "BBB" by S&P; provided that any insurer in the syndicate as of the Closing Date that is not rated by S&P can remain in the syndicate on the following conditions: (x) such insurer does not insure more than, or change its "first" or other level-of-loss position from, that in effect as of the Closing Date and (y) such insurer maintains an A.M. Best rating of at least A-/X (except that the rating of Glacier Reinsurance AG may be A-/IX). The Policies described in Section 6.1(a) (other than those strictly limited to liability protection) shall designate Lender as mortgagee and loss payee. Not less than ten (10) days prior to the expiration dates of the Policies theretofore furnished to Lender, certificates of insurance evidencing the Policies accompanied by evidence satisfactory to Lender of payment of the premiums due thereunder (the "**Insurance Premiums**"), shall be delivered by Borrower to Lender.

(c) Notwithstanding anything to the contrary contained in the immediately preceding paragraph (b), any insurance required to be maintained by Borrower under Section 6.1(a)(x) hereof covering perils and acts of terrorism may be provided by a captive insurance company (a "**Captive Insurance Company**") with the prior reasonable written consent of Lender and subject to Lender's review and approval of Policies and other documentation reasonably requested by Lender and the satisfaction of such other conditions as Lender may reasonably require provided that (and for so long as) (i) except with respect to any deductible permitted under Section 6.1(a)(x), those covered losses which are not reinsured by the federal government under TRIA and payable directly to the insured shall be reinsured by an insurance company having a claims paying ability rating of "A-" or better with S&P, (ii) all re-insurance agreements between such Captive Insurance Company and all such re-insurance companies providing the referenced re-insurance shall be reasonably acceptable to Lender, and Borrower shall cause such re-insurance agreements to provide for direct access to such re-insurers through a direct access cut-through endorsement by all named insureds, loss payees and mortgagees, (iii) such Captive Insurance Company shall not be subject to a bankruptcy or similar insolvency proceeding, (iv) such Captive Insurance Company shall be licensed in the States of Nevada, New Jersey and California (to the extent any portion of the improvements are located in California), to the extent required, and qualified to issue the terrorism insurance policy described in Section 6.1(a)(x) and similar terrorism insurance policies in accordance with all Legal Requirements, (v) such Captive Insurance Company shall qualify for the reinsurance and other benefits afforded insurance companies under TRIA as evidenced by a letter or written confirmation provided by the United States Department of the Treasury (it is understood that a written request for such letter has been sent and Borrower shall use its reasonable best efforts to obtain promptly a positive response thereto and, in the event Borrower is unable to obtain such letter from the Department of the Treasury, Borrower shall obtain a comfort letter addressed to Lender, reasonably acceptable to Lender, from a reputable insurance consultant reasonably acceptable to Lender, it being acknowledged that either Willis Insurance or Beecher Carlson would be acceptable to Lender, confirming that such Captive Insurance Company qualifies for reinsurance and other benefits afforded insurance companies under TRIA), (vi) no

Governmental Authority shall have issued any statement, opinion, finding or decree that any insurance company which is similar to such Captive Insurance Company (i.e., an insurance company owned and/or Controlled by a Person insured under an applicable insurance policy) does not qualify for such benefits and TRIA shall be in full force and effect, (vii) Lender shall have received each of the following, each of which shall be reasonably acceptable to Lender: (1) the organizational documents of such Captive Insurance Company; (2) any regulatory agreements of such Captive Insurance Company; (3) the application for licensing in the States of Nevada, California and New Jersey for such Captive Insurance Company; (4) the form of the Policy to be used by such Captive Insurance Company to provide the insurance coverage described herein; (5) a description of the structure and amount of reserves and capitalization of such Captive Insurance Company; (viii) the Insurance Premiums payable to such Captive Insurance Company have been determined and recommended by an independent firm reasonably acceptable to Lender; (ix) the organizational documents of such Captive Insurance Company shall not be materially amended without the prior written consent of Lender, which consent shall not be unreasonably withheld, conditioned or delayed; and (x) except as otherwise expressly set forth in this paragraph (c), all such insurance provided by such Captive Insurance Company shall otherwise comply with all other terms and conditions of Section 6.1. Lender hereby accepts and approves Romulus Risk and Insurance Company, Inc. as a Captive Insurance Company in accordance with the program that is in effect as of the date hereof. If, in connection with any claim under the Policies, Lender shall suffer a loss as a result of (A) Captive Insurance Company's fraud, willful misconduct, gross negligence, illegal action or the failure of Captive Insurance Company to pay any Borrower claim up to the Captive Insurance Company's policy limits, or (B) the refusal or failure of any issuer of the re-insurance agreements and/or the United States of America to pay such issuer's proportional share of any such claim based on any claim or set of facts relating to the organizational structure, licensing, documentation, contracts and agreements or solvency relating to the Captive Insurance Company or for any actual or alleged action or inaction of the Captive Insurance Company (any such loss being referred to as a "Captive Insurance Loss"), then Borrower shall pay (without premium or penalty) to Lender within ninety (90) days after receipt of notice of a potential shortfall from Lender an amount equal to the Captive Insurance Loss. Captive Insurance Company's failure to comply with the requirements set forth in this subsection (c) shall be deemed prima facie evidence of a Captive Insurance Loss.

(d) Any blanket insurance Policy (other than a blanket insurance policy for windstorm) shall specifically allocate to the Individual Property the amount of coverage from time to time required hereunder or shall otherwise provide the same protection as would a separate Policy. Furthermore it is agreed that the insurance coverage required under Section 6.1(a) may be effected under a blanket policy or policies covering the Properties and other property and assets not constituting a part of the collateralized properties;

(e) All Policies provided for or contemplated by Section 6.1(a), except for the Policy referenced in Section 6.1(a)(v), shall name Operating Company and Borrower as the insured and Lender as the additional insured, as its interests may appear, and in the case of property damage, boiler and machinery, flood and earthquake insurance, shall contain a so-called New York standard non-contributing mortgagee clause in favor of Lender providing that the loss thereunder shall be payable to Lender.

(f) All Policies provided for in Section 6.1 shall contain clauses or endorsements to the effect that:

(i) no act or negligence of Borrower, or anyone acting for Borrower, or of any tenant or other occupant, or failure to comply with the provisions of any Policy, which might otherwise result in a forfeiture of the insurance or any part thereof, shall in any way affect the validity or enforceability of the insurance insofar as Lender is concerned;

(ii) the Policies shall not be materially changed (other than to increase the coverage provided thereby) or canceled without at least thirty (30) days' notice to Lender and any other party named therein as an additional insured;

(iii) the issuers thereof shall give notice to Lender if the Policies have not been renewed fifteen (15) days prior to its expiration; and

(iv) Lender shall not be liable for any Insurance Premiums thereon or subject to any assessments thereunder.

(g) If at any time Lender is not in receipt of written evidence that all Policies are in full force and effect when and as required hereunder, Lender shall have the right, without notice to Borrower, to take such action as Lender deems necessary to protect its interest in the Properties, including, without limitation, the obtaining of such insurance coverage as Lender in its sole discretion deems appropriate (but limited to the coverages and amounts required hereunder). All premiums incurred by Lender in connection with such action or in obtaining such insurance and keeping it in effect shall be paid by Borrower to Lender upon demand and, until paid, shall be secured by the Mortgages and shall bear interest at the Default Rate.

(h) All of the coverages required by this Section 6.1 shall be in place as of the Closing Date except as provided in this Section 6.1(h). Borrower shall have thirty (30) days following the Closing Date to increase the amount of windstorm coverage in place to the amount required by Section 6.1(a). In the event such additional windstorm coverage is not in place as of the Closing Date, Borrower shall deliver to Lender on the Closing Date \$7 million to be held in escrow, as collateral for the Loan. The failure of Borrower to obtain the required amount of windstorm coverage on or prior to the thirtieth day following the Closing Date shall constitute an Event of Default and Lender shall be entitled to apply any amounts escrowed pursuant to this Section 6.1(h) to any obligations of Borrower hereunder, including, without limitation, to the purchase of windstorm insurance in the amount required hereby. Lender shall invest any amounts escrowed pursuant to this Section 6.1(h) in Permitted Investments and the interest earned thereon shall be for the account of Borrower. Upon Borrower delivering insurance certificates to Lender evidencing that Borrower has the required amount of windstorm insurance in place, Lender shall return any amounts escrowed pursuant to this Section 6.1(h) to Borrower.

**Section 6.2. Casualty.** If the Individual Property shall be materially damaged or destroyed, in whole or in part, by fire or other casualty (a "Casualty"), Borrower shall give prompt notice of such damage to Lender and shall promptly commence and diligently prosecute

the completion of the Restoration of the Individual Property as nearly as possible to the condition the Individual Property was in immediately prior to such Casualty, with such alterations as may be reasonably approved by Lender and otherwise in accordance with Section 6.4. Borrower shall pay all costs of such Restoration whether or not such costs are covered by insurance. Lender may, but shall not be obligated to make proof of loss if not made promptly by Borrower. In addition, Lender may participate in any settlement discussions with any insurance companies with respect to any Casualty in which the Net Proceeds or the costs of completing the Restoration are equal to or greater than, in the case of each Casualty, an amount equal to five percent (5%) of the sum of the Allocated Loan Amount for the affected Individual Property and the "Allocated Loan Amounts" under (and as defined in each of) the Mezzanine Loan Agreements for the affected Individual Property, and Borrower shall deliver to Lender all instruments required by Lender to permit such participation.

**Section 6.3. Condemnation.** Borrower shall promptly give Lender notice of the actual or threatened commencement of any proceeding for the Condemnation of any Individual Property and shall deliver to Lender copies of any and all papers served in connection with such proceedings. Lender may participate in any such proceedings, and Borrower shall from time to time deliver to Lender all instruments requested by it to permit such participation. Borrower shall, at its expense, diligently prosecute any such proceedings, and shall consult with Lender, its attorneys and experts, and cooperate with them in the carrying on or defense of any such proceedings. Notwithstanding any taking by any public or quasi-public authority through Condemnation or otherwise (including, but not limited to, any transfer made in lieu of or in anticipation of the exercise of such taking), Borrower shall continue to pay the Debt at the time and in the manner provided for its payment in the Note and in this Agreement and the Debt shall not be reduced until any Award shall have been actually received and applied by Lender, after the deduction of expenses of collection, to the reduction or discharge of the Debt. Lender shall not be limited to the interest paid on the Award by the condemning authority but shall be entitled to receive out of the Award interest at the rate or rates provided herein or in the Note. If any Individual Property or any portion thereof is taken by a condemning authority, Borrower shall promptly commence and diligently prosecute the Restoration of the applicable Individual Property and otherwise comply with the provisions of Section 6.4. If any Individual Property is sold, through foreclosure or otherwise, prior to the receipt by Lender of the Award, Lender shall have the right, whether or not a deficiency judgment on the Note shall have been sought, recovered or denied, to receive the Award, or a portion thereof sufficient to pay the Debt.

**Section 6.4. Restoration.** The following provisions shall apply in connection with the Restoration of any Individual Property:

(a) If the Net Proceeds from an Individual Property, or the costs of completing the Restoration of such Individual Property, are less than an amount equal to five percent (5%) of the sum of the Allocated Loan Amount for such Individual Property and the "Allocated Loan Amounts" under (and as defined in each of) the Mezzanine Loan Agreements for such Individual Property, the Net Proceeds will be disbursed by Lender to Borrower upon receipt, provided that all of the conditions set forth in Section 6.4(b)(i) are met and Borrower delivers to Lender a written undertaking to expeditiously commence and to satisfactorily complete with due diligence the Restoration in accordance with the terms of this Agreement.

(b) If the Net Proceeds from an Individual Property, or the costs of completing the Restoration of such Individual Property, are equal to or greater than an amount equal to five percent (5%) of the sum of the Allocated Loan Amount for such Individual Property and the “Allocated Loan Amounts” under (and as defined in each of) the Mezzanine Loan Agreements for such Individual Property, the Net Proceeds will be held by Lender and Lender shall make the Net Proceeds available for the Restoration in accordance with the provisions of this Section 6.4. The term “**Net Proceeds**” for purposes of this Section 6.4 shall mean: (i) the net amount of all insurance proceeds received by Lender pursuant to Section 6.1 (a)(i), (iv), (vi), (ix) and (x) as a result of such damage or destruction, after deduction of its reasonable costs and expenses (including, but not limited to, reasonable counsel fees), if any, in collecting same (“**Insurance Proceeds**”), or (ii) the net amount of the Award, after deduction of its reasonable costs and expenses (including, but not limited to, reasonable counsel fees), if any, in collecting same (“**Condemnation Proceeds**”), together with (in each case) interest accruing thereon, whichever the case may be.

(i) The Net Proceeds shall be made available to Borrower for Restoration upon the approval of Lender in its sole discretion that the following conditions are met:

(A) no Event of Default shall have occurred and be continuing;

(B) (1) in the event the Net Proceeds are Insurance Proceeds, less than forty percent (40%) of the total floor area of the Improvements on the Individual Property has been damaged, destroyed or rendered unusable as a result of such Casualty or (2) in the event the Net Proceeds are Condemnation Proceeds, less than fifteen percent (15%) of the land constituting the Individual Property is taken, and such land is located along the perimeter or periphery of the Individual Property, and no material portion of the Improvements is located on such land;

(C) Intentionally Omitted;

(D) Borrower shall commence the Restoration as soon as reasonably practicable (but in no event later than sixty (60) days after such Casualty or Condemnation) and shall diligently pursue the same to satisfactory completion;

(E) Lender shall be satisfied that any operating deficits, including all scheduled payments of principal and interest under the Note, which will be incurred with respect to the Individual Property as a result of the occurrence of any such Casualty or Condemnation, whichever the case may be, will be covered out of (1) the Net Proceeds, (2) the insurance coverage referred to in Section 6.1(a)(iii), if applicable, or (3) by other funds of Borrower;

(F) Lender shall be satisfied that the Restoration will be completed on or before the earliest to occur of (1) three (3) months prior to the Maturity Date, (2) the earliest date required for such completion under the terms of any Leases, (3) such time as may be required under applicable Legal Requirements or (4) the expiration of the insurance coverage referred to in Section 6.1(a)(iii);

(G) the Individual Property and the use thereof after the Restoration will be in compliance with and permitted under all applicable Legal Requirements;

(H) the Restoration shall be done and completed by Borrower in an expeditious and diligent fashion and in compliance with all applicable Legal Requirements and in compliance with all requirements set forth in the Mezzanine Loan Agreements;

(I) such Casualty or Condemnation, as applicable, does not result in the permanent loss of access to the Individual Property or the related Improvements;

(J) Borrower shall deliver, or cause to be delivered, to Lender a signed detailed budget approved in writing by Borrower's architect or engineer stating the entire cost of completing the Restoration, which budget shall be reasonably acceptable to Lender; and

(K) the Net Proceeds together with any cash or cash equivalent deposited by Borrower with Lender are sufficient in Lender's discretion to cover the cost of the Restoration.

(ii) The Net Proceeds shall be held by Lender in an interest-bearing account and, until disbursed in accordance with the provisions of this Section 6.4(b), shall constitute additional security for the Debt and other obligations under the Loan Documents (with all interest on such Net Proceeds being for the benefit of Borrower). The Net Proceeds shall be disbursed by Lender to, or as directed by, Borrower from time to time during the course of the Restoration, upon receipt of evidence satisfactory to Lender that (A) all materials installed and work and labor theretofore performed (except to the extent that they are to be paid for out of the requested disbursement) in connection with the Restoration have been paid for in full (to the extent payment is due and payable), and (B) there exist no notices of pendency, stop orders, mechanic's or materialman's liens or notices of intention to file same, or any other liens or encumbrances of any nature whatsoever on the Individual Property which have not either been fully bonded to the satisfaction of Lender and discharged of record or in the alternative fully insured to the satisfaction of Lender by the title company issuing the Title Insurance Policy.

(iii) (A) All plans and specifications required in connection with the Restoration shall be subject to prior reasonable review and acceptance in all respects by Lender and by an independent consulting engineer selected by Lender (the "**Casualty Consultant**"). Lender shall have the use of the plans and specifications and all permits, licenses and approvals required or obtained in connection with the Restoration. The identity of the contractors, subcontractors and materialmen engaged in the Restoration, as well as the contracts under which they have been engaged, shall be subject to prior reasonable review and acceptance by Lender and the Casualty Consultant. All reasonable out-of-pocket costs and expenses incurred by Lender in connection with making the Net

Proceeds available for the Restoration including, without limitation, reasonable counsel fees and disbursements and the Casualty Consultant's fees, shall be paid by Borrower.

(B) Every submission to Lender of any plans and specifications, information regarding the identity of contractors, subcontractors and materialmen engaged in the Restoration as well as the contracts under which they have been engaged, that are submitted to Lender for Lender's approval, shall be forwarded to Lender together with a notice from Borrower (in bold typeface) that states "YOUR FAILURE TO RESPOND TO THIS NOTICE AND REQUEST FOR APPROVAL WITHIN TEN (10) BUSINESS DAYS OF YOUR RECEIPT OF THIS NOTICE SHALL CONSTITUTE YOUR DEEMED CONSENT TO THE MATTERS DESCRIBED IN OR THAT ARE THE SUBJECT OF THIS NOTICE". If Lender responds to Borrower's request by identifying missing documents or materials that are incomplete or inaccurate (and that are the subject of the request for approval), then Borrower shall re-submit such documents or materials to Lender for its approval together with a second notice from Borrower that complies with this section.

(C) If Lender fails to approve or disapprove any such proposed request or submission attached to a first notice or request sent by Borrower (or the matters that are the subject of the re-submitted notice or request for approval) within ten (10) Business Days of receipt of same, Borrower shall re-submit such instruments or materials to Lender for Lender's approval and give Lender a second notice (in bold typeface) that states "SECOND NOTICE — YOUR FAILURE TO RESPOND TO THIS NOTICE AND REQUEST FOR APPROVAL WITHIN TEN (10) BUSINESS DAYS OF YOUR RECEIPT OF THIS NOTICE SHALL CONSTITUTE YOUR DEEMED CONSENT TO THE MATTERS DESCRIBED IN OR THAT ARE THE SUBJECT OF THIS NOTICE". If Lender fails to respond to such second notice within ten (10) Business Days from the receipt of same, then Lender's consent to the proposed request or submission that is the subject of such notice shall be deemed granted.

(iv) In no event shall Lender be obligated to make disbursements of the Net Proceeds in excess of an amount equal to the costs actually incurred from time to time for work in place as part of the Restoration, as certified by the Casualty Consultant, minus the Casualty Retainage. The term "**Casualty Retainage**" shall mean an amount equal to ten percent (10%) of the costs actually incurred for work in place as part of the Restoration, as certified by the Casualty Consultant, until fifty percent (50%) of the Restoration has been completed (and five percent (5%) thereafter)). The Casualty Retainage shall in no event, and notwithstanding anything to the contrary set forth above in this Section 6.4(b), be less than the amount actually held back by Borrower from contractors, subcontractors and materialmen engaged in the Restoration. The Casualty Retainage shall not be released until the Casualty Consultant certifies to Lender that the Restoration has been completed in accordance with the provisions of this Section 6.4(b) and that all approvals necessary for the re-occupancy and use of the Individual Property have been obtained from all appropriate governmental and quasi-governmental authorities, and Lender receives evidence satisfactory to Lender that the costs of the Restoration have been paid in full or will be paid in full out of the Casualty Retainage;

provided, however, that Lender will release the portion of the Casualty Retainage being held with respect to any contractor, subcontractor or materialman engaged in the Restoration as of the date upon which the Casualty Consultant certifies to Lender that the contractor, subcontractor or materialman has satisfactorily completed all work and has supplied all materials in accordance with the provisions of the contractor's, subcontractor's or materialman's contract, the contractor, subcontractor or materialman delivers the lien waivers and evidence of payment in full of all sums due to the contractor, subcontractor or materialman as may be reasonably requested by Lender or by the title company issuing the Title Insurance Policy, and Lender receives an endorsement to the Title Insurance Policy insuring the continued priority of the lien of the related Mortgage and evidence of payment of any premium payable for such endorsement. If required by Lender, the release of any such portion of the Casualty Retainage shall be approved by the surety company, if any, which has issued a payment or performance bond with respect to the contractor, subcontractor or materialman.

(v) Lender shall not be obligated to make disbursements of the Net Proceeds more frequently than once every calendar month or at any time an Event of Default shall have occurred and be continuing.

(vi) If at any time the Net Proceeds or the undisbursed balance thereof shall not, in the reasonable opinion of Lender in consultation with the Casualty Consultant, be sufficient to pay in full the balance of the costs which are estimated by the Casualty Consultant to be incurred in connection with the completion of the Restoration, Borrower shall deposit the deficiency (the "**Net Proceeds Deficiency**") with Lender before any further disbursement of the Net Proceeds shall be made. The Net Proceeds Deficiency deposited with Lender shall be held by Lender and shall be disbursed for costs actually incurred in connection with the Restoration on the same conditions applicable to the disbursement of the Net Proceeds, and until so disbursed pursuant to this Section 6.4(b) shall constitute additional security for the Debt and other obligations under the Loan Documents.

(vii) The excess, if any, of the Net Proceeds and the remaining balance, if any, of the Net Proceeds Deficiency deposited with Lender after the Casualty Consultant certifies to Lender that the Restoration has been completed in accordance with the provisions of this Section 6.4(b), and the receipt by Lender of evidence satisfactory to Lender that all costs incurred in connection with the Restoration have been paid in full, shall be remitted by Lender to Borrower, provided no Event of Default shall have occurred and shall be continuing.

(c) All Net Proceeds not required (i) to be made available for the Restoration or (ii) to be returned to Borrower as excess Net Proceeds pursuant to Section 6.4(b)(vii) may be retained and applied by Lender in accordance with Section 2.4.2 hereof toward the payment of the Debt whether or not then due and payable (without payment of any Spread Maintenance Premium) in such order, priority and proportions as Lender in its sole discretion shall deem proper (but pro-rata among any components of the Debt), or, at the discretion of Lender, the

same may be paid, either in whole or in part, to Borrower for such purposes as Lender shall approve, in its discretion.

(d) In the event of foreclosure of the Mortgage with respect to the Individual Property, or other transfer of title to the Individual Property in extinguishment in whole or in part of the Debt all right, title and interest of Borrower in and to the Policies that are not blanket Policies then in force concerning the Individual Property and all proceeds payable thereunder shall thereupon vest in the purchaser at such foreclosure or Lender or other transferee in the event of such other transfer of title.

## **VII. RESERVE FUNDS**

### **Section 7.1. Intentionally Omitted.**

**Section 7.2. Tax and Insurance Escrow Fund.** (a) If (and for so long as) a Trigger Event shall have occurred and shall not have been cured by a Trigger Event Cure, on each Payment Date during such period, Borrower shall pay to Lender (or Servicer, as directed by Lender) an amount equal to (i) one-twelfth of the Taxes that Lender estimates will be payable during the next ensuing twelve (12) months in order to accumulate with Lender sufficient funds to pay all such Taxes at least thirty (30) days prior to their respective due dates, and (ii) one-twelfth of the Insurance Premiums that Lender estimates will be payable for the renewal of the coverage afforded by the Policies upon the expiration thereof in order to accumulate with Lender sufficient funds to pay all such Insurance Premiums at least thirty (30) days prior to the expiration of the Policies (said amounts in (i) and (ii) above hereinafter called the “**Tax and Insurance Escrow Fund**”). Lender shall apply the Tax and Insurance Escrow Fund to payments of Taxes and Insurance Premiums required to be made by Borrower pursuant to Section 5.1.2 hereof and under the Mortgages. In making any payment relating to the Tax and Insurance Escrow Fund, Lender may do so according to any bill, statement or estimate procured from the appropriate public office (with respect to Taxes) or insurer or agent (with respect to Insurance Premiums), without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof. If the amount of the Tax and Insurance Escrow Fund shall exceed the amounts due for Taxes and Insurance Premiums pursuant to Section 5.1.2 hereof, provided no Event of Default shall have occurred and be continuing, then Lender shall return any excess to Borrower (or to Operating Company, if so directed by Borrower). In allocating such excess, Lender may deal with the Person shown on the records of Lender to be the owner of the Properties. If at any time Lender reasonably determines that the Tax and Insurance Escrow Fund is not or will not be sufficient to pay Taxes and Insurance Premiums by the dates set forth in (i) and (ii) above, Lender shall notify Borrower of such determination and Borrower shall increase its monthly payments to Lender by the amount that Lender estimates is sufficient to make up the deficiency at least thirty (30) days prior to the due date of the Taxes and/or thirty (30) days prior to expiration of the Policies, as the case may be.

(b) Notwithstanding the foregoing, Borrower shall not be required to make any deposits into the Tax and Insurance Escrow Fund on account of Insurance Premiums if (and for so long as) Borrower shall maintain a blanket insurance policy in respect of the Properties that is

in accordance with the provisions of Section 6.1(a) and otherwise satisfactory to Lender in all material respects.

(c) Any amount remaining in the Tax and Insurance Escrow Fund following the occurrence of a Trigger Event Cure shall be returned to Borrower (or Operating Company, as directed by Borrower), provided no Event of Default shall have occurred and be continuing. Any Tax and Insurance Escrow Funds remaining after the Debt has been paid in full shall be remitted (i) first, to the First Mezzanine Lender or (ii) if the First Mezzanine Loan is not then outstanding but the Second Mezzanine Loan is outstanding, then to the Second Mezzanine Lender in accordance with the First Mezzanine Loan Agreement or (iii) if the First Mezzanine Loan and the Second Mezzanine Loan are not then outstanding but the Third Mezzanine Loan is outstanding, then to the Third Mezzanine Lender in accordance with the Second Mezzanine Loan Agreement or (iv) if the First Mezzanine Loan, the Second Mezzanine Loan and the Third Mezzanine Loan are no longer outstanding, then to the Fourth Mezzanine Lender in accordance with the Third Mezzanine Loan Agreement or (v) if the First Mezzanine Loan, the Second Mezzanine Loan, the Third Mezzanine Loan and the Fourth Mezzanine Loan are no longer outstanding, then to the Fifth Mezzanine Lender in accordance with the Fourth Mezzanine Loan Agreement or (vi) if the First Mezzanine Loan, the Second Mezzanine Loan, the Third Mezzanine Loan, the Fourth Mezzanine Loan and the Fifth Mezzanine Loan are no longer outstanding, then to the Sixth Mezzanine Lender in accordance with the Fifth Mezzanine Loan Agreement or (vii) if the First Mezzanine Loan, the Second Mezzanine Loan, the Third Mezzanine Loan, the Fourth Mezzanine Loan, the Fifth Mezzanine Loan and the Sixth Mezzanine Loan are no longer outstanding, then to the Seventh Mezzanine Lender in accordance with the Sixth Mezzanine Loan Agreement or (viii) if the First Mezzanine Loan, the Second Mezzanine Loan, the Third Mezzanine Loan, the Fourth Mezzanine Loan, the Fifth Mezzanine Loan, the Sixth Mezzanine Loan and the Seventh Mezzanine Loan are no longer outstanding, then to the Eighth Mezzanine Lender in accordance with the Seventh Mezzanine Loan Agreement or (ix) if the First Mezzanine Loan, the Second Mezzanine Loan, the Third Mezzanine Loan, the Fourth Mezzanine Loan, the Fifth Mezzanine Loan, the Sixth Mezzanine Loan, the Seventh Mezzanine Loan and the Eighth Mezzanine Loan are no longer outstanding, then to the Ninth Mezzanine Lender in accordance with the Eighth Mezzanine Loan Agreement or (x) if the First Mezzanine Loan, the Second Mezzanine Loan, the Third Mezzanine Loan, the Fourth Mezzanine Loan, the Fifth Mezzanine Loan, the Sixth Mezzanine Loan, the Seventh Mezzanine Loan, the Eighth Mezzanine Loan and the Ninth Mezzanine Loan are no longer outstanding then to Borrower or, at Borrower's election, shall be credited against the Debt simultaneously with the satisfaction of the balance of the Loan

**Section 7.3. FF&E Reserve Account.**

**7.3.1 FF&E Reserve Fund.** (a) Unless Borrower shall have delivered to Lender a Guaranty (FF&E), Borrower shall pay to Lender (or Servicer, as directed by Lender) on each Payment Date an amount equal to (i) one-twelfth of three percent (3%) of the amount of all Revenues for the full calendar year prior to the first (1st) day of the month in which such Payment Date occurs, less (ii) any amount spent during the previous calendar month by Borrower or Operating Company on behalf of Borrower in accordance with the Operating Lease on account of FF&E (other than from the FF&E Reserve Fund; it being understood that amounts

expended on account of FF&E from the FF&E Reserve Fund shall not be included in any deductions required pursuant to the preceding subclause (i) and that any FF&E that is purchased through disbursements from the FF&E Reserve Fund may not be subsequently financed by Borrower or Operating Company). Notwithstanding anything to the contrary contained herein, in no event shall Borrower be required to maintain in the FF&E Reserve Account an amount in excess of the aggregate amount of all FF&E deposits required to be made in the preceding calendar year (as determined, for purposes of this sentence, utilizing the monthly formula set forth in the preceding sentence). In addition, notwithstanding anything to the contrary contained herein, for purposes of determining the amount of any required FF&E Reserve Fund deposits (and for purposes of calculating such amount, monthly, based on the formula set forth in the first sentence of this Section 7.3.1), Revenues shall include Revenue from the Hotel Component and the Casino Component but shall not include non-Hotel or Casino related Revenues (e.g., Rents from retail tenants).

(b) Amounts deposited by Borrower as described in this Section 7.3.1 shall hereinafter be referred to as the “**FF&E Reserve Fund**” and the account in which such amounts are held shall hereinafter be referred to as the “**FF&E Reserve Account**”.

**7.3.2 Disbursements from FF&E Reserve Account.** (a) All disbursements from the FF&E Reserve Account shall be made solely for the purpose of reimbursing Borrower (or Operating Company for FF&E bought on behalf and in the name of Borrower in accordance with the Operating Lease, as directed by Borrower) for its costs and expenses incurred, or for paying costs to be incurred, in connection with the repair, replacement and/or upgrade of FF&E owned by Borrower at the Properties. Provided no Event of Default shall have occurred and be continuing, Lender shall, within ten (10) days following request by Borrower, make disbursements from the FF&E Reserve Fund no more frequently than once in any thirty (30) day period, in amounts no less than \$10,000 per disbursement (or a lesser amount if the total amount in the FF&E Reserve Account is less than \$10,000, in which case only one disbursement of the amount remaining in the account shall be made), and upon delivery by Borrower (or Operating Company) of Lender’s standard form of draw request accompanied by copies of invoices for the amounts requested and, if required by Lender for requests in excess of \$50,000 for a single item, receipts and releases from all parties furnishing materials and/or services in connection with the requested payment.

(b) Disbursements may be made from the FF&E Reserve Account, at Borrower’s election, directly to third parties (as directed by Borrower).

(c) In no event shall funds in the FF&E Reserve Account be utilized to pay (or reimburse any Person) for any Capital Expenditures or non-recurring work being performed at the Properties.

**7.3.3 Balance in the FF&E Reserve Account.** (a) The insufficiency of any balance in the FF&E Reserve Account shall not relieve Borrower from its obligation to fulfill all preservation and maintenance covenants in the Loan Documents.

(b) Any FF&E Reserve Funds remaining after the Debt has been paid in full shall be remitted (i) first, to the First Mezzanine Lender or (ii) if the First Mezzanine Loan is not then outstanding but the Second Mezzanine Loan is outstanding, then to the Second Mezzanine Lender in accordance with the First Mezzanine Loan Agreement or (iii) if the First Mezzanine Loan and the Second Mezzanine Loan are not then outstanding but the Third Mezzanine Loan is outstanding, then to the Third Mezzanine Lender in accordance with the Second Mezzanine Loan Agreement or (iv) if the First Mezzanine Loan, the Second Mezzanine Loan and the Third Mezzanine Loan are no longer outstanding, then to the Fourth Mezzanine Lender in accordance with the Third Mezzanine Loan Agreement or (v) if the First Mezzanine Loan, the Second Mezzanine Loan, the Third Mezzanine Loan and the Fourth Mezzanine Loan are no longer outstanding, then to the Fifth Mezzanine Lender in accordance with the Fourth Mezzanine Loan Agreement or (vi) if the First Mezzanine Loan, the Second Mezzanine Loan, the Third Mezzanine Loan, the Fourth Mezzanine Loan and the Fifth Mezzanine Loan are no longer outstanding, then to the Sixth Mezzanine Lender in accordance with the Fifth Mezzanine Loan Agreement or (vii) if the First Mezzanine Loan, the Second Mezzanine Loan, the Third Mezzanine Loan, the Fourth Mezzanine Loan, the Fifth Mezzanine Loan and the Sixth Mezzanine Loan are no longer outstanding, then to the Seventh Mezzanine Lender in accordance with the Sixth Mezzanine Loan Agreement or (viii) if the First Mezzanine Loan, the Second Mezzanine Loan, the Third Mezzanine Loan, the Fourth Mezzanine Loan, the Fifth Mezzanine Loan, the Sixth Mezzanine Loan and the Seventh Mezzanine Loan are no longer outstanding, then to the Eighth Mezzanine Lender in accordance with the Seventh Mezzanine Loan Agreement or (ix) if the First Mezzanine Loan, the Second Mezzanine Loan, the Third Mezzanine Loan, the Fourth Mezzanine Loan, the Fifth Mezzanine Loan, the Sixth Mezzanine Loan, the Seventh Mezzanine Loan and the Eighth Mezzanine Loan are no longer outstanding, then to the Ninth Mezzanine Lender in accordance with the Eighth Mezzanine Loan Agreement or (x) if the First Mezzanine Loan, the Second Mezzanine Loan, the Third Mezzanine Loan, the Fourth Mezzanine Loan, the Fifth Mezzanine Loan, the Sixth Mezzanine Loan, the Seventh Mezzanine Loan, the Eighth Mezzanine Loan and the Ninth Mezzanine Loan are no longer outstanding then to Borrower.

#### **Section 7.4. Ground Rent Funds.**

**7.4.1 Deposits of Ground Rent Funds.** If (and for so long as) a Trigger Event shall have occurred and shall not have been cured by a Trigger Event Cure, Borrower shall deposit with Lender (or Servicer, as directed by Lender), at least ten (10) Business Days prior to each Payment Date during such period, an amount equal to the Ground Rent that will be payable under the Ground Lease for the month in which such Payment Date occurs. Amounts deposited by Borrower as described in this Section 7.4.1 shall hereinafter be referred to as the “**Ground Rent Reserve Fund**” and the account in which such amounts are held shall hereinafter be referred to as the “**Ground Rent Reserve Account**”. Such deposit may be increased by Lender in the amount Lender deems is necessary in its reasonable discretion based on any increases in the Ground Rent.

**7.4.2 Release of Ground Rent Funds.** Provided no Event of Default has occurred and is continuing, Lender shall apply the Ground Rent Reserve Funds to payments of Ground Rent. In making any payment relating to Ground Rent, Lender may do so according to

any bill or statement given by the ground lessor without inquiry into the accuracy of such bill or statement or into the validity of any rent, additional rent or other charge thereof. If the amount of the Ground Rent Reserve Funds shall exceed the amounts due for Ground Rent, Lender shall return any excess to Borrower. Any Ground Rent Reserve Funds remaining after the Debt has been paid in full shall be remitted (i) first, to the First Mezzanine Lender or (ii) if the First Mezzanine Loan is not then outstanding but the Second Mezzanine Loan is outstanding, then to the Second Mezzanine Lender in accordance with the First Mezzanine Loan Agreement or (iii) if the First Mezzanine Loan and the Second Mezzanine Loan are not then outstanding but the Third Mezzanine Loan is outstanding, then to the Third Mezzanine Lender in accordance with the Second Mezzanine Loan Agreement or (iv) if the First Mezzanine Loan, the Second Mezzanine Loan and the Third Mezzanine Loan are no longer outstanding, then to the Fourth Mezzanine Lender in accordance with the Third Mezzanine Loan Agreement or (v) if the First Mezzanine Loan, the Second Mezzanine Loan, the Third Mezzanine Loan and the Fourth Mezzanine Loan are no longer outstanding, then to the Fifth Mezzanine Lender in accordance with the Fourth Mezzanine Loan Agreement or (vi) if the First Mezzanine Loan, the Second Mezzanine Loan, the Third Mezzanine Loan, the Fourth Mezzanine Loan and the Fifth Mezzanine Loan are no longer outstanding, then to the Sixth Mezzanine Lender in accordance with the Fifth Mezzanine Loan Agreement or (vii) if the First Mezzanine Loan, the Second Mezzanine Loan, the Third Mezzanine Loan, the Fourth Mezzanine Loan, the Fifth Mezzanine Loan and the Sixth Mezzanine Loan are no longer outstanding, then to the Seventh Mezzanine Lender in accordance with the Sixth Mezzanine Loan Agreement or (viii) if the First Mezzanine Loan, the Second Mezzanine Loan, the Third Mezzanine Loan, the Fourth Mezzanine Loan, the Fifth Mezzanine Loan, the Sixth Mezzanine Loan and the Seventh Mezzanine Loan are no longer outstanding, then to the Eighth Mezzanine Lender in accordance with the Seventh Mezzanine Loan Agreement or (ix) if the First Mezzanine Loan, the Second Mezzanine Loan, the Third Mezzanine Loan, the Fourth Mezzanine Loan, the Fifth Mezzanine Loan, the Sixth Mezzanine Loan, the Seventh Mezzanine Loan and the Eighth Mezzanine Loan are no longer outstanding, then to the Ninth Mezzanine Lender in accordance with the Eighth Mezzanine Loan Agreement or (x) if the First Mezzanine Loan, the Second Mezzanine Loan, the Third Mezzanine Loan, the Fourth Mezzanine Loan, the Fifth Mezzanine Loan, the Sixth Mezzanine Loan, the Seventh Mezzanine Loan and the Eighth Mezzanine Loan are no longer outstanding, then to the Ninth Mezzanine Lender in accordance with the Eighth Mezzanine Loan Agreement or (x) if the First Mezzanine Loan, the Second Mezzanine Loan, the Third Mezzanine Loan, the Fourth Mezzanine Loan, the Fifth Mezzanine Loan, the Sixth Mezzanine Loan, the Seventh Mezzanine Loan, the Eighth Mezzanine Loan and the Ninth Mezzanine Loan are no longer outstanding then to Borrower.

**Section 7.5. Ground Lease Estoppel Reserve Amount.**

**7.5.1 Deposit of Ground Lease Estoppel Reserve Amount.** On the Closing Date, Borrower shall deposit with Lender (or Servicer, as directed by Lender), from the proceeds of the Loan, an amount equal to the Ground Lease Estoppel Reserve Amount.

**7.5.2 Release of Ground Lease Estoppel Reserve Amount.** Provided no Event of Default has occurred and is continuing, Lender shall disburse the entire Ground Lease Estoppel Reserve Amount to Borrower upon satisfaction of the conditions set forth in either paragraph 1, clause (i) or paragraph 1, clause (ii) of the Ground Lease Side Letter, and the Ground Lease Estoppel Reserve Amount shall otherwise be applied in the manner specified in the Ground Lease Side Letter.

**Section 7.6. Reserve Funds, Generally.** (a) Borrower grants to Lender a first-priority perfected security interest in each of the Reserve Funds and any and all monies now or hereafter deposited in each Reserve Fund as additional security for payment of the Debt. Until expended or applied in accordance herewith, the Reserve Funds shall constitute additional security for the Debt. Upon the occurrence and during the continuance of an Event of Default, Lender may, in addition to any and all other rights and remedies available to Lender, apply any sums then present in any or all of the Reserve Funds to the payment of the Debt in any order in its sole discretion. The Reserve Funds shall not constitute trust funds and may be commingled with other monies held by Lender.

(b) Borrower shall not, without obtaining the prior consent of Lender, further pledge, assign or grant any security interest in any Reserve Fund or the monies deposited therein or permit any lien or encumbrance to attach thereto, or any levy to be made thereon, or any UCC-1 Financing Statements, except those naming Lender as the secured party, to be filed with respect thereto.

(c) The Reserve Funds shall be held by Lender (or Servicer) and may be invested at Borrower's election and direction in Permitted Investments routinely offered by the Servicer of the Securitization for investment by Borrower. All interest or other earnings on a Reserve Fund shall be added to and become a part of such Reserve Fund for the benefit of Borrower and shall be disbursed in the same manner as other monies deposited in such Reserve Fund. Borrower shall have the right to direct Lender (or Servicer) to invest sums on deposit in the Eligible Account in Permitted Investments provided (a) such investments are permitted by applicable federal, state and local rules, regulations and laws, (b) the maturity date of the Permitted Investment is not later than the date on which the applicable Reserve Funds are required for payment of an obligation for which such Reserve Fund was created, and (c) no Event of Default shall have occurred and be continuing. Borrower shall be responsible for payment of any federal, state or local income or other tax applicable to the interest or income earned on the Reserve Funds. No other investments of the sums on deposit in the Reserve Funds shall be permitted except as set forth in this Section 7.6. Borrower shall bear all reasonable costs associated with the investment of the sums in the account in Permitted Investments. Such costs shall be deducted from the income or earnings on such investment, if any, and to the extent such income or earnings shall not be sufficient to pay such costs, such costs shall be paid by Borrower promptly on demand by Lender. Lender shall have no liability for the rate of return earned or losses incurred on the investment of the sums in Permitted Investments.

(d) Borrower shall indemnify Lender and hold Lender harmless from and against any and all actions, suits, claims, demands, liabilities, losses, damages, obligations and costs and expenses (including litigation costs and reasonable attorneys fees and expenses) arising from or in any way connected with the Reserve Funds or the performance of the obligations for which the Reserve Funds were established. Borrower shall assign to Lender all rights and claims Borrower may have against all Persons supplying labor, materials or other services which are to be paid from or secured by the Reserve Funds; provided, however, that Lender may not pursue any such right or claim unless an Event of Default has occurred and remains uncured.

## VIII. DEFAULTS

**Section 8.1. Event of Default.** (a) Each of the following events shall constitute an event of default hereunder (an “Event of Default”):

(i) if (A) any portion of the Debt is not paid in full on the Maturity Date, (B) the Debt Service is not paid in full on or before the related Payment Date, (C) any required deposits to the Cash Management Account are not paid in full on or before the date due, or (D) any other portion of the Debt is not paid within five (5) days of when due;

(ii) if any of the Taxes or Other Charges are not paid (with respect to each Individual Property) prior to Delinquency;

(iii) if the Policies (with respect to each Individual Property) are not kept in full force and effect, or if certified copies of the Policies (for each Individual Property) are not delivered to Lender upon request (or certificates thereof, if a Policy shall be renewed and certified copies of the Policy are not immediately available upon such renewal (Borrower agreeing in such instance to provide copies of the Policies to Lender promptly thereafter));

(iv) if Borrower Transfers or otherwise encumbers any portion of the Properties, or there shall otherwise occur a Transfer without Lender’s prior consent in each case, if the same is in violation of the provisions of this Agreement or Article 6 of the Mortgage;

(v) if any representation or warranty made by Borrower or any other Loan Party herein or in any other Loan Document, or in any report, certificate, financial statement or other instrument, agreement or document furnished to Lender shall have been false or misleading in any material respect as of the date the representation or warranty was made (and, with respect to any such breach which is not the subject of any other subsection of this Section 8.1 and which is capable of being cured, Borrower fails to remedy such condition within ten (10) days following notice to Borrower from Lender, in the case of any such breach which can be cured by the payment of a sum of money, or within thirty (30) days following notice from Lender in the case of any other such breach);

(vi) if Borrower, Principal, Holdings, Operating Company or any Guarantor shall make an assignment for the benefit of creditors;

(vii) if a receiver, liquidator or trustee shall be appointed for Borrower, Principal, Holdings, Operating Company or Guarantor, or if Borrower, Principal, Holdings, Operating Company or Guarantor shall be adjudicated a bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to federal bankruptcy law, or any similar federal or state law, shall be filed by or against, consented to, or acquiesced in by, Borrower, Principal, Holdings, Operating Company or Guarantor, or if any proceeding for the dissolution or liquidation of Borrower, Principal, Holdings,

Operating Company or Guarantor shall be instituted; provided, however, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by Borrower, Principal, Holdings, Operating Company or Guarantor, upon the same not being discharged, stayed or dismissed within ninety (90) days;

(viii) if Borrower attempts to assign its rights under this Agreement or any of the other Loan Documents or any interest herein or therein in contravention of the Loan Documents;

(ix) if Borrower breaches any of its respective negative covenants contained in Section 5.2 or any covenant contained in Section 4.1.30 or Section 5.1.11 hereof (and, with respect to any such breach of any covenant set forth in Section 5.1.11 which is not the subject of any other subsection of this Section 8.1, Borrower fails to remedy such condition within ten (10) days after notice to Borrower from Lender, in the case of any such Default under Section 5.1.11 which can be cured by the payment of a sum of money, or for thirty (30) days after notice from Lender in the case of any other such Default under Section 5.1.11);

(x) with respect to any term, covenant or provision set forth herein which specifically contains a notice requirement or grace period, if Borrower shall be in default under such term, covenant or condition after the giving of such notice or the expiration of such grace period;

(xi) if any of the assumptions contained in the Insolvency Opinion delivered to Lender in connection with the Loan, or in the Additional Insolvency Opinion delivered subsequent to the closing of the Loan, is or shall become untrue in any material respect; or if any of the assumptions contained in the True Lease Opinion delivered to Lender in connection with the Loan, or in the Additional True Lease Opinion delivered subsequent to the closing of the Loan, is or shall become untrue in any material respect;

(xii) if Borrower, Operating Company or Guarantor (Operating Lease) is in default of any of its material obligations under any Operating Lease (or under another lease and/or management agreement in substitution for the Operating Lease in accordance herewith) or under any Operating Lease Guaranty (or under another operating lease guaranty in substitution for the Operating Lease Guaranty in accordance herewith) beyond any applicable notice and cure periods contained therein; or if any Operating Lease (or such other lease and/or management agreement) or any Operating Lease Guaranty (or such other operating lease guaranty) shall be surrendered or any Operating Lease or any Operating Lease Guaranty shall be terminated or canceled for any reason or under any circumstances whatsoever, except with the consent of Lender; or if any of the terms, covenants or conditions of any Operating Lease (or such other lease and/or management agreement) or any Operating Lease Guaranty (or such other operating lease guaranty) shall in any manner be modified, changed, supplemented, altered, restated or amended without the consent of Lender except as may otherwise expressly permitted in this Agreement;

(xiii) if Borrower or IP Licensor is in default of any of its material obligations under the IP License beyond any applicable notice and cure periods contained therein; or if the IP License shall be surrendered, terminated or canceled for any reason or under any circumstances whatsoever, except with the consent of Lender; or if any of the terms, covenants or conditions of the IP License shall in any material respect be modified, changed, supplemented, altered, restated or amended without the consent of Lender;

(xiv) if any Affiliate of Borrower that is or becomes a party to the Windstorm Insurance Intercreditor Agreement is in default of any of its material obligations under the Windstorm Insurance Intercreditor Agreement beyond any applicable notice and cure periods contained therein; or if the Windstorm Insurance Intercreditor Agreement shall be surrendered, terminated or canceled for any reason or under any circumstances whatsoever, except with the consent of Lender; or if any of the terms, covenants or conditions of the Windstorm Insurance Intercreditor Agreement shall in any manner be modified, changed, supplemented, altered, restated or amended without the consent of Lender;

(xv) if Borrower fails to comply with the covenants as to Prescribed Laws set forth in Section 5.1.1 hereof;

(xvi) if (A) subject to any notice and cure periods contained in the applicable Ground Lease, Borrower or Ground Lease Subsidiary, as applicable, shall fail in the payment of any rent, additional rent or other charge mentioned in or made payable by such Ground Lease as and when such rent or other charge is payable (unless waived by the landlord under such Ground Lease), (B) subject to any notice and cure periods contained in the applicable Ground Lease, there shall occur any material default by Borrower or Ground Lease Subsidiary, as applicable, as tenant under such Ground Lease, in the observance or performance of any term, covenant or condition of the Ground Lease on the part of Borrower or Ground Lease Subsidiary, as applicable, to be observed or performed (unless waived by the landlord under the Ground Lease) (other than any such default being contested by Borrower in good faith by appropriate proceedings, provided that (i) no Event of Default has occurred and remains uncured, (ii) such proceeding shall be conducted in accordance with all applicable statutes, laws and ordinances, (iii) in Lender's reasonable determination, the Ground Lease is not in imminent danger of being forfeited, terminated, cancelled or lost and the Operating Company's use and operation of the ground leased premises in connection with the operation of Harrah's Lake Tahoe", "Harvey's Lake Tahoe" or "Bill's Lake Tahoe" is not in imminent danger of being denied, forfeited, terminated, cancelled or lost and (iv) Borrower shall furnish such security as may be reasonably requested by Lender), (C) any one or more of the events referred to in any Ground Lease shall occur which would cause the Ground Lease to terminate without notice or action by the landlord under the Ground Lease or which would entitle the landlord to terminate the Ground Lease and the term thereof by giving notice to Borrower or Ground Lease Subsidiary, as applicable, as tenant thereunder (unless waived by the landlord under the Ground Lease), (D) the leasehold estate created by any Ground Lease shall be surrendered or the Ground Lease shall be terminated or canceled for any reason or under any circumstances whatsoever unless Borrower or

Ground Lease Subsidiary, as applicable, acquires the fee interest and mortgages same to Lender (unless Borrower or Ground Lease Subsidiary, as applicable, acquires the fee interest, with Lender's prior reasonable approval, and mortgages same to Lender) or (E) if any of the terms, covenants or conditions of any Ground Lease shall be modified, changed, supplemented, altered, or amended in any material respect without the consent of Lender except as otherwise permitted by this Agreement;

(xvii) any Gaming License shall be refused, suspended, revoked, modified in a materially adverse manner or canceled or allowed to lapse or any proceeding is commenced by any Governmental Authority for the purpose of suspending, revoking or canceling any Gaming License in any materially adverse respect, or any Governmental Authority shall have appointed a conservator, supervisor or trustee to or for any of the Casino Components and, in each case of the foregoing, such action could reasonably be expected to (A) have an Individual Material Adverse Effect, (B) materially and adversely effect the continued operation of the Casino Components in the usual course of business and in substantially the same manner and to at least the same standard as was maintained prior to such action, or (C) result in any material decrease in the then expected cash flow and revenues to be derived from the Casino Components;

(xviii) if Borrower shall continue to be in Default under any of the other terms, covenants or conditions of this Agreement not specified in subsections (i) to (xvii) above, for ten (10) days after notice to Borrower from Lender, in the case of any Default which can be cured by the payment of a sum of money, or for thirty (30) days after notice from Lender in the case of any other Default; provided, however, that if such non-monetary Default is susceptible of cure but cannot reasonably be cured within such thirty (30) day period and provided further that Borrower shall have commenced to cure such Default within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for such time as is reasonably necessary for Borrower in the exercise of due diligence to cure such Default, such additional period not to exceed one hundred twenty (120) days; or

(xix) if there shall be a default under any of the other Loan Documents beyond any applicable cure periods contained in such documents, whether as to Borrower or any Individual Property, or if any other such event shall occur or condition shall exist, if the effect of such event or condition is to accelerate the maturity of any portion of the Debt or to permit Lender to accelerate the maturity of all or any portion of the Debt.

(b) Upon the occurrence of an Event of Default (other than an Event of Default described in clauses (vi) or (vii) above) and at any time thereafter, in addition to any other rights or remedies available to it pursuant to this Agreement and the other Loan Documents or at law or in equity, Lender may take such action, without notice or demand, that Lender deems advisable to protect and enforce its rights against Borrower and in and to all or any Individual Property, including, without limitation, declaring the Debt to be immediately due and payable, and Lender may enforce or avail itself of any or all rights or remedies provided in the Loan Documents against Borrower and any or all of the Properties, including, without limitation, all rights or remedies available at law or in equity; and upon any Event of Default

described in clauses (vi) or (vii) above, the Debt and all other obligations of Borrower hereunder and under the other Loan Documents shall immediately and automatically become due and payable, without notice or demand, and Borrower hereby expressly waives any such notice or demand, anything contained herein or in any other Loan Document to the contrary notwithstanding.

**Section 8.2. Remedies.** (a) Upon the occurrence of an Event of Default, but in compliance with applicable Gaming Laws, all or any one or more of the rights, powers, privileges and other remedies available to Lender against Borrower under this Agreement or any of the other Loan Documents executed and delivered by, or applicable to, Borrower or at law or in equity may be exercised by Lender at any time and from time to time, whether or not all or any of the Debt shall be declared due and payable, and whether or not Lender shall have commenced any foreclosure proceeding or other action for the enforcement of its rights and remedies under any of the Loan Documents with respect to all or any Individual Property. Any such actions taken by Lender shall be cumulative and concurrent and may be pursued independently, singularly, successively, together or otherwise, at such time and in such order as Lender may determine in its sole discretion, to the fullest extent permitted by law, without impairing or otherwise affecting the other rights and remedies of Lender permitted by law, equity or contract or as set forth herein or in the other Loan Documents. Without limiting the generality of the foregoing, Borrower agrees that if an Event of Default is continuing (i) Lender is not subject to any “one action” or “election of remedies” law or rule, and (ii) all liens and other rights, remedies or privileges provided to Lender shall remain in full force and effect until Lender has exhausted all of its remedies against the Properties and each Mortgage has been foreclosed, sold and/or otherwise realized upon in satisfaction of the Debt or the Debt has been paid in full.

(b) With respect to Borrower and the Properties, nothing contained herein or in any other Loan Document shall be construed as requiring Lender to resort to any Individual Property for the satisfaction of any of the Debt in preference or priority to any other Individual Property, and Lender may seek satisfaction out of all of the Properties or any part thereof, in its absolute discretion in respect of the Debt. In addition, Lender shall have the right from time to time to partially foreclose the Mortgages in any manner and for any amounts secured by the Mortgages then due and payable as determined by Lender in its sole discretion including, without limitation, the following circumstances: (i) in the event Borrower defaults beyond any applicable grace period in the payment of one or more scheduled payments of principal and interest, Lender may foreclose one or more of the Mortgages to recover such delinquent payments, or (ii) in the event Lender elects to accelerate less than the entire outstanding principal balance of the Loan, Lender may foreclose one or more of the Mortgages to recover so much of the principal balance of the Loan as Lender may accelerate and such other sums secured by one or more of the Mortgages as Lender may elect. Notwithstanding one or more partial foreclosures, the Properties shall remain subject to the Mortgages to secure payment of sums secured by the Mortgages and not previously recovered.

Upon the occurrence and during the continuance of an Event of Default, Lender shall have the right from time to time to sever the Note and the other Loan Documents into one or more separate notes, mortgages and other security documents (the “**Severed Loan**”

**Documents**”) in such denominations as Lender shall determine in its sole discretion for purposes of evidencing and enforcing its rights and remedies provided hereunder. Borrower shall execute and deliver to Lender from time to time, promptly after the request of Lender, a severance agreement and such other documents as Lender shall request in order to effect the severance described in the preceding sentence, all in form and substance reasonably satisfactory to Lender. Borrower hereby absolutely and irrevocably appoints Lender as its true and lawful attorney, coupled with an interest, in its name and stead to make and execute all documents necessary or desirable to effect the aforesaid severance, Borrower ratifying all that its said attorney shall do by virtue thereof; provided, however, Lender shall not make or execute any such documents under such power until three (3) days after notice has been given to Borrower by Lender of Lender’s intent to exercise its rights under such power. Borrower shall be obligated to pay any costs or expenses incurred in connection with the preparation, execution, recording or filing of the Severed Loan Documents. The Severed Loan Documents shall not contain any representations, warranties or covenants not contained in the Loan Documents and any such representations and warranties contained in the Severed Loan Documents will be given by Borrower only as of the Closing Date. The Severed Loan Documents shall (a) not increase the aggregate stated principal amount of the Loan, (b) provide that the weighted average spread of the Loan on the date of such severance shall equal the weighted average spread which was applicable to the Loan immediately prior to such severance (Borrower acknowledging that such Severed Loan Document may, in connection with the application of principal to the amounts evidenced by such Severed Loan Documents, subsequently cause the weighted average spread of such new notes or modified notes to change), (c) not adversely affect the overall economics to Borrower of the Loan, taken as a whole, or (d) expose Borrower to any additional costs or increased risk of any liability (beyond that or greater than that existing in the Loan Documents in effect on the date hereof).

(c) Remedies Cumulative; Waivers. The rights, powers and remedies of Lender under this Agreement shall be cumulative and not exclusive of any other right, power or remedy which Lender may have against Borrower pursuant to this Agreement or the other Loan Documents, or existing at law or in equity or otherwise. Lender’s rights, powers and remedies may be pursued singularly, concurrently or otherwise, at such time and in such order as Lender may determine in Lender’s sole discretion. No delay or omission to exercise any remedy, right or power accruing upon an Event of Default shall impair any such remedy, right or power or shall be construed as a waiver thereof, but any such remedy, right or power may be exercised from time to time and as often as may be deemed expedient. A waiver of one Default or Event of Default with respect to Borrower shall not be construed to be a waiver of any subsequent Default or Event of Default by Borrower or to impair any remedy, right or power consequent thereon.

**Section 8.3. Administration of Bankruptcy Claims.** Borrower and Lender agree that, with respect to each Operating Lease with respect to the Properties, each Borrower hereby transfers to Lender, in the event of any proceeding involving any Operating Company under the Bankruptcy Code or any similar proceeding, all of such Borrower’s rights to (a) file any proof of such claims, (b) cast any votes relating to any claims of such Borrower against such Operating Company, as the case may be, in such proceedings, (c) collect and receive any dividends payable with respect to such claims, (d) take any action or commence any proceeding

to collect such claims, (e) file any motion for relief from the stay imposed under Section 362(a) of the Bankruptcy Code or any similar statute, (f) file any motion to compel such Operating Company to assume or reject the applicable Leases under the Bankruptcy Code or any similar statute, or (g) take any other actions to collect or protect such claims. Borrower agrees that Lender shall be the sole party permitted to participate in the administration of the estate of Operating Company under any proceeding under the Bankruptcy Code or any similar statute with respect any such claims.

**Section 8.4. Costs of Collection.** In the event that after an Event of Default and during the continuance thereof: (a) the Note or any of the Loan Documents is placed in the hands of an attorney for collection or enforcement or is collected or enforced through any legal proceeding; (b) an attorney is retained to represent Lender in any bankruptcy, reorganization, receivership, or other proceedings affecting creditors' rights and involving a claim under the Note or any of the Loan Documents or (c) an attorney is retained to protect or enforce the lien or any of the terms of this Agreement, the Mortgage or any of the Loan Documents, then, in any such instance, Borrower shall pay to Lender all reasonable attorneys' fees, costs and expenses actually incurred in connection therewith, including costs of appeal, together with interest on any judgment obtained by Lender at the Default Rate.

#### **IX. SPECIAL PROVISIONS**

**Section 9.1. Sale of Notes and Securitization.** Borrower acknowledges and agrees that the Lender may sell all or any portion of the Loan and the Loan Documents, or issue one or more participations therein, or consummate one or more private or public securitizations of rated single- or multi-class securities (the "**Securities**") secured by or evidencing ownership interests in all or any portion of the Loan and the Loan Documents or a pool of assets that include the Loan and the Loan Documents (such sales, participations and/or securitizations, collectively, a "**Securitization**"). At the request of Lender, and to the extent not already required to be provided by Borrower under this Agreement, Borrower shall use reasonable efforts to provide information not in the possession of Lender or which may be reasonably required by Lender in order to satisfy the market standards to which Lender customarily adheres or which may be reasonably required by prospective investors and/or the Rating Agencies in connection with any such Securitization including, without limitation, to:

(a) provide additional and/or updated Provided Information, together with appropriate verification and/or consents related to the Provided Information through letters of auditors or opinions of counsel of independent attorneys reasonably acceptable to Lender and the Rating Agencies;

(b) cooperate in good faith in the preparation of descriptive materials for presentations to any or all of the Rating Agencies, and work with, and if requested, supervise, third-party service providers engaged by Borrower, Holdings and their respective affiliates to obtain, collect, and deliver information requested or required by Lender or the Rating Agencies;

(c) deliver, if required or requested by any Rating Agency, (i) updated opinions of counsel as to non-consolidation, due execution and enforceability with respect to the

Properties, Borrower, Holdings and their respective Affiliates and the Loan Documents, and (ii) revised organizational documents for Borrower, which counsel opinions and organizational documents shall be reasonably satisfactory to Lender and the Rating Agencies;

(d) if required by any Rating Agency, use commercially reasonable efforts to deliver such additional tenant estoppel letters, subordination agreements or other agreements from parties to agreements that affect any of the Properties, which estoppel letters, subordination agreements or other agreements shall be reasonably satisfactory to Lender and the Rating Agencies;

(e) execute such amendments to the Loan Documents as may be requested by Lender or the Rating Agencies to effect the Securitization and/or deliver one or more new component notes to replace the original note or modify the original note to reflect multiple components of the Loan such that the pricing and marketability of the Securities and the size of each class of Securities and the rating assigned to each such class by the Rating Agencies shall provide the most favorable rating levels and achieve the optimum rating levels for the Loan, provided that (i) the aggregate stated principal amount of the notes, following such amendments or delivery of new or component notes, shall equal the aggregate stated principal amount of the Loan immediately prior thereto, (ii) the weighted average spread of the Loan on the date of such amendment or delivery of new or component notes shall equal the weighted average spread which was applicable to the Loan immediately prior to such adjustment (Borrower acknowledging that such new notes or modified notes may, in connection with the application of principal to such new notes or modified note following the occurrence of an Event of Default, but not otherwise, subsequently cause the weighted average spread of such new notes or modified notes to change and (iii) the provisions of Section 2.1.5 otherwise shall apply to any such amendments and delivery of new or component notes (such provisions being incorporated herein by this reference);

(f) if requested by Lender, review any information regarding any of the Properties, Borrower, Principal, Holdings, the Operating Company and the Loan which is contained in a preliminary or final private placement memorandum, prospectus, prospectus supplement (including any amendment or supplement to either thereof), or other disclosure document to be used by Lender or any affiliate thereof; and

(g) supply to Lender such documentation, financial statements and reports in form and substance required in order to comply with any applicable securities laws (to the extent in Borrower's possession, or in the possession of Borrower's advisors, agents or employees), including, without limitation, if applicable, information necessary to comply with any applicable reporting or information requirements under Regulation D under the Securities Act of 1933 or Regulation S under the Securities Act of 1933.

Lender and Borrower each shall pay their respective costs and expenses incurred in connection with the foregoing, including, without limitation, legal fees in connection with any of the foregoing matters; except that all costs and expenses of Lender and Borrower associated with any restructuring of the Loan requested by Lender, including under Section 2.1.5, 2.1.6 and 2.1.7, shall be paid solely by Lender.

**Section 9.2. Securitization Indemnification.** (a) Borrower understands that certain of the Provided Information may be included in Disclosure Documents in connection with the Securitization and may also be included in filings with the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended (the “**Securities Act**”), or the Securities and Exchange Act of 1934, as amended (the “**Exchange Act**”), or provided or made available to investors or prospective investors in the Securities, the Rating Agencies, and service providers relating to the Securitization. In the event that the Disclosure Document is required to be revised prior to the sale of all Securities, Borrower will cooperate with the holder of the Note in updating the Disclosure Document by providing all current information necessary to keep the Disclosure Document accurate and complete in all material respects to the extent in Borrower’s possession.

(b) Borrower agrees to provide, in connection with the Securitization, an indemnification agreement (i) certifying that (A) Borrower has carefully examined the Disclosure Documents, including, without limitation, the sections entitled “Risk Factors,” “Special Considerations,” “Description of the Mortgages,” “Description of the Mortgage Loans and Mortgaged Property,” “The Operating Company,” “The Borrower” and “Certain Legal Aspects of the Mortgage Loan,” and (B) such sections and such other information in the Disclosure Documents (to the extent such information relates to or includes any Provided Information or any information regarding the Properties, Borrower and/or Operating Company) (collectively with the Provided Information, the “**Covered Disclosure Information**”) do not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, (ii) indemnifying Lender, each Noteholder, JPM (whether or not it is the Lender), any Affiliate of JPM or a Noteholder that has filed any registration statement relating to the Securitization or has acted as the sponsor or depositor in connection with the Securitization, any Affiliate of JPM or a Noteholder that acts as an underwriter, placement agent or initial purchaser of Securities issued in the Securitization, any other co-underwriters, co-placement agents or co-initial purchasers of Securities issued in the Securitization, and each of their respective officers, directors, partners, employees, representatives, agents and Affiliates and each Person or entity who controls any such Person within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act (collectively, the “**Indemnified Persons**”), for any losses, claims, damages, liabilities, costs or expenses (including, without limitation, legal fees and expenses for enforcement of these obligations (collectively, the “**Liabilities**”)) to which any such Indemnified Person may become subject insofar as the Liabilities arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in the Covered Disclosure Information or arise out of or are based upon the omission or alleged omission to state in the Covered Disclosure Information a material fact required to be stated therein or necessary in order to make the statements in the Covered Disclosure Information, in light of the circumstances under which they were made, not misleading and (iii) agreeing to reimburse each Indemnified Person for any legal or other expenses incurred by such Indemnified Person, as they are incurred, in connection with investigating or defending the Liabilities provided, however, that Borrower shall have liability with respect to Liabilities arising out of or based upon the Covered Disclosure Information only to the extent that such Liabilities arise out of or are based upon any such untrue statement or omission made in the Covered Disclosure Information in reliance upon and in conformity with information furnished to Lender or such Noteholder by or

on behalf of Borrower in connection with the preparation of the Disclosure Documents or in connection with the underwriting or the closing of the Loan (including without limitation financial statements of Borrower and operating statements and rent rolls with respect to the Properties), and in no event shall Borrower be liable for Liabilities arising from information contained in a Disclosure Document that was not provided to Borrower for comment at least five (5) Business Days prior to its dissemination or on which Borrower provided comments to Lender in writing and Lender failed to incorporate such comments (assuming such comments were accurate). This indemnity agreement will be in addition to any liability which Borrower may otherwise have. Moreover, the indemnification provided for in clauses (ii) and (iii) above shall be effective whether or not an indemnification agreement described in clause (i) above is provided.

(c) In connection with filings under the Exchange Act (if any), Borrower agrees to indemnify (i) the Indemnified Persons for Liabilities to which any such Indemnified Person may become subject insofar as the Liabilities arise out of or are based upon any untrue statement or alleged untrue statement of any material fact in the Covered Disclosure Information, or the omission or alleged omission to state in the Covered Disclosure Information a material fact required to be stated therein or necessary in order to make the statements in the Covered Disclosure Information, in light of the circumstances under which they were made, not misleading and (ii) reimburse each Indemnified Person for any legal or other expenses incurred by such Indemnified Persons, as they are incurred, in connection with defending or investigating the Liabilities.

(d) Promptly after receipt by an Indemnified Person of notice of any claim or the commencement of any action, the Indemnified Person shall, if a claim in respect thereof is to be made against Borrower, notify Borrower in writing of the claim or the commencement of that action; provided, however, that the failure to notify Borrower shall not relieve it from any liability which it may have under the indemnification provisions of this Section 9.2 except to the extent that it has been materially prejudiced by such failure and, provided further that the failure to notify Borrower shall not relieve it from any liability which it may have to an Indemnified Person otherwise than under the provisions of this Section 9.2. If any such claim or action shall be brought against an Indemnified Person, and it shall notify Borrower thereof, Borrower shall be entitled to participate therein and, to the extent that it wishes, assume the defense thereof with counsel reasonably satisfactory to the Indemnified Person. After notice from any Borrower to an Indemnified Person of its election to assume the defense of such claim or action, Borrower shall not be liable to the Indemnified Person for any legal or other expenses subsequently incurred by the Indemnified Person in connection with the defense thereof except as provided in the following sentence; provided, however, if the defendants in any such action include both Borrower, on the one hand, and one or more Indemnified Persons on the other hand, and an Indemnified Person shall have reasonably concluded that there are any legal defenses available to it and/or other Indemnified Persons that are different or in addition to those available to Borrower, the Indemnified Person or Persons shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on behalf of such Indemnified Person or Persons. The Indemnified Person shall instruct its counsel to maintain reasonably detailed billing records for fees and disbursements for which such Indemnified Person is seeking reimbursement hereunder and shall submit copies of such detailed

billing records to substantiate that such counsel's fees and disbursements are solely related to the defense of a claim for which Borrower is required hereunder to indemnify such Indemnified Person. Borrower shall not be liable for the expenses of more than one (1) such separate counsel unless such Indemnified Person shall have reasonably concluded that there may be legal defenses available to it that are different from or additional to those available to another Indemnified Person.

(e) Without the prior consent of the Indemnified Person in question (which consent shall not be unreasonably withheld), Borrower shall not settle or compromise or consent to the entry of any judgment in any pending or threatened claim, action, suit or proceeding in respect of which indemnification may be sought hereunder (whether or not any Indemnified Person is an actual or potential party to such claim, action, suit or proceeding) unless Borrower shall have given such Indemnified Person reasonable prior notice thereof and shall have obtained an unconditional release of each Indemnified Person hereunder from all liability arising out of such claim, action, suit or proceedings. As long as Borrower has complied with its obligations to defend and indemnify hereunder, Borrower shall not be liable for any settlement made by any Indemnified Person without the consent of Borrower (which consent shall not be unreasonably withheld).

(f) Borrower agrees that if any indemnification or reimbursement sought pursuant to this Section 9.2 is finally judicially determined to be unavailable for any reason or is insufficient to hold any Indemnified Person harmless (with respect only to the Liabilities that are the subject of this Section 9.2), then Borrower, on the one hand, and such Indemnified Person, on the other hand, shall contribute to the Liabilities for which such indemnification or reimbursement is held unavailable or is insufficient: (x) in such proportion as is appropriate to reflect the relative benefits to Borrower, on the one hand, and such Indemnified Person, on the other hand, from the transactions to which such indemnification or reimbursement relates; or (y) if the allocation provided by clause (x) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (x) but also the relative faults of Borrower, on the one hand, and all Indemnified Persons, on the other hand, as well as any other equitable considerations. Notwithstanding the provisions of this Section 9.2, (A) no party found liable for a fraudulent misrepresentation shall be entitled to contribution from any other party who is not also found liable for such fraudulent misrepresentation, and (B) Borrower agrees that in no event shall the amount to be contributed by the Indemnified Persons collectively pursuant to this paragraph exceed the amount of the fees (by underwriting discount or otherwise) actually received by the Indemnified Persons in connection with the closing of the Loan or the Securitization.

(g) Borrower agrees that the indemnification, contribution and reimbursement obligations set forth in this Section 9.2 shall apply whether or not any Indemnified Person is a formal party to any lawsuits, claims or other proceedings. Borrower further agrees that the Indemnified Persons are intended third party beneficiaries under this Section 9.2.

(h) The liabilities and obligations of the Indemnified Persons and Borrower under this Section 9.2 shall survive the termination of this Agreement and the satisfaction and discharge of the Debt.

(i) Notwithstanding anything to the contrary contained herein, Borrower shall have no obligation to act as depositor with respect to the Loan or an issuer or registrant with respect to the Securities issued in any Securitization.

**Section 9.3. Exculpation.** (a) Subject to the qualifications below, Lender shall not enforce the liability and obligation of Borrower to perform and observe the obligations contained in the Note, this Agreement, the Mortgages or the other Loan Documents by any action or proceeding wherein a money judgment shall be sought against Borrower, except that Lender may bring a foreclosure action, an action for specific performance or any other appropriate action or proceeding to enable Lender and each Noteholder to enforce and realize upon its interest under the Note, this Agreement, the Mortgages and the other Loan Documents, or in the Properties, the Rents, or any other collateral given to Lender pursuant to the Loan Documents; provided, however, that, except as specifically provided herein, any judgment in any such action or proceeding shall be enforceable against Borrower only to the extent of Borrower's interest in the Properties, in the Rents and in any other collateral given to Lender, and Lender, by accepting the Note, this Agreement, the Mortgages and the other Loan Documents, agrees that it shall not sue for, seek or demand any deficiency judgment against Borrower in any such action or proceeding under, or by reason of, or in connection with, the Note, this Agreement, the Mortgages or the other Loan Documents. The provisions of this Section shall not, however, (a) constitute a waiver, release or impairment of any obligation evidenced or secured by any of the Loan Documents; (b) impair the right of Lender to name Borrower as a party defendant in any action or suit for foreclosure and sale under any of the Mortgages; (c) affect the validity or enforceability of or any Guaranty made in connection with the Loan or any of the rights and remedies of Lender thereunder; (d) impair the right of Lender to obtain the appointment of a receiver; (e) impair the enforcement of any of the Assignments of Leases; (f) constitute a prohibition against Lender to seek a deficiency judgment against Borrower in order to fully realize the security granted by each of the Mortgages or to commence any other appropriate action or proceeding in order for Lender to exercise its remedies against all of the Properties; or (g) constitute a waiver of the right of Lender to enforce the liability and obligation of Borrower, by money judgment or otherwise, to the extent of any actual loss, damage, cost, expense, liability, claim or other obligation incurred by Lender (including attorneys' fees and costs reasonably incurred) arising out of or in connection with the following:

(i) fraud or intentional misrepresentation by Borrower, Operating Company or any Guarantor in connection with the execution and delivery of the Loan Documents and/or the Loan;

(ii) the misappropriation, conversion or misapplication in contravention of the Loan Documents by Borrower, Operating Company or any Guarantor of any funds of Borrower or Operating Company, including, without limitation, (A) any Revenues, (B) any Insurance Proceeds paid by reason of any Casualty, (C) any Awards received in connection with a Condemnation, or (D) any Rents or security deposits (or any item of Revenue, from whatever source) following an Event of Default;

(iii) the misappropriation, conversion or misapplication by Borrower, Operating Company or any Guarantor of any security deposits or Rents paid more than one (1) month in advance;

(iv) any act of actual intentional physical waste by Borrower, Operating Company or any Guarantor;

(v) the breach of any representation, warranty, covenant or indemnification provision in the Environmental Indemnity or in the Mortgages concerning environmental laws, hazardous substances and asbestos and any indemnification of Lender with respect thereto in either document;

(vi) if Borrower or Operating Company fails to obtain Lender's prior consent to any voluntary intentional Transfer as required by this Agreement or the Mortgages;

(vii) any security deposits, advance deposits or any other deposits collected with respect to any of the Properties which are not delivered to Lender upon a foreclosure of any of the Properties or action in lieu thereof, except to the extent any such security deposits were applied in accordance with the terms and conditions of any of the Leases prior to the occurrence of the Event of Default that gave rise to such foreclosure or action in lieu thereof;

(viii) in the event of: (A) Borrower, Operating Company or any Guarantor filing a voluntary petition under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (B) the filing of an involuntary petition against Borrower, Operating Company or any Guarantor under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law by any Person in which Borrower, Operating Company or any Guarantor or any of their respective Affiliates, agents or employees colludes with or such other Person, or Borrower, Operating Company or any Guarantor soliciting or causing to be solicited petitioning creditors for any involuntary petition against Borrower, Operating Company or any Guarantor from any Person; (C) Borrower, Operating Company or any Guarantor filing an answer consenting to or otherwise acquiescing in or joining in any involuntary petition filed against it by any other Person, other than Lender, under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (D) Borrower, Operating Company or any Guarantor consenting to or acquiescing in or joining in an application for the appointment of a custodian, receiver, trustee, or examiner for Borrower, Operating Company or any Guarantor or any of the Properties or any portion thereof, other than at the request of Lender; or (E) Borrower, Operating Company or any Guarantor making an assignment for the benefit of creditors (other than Lender), or admitting, in writing or in any legal proceeding, its insolvency or inability to pay its debts as they become due;

(ix) if Borrower fails to maintain its status as a Special Purpose Entity or breaches any material representation or warranty set forth in Section 4.1.30 of this Agreement; and

(x) if Borrower or Operating Company fails to obtain Lender's prior consent to any voluntary Indebtedness (other than Permitted Indebtedness or Permitted Indebtedness (Operating Company), as applicable) or voluntary Lien (other than Permitted Encumbrances) encumbering any of the Properties as required by this Agreement or the Mortgages.

Notwithstanding anything to the contrary under this Agreement, neither any present or future Affiliate of Borrower (other than Guarantor, to the extent provided under the Guaranty) nor any present or future shareholder, officer, director, employee, trustee, beneficiary, advisor, partner, member, principal, participant or agent of or in any Borrower or of or in any person or entity that is or becomes an Affiliate of any Borrower shall have any personal liability, directly or indirectly, under or in connection with the Loan Documents. Neither the negative capital account of any Affiliate of Borrower in Borrower, or in any other Affiliate of Borrower in any other Affiliate of Borrower, nor any obligation of any Affiliate of Borrower in any Borrower to restore a negative capital account or to contribute or loan capital to any Borrower or to any other Affiliate of Borrower shall at any time be deemed to be the property or an asset of any Borrower (or any other Affiliate of Borrower) and neither Lender nor its successors or assigns shall have any right to collect, enforce or proceed against any such negative capital account or obligation to restore, contribute or loan capital.

(b) Notwithstanding anything to the contrary in this Agreement, the Note or any of the Loan Documents, Lender shall not be deemed to have waived any right which Lender may have under Section 506(a), 506(b), 1111(b) or any other provisions of the Bankruptcy Code to file a claim for the full amount of the Indebtedness or to require that all collateral shall continue to secure all of the Indebtedness owing to Lender in accordance with the Loan Documents.

**Section 9.4. Servicer.**

(a) At the option of Lender, the Loan may be serviced by a servicer/trustee (the "**Servicer**") selected by Lender and Lender may delegate all or any portion of its responsibilities under this Agreement and the other Loan Documents to the Servicer pursuant to a servicing agreement (the "**Servicing Agreement**") between Lender and Servicer. Lender shall be responsible for any set-up fees or any other initial costs relating to or arising under the Servicing Agreement (arising in connection with the Securitization) and the payment of the monthly servicing fee due to Servicer under the Servicing Agreement, and, unless otherwise specifically set forth herein, Borrower shall be responsible for the payment of all fees and other reasonable out-of-pocket expenses incurred by Servicer resulting from any Borrower requests (for approvals or otherwise) to Servicer.

(b) In the event of a Securitization or syndication, the grant of participations in the Loan or any secondary marketing by Lender, Borrower and the Mezzanine Borrowers, collectively may rely upon approvals or consents given by one (1) agent or representative in respect of the Lender and the Mezzanine Lenders for the matter in question (which such parties shall designate, and pending further notice from Lender, such agent shall be JPM). Borrower shall only pay legal fees for the outside counsel of one Servicer.

**Section 9.5. Assignments and Participations.** (a) In addition to the rights Lender has under Section 9.1, Lender shall have the right, subject to this Section 9.5, to assign, sell, negotiate, pledge or hypothecate all or any portion of their rights and obligations hereunder (a “**Syndication**”). Except in connection with a Securitization, no Lender shall assign, sell, negotiate, pledge, hypothecate or otherwise transfer all or any portion of its rights in and to the Loan to any other Person (an “**Assignee**”) (a) other than in compliance with Section 9.9 hereof; and (b) unless such transaction shall be an assignment of a constant (and not varying), ratable percentage of such Lender’s interest in the Loan; provided, however, any Lender shall have the right at any time without the consent of or notice to any other Lender or other Person to grant a security interest in all or any portion of such Lender’s interest in the Loan to any Federal Reserve Bank or the central reserve bank or similar authority of any other country to secure any obligation of such Lender to such bank or similar authority (a “**Central Bank Pledge**”). Effective on any such assignment and assumption by the assignee and on compliance with Section 9.9 hereof, the assigning Lender shall have no further liability hereunder with respect to the interest of such Lender that was the subject of such transfer and such Assignee shall be a Lender with respect to such interest, and Borrower shall have the same rights as to such Assignee with respect to such interest from and after the date of such assignment as if such Lender were an original Lender hereunder. Except for a Central Bank Pledge or financing transaction under a repurchase agreement, a Lender making any such assignment shall notify Borrower of same, specifying the Assignee thereof and the amount of the assignment and shall provide such other detail as Borrower may reasonably request to substantiate compliance with the foregoing.

**Section 9.6. Participation.** Lender may, without the consent of the Borrower, in compliance with applicable law, sell participations to one or more banks or other entities (a “**Participant**”), in all or a portion of Lender’s rights and obligations under this Agreement (including all or a portion of the Loan owing to it); provided that (A) Lender’s obligations under this Agreement shall remain unchanged, (B) Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) the Borrower shall continue to deal solely and directly with Lender in connection with Lender’s rights and obligations under this Agreement. The Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.2.3 and 2.2.4 (subject to requirements and limitations therein) to the same extent as if it were a Noteholder and had acquired its interest by assignment pursuant to Section 9.5. Each Lender that sells a participation shall, acting solely for this purpose as an agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each participant’s interest in the Loans or other obligations under this Agreement (the “**Participant Register**”). The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each person whose name is recorded in the Participant Register as the owner of such Loan or other obligation hereunder as the owner thereof for all purposes of this Agreement notwithstanding any notice to the contrary.

**Section 9.7. Borrower’s Facilitation of Transfer.** In order to facilitate permitted assignments and other transfers to Assignees and sales to Participants, Borrower shall execute and deliver to Lender and shall cause Guarantor to execute and deliver to Lender such further documents, instruments or agreements as Lender may reasonably require, including, if required by Lender, supplemental notes in the principal amount of such Lender’s pro rata share of the Loan substantially in the form of such Lender’s Note against surrender of the prior notes,

and such supplemental note shall (i) be payable to order of such Lender, (ii) be dated as of the date hereof, and (iii) mature on the Maturity Date. Such supplemental note shall provide that it evidences a portion of the existing indebtedness hereunder and under the Notes and not any new or additional indebtedness of Borrower. The term "Note" as used in this Agreement and in all the other Loan Documents shall include all such supplemental notes but exclude any Note it replaces. Notwithstanding the foregoing, such documents, instruments or agreements shall not (a) increase the obligations or liabilities of any such Person hereunder or under the other Loan Documents in excess of the obligations or liabilities intended to be provided herein or in the other Loan Documents or (b) decrease such Person's rights hereunder or under the other Loan Documents to less than what they were prior to the execution of such documents, instruments or agreements. In addition, Borrower agrees to reasonably cooperate with Lender, including providing such information and documentation regarding Borrower, Holdings, the Operating Company and any other Person as Lender or any potential Assignee or Participant may reasonably request and to meet with potential Assignees and Participants upon reasonable notice. Lender and Borrower each shall pay their respective costs and expenses incurred in connection with the foregoing, including, without limitation, legal fees in connection with any of the foregoing matters, except that all costs and expenses of Lender and Borrower associated with any restructuring of the Loan requested by Lender, including under Section 2.1.5, 2.1.6 and 2.1.7, shall be paid solely by Lender.

**Section 9.8. Notice; Registration Requirement.** No Syndication of any part of Lender's interest in and to the Loan shall be effective or permitted under Section 9.5 until (a) an assignment and acceptance agreement in a form reasonably acceptable to Lender (an "**Assignment and Acceptance**") with respect to such Syndication shall have been delivered to Lender, (b) Lender shall have registered such Assignee's name and address in the Register which Lender maintains for the recordation of the names, addresses and interests of Noteholders, and (c) if such Assignee is not already a Lender hereunder, such Assignee shall deliver any tax forms required hereunder. The entries in the Register shall be conclusive, absent manifest error. This Section 9.8 shall not apply to any Central Bank Pledge.

**Section 9.9. Registry.** Borrower hereby designates Lender to serve as Borrower's agent, solely for purposes of this Section 9.9, to maintain at one of its offices a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the names and addresses of each Assignee, and the principal amount of the Loan (or portions thereof) owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). Failure to make any such recordation, or any error in such recordation shall not affect Borrower's obligations in respect of the Loan. With respect to any Lender, the transfer of the rights to the principal of, and interest on, its interest in the Loan shall not be effective until such transfer is recorded on the Register maintained by Lender with respect to ownership of such Loan and prior to such recordation all amounts owing to the transferor with respect to such Note shall remain owing to the transferor. The registration of a transfer of all or part of the Loan shall be recorded by Lender on the Register only upon the acceptance by Lender of a properly executed and delivered Assignment and Acceptance by the assignor and assignee. At the assigning Lender's option, concurrently with the delivery of an Assignment and Acceptance pursuant to which an interest of such Lender in the Loan was assigned to such Assignee, the assigning Lender shall surrender to Borrower its Note, if any, evidencing the portion of the Loan corresponding to the

interest so transferred and Borrower shall deliver to Lender one or more new promissory notes in the same aggregate principal amount issued to the assigning Lender and/or the Assignee.

**Section 9.10. Cooperation in Syndication.**

Borrower agrees to assist the Lender in completing a Syndication satisfactory to the Lender. Such assistance shall include (i) direct contact between senior management and advisors of Borrower and the proposed Assignees and/or Participants, (ii) assistance in the preparation of a confidential information memorandum and other marketing materials to be used in connection with the Syndication, (iii) the hosting, with the Lender, of one or more meetings of prospective Assignees and/or Participants, (iv) the delivery of appraisals satisfactory to the Lender if required. To assist the Lender in its Syndication efforts, Borrower agrees promptly to prepare and provide to the Lender all information with respect to Borrower, Holdings, the Operating Company, Guarantor and the Properties contemplated hereby, including all financial information and projections (the “**Projections**”), as the Lender may reasonably request in connection with the Syndication of the Loan. If required in connection with the Syndication, Borrower hereby agrees to:

(a) deliver updated financial and operating statements and other information reasonably required by the Lender to facilitate the Syndication;

(b) use reasonable efforts to deliver reliance letters reasonably satisfactory to the Lender with respect to the environmental assessments and reports delivered to the Lender prior to the Closing Date, which will run to the Lender and its successors and assigns;

(c) execute modifications to the Loan Documents required by the Lender, provided that such modification will not (except as set forth in (d)) change any material or economic terms of the Loan Documents, or otherwise increase the obligations or decrease the rights of Borrower pursuant to the Loan Documents (except to a de minimis extent); and

(d) if the Lender elects, in its sole discretion, prior to or upon a Syndication, to exercise its rights under Section 2.1.5, Borrower agrees to cooperate with the Lender in connection with the foregoing and to execute the required modifications and amendments to the Notes, this Agreement and the Loan Documents and to use reasonable efforts to provide opinions necessary to effectuate the same. Such Notes or components may be assigned different interest rates, so long as the weighted average of such interest rates does not exceed the Applicable Interest Rate, except in connection with the application of principal to such Notes or components following the occurrence of an Event of Default.

Lender and Borrower each shall pay their respective costs and expenses incurred in connection with the foregoing, including, without limitation, legal fees in connection with any of the foregoing matters, except that all costs and expenses of Lender and Borrower associated with any restructuring of the Loan requested by Lender, including under Section 2.1.5, 2.1.6 and 2.1.7, shall be paid solely by Lender.

## **X. MISCELLANEOUS**

**Section 10.1. Survival.** This Agreement and all covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the making by Lender of the Loan and the execution and delivery to Lender of the Note, and shall continue in full force and effect so long as all or any of the Debt is outstanding and unpaid unless a longer period is expressly set forth herein or in the other Loan Documents. Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the legal representatives, successors and assigns of such party. All covenants, promises and agreements in this Agreement, by or on behalf of Borrower, shall inure to the benefit of the legal representatives, successors and assigns of Lender.

**Section 10.2. Lender's Discretion.** Whenever pursuant to this Agreement, Lender exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Lender, the decision of Lender to approve or disapprove or to decide whether arrangements or terms are satisfactory or not satisfactory shall (except as is otherwise specifically herein provided) be in the sole discretion of Lender and shall be final and conclusive. Whenever this Agreement expressly provides that Lender may not withhold or shall be reasonable in granting its consent or its approval of an arrangement or term, such provisions shall also be deemed to prohibit Lender from delaying or conditioning such consent or approval.

### **Section 10.3. Governing Law.**

**(A) THIS AGREEMENT WAS NEGOTIATED IN THE STATE OF NEW YORK, THE LOAN WAS MADE BY LENDER AND ACCEPTED BY BORROWER IN THE STATE OF NEW YORK, AND THE PROCEEDS OF THE LOAN DELIVERED PURSUANT HERETO WERE DISBURSED FROM THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS AND THE OBLIGATIONS ARISING HEREUNDER AND THEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA, EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION, AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS WITH RESPECT TO ANY INDIVIDUAL PROPERTY (OTHER THAN PERSONAL PROPERTY) CREATED PURSUANT HERETO AND PURSUANT TO THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE IN WHICH THE APPLICABLE INDIVIDUAL PROPERTY (OTHER THAN PERSONAL PROPERTY) IS LOCATED, IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF NEW**

YORK SHALL GOVERN THE CONSTRUCTION, VALIDITY AND ENFORCEABILITY OF ALL LOAN DOCUMENTS AND ALL OF THE OBLIGATIONS ARISING HEREUNDER OR THEREUNDER. TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER AND LENDER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVE ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS, AND THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

(B) ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER OR BORROWER ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS MAY AT LENDER'S OPTION BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW AND BORROWER WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND BORROWER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. BORROWER DOES HEREBY DESIGNATE AND APPOINT:

Corporation Service Company  
2711 Centerville Road, Suite 400  
Wilmington, DE 19808

AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON ITS BEHALF SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY FEDERAL OR STATE COURT IN NEW YORK, NEW YORK, AND AGREES THAT SERVICE OF PROCESS UPON SAID AGENT AT SAID ADDRESS AND NOTICE OF SAID SERVICE MAILED OR DELIVERED TO BORROWER IN THE MANNER PROVIDED HEREIN SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON BORROWER IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE STATE OF NEW YORK. BORROWER (I) SHALL GIVE PROMPT NOTICE TO LENDER OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER, (II) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN NEW YORK, NEW YORK (WHICH SUBSTITUTE AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS), AND (III) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE IF ITS AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN NEW YORK, NEW YORK OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR.

**Section 10.4. Modification, Waiver in Writing.** No modification, amendment, extension, discharge, termination or waiver of any provision of this Agreement, or of the Note, or of any other Loan Document, nor consent to any departure by Borrower therefrom, shall in any event be effective unless the same shall be in a writing signed by the party against whom enforcement is sought, and then such waiver or consent shall be effective only in the specific instance, and for the purpose, for which given. Except as otherwise expressly provided herein, no notice to, or demand on Borrower, shall entitle Borrower to any other or future notice or demand in the same, similar or other circumstances. To the extent required by any Gaming Law, Borrower shall notify all relevant Gaming Authorities of any amendment to this Agreement or any Loan Document.

**Section 10.5. Delay Not a Waiver.** Except as expressly set forth herein, neither any failure nor any delay on the part of Lender in insisting upon strict performance of any term, condition, covenant or agreement, or exercising any right, power, remedy or privilege hereunder, or under the Note or under any other Loan Document, or any other instrument given as security therefor, shall operate as or constitute a waiver thereof, nor shall a single or partial exercise thereof preclude any other future exercise, or the exercise of any other right, power, remedy or privilege. In particular, and not by way of limitation, by accepting payment after the due date of any amount payable under this Agreement, the Note or any other Loan Document, Lender shall not be deemed to have waived any right either to require prompt payment when due of all other amounts due under this Agreement, the Note or the other Loan Documents, or to declare a default for failure to effect prompt payment of any such other amount.

**Section 10.6. Notices.** All notices, consents, approvals and requests required or permitted hereunder or under any other Loan Document shall be given in writing and shall be effective for all purposes if hand delivered or sent by (a) certified or registered United States mail, postage prepaid, return receipt requested or (b) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery, and by telecopier (with answer back acknowledged), addressed as follows (or at such other address and Person as shall be designated from time to time by any party hereto, as the case may be, in a notice to the other parties hereto in the manner provided for in this Section 10.6):

If to Lender: JPMorgan Chase Bank, N.A.  
270 Park Avenue, 10th Floor  
New York, New York 10017  
Attention: Michael Mesard  
Facsimile No.: (212) 834-6592

with a copy to: Sullivan & Cromwell LLP  
125 Broad Street  
New York, New York 10004  
Attention: Arthur S. Adler  
Facsimile No.: (212) 558-3588

and

Cadwalader, Wickersham & Taft LLP  
One World Financial Center  
New York, New York 10281  
Attention: Fredric L. Altschuler  
Facsimile No. (212) 504-6666

If to Borrower: One Caesars Palace Drive  
Las Vegas, Nevada 89109  
Attention: Chief Financial Officer  
Facsimile No. (702) 407-6081

With a copy to: One Caesars Palace Drive  
Las Vegas, Nevada 89109  
Attention: General Counsel  
Facsimile No. (702) 407-6418

and

Cleary Gottlieb Steen & Hamilton LLP  
One Liberty Plaza  
New York, New York 10006  
Attention: Michael Weinberger  
Facsimile No. (212) 225-3999

and

Pircher, Nichols & Meeks  
1925 Century Park East, Seventeenth Floor  
Los Angeles, California 90067  
Attention: David Packer  
Facsimile No. (310) 201-8922

A notice shall be deemed to have been given: in the case of hand delivery, at the time of delivery; in the case of registered or certified mail, when delivered or the first attempted delivery on a Business Day; or in the case of expedited prepaid delivery and telecopy, upon the first attempted delivery on a Business Day; or in the case of telecopy, upon sender's receipt of a machine-generated confirmation of successful transmission after advice by telephone to recipient that a telecopy notice is forthcoming. Each Borrower hereby designates Tahoe Propco, LLC, a Delaware limited liability company ("**Borrower Agent**"), as the party to give and receive notices on behalf of Borrower hereunder, and any notice received by Lender by a Borrower other than Borrower Agent shall not constitute effective notice to, or be binding upon Lender hereunder. Notwithstanding the foregoing, any notice by Lender to one or more Borrowers other than Borrower Agent shall be deemed to constitute effective notice to all of the Borrowers.

**Section 10.7. Trial by Jury.** BORROWER AND LENDER HEREBY AGREE NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVE ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY BORROWER AND LENDER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. BORROWER AND LENDER ARE HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER.

**Section 10.8. Headings.** The Article and/or Section headings and the Table of Contents in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

**Section 10.9. Severability.** Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

**Section 10.10. Preferences.** Lender shall have the continuing and exclusive right to apply or reverse and reapply any and all payments by Borrower to any portion of the obligations of Borrower hereunder (except that, unless there exists an Event of Default, payments of principal shall be applied to components of the Note on a pro-rata basis). To the extent Borrower makes a payment or payments to Lender, which payment or proceeds or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable cause, then, to the extent of such payment or proceeds received, the obligations hereunder or part thereof intended to be satisfied shall be revived and continue in full force and effect, as if such payment or proceeds had not been received by Lender.

**Section 10.11. Waiver of Notice.** Borrower hereby expressly waives, and shall not be entitled to, any notices of any nature whatsoever from Lender except with respect to matters for which this Agreement or the other Loan Documents specifically and expressly provide for the giving of notice by Lender to Borrower and except with respect to matters for which Borrower is not, pursuant to applicable Legal Requirements, permitted to waive the giving of notice.

**Section 10.12. Remedies of Borrower.** In the event that a claim or adjudication is made that Lender or its agents have acted unreasonably or unreasonably delayed acting in any case where by law or under this Agreement or the other Loan Documents, Lender or such agent, as the case may be, has an obligation to act reasonably or promptly, Borrower agrees that neither Lender nor its agents shall be liable for any monetary damages, and Borrower's sole remedies

shall be limited to commencing an action seeking injunctive relief or declaratory judgment (except in cases of bad faith, gross negligence or willful misconduct). The parties hereto agree that any action or proceeding to determine whether Lender has acted reasonably shall be determined by an action seeking declaratory judgment.

**Section 10.13. Expenses; Indemnity.** (a) Borrower covenants and agrees to pay or, if Borrower fails to pay, to reimburse, Lender and each Noteholder upon receipt of notice from such Person for all reasonable out-of-pocket costs and expenses (including reasonable attorneys' fees and disbursements) incurred by such Person in connection with (i) the preparation, negotiation, execution and delivery of this Agreement and the other Loan Documents and the consummation of the transactions contemplated hereby and thereby and all the costs of furnishing all opinions by counsel for Borrower (including, without limitation, any opinions requested by such Person as to any legal matters arising under this Agreement or the other Loan Documents with respect to the Properties); (ii) Borrower's ongoing performance of and compliance with Borrower's respective agreements and covenants contained in this Agreement and the other Loan Documents on its part to be performed or complied with after the Closing Date, including, without limitation, confirming compliance with environmental, gaming and insurance requirements, if necessary or advisable due to reasonably suspected non-compliance; (iii) the negotiation, preparation, execution, delivery and administration of any consents, amendments, waivers or other modifications to this Agreement and the other Loan Documents and any other documents or matters requested by Borrower; (iv) securing Borrower's compliance with any requests made pursuant to the provisions of this Agreement, if Borrower defaults in its obligations hereunder; (v) the filing and recording fees and expenses, title insurance and reasonable fees and expenses of counsel for providing to Lender or any Noteholder all required legal opinions, and other similar expenses incurred in creating and perfecting the Liens in favor of Lender (or, as applicable, any Noteholder) pursuant to this Agreement and the other Loan Documents; (vi) enforcing or preserving any rights, either in response to third party claims or in prosecuting or defending any action or proceeding or other litigation, in each case against, under or affecting Borrower, Operating Company, this Agreement, the other Loan Documents, the Properties, or any other security given for the Loan; and (vii) enforcing any obligations of or collecting any payments due from Borrower under this Agreement, the other Loan Documents or with respect to the Properties, Operating Company or in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a "work-out" or of any insolvency or bankruptcy proceedings; provided, however, that Borrower shall not be liable for the payment of any such costs and expenses to any Person to the extent the same arise by reason of the gross negligence, illegal acts, fraud or willful misconduct of such Person. Any cost and expenses due and payable to Lender or any Noteholder may be paid from any amounts in the Cash Management Account upon the occurrence and during the continuance of an Event of Default.

(b) Borrower shall indemnify, defend and hold harmless Lender from and against any and all other actual liabilities, obligations, losses, damages (excluding, however, any punitive and consequential damages), penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel for Lender in connection with any investigative, administrative or judicial proceeding commenced or threatened, whether or not Lender shall be

designated a party thereto), that may be imposed on, incurred by, or asserted against Lender in any manner relating to or arising out of (i) any breach by Borrower of its obligations under, or any material misrepresentation by Borrower contained in, this Agreement or the other Loan Documents, (ii) the use or intended use of the proceeds of the Loan, (iii) the Leases or any of the duties, responsibilities or obligations of Borrower or any Operating Company thereunder, (iv) the transactions contemplated in the Collection Account Agreements or (v) any third-party claims alleging that the Loan, the Operating Lease, the Operating Lease Guaranty or any of the Loan Documents violates any agreements or Legal Requirements binding on the Borrower or its Affiliates or their respective properties (collectively, the “**Indemnified Liabilities**”); provided, however, that Borrower shall not have any obligation to Lender hereunder to the extent that such Indemnified Liabilities arise from the gross negligence, illegal acts, fraud or willful misconduct of Lender. To the extent that the undertaking to indemnify, defend and hold harmless set forth in the preceding sentence may be unenforceable because it violates any law or public policy, Borrower shall pay the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by Lender.

(c) Borrower covenants and agrees to pay for or, if Borrower fails to pay, to reimburse Lender for, any fees and expenses incurred by any Rating Agency in connection with any request by Borrower that required Rating Agency Confirmation pursuant to the terms hereof.

**Section 10.14. Schedules Incorporated.** The Schedules annexed hereto are hereby incorporated herein as a part of this Agreement with the same effect as if set forth in the body hereof.

**Section 10.15. Offsets, Counterclaims and Defenses.** Any assignee of Lender’s interest in and to this Agreement, the Note and the other Loan Documents shall take the same free and clear of all offsets, counterclaims or defenses which are unrelated to such documents which Borrower may otherwise have against any assignor of such documents, and no such unrelated counterclaim or defense shall be interposed or asserted by Borrower in any action or proceeding brought by any such assignee upon such documents and any such right to interpose or assert any such unrelated offset, counterclaim or defense in any such action or proceeding is hereby expressly waived by Borrower.

**Section 10.16. No Joint Venture or Partnership; No Third Party Beneficiaries.** (a) Borrower and Lender intend that the relationships created hereunder and under the other Loan Documents be solely that of borrower and lender. Nothing herein or therein is intended to create a joint venture, partnership, tenancy-in-common, or joint tenancy relationship between Borrower and Lender nor to grant Lender any interest in the Properties other than that of mortgagee, beneficiary or lender.

(b) Except as expressly provided herein, this Agreement and the other Loan Documents are solely for the benefit of Lender and Borrower and nothing contained in this Agreement or the other Loan Documents shall be deemed to confer upon anyone other than Lender and Borrower any right to insist upon or to enforce the performance or observance of

any of the obligations contained herein or therein. Lender and Borrower acknowledge and agree that the Noteholders are intended third party beneficiaries of all rights and remedies of the Lender hereunder. All conditions to the obligations of Lender to make the Loan hereunder are imposed solely and exclusively for the benefit of Lender and no other Person shall have standing to require satisfaction of such conditions in accordance with their terms or be entitled to assume that Lender will refuse to make the Loan in the absence of strict compliance with any or all thereof and no other Person shall under any circumstances be deemed to be a beneficiary of such conditions, any or all of which may be freely waived in whole or in part by Lender if, in Lender's sole discretion, Lender deems it advisable or desirable to do so.

**Section 10.17. Intentionally Omitted.**

**Section 10.18. Cross-Default; Cross-Collateralization; Waiver of Marshalling of Assets.** (a) Borrower acknowledges that Lender has made the Loan to Borrower upon the security of its collective interest in the Properties and in reliance upon the aggregate of the Properties taken together being of greater value as collateral security than the sum of each Individual Property taken separately. Borrower agrees that the Mortgages are and will be cross-collateralized and cross-defaulted with each other so that (i) an Event of Default under any of the Mortgages shall constitute an Event of Default under each of the other Mortgages which secure the Note; (ii) an Event of Default under the Note or this Loan Agreement shall constitute an Event of Default under each Mortgage; (iii) each Mortgage shall constitute security for the Note as if a single blanket lien were placed on all of the Properties as security for the Note; and (iv) such cross-collateralization shall in no event be deemed to constitute a fraudulent conveyance.

(b) To the fullest extent permitted by law, Borrower, for itself and its successors and assigns, waives all rights to a marshalling of the assets of Borrower, Borrower's partners and others with interests in Borrower, and of the Properties, or to a sale in inverse order of alienation in the event of foreclosure of all or any of the Mortgages, and agrees not to assert any right under any laws pertaining to the marshalling of assets, the sale in inverse order of alienation, homestead exemption, the administration of estates of decedents, or any other matters whatsoever to defeat, reduce or affect the right of Lender under the Loan Documents to a sale of the Properties for the collection of the Debt without any prior or different resort for collection or of the right of Lender to the payment of the Debt out of the net proceeds of the Properties in preference to every other claimant whatsoever. In addition, Borrower, for itself and its successors and assigns, waives in the event of foreclosure of any or all of the Mortgages, any equitable right otherwise available to Borrower which would require the separate sale of the Properties or require Lender to exhaust its remedies against any Individual Property or any combination of the Properties before proceeding against any other Individual Property or combination of Properties; and further in the event of such foreclosure Borrower does hereby expressly consent to and authorize, at the option of Lender, the foreclosure and sale either separately or together of any combination of the Properties.

**Section 10.19. Waiver of Counterclaim.** Borrower hereby waives the right to assert a counterclaim, other than a compulsory counterclaim, in any action or proceeding brought against it by Lender or its agents.

**Section 10.20. Conflict; Construction of Documents; Reliance.** In the event of any conflict between the provisions of this Loan Agreement and any of the other Loan Documents, the provisions of this Loan Agreement shall control. The parties hereto acknowledge that they were represented by competent counsel in connection with the negotiation, drafting and execution of the Loan Documents and that such Loan Documents shall not be subject to the principle of construing their meaning against the party which drafted same. Borrower acknowledges that, with respect to the Loan, Borrower shall rely solely on its own judgment and advisors in entering into the Loan without relying in any manner on any statements, representations or recommendations of Lender or any parent, subsidiary or Affiliate of Lender. Lender shall not be subject to any limitation whatsoever in the exercise of any rights or remedies available to it under any of the Loan Documents or any other agreements or instruments which govern the Loan by virtue of the ownership by it or any parent, subsidiary or Affiliate of Lender of any equity interest any of them may acquire in Borrower, and Borrower hereby irrevocably waives the right to raise any defense or take any action on the basis of the foregoing with respect to Lender's exercise of any such rights or remedies. Borrower acknowledges that Lender engages in the business of real estate financings and other real estate transactions and investments which may be viewed as adverse to or competitive with the business of Borrower or its Affiliates.

**Section 10.21. Brokers and Financial Advisors.** Borrower hereby represents that it has dealt with no financial advisors, brokers, underwriters, placement agents, agents or finders in connection with the transactions contemplated by this Agreement (other than those the fees and other claims of which shall be paid by Borrower. Borrower hereby agrees to indemnify, defend and hold Lender and each Noteholder harmless from and against any and all claims, liabilities, costs and expenses of any kind (including Lender's attorneys' fees and expenses) in any way relating to or arising from a claim by any Person that such Person acted on behalf of Borrower or Lender in connection with the transactions contemplated herein. Each of Lender and (by its acceptance of its respective Note) the Noteholders hereby represents that it has dealt with no financial advisors, brokers, underwriters, placement agents, agents or finders in connection with the transactions contemplated by this Agreement. The provisions of this Section 10.21 shall survive the expiration and termination of this Agreement and the payment of the Debt.

**Section 10.22. Prior Agreements.** This Agreement and the other Loan Documents contain the entire agreement of the parties hereto and thereto in respect of the transactions contemplated hereby and thereby, and all prior agreements among or between such parties, whether oral or written, including, without limitation, the Commitment Letter dated December 19, 2006 between Affiliates of Borrower and Lender are superseded by the terms of this Agreement and the other Loan Documents.

**Section 10.23. Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which counterparts together shall constitute one agreement with the same effect as if the parties had signed the same signature page.

**Section 10.24. Intentionally Omitted.**

**Section 10.25. Gaming Laws.** All rights, remedies and powers in or under this Agreement may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of the Gaming Laws.

**Section 10.26. Certain Additional Rights of Lender (VCOC).** Notwithstanding anything to the contrary contained in this Agreement, Lender shall have:

(a) the right to routinely consult with and advise Borrower's management regarding the significant business activities and business and financial developments of Borrower, provided that any such advice or consultation shall be completely nonbinding on Borrower, and; provided, however, that such consultations shall not include discussions of environmental compliance programs or disposal of hazardous substances;

(b) the right, in accordance with the terms of this Agreement, to examine the books and records of Borrower at any reasonable times upon reasonable notice;

(c) the right, in accordance with the terms of this Agreement, including, without limitation, Section 5.1.11 hereof, to receive monthly, quarterly and year end financial reports, including balance sheets, statements of income, shareholder's equity and cash flow, a management report and schedules of outstanding indebtedness, in each case to the extent explicitly set forth herein; and

(d) the right, without restricting any other rights of Lender under this Agreement (including any similar right), to reasonably approve any acquisition by Borrower of any other significant real property.

The rights described above in this Section 10.26 may be exercised by any entity which owns and controls, directly or indirectly, substantially all of the interests in Lender.

#### **XI. JOINT AND SEVERAL LIABILITY; WAIVERS**

**Section 11.1. Joint and Several Liability; Primary Obligors.** Each entity comprising Borrower (each, a "**Borrower Entity**") shall be a primary obligor with respect to payment of the Debt and performance of Borrower's obligations under the Loan Documents and all such Borrower Entities shall be jointly and severally liable for payment of the Debt and performance of such other obligations. As used in this Article, references to "**Other Borrowers**" shall mean all Borrower Entities other than the particular Borrower Entity referred to.

**Section 11.2. Waivers.** Without limiting the primary liability of each Borrower Entity as set forth above, to the extent any such Borrower Entity is determined to be secondarily liable with respect to any portion of the Debt or any other obligation hereunder, the following shall apply:

**11.2.1 No Duty To Pursue Others.** It shall not be necessary for Lender (and each Borrower Entity hereby waives any rights which such Borrower Entity may have to require Lender), in order to enforce the obligations of such Borrower Entity hereunder, first to

(a) institute suit or exhaust its remedies against any Other Borrower or others liable on the Debt or any other person, (b) enforce Lender's rights against any collateral mortgaged, pledged or granted by any Other Borrower which shall ever have been given to secure the Debt ("**Other Borrower Collateral**"), (c) enforce Lender's rights against any other guarantors of the Debt, (d) join Borrower or any others liable on the Debt in any action against any Other Borrower seeking to enforce the Loan Documents, (e) exhaust any remedies available to Lender against any collateral which shall ever have been given to secure the Debt, or (f) resort to any other means of obtaining payment of the Loan by any Other Borrower. Lender shall not be required to mitigate damages or take any other action pertaining to any Other Borrower or any Other Borrower Collateral to reduce, collect or enforce the Debt from any Other Borrower.

**11.2.2 Waivers.** Such Borrower Entity agrees to the provisions of the Loan Documents, and hereby waives notice of (a) any loans or advances made by Lender to any Other Borrower, (b) acceptance of the Loan Documents, (c) any amendment or extension of the Note, this Agreement or of any other Loan Documents entered into by any Other Borrower, (d) the execution and delivery by any Other Borrower and Lender of any other loan or credit agreement or of any Other Borrower's execution and delivery of any promissory notes or other documents arising under the Loan Documents or in connection with the Other Borrower Collateral, (e) the occurrence of any breach by any Other Borrower or an Event of Default with respect to any Other Borrower or Other Borrower Collateral, (f) Lender's transfer or disposition of the Debt, or any part thereof, (g) sale or foreclosure (or posting or advertising for sale or foreclosure) of any Other Borrower Collateral, (h) protest, proof of non-payment or default by any Other Borrower and (i) any other action at any time taken or omitted by Lender, and, generally, all demands and notices to any Other Borrower of every kind in connection with the Loan Documents, any documents or agreements evidencing, securing or relating to any of the Debt.

**11.2.3 Waiver of Subrogation, Reimbursement and Contribution.** Notwithstanding anything to the contrary contained in the Loan Documents, each Borrower hereby unconditionally and irrevocably waives, releases and abrogates, prior to the payment in full of the Loan and for a period of ninety-one (91) days thereafter any and all rights it may now or hereafter have under any agreement, at law or in equity (including any law subrogating such Borrower Entity to the rights of Lender), to assert any claim against or seek contribution, indemnification or any other form of reimbursement (other than pursuant to the express provisions of the Contribution Agreement) from any Other Borrower or any other party liable for payment of any or all of the Debt for any payment made by such Borrower Entity under or in connection with the Loan Documents or otherwise.

**11.2.4 Events And Circumstances Not Reducing Or Discharging Guarantor's Obligations.** Each Borrower Entity hereby consents and agrees to each of the following, and agrees that such Borrower Entity's obligations under the Loan Documents shall not be released, diminished, impaired, reduced or adversely affected by any of the following, and waives any common law, equitable, statutory or other rights (including rights to notice) which such Borrower Entity might otherwise have as a result of or in connection with any of the following:

(a) Modifications. Any renewal, extension, increase, modification, alteration, restatement or rearrangement entered into by any Other Borrower of all or any part of the Debt, the Note, the Loan Agreement, the other Loan Documents, or any other document, instrument, contract or understanding between any Other Borrower and Lender, or any other parties, pertaining to the Debt or any failure of Lender to notify Borrower Entity of any such action.

(b) Adjustment. Any adjustment, indulgence, forbearance or compromise that might be granted or given by Lender to any Other Borrower.

(c) Condition of Borrower or Borrower Entity. The insolvency, bankruptcy, arrangement, adjustment, composition, liquidation, disability, dissolution or lack of power of any Other Borrower or any other party at any time liable for the payment of all or part of the Debt; or any dissolution of any Other Borrower, or any sale, lease or transfer of any or all of the assets of Borrower or of any Other Borrower, or any changes in the shareholders, partners or members of any Other Borrower; or any reorganization of any Other Borrower.

(d) Invalidity of Debt. The invalidity, illegality or unenforceability of all or any part of the Debt, or any document or agreement executed in connection with the Debt, for any reason whatsoever, including the fact that (a) the Debt, or any part thereof, exceeds the amount permitted by law, (b) the act of creating the Debt or any part thereof is ultra vires, (c) the officers or representatives executing the Note, the Loan Agreement or the other Loan Documents or otherwise creating the Debt acted in excess of their authority, (d) the Debt violate applicable usury laws, (e) any Other Borrower has valid defenses, claims or offsets (whether at law, in equity or by agreement) which render the Debt wholly or partially uncollectible from such Other Borrower, (f) the creation, performance or repayment of the Debt (or the execution, delivery and performance of any document or instrument by any Other Borrower representing part of the Debt or executed in connection with the Debt, or given to secure the repayment of the Debt) is illegal, uncollectible or unenforceable, or (g) the Note, the Loan Agreement or any of the other Loan Documents have been forged or otherwise are irregular or not genuine or authentic, it being agreed that such Borrower Entity shall remain liable hereon regardless of whether any Other Borrower or any other Person be found not liable on the Debt or any part thereof for any reason.

(e) Release of Obligors. Any full or partial release of the liability of any Other Borrower on the Debt, or any part thereof, or of any guarantor(s) thereof, or any other person or entity now or hereafter liable, whether directly or indirectly, jointly, severally, or jointly and severally, to pay, perform, guarantee or assure the payment of the Debt, or any part thereof, it being recognized, acknowledged and agreed by such Borrower Entity that such Borrower Entity may be required to pay the Debt in full without assistance or support of any other party, and such Borrower Entity has not been induced to enter into the Loan Documents on the basis of a contemplation, belief, understanding or agreement that other Persons will be liable to pay or perform the Debt, or that Lender will look to other Persons to pay or perform the Debt.

(f) Other Collateral. The taking or accepting of any other security, collateral or guaranty, or other assurance of payment, for all or any part of the Debt.

(g) **Release of Collateral.** Any release, surrender, exchange, subordination, deterioration, waste, loss or impairment (including negligent, willful, unreasonable or unjustifiable impairment) of any collateral, property or security at any time existing in connection with, or assuring or securing payment of, all or any part of the Debt.

(h) **Care and Diligence.** The failure of Lender or any other party to exercise diligence or reasonable care in the preservation, protection, enforcement, sale or other handling or treatment of Other Borrower Collateral, all or any part of such collateral, property or security, including any neglect, delay, omission, failure or refusal of Lender (a) to take or prosecute any action for the collection of any of the Debt or (b) to foreclose, or initiate any action to foreclose, or, once commenced, prosecute to completion any action to foreclose upon Other Borrower Collateral, or (c) to take or prosecute any action in connection with any instrument or agreement evidencing or securing all or any part of the Debt.

(i) **Unenforceability.** The fact that any collateral, security, security interest or lien contemplated or intended to be given, created or granted as security for the repayment of the Debt, or any part thereof, shall not be properly perfected or created, or shall prove to be unenforceable or subordinate to any other security interest or lien, it being recognized and agreed by such Borrower Entity that such Borrower Entity is not entering into the Loan Documents in reliance on, or in contemplation of the benefits of, the validity, enforceability, collectibility or value of any of the collateral for the Debt.

(j) **Offset.** Any existing or future right of offset, claim or defense of Borrower against Lender, or any other Person, or against payment of the Debt by any Other Borrower, whether such right of offset, claim or defense arises in connection with the Debt (or the transactions creating the Debt) or otherwise.

(k) **Merger.** The reorganization, merger or consolidation of any Other Borrower into or with any other corporation or entity.

(l) **Preference.** Any payment by Borrower to Lender is held to constitute a preference under bankruptcy laws, or for any reason Lender is required to refund such payment or pay such amount to Borrower or someone else.

**Section 11.3. Other Actions Taken or Omitted.** Any other action taken or omitted to be taken with respect to the Loan Documents, the Debt, or Other Borrower Collateral, whether or not such action or omission prejudices such Borrower Entity or increases the likelihood that such Borrower Entity will be required to pay the Debt pursuant to the terms hereof, it is the unambiguous and unequivocal intention of such Borrower Entity that such Borrower Entity shall be obligated to pay the Debt when due, notwithstanding any occurrence, circumstance, event, action, or omission whatsoever pertaining to any Other Borrower or any Other Borrower Collateral, whether contemplated or not, and whether or not otherwise or particularly described herein, which obligation shall be deemed satisfied only upon the full and final payment and satisfaction of the Debt.



**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed by their duly authorized representatives, all as of the day and year first above written.

**BORROWER:**

**HARRAH'S LAS VEGAS PROPCO, LLC,**  
a Delaware limited liability company

By: /s/ Jonathan S. Halkyard

Name: Jonathan S. Halkyard

Title: President and Treasurer

**HARRAH'S ATLANTIC CITY PROPCO, LLC,**  
a Delaware limited liability company

By: /s/ Jonathan S. Halkyard

Name: Jonathan S. Halkyard

Title: President and Treasurer

**TAHOE PROPCO, LLC,**  
a Delaware limited liability company

By: /s/ Jonathan S. Halkyard

Name: Jonathan S. Halkyard

Title: President and Treasurer

**RIO PROPCO, LLC,**  
a Delaware limited liability company

By: /s/ Jonathan S. Halkyard

Name: Jonathan S. Halkyard

Title: President and Treasurer

**FLAMINGO LAS VEGAS PROPCO, LLC,**  
a Delaware limited liability company

By: /s/ Jonathan S. Halkyard

Name: Jonathan S. Halkyard

Title: President and Treasurer

**SHOWBOAT PROPCO, LLC,** a Delaware limited liability  
company

By: /s/ Jonathan S. Halkyard

Name: Jonathan S. Halkyard

Title: President and Treasurer

**LENDER:**

**JPMORGAN CHASE BANK, N.A.**

By: /s/ Jennifer A. Loughrey

Name: Jennifer A. Loughrey

Title: Vice President

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**FIRST MEZZANINE LOAN AGREEMENT**

Dated as of January 28, 2008

Between

**THE ENTITIES IDENTIFIED ON THE SIGNATURE PAGES HEREOF AS  
BORROWER,**  
collectively, as Borrower

and

**JPMORGAN CHASE BANK, N.A.,**  
as Lender

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**FIRST MEZZANINE LOAN AGREEMENT**

**THIS FIRST MEZZANINE LOAN AGREEMENT**, dated as of January 28, 2008 (as amended, restated, replaced, supplemented or otherwise modified from time to time, this “**Agreement**”), between **JPMORGAN CHASE BANK, N.A.**, a banking association chartered under the laws of the United States of America, having an address at 270 Park Avenue, New York, New York 10017 (“**Lender**”) and **THE ENTITIES IDENTIFIED ON THE SIGNATURE PAGES HEREOF AS BORROWER**, each a Delaware limited liability company having its principal place of business at the addresses set forth on Schedule I attached hereto (collectively, “**Borrower**”).

**WITNESSETH:**

**WHEREAS**, JPMorgan Chase Bank, N.A., having an address at 270 Park Avenue, New York, New York 10017, as mortgage lender (“Mortgage Lender”), is making a loan in the principal amount of Four Billion and No/100 Dollars (\$4,000,000,000) (the “Mortgage Loan”) to Mortgage Borrower (as hereinafter defined) pursuant to that certain Loan Agreement, dated as of the date hereof (as the same may be amended, supplemented, replaced or otherwise modified from time to time, the “Mortgage Loan Agreement”), which Mortgage Loan is evidenced by the Mortgage Notes (as hereinafter defined) made by Mortgage Borrower to Mortgage Lender and secured by, among other things, the Mortgage (as hereinafter defined) given by Mortgage Borrower in favor of Mortgage Lender pursuant to which Mortgage Borrower has granted Mortgage Lender a first priority mortgage on, among other things, the Properties and other collateral as more fully described in the Mortgage;

**WHEREAS**, Borrower is the legal and beneficial owner of all of the interests in Mortgage Borrower;

**WHEREAS**, Borrower desires to obtain the Loan (as hereinafter defined) from Lender;

**WHEREAS**, as a condition precedent to the obligation of Lender to make the Loan to Borrower, Borrower has entered into that certain Pledge and Security Agreement (First Mezzanine Loan), dated as of the date hereof, in favor of Lender (as amended, supplemented or otherwise modified from time to time, the “Pledge Agreement”), pursuant to which Borrower has granted to Lender a first priority security interest in the Collateral (as defined in the Pledge Agreement) as collateral security for the Debt (as hereinafter defined); and

**WHEREAS**, Lender is willing to make the Loan to Borrower, subject to and in accordance with the terms of this Agreement and the other Loan Documents (as hereinafter defined).

**NOW THEREFORE**, in consideration of the making of the Loan by Lender and the covenants, agreements, representations and warranties set forth in this Agreement, the parties hereto hereby covenant, agree, represent and warrant as follows:

**I. DEFINITIONS; PRINCIPLES OF CONSTRUCTION**

**Section 1.1. Definitions.** For all purposes of this Agreement, except as otherwise expressly required or unless the context clearly indicates a contrary intent:

“**Acceptable Counterparty**” shall mean any counterparty to the Interest Rate Cap Agreement that has and shall maintain, until the expiration of the applicable Interest Rate Cap Agreement, a long-term unsecured debt rating of at least “A+” by S&P and “Aa3” from Moody’s, which rating shall not include a “t” or otherwise reflect a termination risk and is otherwise reasonably acceptable to Lender.

“**Additional Insolvency Opinion**” shall have the meaning set forth in Section 4.1.30(c) hereof.

“**Additional True Lease Opinion**” shall have the meaning set forth in Section 4.1.30(d) hereof.

“**Affiliate**” shall mean, as to any Person, any other Person that, directly or indirectly, is in Control of, is Controlled by or is under common Control with such Person or is a director or officer of such Person or of an Affiliate of such Person.

“**Aggregate Debt Service**” shall mean, with respect to any particular period of time, the sum of (a) the Debt Service, (b) the Mortgage Debt Service and (c) the Other Mezzanine Debt Service.

“**Aggregate Material Adverse Effect**” shall mean any event or condition that, either singly or in the aggregate, could reasonably be expected to have or result in a material adverse effect upon (a) the business, operations, economic performance, prospects, assets or condition (financial or otherwise) of (i) Mortgage Borrower or Borrower (taken as a whole), (ii) Guarantor, (iii) Operating Company (taken as a whole), (iv) the Operating Lease or the Operating Lease Guaranty (taken as a whole) or (v) the Properties (taken as a whole), the Collateral, the Hotel Components (taken as a whole) or the Casino Components (taken as a whole); (b) the ability of Mortgage Borrower (taken as a whole), Borrower (taken as a whole) or Guarantor to perform, in all material respects, its obligations under the Loan Documents or Mortgage Loan Documents (taken as a whole) to which such entity is a party; (c) the ability of Operating Company (taken as a whole) to perform, in all material respects, the obligations under the Operating Leases (taken as a whole) or the ability of Guarantor (Operating Lease) (taken as a whole) to perform, in all material respects, the obligations under the Operating Lease Guaranty

(taken as a whole) ; (d) the enforceability or validity of (i) the Operating Lease (taken as a whole) or the Operating Lease Guaranty (taken as a whole), (ii) the Loan Documents or Mortgage Loan Documents (taken as a whole) or the perfection or priority of the Liens created under the Loan Documents or Mortgage Loan Documents (taken as a whole); (e) the value of, or cash flow from, the Properties or the operations thereof (taken as a whole) or the Collateral; or (f) the material rights, interests and remedies of Lender under the Loan Documents (taken as a whole).

“**Allocated Loan Amount**” shall mean, for an Individual Property, the amount set forth on Schedule II attached hereto.

“**ALTA**” shall mean American Land Title Association, or any successor thereto.

“**Alteration**” shall mean, with respect to any Individual Property, any alteration, improvement, demolition, construction or removal of all or any portion of the Improvements at such Individual Property.

“**Annual Budget**” shall mean, individually and collectively as the context requires, (a) the Borrower Annual Budget and (b) the Operating Company Annual Budget.

“**Applicable Interest Rate**” shall mean the rate or rates at which the outstanding principal amount of the Loan bears interest from time to time in accordance with the provisions of Section 2.2.3 hereof.

“**Approved Guarantor**” means (x) Holdings, for so long Holdings meets the Minimum Value Test, or (y) any other guarantor that meets the Minimum Value Test and is otherwise reasonably satisfactory to Lender.

“**Assignee**” shall have the meaning set forth in Section 9.5 hereof.

“**Assignment and Acceptance**” shall have the meaning set forth in Section 9.8, hereof.

“**Award**” shall mean any compensation paid by any Governmental Authority in connection with a Condemnation with respect to all or any part of any Individual Property.

“**Bankruptcy Action**” shall mean with respect to any Person (a) such Person filing a voluntary petition under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (b) the filing of an involuntary petition against such Person under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law, or soliciting or causing to be solicited petitioning creditors for any involuntary petition against such Person; (c) such Person filing an answer consenting to or otherwise acquiescing in or joining in any involuntary petition filed against it, by any other Person under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law, or soliciting or causing to be solicited petitioning creditors for any involuntary petition from any Person; (d) such Person consenting to or acquiescing in or joining in an application for the appointment of a custodian, receiver, trustee, or examiner for such Person or any portion of its property; or (e) such Person making an

assignment for the benefit of creditors, or admitting, in writing or in any legal proceeding, its insolvency or inability to pay its debts as they become due.

**“Bankruptcy Code”** shall mean Title 11 of the United States Code, 11 U.S.C. §101, *et seq.*, as the same may be amended from time to time, and any successor statute or statutes and all rules and regulations from time to time promulgated thereunder, and any comparable foreign laws relating to bankruptcy, insolvency or creditors’ rights or any other Federal or state bankruptcy or insolvency law.

**“Basic Carrying Costs”** shall mean, for any period, with respect to each Individual Property, the sum of the following costs associated with such Individual Property for such period: (a) Taxes, (b) Insurance Premiums and (c) Ground Rent.

**“Bill’s Lake Tahoe Casino”** shall mean that certain property identified on Schedule II as “Bill’s Lake Tahoe” having a street address of 15 Highway 50, Stateline, Nevada.

**“Borrower”** shall have the meaning set forth in the introductory paragraph hereto, together with its successors and permitted assigns. As used herein, the term “Borrower” shall mean one of the Borrowers individually, or the Borrowers collectively, as the context shall require.

**“Borrower Agent”** shall have the meaning set forth in Section 10.6 hereof.

**“Borrower Annual Budget”** shall mean the operating budget of Mortgage Borrower, prepared by Mortgage Borrower for the applicable Fiscal Year or other period.

**“Borrower Entity”** shall have the meaning set forth in Section 11.1 hereof.

**“Business Day”** shall mean any day other than a Saturday, Sunday or any other day on which national banks in New York, New York are not open for business.

**“Capital Expenditures”** shall mean, for any period, the amount expended for items capitalized under GAAP (including expenditures for building improvements or major repairs, leasing commissions, tenant improvements and Fixtures).

**“Capitalized Software Expenditures”** shall mean, for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities) by a Person during such period in respect of licensed or purchased software or internally developed software and software enhancements that, in accordance with GAAP, are or are required to be reflected as capitalized costs on the consolidated balance sheet of such Person.

**“Cash Management Account”** shall have the meaning set forth in the Mortgage Loan Agreement.

**“Casino Components”** shall mean, collectively, those portions of each Individual Property devoted to the operation of casino gaming operations, including (without limitation) those areas devoted to the conduct of games of chance, facilities associated directly with gaming

operations including, without limitation, casino support areas such as surveillance and security areas, cash cages, counting and accounting areas and gaming back-of-the-house areas in each case, to the extent the operation thereof requires a Gaming License under applicable Gaming Laws. The Casino Components are more particularly described and set forth in each Operating Lease, as appropriate.

“**Casualty**” shall have the meaning set forth in Section 6.2 hereof.

“**Change in Control**” shall mean (1) a “Change in Control” as defined in the Credit Agreement, dated the date hereof, among Hamlet Merger Inc., a Delaware corporation, Harrah’s Operating Company, Inc., a Delaware corporation, the Lenders party thereto from time to time, Bank of America, N.A., as administrative agent and collateral agent for the Lenders, and certain other parties thereto, or (2) a Change in Control as defined in clause (b) of said definition except that references therein to Borrower shall be deemed to refer to Holdings.

“**Closing Date**” shall mean the date of the funding of the Loan.

“**Code**” shall mean the Internal Revenue Code of 1986, as amended, as it may be further amended from time to time, and any successor statutes thereto, and applicable U.S. Department of Treasury regulations issued pursuant thereto in temporary or final form.

“**Collateral**” shall have the meaning set forth in the Pledge Agreement.

“**Collateral Assignment of Interest Rate Cap Agreement**” shall mean that certain Collateral Assignment of Interest Rate Cap Agreement, dated as of the date hereof, executed by Borrower in connection with the Loan for the benefit of the Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Collection Account**” shall have the meaning set forth in the Mortgage Loan Agreement.

“**Collection Banks**” shall mean (a) any Eligible Institution(s) designated by Mortgage Borrower as Collection Bank and reasonably approved by Lender from time to time in accordance with the terms hereof, or (b) any other financial institution otherwise reasonably approved by Lender and, if a Securitization has occurred, with respect to which a Rating Agency Confirmation has been obtained.

“**Condemnation**” shall mean a temporary or permanent taking by any Governmental Authority as the result or in lieu or in anticipation of the exercise of the right of condemnation or eminent domain, of all or any part of any Individual Property, or any interest therein or right accruing thereto, including any right of access thereto or any change of grade affecting such Individual Property or any part thereof.

“**Consolidated Net Income**” shall mean, with respect to any Person for any period, the aggregate of the Net Income of such Person for such period, on a consolidated basis; provided, however, that, without duplication,

(i) any net after-tax extraordinary, nonrecurring or unusual gains or losses or income or expense or charge (less all fees and expenses relating thereto), including, without limitation, any severance, relocation or other restructuring expenses, any expenses related to any reconstruction, decommissioning, recommissioning or reconfiguration of fixed assets for alternative uses, fees, expenses or charges relating to new product lines, curtailments or modifications to pension and post-retirement employee benefit plans, excess pension charges, acquisition integration costs, facilities opening costs, project start-up costs, business optimization costs, signing, retention or completion bonuses, shall be excluded,

(ii) any net after-tax income or loss from disposed, abandoned, transferred, closed or discontinued operations and any net after-tax gain or loss on disposal of disposed, abandoned, transferred, closed or discontinued operations shall be excluded,

(iii) any net after-tax gain or loss (less all fees and expenses or charges relating thereto) attributable to business dispositions or asset dispositions other than in the ordinary course of business (as determined in good faith by the management of the Borrower) shall be excluded,

(iv) Consolidated Net Income for such period shall not include the cumulative effect of a change in accounting principles during such period,

(v) effects of purchase accounting adjustments (including the effects of such adjustments pushed down to such Person) in component amounts required or permitted by GAAP, resulting from the application of purchase accounting in relation to any consummated acquisition or the amortization or write-off of any amounts thereof, net of taxes, shall be excluded,

(vi) any impairment charges or asset write-offs, in each case pursuant to GAAP, and the amortization of intangibles arising pursuant to GAAP, shall be excluded,

(vii) any non-cash compensation charge or expenses realized or resulting from stock option plans, employee benefit plans or post-employment benefit plans, or grants or sales of stock, stock appreciation or similar rights, stock options, restricted stock, preferred stock or other rights shall be excluded,

(viii) accruals and reserves that are established or adjusted within twelve months after the Closing Date and that are so required to be established or adjusted in accordance with GAAP or as a result of adoption or modification of accounting policies shall be excluded,

(ix) non-cash gains, losses, income and expenses resulting from fair value accounting required by the applicable standard under GAAP and related interpretations shall be excluded,

(x) (i) the non-cash portion of “straight-line” rent expense shall be excluded and (ii) the cash portion of “straight-line” rent expense which exceeds the amount expensed in respect of such rent expense shall be included,

(xi) to the extent covered by insurance and actually reimbursed, or, so long as such Person has made a determination that there exists reasonable evidence that such amount will in fact be reimbursed by the insurer and only to the extent that such amount is (i) not denied by the applicable carrier in writing within 180 days and (ii) in fact reimbursed within 365 days of the date of such evidence (with a deduction for any amount so added back to the extent not so reimbursed within 365 days), expenses with respect to liability or casualty events or business interruption shall be excluded, and

(xii) non-cash charges for deferred tax asset valuation allowances shall be excluded.

“**Contribution Agreement**” shall mean that certain Contribution Agreement, dated as of the date hereof, between Borrower and Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Control**” shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management, policies or activities of a Person, whether through ownership of voting securities, by contract or otherwise. “**Controlled**” and “**Controlling**” shall have correlative meanings.

“**Convention Center Parcel**” shall mean the parcel shown on Schedule XXII and comprising a part of the Harrah’s Atlantic City Property.

“**Convention Center Project**” shall mean that certain conference center currently contemplated to be constructed on the Convention Center Parcel by the Mortgage Borrower and/or the Operating Company owning the Harrah’s Atlantic City Property, and more fully described in the schematic designs for the Convention Center Project provided by Mortgage Borrower to Mortgage Lender. The Convention Center Project will not be funded with the proceeds of the Loan (but will be funded by Mortgage Borrower, including with capital contributions).

“**Counterparty**” shall mean, with respect to the Interest Rate Cap Agreement and any Replacement Interest Rate Cap Agreement, any Acceptable Counterparty.

“**Covered Disclosure Information**” shall have the meaning set forth in Section 9.2(b) hereof.

“**Debt**” shall mean the outstanding principal amount set forth in, and evidenced by, this Agreement and the Notes together with all interest accrued and unpaid thereon (including any interest that would accrue on the outstanding principal amount of the Loan through and including the end of any applicable Interest Period, even if such Interest Period extends beyond any applicable Payment Date, prepayment date or the Maturity Date) and all

other sums due to Lender in respect of the Loan under the Notes, this Agreement, the Pledge Agreement and the other Loan Documents.

“**Debt Service**” shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under this Agreement and the Notes.

“**Debt Service Coverage Ratio**” shall mean a ratio for the applicable period in which:

(a) the numerator is EBITDAR of the Operating Company for the four (4) quarter period preceding the date of determination, as set forth in the financial statements required hereunder; and

(b) the denominator is the sum of (i) the aggregate amount of Mortgage Debt Service which was due and payable for such preceding four (4) quarter period calculated, for these purposes, assuming that (A) the spread on the Mortgage Loan is the Spread (as defined in the Mortgage Loan Agreement) and (B) LIBOR is equal to the lesser of (y) LIBOR on the date of determination, or (z) the applicable Strike Price, (ii) the aggregate amount of Mezzanine Debt Service (including the Debt Service) which was due and payable for such preceding four (4) quarter period calculated, for these purposes, assuming that (A) the spread on the Mezzanine Loans is the “Spread” as defined in each Mezzanine Loan Agreement and (B) LIBOR is equal to the lesser of (y) LIBOR on the date of determination, or (z) the applicable Strike Price (as defined in the Mortgage Loan Agreement), and (iii) the aggregate amount of the Permitted Mezzanine Debt Service which was due and payable for such preceding four (4) quarter period (or the annualized amount, if the Permitted Mezzanine Loan were outstanding for less than 12 calendar months) calculated, for these purposes, assuming that (A) the spread on the Permitted Mezzanine Loan is the “Spread” as defined in the documents evidencing the Permitted Mezzanine Loan Documents and (B) LIBOR is equal to the lesser of (y) LIBOR on the date of determination, or (z) the strike price under the related interest rate cap purchased in connection with the Permitted Mezzanine Loan;

provided, however, that, solely for the purpose of [Section 2.5](#), the Debt Service Coverage Ratio shall be determined as described in [Section 2.5.1\(c\)](#).

“**Default**” shall mean the occurrence of any event hereunder or under any other Loan Document which, but for the giving of notice or passage of time, or both, would be an Event of Default.

“**Default Rate**” shall mean a rate per annum equal to the lesser of (a) the Maximum Legal Rate and (b) two percent (2%) above the Applicable Interest Rate.

“**Delinquency**” shall mean, with respect to each Individual Property, the latest date on which Taxes or Other Charges may be paid (with respect to such Individual Property) without the payment of a premium, penalty or interest.

**“Determination Date”** shall mean, with respect to any Interest Period, the date that is two (2) London Business Days prior to the fifteenth (15<sup>th</sup>) day of the calendar month in which such Interest Period commences.

**“Disclosure Document”** shall mean a prospectus, prospectus supplement, private placement memorandum, offering memorandum, offering circular, term sheet, road show presentation materials or other offering documents or marketing materials, in each case in preliminary or final form, used to offer Securities in connection with a Securitization.

**“EBITDAR”** shall mean, with respect to any Person for any period, the Consolidated Net Income of such Person plus the sum of (in each case without duplication and to the extent the respective amounts described in subclauses (i) through (vi) below reduced such Consolidated Net Income (and were not excluded therefrom) for the respective period for which EBITDAR is being determined):

(i) provision for Taxes based on income, profits or capital for such period, including, without limitation, state, franchise and similar taxes and foreign withholding taxes (including penalties and interest related to taxes or arising from tax examinations),

(ii) Interest Expense for such period (net of interest income for such period),

(iii) depreciation and amortization expenses for such period including, but not exclusively, the amortization of intangible assets, deferred financing fees and Capitalized Software Expenditures and amortization of unrecognized prior service costs and actuarial gains and losses related to pensions and other post-employment benefits,

(iv) any expenses or charges (other than depreciation or amortization expense as described in the preceding clause (iii)) related to any acquisition, disposition, recapitalization or the incurrence, modification or repayment of Indebtedness permitted to be incurred by this Agreement (including a refinancing thereof) (whether or not successful), including (y) any amendment or other modification of such Indebtedness, and (z) commissions, discounts, yield and other fees and charges (including any interest expense) related to any such Indebtedness,

(v) restructuring charges or reserves (which, for the avoidance of doubt, shall include, without limitation, the effect of inventory optimization programs, retention, severance, systems establishment costs, contract termination costs, future lease commitments and excess pension charges), to the extent that such expenses, charges or reserves are considered to be extraordinary expenses under GAAP,

(vi) any costs or expense incurred pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement or any stock subscription or shareholder agreement, to the extent that such cost or expenses are funded with cash proceeds contributed to the capital of such Person,

(vii) with respect to the Operating Company, the Fixed Rent payable under the Operating Lease; and

(viii) if the Captive Insurance Company shall be utilized to provide terrorism coverage hereunder, the amount of the premiums expended by Mortgage Borrower to obtain such terrorism coverage to the extent such amount exceeds the Terrorism Premium Limit and such excess is retained by the Captive Insurance Company;

provided that EBITDAR shall be reduced by the sum of the following for the respective period for which EBITDAR is being determined:

(A) management fees equal to the greater of (x) 3 percent per annum of gross revenues at the Properties and (y) the actual management fees payable under any management agreement (provided the foregoing shall not be construed as Lender's approval of any management agreement except in accordance with the terms hereof), without double counting actual amounts incurred and otherwise reflected in the calculation of EBITDAR, and

(B) FF&E reserves equal to 3 percent per annum of gross hotel and casino revenues at the Properties without double counting actual amounts incurred and otherwise reflected in the calculation of EBITDAR.

**"EBITDAR (Closing Date)"** shall mean EBITDAR for calendar year 2007, as agreed upon between Borrower and Lender.

**"Eighth Mezzanine Borrower"** shall mean, collectively, the entities set forth on Schedule XX hereto, each a Delaware limited liability company, together with their respective successors and permitted assigns. As used herein, the term "Eighth Mezzanine Borrower" shall mean one of the Eighth Mezzanine Borrowers individually, or the Eighth Mezzanine Borrowers collectively, as the context shall require.

**"Eighth Mezzanine Debt Service"** shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Eighth Mezzanine Notes.

**"Eighth Mezzanine Lender"** shall mean JPMorgan Chase Bank, N.A., in its capacity as the holder of the Eighth Mezzanine Loan, together with its successors and assigns.

**"Eighth Mezzanine Loan"** shall mean that certain loan in the original principal amount of Two Hundred Seventy Five Million and No/100 Dollars (\$275,000,000) of even date herewith made by Eighth Mezzanine Lender to Eighth Mezzanine Borrower.

**"Eighth Mezzanine Loan Agreement"** shall mean that certain Eighth Mezzanine Loan Agreement, dated as of the date hereof, between Eighth Mezzanine Borrower and Eighth

Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Eighth Mezzanine Loan Documents**” shall mean the Eighth Mezzanine Loan Agreement, the Eighth Mezzanine Notes and all other documents and instruments executed and delivered in connection with the Eighth Mezzanine Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

“**Eighth Mezzanine Notes**” shall mean the “Notes” as defined in the Eighth Mezzanine Loan Agreement.

“**Eligibility Requirements**” means, with respect to any Person, that such Person (a) has total assets (in name or under management) in excess of \$4,000,000,000 and (except with respect to a pension advisory firm or similar fiduciary) capital/statutory surplus or shareholder’s equity of \$1,000,000,000, (b) is regularly engaged in the business of owning and operating commercial real estate properties, (c) is not currently, and its principals are not currently, subject to a Bankruptcy Action and for the immediately preceding 10 years, neither it nor any material subsidiary has been subject to a Bankruptcy Action, and (d) has not been, and its principals have not been, convicted and is not under current indictment for a felony or crime involving moral turpitude, has not been found by a court of competent jurisdiction to have violated federal or state securities laws, and is not an organized crime figure.

“**Eligible Account**” shall mean a separate and identifiable account from all other funds held by the holding institution that is either (a) an account or accounts maintained with a federal or state-chartered depository institution or trust company which complies with the definition of Eligible Institution or (b) a segregated trust account or accounts maintained with a federal or state chartered depository institution or trust company acting in its fiduciary capacity which, in the case of a state chartered depository institution or trust company, is subject to regulations substantially similar to 12 C.F.R. §9.10(b), having in either case a combined capital and surplus of at least \$50,000,000 and subject to supervision or examination by federal and state authority. An Eligible Account will not be evidenced by a certificate of deposit, passbook or other instrument.

“**Eligible Institution**” shall mean a depository institution or trust company, the short term unsecured debt obligations or commercial paper of which are rated at least “A-1” by S&P, “P-1” by Moody’s and “F-1” by Fitch in the case of accounts in which funds are held for thirty (30) days or less (or, in the case of accounts in which funds are held for more than thirty (30) days, the long term unsecured debt obligations of which are rated at least “A” by Fitch and S&P and “A2” by Moody’s). After a Securitization of all or any portion of the Loan, only the ratings of those Rating Agencies rating the Securities shall be taken into account in determining whether institutions or trust companies constitute Eligible Institutions.

“**Embargoed Person**” shall have the meaning set forth in Section 4.1.35 hereof.

“**Environmental Indemnity**” shall mean that certain Environmental Indemnity Agreement, dated as of the date hereof, executed by Borrower and Guarantor in connection with

the Loan for the benefit of Lender and the Noteholders, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Equipment**” shall mean, with respect to each Individual Property, any equipment now owned or hereafter acquired by Mortgage Borrower or Operating Company, which is used at or in connection with the Improvements or such Individual Property or is located thereon or therein, including (without limitation) all Gaming Equipment, all machinery, equipment, furnishings, and electronic data-processing and other office equipment now owned or hereafter acquired by or on behalf of Mortgage Borrower or Operating Company and any and all additions, substitutions and replacements of any of the foregoing), together with all attachments, components, parts, equipment and accessories installed thereon or affixed thereto.

“**ERISA**” shall mean the Employee Retirement Income Security Act of 1974, as amended.

“**Event of Default**” shall have the meaning set forth in Section 8.1(a) hereof.

“**Exchange Act**” shall have the meaning set forth in Section 9.2(a) hereof.

“**Exchange Act Filing**” shall have the meaning set forth in Section 5.1.11(f) hereof.

“**FF&E**” shall mean, with respect to each Individual Property, collectively, furnishings, fixtures (other than Fixtures) and Equipment located in the guest rooms, hallways, lobbies, restaurants, lounges, meeting and banquet rooms, parking facilities, public areas or otherwise in any portion of such Individual Property, including (without limitation) all fixed asset supplies (including, but not limited to, linen, china, glassware, tableware, uniforms, other hotel inventory and similar items, whether used in connection with public space or guest rooms), beds, chairs, bookcases, tables, carpeting, drapes, couches, luggage carts, luggage racks, bars, bar fixtures, radios, television sets, intercom and paging equipment, electric and electronic equipment, heating, lighting and plumbing fixtures, fire prevention and extinguishing apparatus, cooling and air-conditioning systems, elevators, escalators, stoves, ranges, refrigerators, laundry machines, tools, machinery, boilers, incinerators, switchboards, conduits, compressors, vacuum cleaning systems, floor cleaning, waxing and polishing equipment, cabinets, lockers, shelving, dishwashers, garbage disposals, washer and dryers, gaming equipment and other casino equipment and all other customary hotel and casino resort equipment and other tangible property owned by Mortgage Borrower or Operating Company, or in which Mortgage Borrower or Operating Company has or shall have an interest, now or hereafter located at such Individual Property and useable in connection with the present or future operation and occupancy of such Individual Property; provided, however, that FF&E shall not include items owned by tenants under space Leases (other than the Operating Lease) or by third party operators (other than Operating Company).

“**FF&E Reserve Account**” shall have the meaning set forth in Section 7.3 hereof.

“**FF&E Reserve Fund**” shall have the meaning set forth in Section 7.3 hereof.

**“Fifth Mezzanine Borrower”** shall mean, collectively, the entities set forth on Schedule XVII hereto, each a Delaware limited liability company, together with their respective successors and permitted assigns. As used herein, the term “Fifth Mezzanine Borrower” shall mean one of the Fifth Mezzanine Borrowers individually, or the Fifth Mezzanine Borrowers collectively, as the context shall require.

**“Fifth Mezzanine Debt Service”** shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Fifth Mezzanine Notes.

**“Fifth Mezzanine Lender”** shall mean JPMorgan Chase Bank, N.A., in its capacity as the holder of the Fifth Mezzanine Loan, together with its successors and assigns.

**“Fifth Mezzanine Loan”** shall mean that certain loan in the original principal amount of Two Hundred Seventy Five Million and No/100 Dollars (\$275,000,000) of even date herewith made by Fifth Mezzanine Lender to Fifth Mezzanine Borrower.

**“Fifth Mezzanine Loan Agreement”** shall mean that certain Fifth Mezzanine Loan Agreement, dated as of the date hereof, between Fifth Mezzanine Borrower and Fifth Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**“Fifth Mezzanine Loan Documents”** shall mean the Fifth Mezzanine Loan Agreement, the Fifth Mezzanine Notes and all other documents and instruments executed and delivered in connection with the Fifth Mezzanine Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

**“Fifth Mezzanine Notes”** shall mean the “Notes” as defined in the Fifth Mezzanine Loan Agreement.

**“Fiscal Year”** shall mean each twelve (12) month period commencing on January 1 and ending on December 31 during each year of the term of the Loan.

**“Fitch”** shall mean Fitch, Inc.

**“Fixed Rent”** shall mean the Base Rent (as defined in the Operating Lease) payable under the Operating Lease.

**“Fixtures”** shall mean, with respect to each Individual Property, all Equipment now owned, or the ownership of which is hereafter acquired, by Mortgage Borrower which is so related to the Land and the Improvements forming part of the Individual Property in question that it is deemed fixtures or real property under applicable Legal Requirements, including, without limitation, all building or construction materials intended for construction, reconstruction, alteration, decoration or repair of or installation on the applicable Individual Property, construction equipment, appliances, machinery, plant equipment, fittings, apparatuses, fixtures and other items now or hereafter attached to, installed in or used in connection with (temporarily or permanently) any of the Improvements or the Land, including, but not limited to,

engines, devices for the operation of pumps, pipes, plumbing, call and sprinkler systems, fire extinguishing apparatuses and equipment, heating, ventilating, incinerating, electrical, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances and equipment, pollution control equipment, security systems, disposals, dishwashers, refrigerators and ranges, recreational equipment and facilities of all kinds, and water, electrical, storm and sanitary sewer facilities, utility lines and equipment (whether owned individually or jointly with others, and, if owned jointly, to the extent of Mortgage Borrower's interest therein) and all other utilities whether or not situated in easements, all water tanks, water supply, water power sites, fuel stations, fuel tanks, fuel supply, and all other structures, together with all accessions, appurtenances, additions, replacements, betterments and substitutions or any of the foregoing and the proceeds thereof.

**"Flamingo Las Vegas"** shall mean that certain Individual Property identified on Schedule II as the "Flamingo Las Vegas" and having a street address of 3555 Las Vegas Boulevard South, Las Vegas, Nevada.

**"Force Majeure"** shall mean any delay caused by reason of strike, lock-out or other labor trouble, casualty, governmental preemption of priorities or other controls in connection with a national or other public emergency or shortages of fuel, supplies or labor resulting therefrom or other causes beyond Borrower's reasonable control.

**"Foreign Taxes"** shall have the meaning set forth in Section 2.2.3(e) hereof.

**"Fourth Mezzanine Borrower"** shall mean, collectively, the entities set forth on Schedule XVI hereto, each a Delaware limited liability company, together with their respective successors and permitted assigns. As used herein, the term "Fourth Mezzanine Borrower" shall mean one of the Fourth Mezzanine Borrowers individually, or the Fourth Mezzanine Borrowers collectively, as the context shall require.

**"Fourth Mezzanine Debt Service"** shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Fourth Mezzanine Notes.

**"Fourth Mezzanine Lender"** shall mean JPMorgan Chase Bank, N.A., in its capacity as the holder of the Fourth Mezzanine Loan, together with its successors and assigns.

**"Fourth Mezzanine Loan"** shall mean that certain loan in the original principal amount of Two Hundred Seventy Five Million and No/100 Dollars (\$275,000,000) of even date herewith made by Fourth Mezzanine Lender to Fourth Mezzanine Borrower.

**"Fourth Mezzanine Loan Agreement"** shall mean that certain Fourth Mezzanine Loan Agreement, dated as of the date hereof, between Fourth Mezzanine Borrower and Fourth Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**"Fourth Mezzanine Loan Documents"** shall mean the Fourth Mezzanine Loan Agreement, the Fourth Mezzanine Notes and all other documents and instruments executed and

delivered in connection with the Fourth Mezzanine Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

“**Fourth Mezzanine Notes**” shall mean the “Notes” as defined in the Fourth Mezzanine Loan Agreement.

“**GAAP**” shall mean generally accepted accounting principles in the United States of America as of the date of the applicable financial report.

“**Gaming Authorities**” shall mean, in any jurisdiction in which Borrower, Mortgage Borrower, Operating Company or any of their respective subsidiaries manages or conducts any casino, gaming business or activities, the applicable gaming board, commission, or other governmental gaming regulatory authority, body or agency which (a) has, or may at any time after the Closing Date have, jurisdiction over the gaming activities at any of the Properties or any successor to such authority or (b) is, or may at any time after the Closing Date be, responsible for interpreting, administering and enforcing the Gaming Laws.

“**Gaming Equipment**” shall mean any and all gaming devices, gaming device parts inventory and other related gaming equipment and supplies used in connection with the operation of a casino, including (without limitation), slot machines, gaming tables, cards, dice, chips, tokens, player tracking systems, cashless wagering systems, electronic betting systems, mobile gaming systems and associated equipment which are located at the Casino Components, owned or leased by Operating Company or Mortgage Borrower and used or useable exclusively in the present or future operation of slot machines and live games at the Casino Component, together with all improvements and/or additions thereto.

“**Gaming Laws**” or “**Gaming Regulations**” shall mean all applicable constitutions, treaties, laws, statutes and municipal ordinances pursuant to which any Gaming Authority possesses regulatory, licensing or permitting authority over gaming, gambling or casino or casino-related activities and all rules, rulings, orders, ordinances and regulations of any Gaming Authority applicable to the gambling, casino, gaming businesses or casino or casino-related activities of Borrower, Mortgage Borrower or the Operating Companies or any of their respective subsidiaries in any jurisdiction, as in effect from time to time, including the policies, interpretations and administration thereof by the Gaming Authorities.

“**Gaming License**” shall mean, in any jurisdiction in which Borrower, Mortgage Borrower, Operating Company or any of their respective subsidiaries conducts any casino and gaming business or activities, any license, qualification, franchise, accreditation, approval, registration, permit, finding of suitability or other authorization relating to gaming, the gaming business or the operation of a casino under the Gaming Laws or required by the Gaming Authorities or otherwise necessary for the operation of gaming, the gaming business or a resort casino.

“**Gaming Liquidity Requirement**” shall mean the minimum bankroll requirements for cash and cash equivalents required to be maintained by each Operating Company pursuant to Gaming Laws in an amount no greater than is mandated by applicable law, which requirements may be subject to (a) adjustment in an amount equal to any incremental

increase or decrease in the amount of the Gaming Liquidity Requirement that is required to be maintained by Operating Company under applicable Gaming Laws as a result of any increase or decrease in gaming business at the applicable Casino Component, or (b) subject to increase or decrease due to any change in the applicable requirements under Gaming Laws generally.

**“Gaming Operating Reserve”** shall mean, with respect to the Casino Component, such cash funds and reserves that are held and maintained on-site at each Individual Property by Operating Company, in its capacity as the duly licensed operator of the Casino Component, including (without limitation) casino chips, tokens, checks and markers; provided, however, that all such Gaming Operating Reserves (a) are established and maintained in compliance with all applicable Gaming Liquidity Requirements, (b) are solely for use in the day-to-day operation and management of each Casino Component in the ordinary course of business, and (c) in the case of each Individual Property, are in amounts customary and generally comparable for casinos comparable to the Individual Property in question.

**“Governmental Authority”** shall mean any court, board, agency, commission, office or other authority of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence, including, without limitation, all Gaming Authorities having jurisdiction over the Properties (and any operations conducted thereat), Mortgage Borrower, Borrower and Operating Company. For the avoidance of doubt, the term “Governmental Authority” shall include, and be deemed to include, all Gaming Authorities.

**“Ground Lease”** shall mean, individually and collectively, as the context requires, those certain ground leases listed in Schedule IV, as the same may be amended, supplemented, replaced or otherwise modified from time to time in accordance with the provisions hereof.

**“Ground Lease Estoppel Reserve Amount”** shall have the meaning set forth in the Ground Lease Side Letter.

**“Ground Lease Estoppel Trigger Event”** shall have the meaning set forth in Section 5.1.23 hereof.

**“Ground Lease Estoppel Trigger Spread”** shall have the meaning set forth in the Ground Lease Side Letter.

**“Ground Lease Side Letter”** shall have the meaning assigned to such term in the Mortgage Loan Agreement.

**“Ground Lease Subsidiary”** shall have the meaning assigned to such term in the Mortgage Loan Agreement.

**“Ground Rent”** shall mean any rent, additional rent or other charge payable by the tenant under the Ground Lease.

“**Ground Rent Reserve Account**” shall have the meaning set forth in Section 7.4 hereof.

“**Ground Rent Reserve Funds**” shall have the meaning set forth in Section 7.4.

“**Guarantor**” shall mean, collectively, Guarantor (FF&E), Guarantor (Recourse Carveouts), Guarantor (Operating Lease), Guarantor (Ground Lease Estoppel) and any guarantor under any completion guaranty provided under Section 5.1.21.

“**Guarantor (FF&E)**” shall mean any Approved Guarantor. Initially, Guarantor (FF&E) shall mean Holdings, and its successors. If Holdings fails to meet the Minimum Value Test, then Borrower shall replace Holdings, as the guarantor under the Guaranty (FF&E), with an Approved Guarantor.

“**Guarantor (Ground Lease Estoppel)**” shall mean Holdings, and its successors.

“**Guarantor (Operating Lease)**” shall mean Holdings, and its successors.

“**Guarantor (Recourse Carveouts)**” shall mean Holdings, and its successors.

“**Guaranty**” shall mean, collectively, the Guaranty (FF&E), the Guaranty (Recourse Carveouts), the Guaranty (Ground Lease Estoppel), the Operating Lease Guaranty and any completion guaranty provided under Section 5.1.21.

“**Guaranty (FF&E)**” shall mean that certain Guaranty (FF&E) (First Mezzanine Loan), dated as of the date hereof, from Guarantor (FF&E) to Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Guaranty (Ground Lease Estoppel)**” shall mean that certain Guaranty (Harvey’s—Payment) (First Mezzanine), dated as of the date hereof, from Guarantor (Ground Lease Estoppel) to Lender, as the same may be amended, restated, supplemented or modified from time to time.

“**Guaranty (Recourse Carveouts)**” shall mean that certain Guaranty (Recourse Carveouts) (First Mezzanine Loan), dated as of the date hereof, from Guarantor (Recourse Carveouts) to Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Harrah’s Atlantic City Property**” shall mean that certain Individual Property identified on Schedule II as “Harrah’s Atlantic City” and having a street address of 777 Harrah’s Boulevard, Atlantic City, New Jersey.

“**Holdings**” shall mean Harrah’s Entertainment, Inc., and its successors.

“**Hotel Components**” shall mean, collectively, those portions of each Individual Property devoted to the operation of a hotel and related facilities, excluding the Casino Component, but including (without limitation) (a) all guest rooms and suites, hotel amenities,

restaurants, conference centers, meeting, banquet and other public rooms, spa, parking spaces and other facilities of the hotel portion of such Individual Property, and (b) any theaters or performing arts spaces in the Individual Property in question. The Hotel Components are more particularly described and set forth in each Operating Lease, as applicable.

“**Improvements**” shall have the meaning set forth in the granting clause of the related Mortgage with respect to each Individual Property.

“**Indebtedness**” of a Person, at a particular date, means the sum (without duplication) at such date of (a) all indebtedness of such Person (including, without limitation, amounts for borrowed money and indebtedness in the form of mezzanine debt and preferred equity); (b) obligations evidenced by bonds, debentures, notes, or other similar instruments; (c) obligations for the deferred purchase price of property or services (including trade obligations); (d) obligations under letters of credit; (e) obligations under acceptance facilities; (f) all guaranties, endorsements (other than for collection or deposit in the ordinary course of business) and other contingent obligations to purchase, to provide funds for payment, to supply funds, to invest in any Person or entity, or otherwise to assure a creditor against loss; and (g) obligations secured by any Liens, whether or not the obligations have been assumed.

“**Indemnified Liabilities**” shall have the meaning set forth in Section 10.13 hereof.

“**Indemnified Person**” shall have the meaning set forth in Section 9.2(b) hereof.

“**Independent Director**” or “**Independent Manager**” shall mean a natural person who is not and will not be while serving and has not been during the five years preceding his or her initial appointment to such position any of the following: (a) a stockholder (other than a stockholder who owns a de minimis amount of shares and receive de minimis income therefrom, or who indirectly owns stock through its interest in one or more mutual funds), member (other than as a Special Member or Springing Member of Borrower), director, manager (except in his or her capacity as an Independent Manager on the Board of Managers of Borrower), officer, employee, partner, attorney, trustee or counsel of Borrower or any Affiliate of Borrower or any direct or indirect parent of either of them, including Holdings, (b) a creditor, customer (other than a retail customer of an Individual Property), supplier or other Person who derives any of its purchases or revenues from its activities with Borrower or any Affiliate of Borrower, including Holdings, (c) a Person or other entity controlling or under common control with any such stockholder, partner, member, director, manager or officer, customer, supplier or other Person excluded from serving as Independent Director or Independent Manager described in the foregoing subclause (a) or subclause (b), or (d) a member of the immediate family by blood or marriage of any such stockholder, member, manager, director, officer, employee, partner, attorney, customer, supplier or other Person excluded from serving as Independent Director or Independent Manager in subclause (a) or subclause (b). A natural person who satisfies the foregoing definition other than subclause (b) above shall not be disqualified from serving as an Independent Manager, if such individual is an independent director provided by a nationally recognized company that provides professional independent directors and managers, it being hereby acknowledged and agreed that Corporation Service Company satisfies such criteria.

Further, a natural person who otherwise satisfies the foregoing definition except for subclause (a) by reason of being the independent director of a “special purpose entity” affiliated with the Borrower shall not be disqualified from serving as an Independent Director of the Borrower if such individual is either (i) a Professional Independent Director or (ii) the fees and other income that such individual earns from serving as independent director of affiliates of the Borrower in any given year constitute in the aggregate less than five percent (5%) of such individual’s annual income for that year. Notwithstanding the immediately preceding sentence, an Independent Director may not simultaneously serve as Independent Director of the Borrower and independent director of a special purpose entity that owns a direct or indirect equity interest in the Borrower or a direct or indirect interest in any co-borrower with the Borrower. For purposes of this paragraph, a “special purpose entity” is an entity, whose organizational documents contain restrictions on its activities and impose requirements intended to preserve such entity’s separateness that are substantially similar to the “special purpose entity” provisions of this Agreement. Notwithstanding anything herein to the contrary, an Independent Director may not simultaneously serve as Independent Director of a Borrower and an independent director of a special purpose entity that owns a direct or indirect equity interest in any Borrower; provided, however, that one Independent Director of Borrower (but not both Independent Directors simultaneously) may serve as an independent director of each Other Mezzanine Borrower.

“**Individual Material Adverse Effect**” shall mean any event or condition that, either singly or in the aggregate, could reasonably be expected to have or result in a material adverse effect upon (a) the business, operations, economic performance, prospects, assets or condition (financial or otherwise) of (i) any Borrower or any Mortgage Borrower, (ii) Guarantor, (iii) any Operating Company, (iv) any Operating Lease or Operating Lease Guaranty or (v) the Collateral or any Individual Property or any Hotel Component or Casino Component thereon; (b) the ability of any Borrower, any Mortgage Borrower or Guarantor to perform, in all material respects, its obligations under each of the Loan Documents or Mortgage Loan Documents to which it is a party; (c) the ability of any Operating Company to perform, in all material respects, its obligations under its Lease; (d) the enforceability or validity of (i) any Operating Lease or Operating Lease Guaranty, or (ii) any Loan Document, Mortgage Loan Document or the perfection or priority of any Lien created under any Loan Document or Mortgage Loan Document; (e) the value of, or cash flow from, any Individual Property, the Collateral or the operations thereof; or (f) the material rights, interests and remedies of Lender under any of the Loan Documents.

“**Individual Property**” shall mean, individually, any one of the properties identified on Schedule II (it being, the Improvements thereon and all Fixtures and all Equipment, FF&E and personal property owned by Mortgage Borrower and encumbered by a Mortgage, together with all rights pertaining to such property and Improvements, as more particularly described in the Granting Clauses of each Mortgage and referred to therein as the “Property”). For all purposes herein and in the other Loan Documents and to the extent not prohibited by the Ground Lease, the premises leased by Ground Lease Subsidiary or Borrower, as applicable, under the Ground Lease shall constitute a part of the Individual Property known as “Harvey’s Lake Tahoe”, “Harrah’s Lake Tahoe” and “Bill’s Lake Tahoe”, except that such ground leased premises shall not be subject to a lien of a Mortgage or an Operating Lease unless and until

required pursuant hereto, the Mortgage Loan Agreement or pursuant to the Ground Lease Side Letter.

**“Insolvency Opinion”** shall mean that certain non-consolidation opinion letter dated the date hereof delivered by Cleary Gottlieb Steen & Hamilton LLP in connection with the Loan.

**“Institutional Lender”** shall mean any Person reasonably acceptable to Lender in all respects that is either (a) a real estate investment trust, bank, saving and loan association, investment bank, insurance company, trust company, commercial credit corporation, pension plan, pension fund or pension advisory firm, mutual fund, government entity or plan, provided that any such Person referred to in this clause (a) satisfies the Eligibility Requirements; (b) an investment company, money management firm or “qualified institutional buyer” within the meaning of Rule 144A under the Securities Act of 1933, as amended, or an institutional “accredited investor” within the meaning of Regulation D under the Securities Act of 1933, as amended, provided that any such Person referred to in this clause (b) satisfies the Eligibility Requirements; (c) an institution substantially similar to any of the foregoing entities described in clauses (a) or (b) that satisfies the Eligibility Requirements; (d) any entity controlled by any of the entities described in clauses (a) or (c) above; or (e) an investment fund, limited liability company, limited partnership or general partnership where a Permitted Fund Manager or an entity that is otherwise an Institutional Lender under clauses (a), (b), (c) or (d) of this definition acts as the general partner, managing member or fund manager and at least fifty percent (50%) of the equity interests in such investment fund are owned, directly or indirectly, by one or more entities that are otherwise Institutional Lenders under clauses (a), (b), (c) or (d) of this definition.

**“Insurance Premiums”** shall have the meaning set forth in the Mortgage Loan Agreement.

**“Insurance Proceeds”** shall have the meaning set forth in the Mortgage Loan Agreement.

**“Interest Expense”** shall mean, with respect to any Person for any period, the sum of (a) gross interest expense of such Person for such period on a consolidated basis, including (i) the amortization of debt discounts, (ii) the amortization of all fees payable in connection with the incurrence of Indebtedness to the extent included in interest expense and (iii) the portion of any payments or accruals with respect to equipment financing and equipment leases allocable to interest expense, (b) capitalized interest of such Person, and (c) commissions, discounts, yield and other fees and charges incurred in connection with any indebtedness which are payable to any Person other than Borrower. For purposes of the foregoing, interest on equipment financing or equipment leases shall be deemed to accrue at an interest rate reasonably determined by the Borrower to be the rate of interest implicit in such equipment financing or equipment lease in accordance with GAAP.

**“Interest Period”** shall mean (a) for the first interest period hereunder, (i) if the Closing Date occurs on or before the fourteenth (14<sup>th</sup>) day of a calendar month, the period commencing on the Closing Date and ending on (and including) the fourteenth (14<sup>th</sup>) day of the

calendar month in which the Closing Date occurs, and (ii) if the Closing Date occurs on or after the fifteenth (15<sup>th</sup>) day of a calendar month, the period commencing on the Closing Date and ending on (and including) the fourteenth (14<sup>th</sup>) day of the following calendar month and (b) for each interest period thereafter commencing February 15, 2008, the period commencing on the fifteenth (15<sup>th</sup>) day of each calendar month and ending on (and including) the fourteenth (14<sup>th</sup>) day of the following calendar month. Each Interest Period as set forth in clause (b) above shall be a full month and shall not be shortened by reason of any payment of the Loan prior to the expiration of such Interest Period. Notwithstanding the foregoing, Lender shall have the right, in connection with a Securitization, to change the Interest Period and Payment Date, provided that in doing so, Lender shall not increase Borrower's costs hereunder (other than the direct costs of implementing such change, such as legal fees, which Borrower hereby agrees to pay).

**"Interest Rate Cap Agreement"** shall mean, as applicable, an Interest Rate Cap Agreement (together with the confirmation and schedules relating thereto) in form and substance reasonably satisfactory to Lender between Borrower and an Acceptable Counterparty or a Replacement Interest Rate Cap Agreement.

**"JPM"** shall mean JPMorgan Chase Bank, N.A. and its successors in interest.

**"Lease"** shall mean any lease (including the Operating Lease), sublease or subsublease, letting, license, concession or other agreement (whether written or oral and whether now or hereafter in effect) pursuant to which any Person is granted a possessory interest in, or right to use or occupy all or any portion of any space in any Individual Property (other than short term arrangements with transient hotel guests entered into in the usual course of business), and (a) every modification, amendment or other agreement relating to such lease, sublease, subsublease, or other agreement entered into in connection with such lease, sublease, subsublease, or other agreement and (b) every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto (including the Operating Lease Guaranty).

**"Legal Requirements"** shall mean, with respect to each Individual Property and the Collateral, all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions of Governmental Authorities affecting such Individual Property, the Collateral or any part thereof (including, without limitation, all Gaming Laws), or affecting the construction, use, alteration or operation thereof, or any part thereof, whether now or hereafter enacted and in force, and all permits, licenses and authorizations and regulations relating thereto (including, without limitation, all Gaming Licenses and Operating Permits), and all covenants, agreements, restrictions and encumbrances contained in any instruments, either of record or known to Borrower, Mortgage Borrower or Operating Company, at any time in force affecting such Individual Property or any part thereof, including, without limitation, any which may (a) require repairs, modifications or alterations in or to such Individual Property or any part thereof, or (b) in any way limit the use and enjoyment thereof. Legal Requirements shall include any (x) judicial, administrative or other governmental or quasi governmental order, injunction, writ, judgment, decree, ruling, interpretation, finding or other directive, whether domestic or foreign; (y) arbitrator's, mediator's or referee's decision, finding, award or recommendation; or (z) charter, rule, regulation or other organizational or

governance document of any self-regulatory or governing body or organization. For the avoidance of doubt, the term "Legal Requirements" shall include, and be deemed to include, all applicable Gaming Laws and Gaming Regulations.

"**Lender**" shall have the meaning set forth in the introductory paragraph hereto, together with its successors and assigns.

"**Lender's Share**" shall mean a fraction, the numerator of which is the outstanding principal amount of the Loan and the denominator of which is the sum of the outstanding principal amounts of the Mortgage Loan, the Loan and the Other Mezzanine Loans (in each case, as of the date of determination).

"**Liabilities**" shall have the meaning set forth in Section 9.2(b) hereof.

"**LIBOR**" shall mean, with respect to each Interest Period, the rate (expressed as a percentage per annum and rounded to the next nearest 1/100 of 1%) for deposits in U.S. dollars, for a one-month period, that appears on Reuters Screen LIBOR01 Page (or the successor thereto) as of 11:00 a.m., London time, on the related Determination Date. If such rate does not appear on Reuters Screen LIBOR01 Page as of 11:00 a.m., London time, on such Determination Date, LIBOR shall be the arithmetic mean of the offered rates (expressed as a percentage per annum) for deposits in U.S. dollars for a one-month period that appear on the Reuters Screen Libor Page as of 11:00 a.m., London time, on such Determination Date, if at least two such offered rates so appear. If fewer than two such offered rates appear on the Reuters Screen Libor Page as of 11:00 a.m., London time, on such Determination Date, Lender shall request the principal London office of any four major reference banks in the London interbank market selected by Lender to provide such bank's offered quotation (expressed as a percentage per annum) to prime banks in the London interbank market for deposits in U.S. dollars for a one-month period as of 11:00 a.m., London time, on such Determination Date for the amounts of not less than U.S. \$1,000,000. If at least two such offered quotations are so provided, LIBOR shall be the arithmetic mean of such quotations. If fewer than two such quotations are so provided, Lender shall request any three major banks in New York City selected by Lender to provide such bank's rate (expressed as a percentage per annum) for loans in U.S. dollars to leading European banks for a one-month period as of approximately 11:00 a.m., New York City time on the applicable Determination Date for amounts of not less than U.S. \$1,000,000. If at least two such rates are so provided, LIBOR shall be the arithmetic mean of such rates. LIBOR shall be determined conclusively by Lender or its agent. Notwithstanding the foregoing, for the Interest Period ending February 14, 2008, LIBOR is 3.31%.

"**LIBOR Loan**" shall mean the Loan at such time as interest thereon accrues at a rate of interest based upon LIBOR.

"**Lien**" shall mean, with respect to each Individual Property and the Collateral, any mortgage, deed of trust, lien, pledge, hypothecation, assignment, security interest, or any other encumbrance, charge or restriction on transfer of, on or affecting Borrower, Mortgage Borrower, any Individual Property or the Collateral, any portion of either or any interest therein, including, without limitation, any conditional sale or other title retention agreement, any

financing lease having substantially the same economic effect as any of the foregoing, the filing of any financing statement, and mechanic's, materialmen's and other similar liens and encumbrances, in each case whether arising by contract, operation of law, or otherwise.

“**Liquidation Event**” shall have the meaning set forth in Section 2.4.2 hereof.

“**Loan**” shall mean the loan made by Lender to Borrower pursuant to this Agreement.

“**Loan Adjustment**” shall have the meaning set forth in Section 2.1.6 hereof.

“**Loan Amount**” shall mean, as determined from time to time, the outstanding principal amount of the Loan.

“**Loan Documents**” shall mean, collectively, this Agreement, the Note, the Pledge Agreement, the Environmental Indemnity, the O&M Agreement, the Guaranty (Recourse Carveouts), the Guaranty (FF&E), the Guaranty (Ground Lease Estoppel), the Collateral Assignment of Interest Rate Cap Agreement, the Contribution Agreement and all other documents executed and/or delivered in connection with the Loan.

“**Loan Party**” shall mean, collectively, Mortgage Borrower, Borrower, Principal and Guarantor.

“**London Business Day**” shall mean any day other than a Saturday, Sunday or any other day on which commercial banks in London, England are not open for business.

“**Major Lease**” shall mean any of the following: (a) with respect to any Individual Property, any Lease (i) covering in excess of forty thousand (40,000) net rentable square feet at such Individual Property or (ii) made with a Tenant that is a Tenant under another Lease at such Individual Property (or with a Tenant that is an Affiliate of a Tenant under another Lease at such Individual Property) if any such Leases, together, cover in excess of forty thousand (40,000) net rentable square feet or more at such Individual Property, (b) any Lease of space at any Individual Property with an Affiliate of Mortgage Borrower, or (c) any Lease that is not the result of arm's length negotiations; provided, however, that the Operating Lease shall not constitute a Major Lease for purposes of this Agreement.

“**Material Alteration**” shall mean any Alteration with respect to all or a portion of any Individual Property that (i) when aggregated with all other Alterations at such Individual Property then being conducted involve an estimated total cost in excess of an amount equal to ten percent (10%) of the sum of the Allocated Loan Amount for such Individual Property and the “Allocated Loan Amounts” under (and as defined in each of) the Mortgage Loan Agreement and the Other Mezzanine Loan Agreements for such Individual Property or (ii) when aggregated with all other Alterations at the Properties, including such Individual Property, then being conducted, involve an estimated total cost in excess of an amount equal to five percent (5%) of the sum of the Loan Amount, the Mortgage Loan Amount and the Other Mezzanine Loan Amount (and, as used herein, “**Threshold Amount**” shall mean whichever of said 5% or 10% amount shall have been exceeded, provided that if both shall have been exceeded, then the lower of such two

amounts shall be the “Threshold Amount”); provided, that, in determining whether one or more Alterations comprise a Material Alteration, there shall not be included (a) merely decorative work such as painting, wall papering, carpeting and replacement of FF&E to the extent the same are of a routine and recurring nature, performed in the ordinary course of business; (b) tenant improvement work performed by a tenant pursuant to the terms of any Lease (other than the Operating Lease) entered into in accordance with the terms hereof, so long as such work does not adversely affect any structural component of any Improvements, any utility or HVAC system contained in any Improvements or the exterior of any building constituting a part of any Improvements, (c) any Alterations which are performed in connection with the Restoration of any portion of any Individual Property after the occurrence of a Casualty or Condemnation in accordance with the terms and provisions of this Agreement, or (d) the Tower Project or the Convention Center Project.

“**Maturity Date**” shall mean the Scheduled Maturity Date or such other date on which the final payment of principal of the Notes becomes due and payable as therein or herein provided, whether at such Scheduled Maturity, by declaration of acceleration, or otherwise.

“**Maximum Legal Rate**” shall mean the maximum nonusurious interest rate, if any, that at any time or from time to time may be contracted for, taken, reserved, charged or received on the indebtedness evidenced by the Note and as provided for herein or the other Loan Documents, under the laws of such state or states whose laws are held by any court of competent jurisdiction to govern the interest rate provisions of the Loan.

“**Mezzanine Borrowers**” shall mean, collectively, Borrower, Second Mezzanine Borrower, Third Mezzanine Borrower, Fourth Mezzanine Borrower, Fifth Mezzanine Borrower, Sixth Mezzanine Borrower, Seventh Mezzanine Borrower, Eighth Mezzanine Borrower, Ninth Mezzanine Borrower and any New Mezzanine Borrower.

“**Mezzanine Collection Account**” shall have the meaning set forth in Section 2.6.4 hereof.

“**Mezzanine Debt Service**” shall mean, with respect to any particular period of time, the sum of (a) the Debt Service, (b) the Second Mezzanine Debt Service, (c) the Third Mezzanine Debt Service, (d) the Fourth Mezzanine Debt Service, (e) the Fifth Mezzanine Debt Service, (f) the Sixth Mezzanine Debt Service, (g) the Seventh Mezzanine Debt Service, (h) the Eighth Mezzanine Debt Service, (i) the Ninth Mezzanine Debt Service, and (j) debt service on any New Mezzanine Loan.

“**Mezzanine Lenders**” shall mean, collectively, Lender, Second Mezzanine Lender, Third Mezzanine Lender, Fourth Mezzanine Lender, Fifth Mezzanine Lender, Sixth Mezzanine Lender, Seventh Mezzanine Lender, Eighth Mezzanine Lender, Ninth Mezzanine Lender and Lender, as lender under any New Mezzanine Loan.

“**Mezzanine Loan Agreements**” shall mean collectively, this Agreement, the Second Mezzanine Loan Agreement, the Third Mezzanine Loan Agreement, the Fourth Mezzanine Loan Agreement, the Fifth Mezzanine Loan Agreement, the Sixth Mezzanine Loan

Agreement, the Seventh Mezzanine Loan Agreement, the Eighth Mezzanine Loan Agreement, the Ninth Mezzanine Loan Agreement and any New Mezzanine Loan Agreement.

“**Mezzanine Loan Amount**” shall mean, as determined from time to time, the outstanding principal amount of the Mezzanine Loans.

“**Mezzanine Loan Documents**” shall mean, collectively, the Loan Documents, the Second Mezzanine Loan Documents, the Third Mezzanine Loan Documents, the Fourth Mezzanine Loan Documents, the Fifth Mezzanine Loan Documents, the Sixth Mezzanine Loan Documents, the Seventh Mezzanine Loan Documents, the Eighth Mezzanine Loan Documents, the Ninth Mezzanine Loan Documents and any loan documents entered into in connection with any New Mezzanine Loan.

“**Mezzanine Loans**” shall mean, collectively, the Loan, the Second Mezzanine Loan, the Third Mezzanine Loan, the Fourth Mezzanine Loan, the Fifth Mezzanine Loan, the Sixth Mezzanine Loan, the Seventh Mezzanine Loan, the Eighth Mezzanine Loan, the Ninth Mezzanine Loan and any New Mezzanine Loan.

“**Minimum Value Test**” shall mean, with respect to any Person, that the greater of the book value or the fair market value of the assets of such Person (excluding, for purposes of making such determination, the value of the Properties) exceeds Five Billion and no/100 Dollars (\$5,000,000,000.00) in the aggregate, as certified to Lender in an Officer’s Certificate prepared in good faith based on the most recent financial statements of such Person.

“**Monthly Disbursements**” shall have the meaning provided in Section 2.6.2.

“**Monthly FF&E Reserve Amount**” means the monthly deposit for FF&E required pursuant to Section 7.3 of this Agreement.

“**Monthly Ground Rent Reserve Amount**” means the monthly deposit for Ground Rent required pursuant to Section 7.4 of this Agreement.

“**Monthly Tax and Insurance Amount**” means the monthly deposit for Taxes and Insurance required pursuant to Section 7.2 of this Agreement.

“**Moody’s**” shall mean Moody’s Investors Service, Inc.

“**Mortgage**” shall mean, with respect to each Individual Property, that certain first priority Mortgage (or Deed of Trust or Deed to Secure Debt) and Security Agreement, dated the date hereof, executed and delivered by Mortgage Borrower as security for the Mortgage Loan and encumbering such Individual Property and any first priority Mortgage (Deed of Trust or Deed to Secure Debt) and Security Agreement delivered pursuant to the Ground Lease Side Letter, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

**“Mortgage Borrower”** shall mean, collectively, the entities set forth on Schedule XIII hereto, each a Delaware limited liability company, together with their respective successors and permitted assigns. As used herein the term “Mortgage Borrower” shall mean one of the Mortgage Borrowers individually or the Mortgage Borrowers collectively, as the context shall require.

**“Mortgage Borrower Company Agreements”** shall mean, collectively, the Limited Liability Company Agreements of Mortgage Borrower, by each Borrower, as sole member, dated as of the date hereof.

**“Mortgage Debt Service”** shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Mortgage Note and the Mortgage Loan Agreement.

**“Mortgage Lender”** shall have the meaning set forth in the Recitals.

**“Mortgage Loan”** shall have the meaning set forth in the Recitals.

**“Mortgage Loan Agreement”** shall have the meaning set forth in the Recitals.

**“Mortgage Loan Amount”** shall mean, as determined from time to time, the outstanding principal amount of the Mortgage Loan.

**“Mortgage Loan Default”** shall mean a “Default” as defined in the Mortgage Loan Agreement.

**“Mortgage Loan Documents”** shall mean the Mortgage Loan Agreement, the Mortgage Note, the Mortgage and all other documents and instruments executed and delivered in connection with the Mortgage Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

**“Mortgage Loan Event of Default”** shall mean an “Event of Default” as defined in the Mortgage Loan Agreement.

**“Mortgage Loan Reserve Funds”** shall mean the “Reserve Funds” as defined in the Mortgage Loan Agreement.

**“Mortgage Note”** shall mean the “Note” as defined in the Mortgage Loan Agreement.

**“Net Income”** shall mean, with respect to any Person, the net income (loss) of such Person, determined in accordance with GAAP and before any reduction in respect of preferred stock dividends.

**“Net Liquidation Proceeds After Debt Service”** shall mean, with respect to any Liquidation Event, all amounts paid to or received by or on behalf of Borrower or Mortgage Borrower in connection with such Liquidation Event, including, without limitation, proceeds of

any sale, refinancing or other disposition or liquidation, less (a) Lender's and/or Mortgage Lender's reasonable costs incurred in connection with the recovery thereof, (b) amounts required or permitted to be deducted therefrom and amounts paid pursuant to the Mortgage Loan Documents to Mortgage Lender, (c) in the case of a foreclosure sale, disposition or Transfer of any Individual Property in connection with realization thereon following a Mortgage Loan Event of Default, such reasonable and customary costs and expenses of sale or other disposition (including attorneys' fees and brokerage commissions), (d) in the case of a foreclosure sale, such costs and expenses incurred by Mortgage Lender under the Mortgage Loan Documents as Mortgage Lender shall be entitled to receive reimbursement for under the terms of the Mortgage Loan Documents, (e) in the case of a refinancing of the Mortgage Loan, such costs and expenses (including attorneys' fees) of such refinancing as shall be reasonably approved by Lender, and (f) the amount of any prepayments required pursuant to the Mortgage Loan Documents, and/or the Loan Documents, in connection with any such Liquidation Event.

**"Net Proceeds"** shall have the meaning set forth in Section 6.4 hereof.

**"New Mezzanine Borrower"** shall have the meaning set forth in Section 2.1.7.

**"New Mezzanine Loan"** shall have the meaning set forth in Section 2.1.7.

**"Ninth Mezzanine Borrower"** shall mean, collectively, the entities set forth on Schedule XXI hereto, each a Delaware limited liability company, together with their respective successors and permitted assigns. As used herein, the term "Ninth Mezzanine Borrower" shall mean one of the Ninth Mezzanine Borrowers individually, or the Ninth Mezzanine Borrowers collectively, as the context shall require.

**"Ninth Mezzanine Debt Service"** shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Ninth Mezzanine Notes.

**"Ninth Mezzanine Lender"** shall mean JPMorgan Chase Bank, N.A., in its capacity as the holder of the Ninth Mezzanine Loan, together with its successors and assigns.

**"Ninth Mezzanine Loan"** shall mean that certain loan in the original principal amount of Two Hundred Seventy Five Million and No/100 Dollars (\$275,000,000) of even date herewith made by Ninth Mezzanine Lender to Ninth Mezzanine Borrower.

**"Ninth Mezzanine Loan Agreement"** shall mean that certain Ninth Mezzanine Loan Agreement, dated as of the date hereof, between Ninth Mezzanine Borrower and Ninth Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**"Ninth Mezzanine Loan Documents"** shall mean the Ninth Mezzanine Loan Agreement, the Ninth Mezzanine Notes and all other documents and instruments executed and delivered in connection with the Ninth Mezzanine Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

“**Ninth Mezzanine Notes**” shall mean the “Notes” as defined in the Ninth Mezzanine Loan Agreement.

“**Note**” or “**Notes**” shall mean, collectively, Note A-1, Note A-2, Note A-3, Note A-4, Note A-5, Note A-6, Note A-7, Note A-8 and Note A-9.

“**Note A-1**” shall mean that certain Promissory Note A-1 (First Mezzanine Loan), dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of Forty Five Million Five Thousand and No/100 Dollars (\$45,005,000), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Note A-2**” shall mean that certain Promissory Note A-2 (First Mezzanine Loan), dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of Forty Five Million Five Thousand and No/100 Dollars (\$45,005,000), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Note A-3**” shall mean that certain Promissory Note A-3 (First Mezzanine Loan), dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of Forty Five Million Five Thousand and No/100 Dollars (\$45,005,000), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Note A-4**” shall mean that certain Promissory Note A-4 (First Mezzanine Loan), dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of Forty Five Million Five Thousand and No/100 Dollars (\$45,005,000), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Note A-5**” shall mean that certain Promissory Note A-5 (First Mezzanine Loan), dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of Forty Five Million Five Thousand and No/100 Dollars (\$45,005,000), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Note A-6**” shall mean that certain Promissory Note A-6 (First Mezzanine Loan), dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of Forty Five Million Five Thousand and No/100 Dollars (\$45,005,000), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Note A-7**” shall mean that certain Promissory Note A-7 (First Mezzanine Loan), dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of Nine Million Nine Hundred Ninety Thousand and No/100 Dollars (\$9,990,000), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Note A-8**” shall mean that certain Promissory Note A-8 (First Mezzanine Loan), dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of Nine Million Nine Hundred Ninety Thousand and No/100 Dollars (\$9,990,000), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Note A-9**” shall mean that certain Promissory Note A-9 (First Mezzanine Loan), dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of Nine Million Nine Hundred Ninety Thousand and No/100 Dollars (\$9,990,000), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Noteholders**” shall mean, collectively, the holders of the Notes from time to time and a “**Noteholder**” shall mean any holder of a Note from time to time (provided that the transfer of a Note shall not result in any prior Noteholder’s loss of any indemnification provided for hereunder to a Noteholder).

“**OC Accounts**” shall have the meaning set forth in Section 2.6.1(c).

“**O&M Agreement**” shall mean, with respect to each Individual Property (to the extent required by the environmental reports referenced in Section 3.1.3(e) hereof), that certain Operations and Maintenance Agreement (First Mezzanine Loan), dated as of the date hereof, between Borrower and Lender given in connection with the Loan, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Officer’s Certificate**” shall mean a certificate delivered to Lender by Borrower which is signed by an authorized senior officer of Borrower or the general partner or managing member of Borrower, as applicable.

“**Off-Shore Accounts**” shall mean the accounts more particularly described on Schedule V.

“**Operating Company**” shall mean, collectively, the tenants under the Operating Leases, and their successors and permitted assigns.

“**Operating Company Annual Budget**” shall mean, individually and collectively as the context requires, with respect to each Operating Company, the operating budget of such Operating Company, including all planned Capital Expenditures, prepared by such Operating Company for the applicable Fiscal Year or other period.

“**Operating Lease**” shall mean, collectively, those certain Lease Agreements listed on Schedule VI, dated as of the date hereof, having a term of fifteen (15) years commencing on the Closing Date, and any similar Lease Agreement executed and delivered pursuant to the Ground Lease Side Letter, as the same may be amended, supplemented, replaced or otherwise modified from time to time in accordance with the provisions hereof.

“**Operating Lease Guaranty**” shall mean, collectively, those certain Lease Guaranty Agreements listed on Schedule VIA, executed and delivered by Guarantor (Operating Lease), dated as of the date hereof, unconditionally guaranteeing the payment and performance by the Operating Company of all of its obligations under the Operating Lease, and any similar Lease Guaranty Agreement executed and delivered pursuant to the Ground Lease Side Letter, as such Lease Guaranty Agreements may be amended, supplemented, replaced or otherwise modified from time to time in accordance with the provisions hereof.

“**Operating Permits**” shall have the meaning set forth in Section 4.1.22 hereof.

“**O’Shea’s**” shall have the meaning ascribed to such term in the Mortgage Loan Agreement.

“**Other Borrower Collateral**” shall have the meaning set forth in Section 11.2.1 hereof.

“**Other Borrowers**” shall have the meaning set forth in Section 11.1 hereof.

“**Other Charges**” shall mean all ground rents, maintenance charges, impositions other than Taxes, and any other charges, including, without limitation, vault charges and license fees for the use of vaults, chutes and similar areas adjoining any Individual Property, now or hereafter levied or assessed or imposed against such Individual Property or any part thereof.

“**Other Mezzanine Borrowers**” shall mean, individually or collectively as the context may require, all of the Mezzanine Borrowers other than Borrower.

“**Other Mezzanine Debt Service**” shall mean, individually or collectively as the context may require, all of the Mezzanine Debt Service other than the Debt Service.

“**Other Mezzanine Lenders**” shall mean, individually or collectively as the context may require, all of the Mezzanine Lenders other than Lender.

“**Other Mezzanine Loans**” shall mean, individually or collectively as the context may require, all of the Mezzanine Loans other than the Loan.

“**Other Mezzanine Loan Agreements**” shall mean, individually or collectively as the context may require, all of the Mezzanine Loan Agreements other than this Agreement.

“**Other Mezzanine Loan Amounts**” shall mean, as determined from time to time, the outstanding principal amounts of all of the Mezzanine Loans other than the Loan.

“**Owner’s Title Policy**” shall mean those certain ALTA extended coverage owner’s policies of title insurance issued in connection with the closing of the Mortgage Loan insuring the Mortgage Borrower as the owner of the Property.

“**Participant**” shall have the meaning set forth in Section 9.6 hereof.

“**Participant Register**” shall have the meaning set forth in Section 9.6 hereof.

“**Payment Date**” shall mean the ninth (9<sup>th</sup>) calendar day of each calendar month during the term of the Loan, and if such day is not a Business Day, then the Business Day immediately preceding such day, commencing on March 9, 2008 and continuing to and including the Maturity Date. Notwithstanding the foregoing, the Payment Date in the final Interest Period shall be the Maturity Date (i.e., the second to last Business Day in such Interest Period rather than the ninth calendar day of such month).

**“Permitted Encumbrances”** shall mean, with respect to an Individual Property, collectively (a) the Liens and security interests created by the Mortgage Loan Documents; (b) all Liens, encumbrances and other matters disclosed in the Title Insurance Policies relating to such Individual Property or any part thereof; (c) Liens, if any, for Taxes and Other Charges imposed by any Governmental Authority not yet due or delinquent; (d) the Operating Lease; (e) such other title and survey exceptions as Lender has approved or may approve in writing in Lender’s reasonable discretion; (f) any Lien being contested by Borrower in good faith by appropriate proceedings, provided that (i) no Default or Event of Default has occurred and remains uncured, (ii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any applicable material instrument to which Mortgage Borrower is subject and shall not constitute a default thereunder and such proceeding shall be conducted in accordance with all applicable statutes, laws and ordinances, (iii) no Individual Property nor any part thereof or interest therein will be in imminent danger of being sold, forfeited, terminated, cancelled or lost, (iv) such proceeding shall suspend the enforcement of the contested Lien against Mortgage Borrower and any Individual Property, and (v) Borrower shall furnish such security as may be required by GAAP or as may be reasonably requested by Lender; (g) statutory Liens for amounts not yet due and payable, provided that no Individual Property nor any part thereof or interest therein will be in imminent danger of being sold, forfeited, terminated, cancelled or lost; (h) Liens incurred in the ordinary course of business in connection with workers’ compensation, unemployment insurance and other types of social security; (i) any Lien securing the financing of FF&E (including equipment leases) entered into by Mortgage Borrower or Operating Company in the ordinary course of business, subject to the limitations specified in the definitions of “Permitted Indebtedness” and “Permitted Indebtedness (Operating Company)”, as applicable; (j) rights of tenants under Leases, as tenants only; (k) rights of hotel guests at the Hotel Components of the Properties; (l) zoning restrictions, easements, rights-of-way, restrictions on use of real property and other similar encumbrances incurred or entered into in the ordinary course of business which do not, in each case, have an Individual Material Adverse Effect, and (m) liens securing equipment financing leases and/or equipment acquisition financings permitted hereunder as “Permitted Indebtedness (Operating Company),” subject to the final sentence of said definition, or as “Permitted Indebtedness”.

**“Permitted Fund Manager”** means any Person that on the date of determination (a) is one of the entities listed on Schedule VII or any other nationally-recognized manager of investment funds investing in debt or equity interests relating to commercial real estate, (b) is investing through a fund with committed capital of at least \$1,000,000,000, (c) is not subject to a Bankruptcy Action, (d) has not been, and none of its material subsidiaries has been, subject to a Bankruptcy Action for the preceding 5 years, (e) has not been convicted and is not under current indictment for a felony or crime involving moral turpitude, (f) has not been found by a court of competent jurisdiction to have violated federal or state securities laws, and (g) is not an organized crime figure (as determined by Lender in its reasonable discretion).

**“Permitted Indebtedness”** shall have the meaning assigned to such term in the Mortgage Loan Agreement.

**“Permitted Indebtedness (Operating Company)”** shall mean, collectively, (a) trade and operational debt (including equipment financing leases, such as leases with

providers of Gaming Equipment) relating to the operation of the Properties and the routine administration of Operating Company incurred in the ordinary course of business with trade creditors and in amounts as are normal and reasonable under the circumstances, are not evidenced by a note, are required to be paid within ninety (90) days after same are incurred (except in the case of operating leases) and are paid when due, (b) accrued and unpaid payroll, benefits and payroll taxes with respect to employees of Operating Company or its Affiliates engaged with respect to the Properties incurred in the ordinary course of business and paid when due, (c) debt owed to affiliates, provided such debt is made subject to an intercreditor and standstill agreement in favor of Lender in form and substance reasonably satisfactory to Lender, and (d) such other Indebtedness specifically permitted pursuant to the Operating Lease (including the Gaming Equipment Facility Agreements (as defined in the Mortgage Loan Agreement)). In no event shall the Permitted Indebtedness (Operating Company) and Permitted Indebtedness of each Operating Company and Mortgage Borrower on an aggregate basis, excluding for purposes of this sentence the Indebtedness described in subclause (b) of the preceding sentence, exceed five percent (5%) of the sum of the Loan Amount, the Mortgage Loan Amount and the Other Mezzanine Loan Amounts in the aggregate (each as determined from time to time).

**“Permitted Investments”** shall have the meaning set forth in the Mortgage Loan Agreement.

**“Permitted Mezzanine Debt Loan-to-Value Ratio”** shall mean the ratio, as of a particular date, in which (a) the numerator is equal to the sum of (i) the outstanding principal amount of the Mortgage Loan, (ii) the outstanding principal amount of the Mezzanine Loans, and any New Mezzanine Loan, plus (iii) the amount of the Permitted Mezzanine Loan, and (b) the denominator is equal to the appraised value of the Properties subject to the Lien of the Mortgage as determined by Lender based on Appraisals obtained by Lender (at Borrower’s sole cost and expense) and satisfactory to Lender and dated no earlier than ninety (90) days prior to the date of determination or such other Appraisals as are approved by Lender in its sole discretion.

**“Permitted Mezzanine Debt Service”** shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Permitted Mezzanine Loan Documents.

**“Permitted Mezzanine DSCR”** shall mean, for the applicable period, the ratio of (a) EBITDAR for such period from the Properties to (b) the sum of (i) the Mortgage Debt Service and Mezzanine Debt Service for such period, plus (ii) principal and/or interest due and payable (or, for purposes of the calculation to be made pursuant to Section 2.8(d), that would have been due and payable had the Permitted Mezzanine Loan then been in place) for such period on the Permitted Mezzanine Loan at the interest rate set forth in the Permitted Mezzanine Loan Documents or, if the Permitted Mezzanine Loan is a floating rate loan, assuming that (A) the spread on the Permitted Mezzanine Loan is the “Spread” as defined in the documents evidencing the Permitted Mezzanine Loan and (B) LIBOR is equal to the lesser of (y) LIBOR on the date of determination, or (z) the strike price under the related interest rate cap purchased in connection with the Permitted Mezzanine Loan.

“**Permitted Mezzanine Loan**” shall have the meaning set forth in Section 2.8 hereof.

“**Permitted Mezzanine Loan Documents**” shall have the meaning set forth in Section 2.8(g) hereof.

“**Permitted Mezzanine Loan Election**” shall have the meaning set forth in Section 2.8 hereof.

“**Permitted Mezzanine Loan Lender**” shall have the meaning set forth in Section 2.8 hereof.

“**Person**” shall mean any individual, corporation, partnership, joint venture, limited liability company, estate, trust, unincorporated association, any federal, state, county or municipal government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

“**Physical Conditions Report**” shall mean, with respect to each Individual Property, a report prepared by a company satisfactory to Lender regarding the physical condition of such Individual Property, satisfactory in form and substance to Lender in its sole discretion.

“**Pledge Agreement**” shall have the meaning set forth in the Recitals.

“**Pledged Company Interests**” shall have the meaning set forth in the Pledge Agreement.

“**Policies**” shall have the meaning specified in Section 6.1(b) hereof.

“**Prepayment Date**” shall have the meaning specified in Section 2.4.1 hereof.

“**Prescribed Laws**” shall mean, collectively, (a) the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56) (The USA PATRIOT Act), as amended, (b) Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, and relating to Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, (c) the International Emergency Economic Power Act, 50 U.S.C. §1701 et. seq. and (d) all other Legal Requirements relating to money laundering or terrorism.

“**Prime Rate**” shall mean the annual rate of interest publicly announced by Citibank, N.A. in New York, New York, as its base rate, as such rate shall change from time to time. If Citibank, N.A. ceases to announce a base rate, Prime Rate shall mean the rate of interest published in The Wall Street Journal from time to time as the “Prime Rate.” If more than one “Prime Rate” is published in The Wall Street Journal for a day, the average of such “Prime Rates” shall be used, and such average shall be rounded up to the nearest one-eighth of one percent (0.125%). If The Wall Street Journal ceases to publish the “Prime Rate,” Lender shall select an equivalent publication that publishes such “Prime Rate,” and if such “Prime Rates” are

no longer generally published or are limited, regulated or administered by a governmental or quasi-governmental body, then Lender shall select a comparable interest rate index.

“**Prime Rate Loan**” shall mean the Loan at such time as interest thereon accrues at a rate of interest based upon the Prime Rate.

“**Prime Rate Spread**” shall mean the difference (expressed as the number of basis points) between (a) LIBOR plus the Spread on the date LIBOR was last applicable to the Loan and (b) the Prime Rate on the date that LIBOR was last applicable to the Loan; provided, however, in no event shall such difference be a negative number.

“**Principal**” shall mean Second Mezzanine Borrower.

“**Projections**” shall have the meaning set forth in Section 9.10 hereof.

“**Properties**” shall mean, collectively, each and every Individual Property which is subject to the terms of this Agreement.

“**Provided Information**” shall mean any and all financial and other information provided at any time by, or on behalf of, Borrower with respect to the Properties, Borrower, any Affiliates of Borrower, including Holdings, Guarantor and/or Operating Company.

“**Qualified Transferee**” means (a) any of the Mezzanine Lenders, (b) Apollo Management, L.P., TPG Capital, L.P. f/k/a Texas Pacific Group, their respective Affiliates and senior or executive principals of Apollo Management, L.P. or TPG Capital, L.P. who are the holders from time to time of voting interests in Holdings, and investment funds Controlled by either of them (but excluding for purposes of this clause (b) “portfolio companies” of the foregoing), or (c) one or more of the following:

(i) a real estate investment trust, bank, saving and loan association, investment bank, insurance company, trust company, commercial credit corporation, pension plan, pension fund or pension advisory firm, mutual fund, government entity or plan, provided that any such Person referred to in this clause (i) satisfies the Eligibility Requirements;

(ii) an investment company, money management firm or “qualified institutional buyer” within the meaning of Rule 144A under the Securities Act of 1933, as amended, or an institutional “accredited investor” within the meaning of Regulation D under the Securities Act of 1933, as amended, provided that any such Person referred to in this clause (ii) satisfies the Eligibility Requirements;

(iii) an institution substantially similar to any of the foregoing entities described in clauses (c)(i) or (c)(ii) that satisfies the Eligibility Requirements;

(iv) any entity Controlled by any of the entities described in clause (a), (b) or clauses (c)(i) or (c)(iii) above, or Holdings or any entity Controlled by Holdings (provided in each case there shall have occurred no Change in Control);

(v) a Qualified Trustee in connection with a securitization of, the creation of collateralized debt obligations (“CDO”) secured by or financing through an “owner trust” of, any Mezzanine Loan (collectively, “**Securitization Vehicles**”), so long as (A) the special servicer or manager of such Securitization Vehicle has the Required Special Servicer Rating and (B) the entire “controlling class” of such Securitization Vehicle, other than with respect to a CDO Securitization Vehicle, is held by one or more entities that are otherwise Qualified Transferees under clauses (c)(i), (ii), (iii) or (iv) of this definition; provided that the operative documents of the related Securitization Vehicle require that (1) in the case of a CDO Securitization Vehicle, the “equity interest” in such Securitization Vehicle is owned by one or more entities that are Qualified Transferees under clauses (c)(i), (ii), (iii) or (iv) of this definition and (2) if any of the relevant trustee, special servicer, manager fails to meet the requirements of this clause (v), such Person must be replaced by a Person meeting the requirements of this clause (v), within thirty (30) days; or

(vi) an investment fund, limited liability company, limited partnership or general partnership where a Permitted Fund Manager or an entity that is otherwise a Qualified Transferee under clauses (c)(i), (ii), (iii) or (iv) of this definition acts as the general partner, managing member or fund manager and at least 50% of the equity interests in such investment vehicle are owned, directly or indirectly, by one or more entities that are otherwise Qualified Transferees under clauses (c)(i), (ii), (iii) or (iv) of this definition;

provided, however, that no Transferee shall be a Qualified Transferee if (and for so long as) such Transferee is, or is Controlled by, an Embargoed Person or a Person that has been found “unsuitable,” for any reason, by a Gaming Authority.

“**Qualified Trustee**” means (a) a corporation, national bank, national banking association or a trust company, organized and doing business under the laws of any state or the United States of America, authorized under such laws to exercise corporate trust powers and to accept the trust conferred, having a combined capital and surplus of at least \$100,000,000 and subject to supervision or examination by federal or state authority, (b) an institution insured by the Federal Deposit Insurance Corporation or (c) an institution whose long-term senior unsecured debt is rated either of the then in effect top two rating categories of each of the Rating Agencies.

“**Rating Agencies**” shall mean each of S&P, Moody’s and Fitch, or any other nationally recognized statistical rating agency which has been approved by Lender and that rates a Securitization of the Loan (or any component thereof).

“**Rating Agency Confirmation**” means, collectively, a written affirmation from each of the Rating Agencies that the credit rating of the Securities given by such Rating Agency of such Securities immediately prior to the occurrence of the event with respect to which such Rating Agency Confirmation is sought will not be qualified, downgraded or withdrawn as a result of the occurrence of such event, which affirmation may be granted or withheld in such Rating Agency’s sole and absolute discretion. In the event that, at any given time, no such

Securities shall have been issued and are then outstanding, then the term Rating Agency Confirmation shall be deemed instead to require the written approval of Lender based on its good faith determination of whether the Rating Agencies would issue a Rating Agency Confirmation if any such Securities were outstanding.

“**Regulation AB**” shall have the meaning set forth in Section 5.1.11(f) hereof.

“**Regulation S-K**” shall mean Regulation S-K under the Securities Act of 1933 and the Securities Exchange Act of 1934, as amended.

“**Regulation S-X**” shall mean Regulation S-X under the Securities Act of 1933 and the Securities Exchange Act of 1934, as amended.

“**Related Loan**” shall have the meaning set forth in Section 5.1.11(f) hereof.

“**Related Property**” shall have the meaning set forth in Section 5.1.11(f) hereof.

“**Release**” shall have the meaning set forth in Section 2.5.1 hereof.

“**Release Borrower**” shall have the meaning set forth in Section 2.5.1 hereof.

“**Release Price**” shall mean, in connection with a release of an Individual Property from the Lien of a Mortgage as provided in Section 2.5, an amount equal to one hundred ten percent (110%) of the applicable Allocated Loan Amount for the first and second Individual Properties released, 115% of the applicable Allocated Loan Amount for the third and fourth Individual Properties released and 110% of the applicable Allocated Loan Amount for any Individual Property thereafter released; provided if the Paris Las Vegas property becomes an Individual Property as contemplated by the last paragraph of Section 2.5.2, then such Individual Property shall have a Release Price of 120% of its Allocated Loan Amount and each other Individual Property shall have a Release Price of 110% of its Allocated Loan Amount.

“**Rents**” shall mean, with respect to each Individual Property, and without duplication, all rents, rent equivalents, moneys payable as damages or in lieu of rent or rent equivalents, royalties (including, without limitation, all oil and gas-or other mineral royalties and bonuses), income, receivables, receipts, revenues, deposits (including, without limitation, security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, and other consideration of whatever form or nature received by or paid to or for the account of or benefit of Mortgage Borrower or the Operating Company (or employees of Mortgage Borrower or the Operating Company) from any and all sources arising from or attributable to such Individual Property, and proceeds, if any, from business interruption or other loss of income or insurance, including, without limitation, all hotel receipts, revenues and credit card receipts collected from guest rooms, restaurants, bars, meeting rooms, banquet rooms and recreational facilities, all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of property or rendering of services by Mortgage Borrower or any operator or manager of the Hotel Components or the commercial spaces located in the Improvements or acquired from others (including, without

limitation, from the rental of any office space, retail space, guest rooms or other space, halls, stores and offices, and deposits securing reservations of such space), license, lease, sublease and concession fees and rentals, health club membership fees, food and beverage wholesale and retail sales, service charges, vending machine sales and proceeds, if any, from business interruption or other loss of income insurance.

**“Replacement Interest Rate Cap Agreement”** means an interest rate cap agreement from an Acceptable Counterparty with terms identical to the Interest Rate Cap Agreement except that the same shall be effective in connection with replacement of the Interest Rate Cap Agreement following a downgrade, withdrawal or qualification of the long-term unsecured debt rating of the Counterparty; provided that to the extent any such interest rate cap agreement does not meet the foregoing requirements, a “Replacement Interest Rate Cap Agreement” shall be such interest rate cap agreement approved in writing by each of the Rating Agencies and Lender with respect thereto.

**“Reserve Account”** shall mean any one of the Tax and Insurance Escrow Account, the FF&E Reserve Account, the Ground Rent Reserve Account and any other escrow fund or reserve account established pursuant to the Loan Documents.

**“Reserve Funds”** shall mean, collectively, the Tax and Insurance Escrow Fund, the FF&E Reserve Fund, the Ground Rent Reserve Fund, the Ground Lease Estoppel Reserve Amount and any other escrow fund established pursuant to the Loan Documents.

**“Restoration”** shall mean the repair and restoration of an Individual Property after a Casualty or Condemnation as nearly as possible to the condition the Individual Property was in immediately prior to such Casualty or Condemnation, with such alterations as may be reasonably approved by Lender.

**“Revenue”** shall mean all Rents and items of income or revenue (of any kind) collected by Mortgage Borrower or Operating Company.

**“S&P”** shall mean Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc.

**“Sale or Pledge”** shall mean a voluntary or involuntary sale, conveyance, assignment, transfer, encumbrance or pledge of a legal or beneficial interest.

**“Scheduled Maturity Date”** shall mean February 13, 2013.

**“Second Mezzanine Borrower”** shall mean, collectively, the entities set forth on Schedule XIV hereto, each a Delaware limited liability company, together with their respective successors and permitted assigns. As used herein, the term “Second Mezzanine Borrower” shall mean one of the Second Mezzanine Borrowers individually, or the Second Mezzanine Borrowers collectively, as the context shall require.

“**Second Mezzanine Debt Service**” shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Second Mezzanine Notes.

“**Second Mezzanine Lender**” shall mean JPMorgan Chase Bank, N.A., in its capacity as the holder of the Second Mezzanine Loan, together with its successors and assigns.

“**Second Mezzanine Loan**” shall mean that certain loan in the original principal amount of Two Hundred Seventy Five Million and No/100 Dollars (\$275,000,000) of even date herewith made by Second Mezzanine Lender to Second Mezzanine Borrower.

“**Second Mezzanine Loan Agreement**” shall mean that certain Second Mezzanine Loan Agreement, dated as of the date hereof, between Second Mezzanine Borrower and Second Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Second Mezzanine Loan Documents**” shall mean the Second Mezzanine Loan Agreement, the Second Mezzanine Notes and all other documents and instruments executed and delivered in connection with the Second Mezzanine Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

“**Second Mezzanine Notes**” shall mean the “Notes” as defined in the Second Mezzanine Loan Agreement.

“**Securities**” shall have the meaning set forth in Section 9.1 hereof.

“**Securities Act**” shall have the meaning set forth in Section 9.2(a) hereof.

“**Securitization**” shall have the meaning set forth in Section 9.1 hereof.

“**Servicer**” shall have the meaning set forth in Section 9.4 hereof.

“**Servicing Agreement**” shall have the meaning set forth in Section 9.4 hereof.

“**Seventh Mezzanine Borrower**” shall mean, collectively, the entities set forth on Schedule XIX hereto, each a Delaware limited liability company, together with their respective successors and permitted assigns. As used herein, the term “Seventh Mezzanine Borrower” shall mean one of the Seventh Mezzanine Borrowers individually, or the Seventh Mezzanine Borrowers collectively, as the context shall require.

“**Seventh Mezzanine Debt Service**” shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Seventh Mezzanine Notes.

“**Seventh Mezzanine Lender**” shall mean JPMorgan Chase Bank, N.A., in its capacity as the holder of the Seventh Mezzanine Loan, together with its successors and assigns.

“**Seventh Mezzanine Loan**” shall mean that certain loan in the original principal amount of Two Hundred Seventy Five Million and No/100 Dollars (\$275,000,000) of even date herewith made by Seventh Mezzanine Lender to Seventh Mezzanine Borrower.

“**Seventh Mezzanine Loan Agreement**” shall mean that certain Seventh Mezzanine Loan Agreement, dated as of the date hereof, between Seventh Mezzanine Borrower and Seventh Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Seventh Mezzanine Loan Documents**” shall mean the Seventh Mezzanine Loan Agreement, the Seventh Mezzanine Notes and all other documents and instruments executed and delivered in connection with the Seventh Mezzanine Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

“**Seventh Mezzanine Notes**” shall mean the “Notes” as defined in the Seventh Mezzanine Loan Agreement.

“**Severed Loan Documents**” shall have the meaning set forth in Section 8.2(c) hereof.

“**Significant Obligor**” shall have the meaning set forth in Section 5.1.11(f) hereof.

“**Sixth Mezzanine Borrower**” shall mean, collectively, the entities set forth on Schedule XVIII hereto, each a Delaware limited liability company, together with their respective successors and permitted assigns. As used herein, the term “Sixth Mezzanine Borrower” shall mean one of the Sixth Mezzanine Borrowers individually, or the Sixth Mezzanine Borrowers collectively, as the context shall require.

“**Sixth Mezzanine Debt Service**” shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Sixth Mezzanine Notes.

“**Sixth Mezzanine Lender**” shall mean JPMorgan Chase Bank, N.A., in its capacity as the holder of the Sixth Mezzanine Loan, together with its successors and assigns.

“**Sixth Mezzanine Loan**” shall mean that certain loan in the original principal amount of Two Hundred Seventy Five Million and No/100 Dollars (\$275,000,000) of even date herewith made by Sixth Mezzanine Lender to Sixth Mezzanine Borrower.

“**Sixth Mezzanine Loan Agreement**” shall mean that certain Sixth Mezzanine Loan Agreement, dated as of the date hereof, between Sixth Mezzanine Borrower and Sixth Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Sixth Mezzanine Loan Documents**” shall mean the Sixth Mezzanine Loan Agreement, the Sixth Mezzanine Notes and all other documents and instruments executed and

delivered in connection with the Sixth Mezzanine Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

“**Sixth Mezzanine Notes**” shall mean the “Notes” as defined in the Sixth Mezzanine Loan Agreement.

“**Special Member**” shall mean a Springing Member in a given Delaware limited liability company who has become a member in such limited liability company to the extent so provided in such limited liability company’s operating agreement.

“**Special Purpose Entity**” shall mean a corporation, limited partnership or limited liability company which at all times on and after the date hereof:

(a) is organized solely for the purpose of (i) owning, holding, selling, transferring, exchanging, managing and operating the Collateral, entering into this Agreement with the Lender, refinancing the Collateral in connection with a permitted repayment of the Loan, and transacting lawful business that is incident, necessary and appropriate to accomplish the foregoing; or (ii) acting as a general partner of the limited partnership that owns the Collateral or member of the limited liability company that owns the Collateral;

(b) is not engaged and will not engage in any business unrelated to (i) the ownership of the Collateral, (ii) acting as general partner of the limited partnership that owns the Collateral or (iii) acting as a member of the limited liability company that owns the Collateral, as applicable;

(c) does not have and will not have any assets other than those related to the Collateral or its partnership interest in the limited partnership or the member interest in the limited liability company that owns the Collateral or acts as the general partner or managing member thereof, as applicable;

(d) has not engaged, sought or consented to and will not engage in, seek or consent to any dissolution, winding up, liquidation, consolidation, merger, sale of all or substantially all of its assets, transfer of partnership or membership interests (if such entity is a general partner in a limited partnership or a member in a limited liability company) or amendment of its limited partnership agreement, articles of incorporation, articles of organization, certificate of formation or operating agreement (as applicable) with respect to the matters set forth in this definition;

(e) if such entity is a limited partnership, has, as its only general partners, Special Purpose Entities that are corporations, limited partnerships or limited liability companies;

(f) if such entity is a corporation, has at least two Independent Directors, and has not caused or allowed and will not cause or allow the board of directors of such entity to take any action requiring the unanimous affirmative vote of one hundred percent (100%) of the members of its board of directors unless two Independent Directors shall have participated in such vote;

(g) if such entity is a limited liability company with more than one member, has at least one member that is a Special Purpose Entity that is a Delaware corporation or limited liability company that has at least two Independent Directors;

(h) if such entity is a limited liability company with only one member, is a limited liability company organized in the State of Delaware that has (i) as its only member a non-managing member, (ii) at least two Independent Managers and has not caused or allowed and will not cause or allow the board of managers of such entity to take any action requiring the unanimous affirmative vote of one hundred percent (100%) of the managers unless two Independent Managers shall have participated in such vote and (iii) at least one springing member that will become the non-managing member of such entity upon the dissolution of the existing non-managing member;

(i) if such entity is (i) a limited liability company, has articles of organization, a certificate of formation and/or an operating agreement, as applicable, (ii) a limited partnership, has a limited partnership agreement, or (iii) a corporation, has a certificate of incorporation or articles that, in each case, provide that such entity will not, while any obligations remain outstanding under the Loan Documents: (A) dissolve, merge, liquidate, consolidate; (B) sell all or substantially all of its assets or the assets of the Borrower (as applicable), except as permitted in connection with the release of an Individual Property as provided in Section 2.5.1; (C) engage in any other business activity, or amend its organizational documents with respect to the matters set forth in this definition without the consent of the Lender; or (D) without the affirmative vote of two Independent Directors and of all other directors of the corporation (that is such entity or the general partner or managing or co-managing member of such entity), file a bankruptcy or insolvency petition or otherwise institute insolvency proceedings with respect to itself or to any other entity in which it has a direct or indirect legal or beneficial ownership interest;

(j) is and will remain solvent and pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from and to the extent of its assets as the same shall become due, and is maintaining and will maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations; provided, however, that the foregoing shall not require the Member to make additional capital contributions to the company;

(k) has not failed and will not fail to correct any known misunderstanding regarding the separate identity of such entity;

(l) has maintained and will maintain its bank accounts, books and records separate from any other Person and will file its own tax returns separate from those of any other Person, except to the extent the company is treated as a “disregarded entity” for tax purposes and is not required to file tax returns under applicable law;

(m) has maintained and will maintain its own records, books, resolutions and agreements;

(n) has not commingled and will not commingle its funds or assets with assets of any other Person;

(o) has held and will hold its assets in its own name;

(p) has conducted and will conduct its business in its own name;

(q) has maintained and will maintain its financial statements, accounting records and other entity documents separate and apart from any other Person and will have its assets listed on the financial statement of any other Person; provided, however, that the company's assets may be included in a consolidated financial statement of its Affiliate, provided, that, (i) appropriate notation shall be made on such consolidated financial statements to indicate the separateness of the company from such Affiliate and to indicate the company's assets and credit are not available to satisfy the debts and other obligations of such Affiliate or any other Person and (ii) such assets shall also be listed on the company's own separate balance sheet;

(r) has paid and will pay its own liabilities and expenses, including the salaries of its own employees (if any), out of its own funds and assets, and has maintained and will maintain a sufficient number of employees (if any) in light of its contemplated business operations;

(s) has observed and will observe all partnership, corporate or limited liability company formalities necessary to maintain its separate existence;

(t) has and will not incur, create, or assume any Indebtedness other than (i) the Loan and (ii) certain Indebtedness to Affiliates that was incurred in connection with the formation of Borrower and Operating Company and the transfer of the Properties to Mortgage Borrower and was satisfied and/or released in full prior to the funding of the Loan hereunder;

(u) has not and will not assume or guarantee or become obligated for the debts of any other Person or hold out its credit as being available to satisfy the obligations of any other Person except as co-borrowers of the Loan;

(v) has not and will not acquire obligations or securities of its partners, members or shareholders or any Affiliate (other than Mortgage Borrower);

(w) has allocated and will allocate fairly and reasonably any overhead expenses that are shared with any Affiliate, including, but not limited to, paying for shared office space and services performed by any employee of an Affiliate;

(x) maintains and uses and will maintain and use separate stationery, invoices and checks, if any, bearing its name. The stationery, invoices, and checks, if any, utilized by the Special Purpose Entity or utilized to collect its funds or pay its expenses shall bear its own name and shall not bear the name of any other entity unless such entity is clearly designated as being the Special Purpose Entity's agent;

(y) has not pledged and will not pledge its assets for the benefit of any Person except as co-borrowers of the Loan;

(z) has held itself out and identified itself and will hold itself out to the public and all other Persons and identify itself as a separate and distinct entity under its own name or in a name franchised or licensed to it by an entity other than an Affiliate of Borrower and not as a division or part of any other Person;

(aa) has maintained and will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;

(bb) has not made and will not make loans to any Person or hold evidence of indebtedness issued by any other Person or entity (other than cash and investment-grade securities issued by an entity that is not an Affiliate of or subject to common ownership with such entity);

(cc) correct any known misunderstanding regarding its separate identity and has not identified and will not identify its partners, members or shareholders, or any Affiliate of any of them, as a division or part of it, and has not identified itself and shall not identify itself as a division of any other Person;

(dd) except for capital contributions or capital distributions permitted under the terms and conditions of this Agreement and properly reflected on the books and records of this company, has not entered into or been a party to, and will not enter into or be a party to, any transaction with its partners, members, shareholders or Affiliates except in the ordinary course of its business and on terms which are commercially reasonable and are no less favorable to it than would be obtained in a comparable arm's-length transaction with an unrelated third party (including an appropriate shared services agreement with Affiliates);

(ee) has not and will not have any obligation to, and will not, indemnify its partners, officers, directors or members, as the case may be, unless such an obligation is fully subordinated to the Debt and will not constitute a claim against it in the event that cash flow in excess of the amount required to pay the Debt is insufficient to pay such obligation;

(ff) if such entity is a corporation, it shall consider the interests of its creditors in connection with all corporate actions;

(gg) does not and will not have any of its obligations guaranteed by any Affiliate (except each Borrower as a co-borrower under the Loan);

(hh) has complied and will comply with all of the terms and provisions contained in its organizational documents. The statement of facts contained in its organizational documents are true and correct and will remain true and correct; and

(ii) form, acquire, or hold any subsidiary (whether corporate, partnership, limited liability company, or other) or own any equity interest in any other entity (other than,

with respect to Borrower, its interest in the Mortgage Borrower, and with respect to Principal, its interest in Borrower).

“**SPE Party**” shall mean Borrower and any other Person that is required to be a “Special Purpose Entity” under applicable Rating Agency criteria so as to make Borrower a Special Purpose Entity.

“**Spread**” shall mean (i) unless and until a Ground Lease Estoppel Trigger Event exists, 3.00% and (ii) upon the occurrence of a Ground Lease Estoppel Trigger Event, the Ground Lease Estoppel Trigger Spread.

“**Spread Maintenance Outside Date**” shall mean February 10, 2009.

“**Spread Maintenance Premium**” shall mean, in connection with any repayment of any of the outstanding principal amount of the Loan prior to and including the Spread Maintenance Outside Date (whether a voluntary or mandatory prepayment), an amount equal to the product of (a) the principal amount of such prepayment, (b) the Spread and (c) a fraction, the numerator of which shall be the actual number of days from (but excluding) the date of such prepayment (or, if later, the last date of the Interest Period during which interest on the amount of such payment shall have been paid by Borrower, as required in this Agreement) through (and including) the Spread Maintenance Outside Date and the denominator of which is three hundred sixty (360).

“**Springing Member**” shall mean a Person who has signed the limited liability company agreement of a given Delaware limited liability company, which agreement provides that, upon the withdrawal, dissolution or disassociation of the last remaining member of such limited liability company (subject to applicable Gaming Laws), such Person shall become a member of such limited liability company having no economic interest therein.

“**State**” shall mean, with respect to an Individual Property, the State or Commonwealth in which such Individual Property or any part thereof is located.

“**Strike Price**” shall mean four and one-half percent (4.5%).

“**Survey**” shall mean a survey of the Individual Property in question prepared pursuant to the requirements contained in Section 3.1.3(c) hereof.

“**Syndication**” shall have the meaning set forth in Section 9.5 hereof.

“**Tax and Insurance Escrow Fund**” shall have the meaning set forth in Section 7.2 hereof.

“**Taxes**” shall mean all real estate and personal property taxes, assessments, water rates or sewer rents, now or hereafter levied or assessed or imposed against any Individual Property or part thereof.

**“Third Mezzanine Borrower”** shall mean, collectively, the entities set forth on Schedule XV hereto, each a Delaware limited liability company, together with their respective successors and permitted assigns. As used herein, the term “Third Mezzanine Borrower” shall mean one of the Third Mezzanine Borrowers individually, or the Third Mezzanine Borrowers collectively, as the context shall require.

**“Third Mezzanine Debt Service”** shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Third Mezzanine Notes.

**“Third Mezzanine Lender”** shall mean JPMorgan Chase Bank, N.A., in its capacity as the holder of the Third Mezzanine Loan, together with its successors and assigns.

**“Third Mezzanine Loan”** shall mean that certain loan in the original principal amount of Two Hundred Seventy Five Million and No/100 Dollars (\$275,000,000) of even date herewith made by Third Mezzanine Lender to Third Mezzanine Borrower.

**“Third Mezzanine Loan Agreement”** shall mean that certain Third Mezzanine Loan Agreement, dated as of the date hereof, between Third Mezzanine Borrower and Third Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**“Third Mezzanine Loan Documents”** shall mean the Third Mezzanine Loan Agreement, the Third Mezzanine Notes and all other documents and instruments executed and delivered in connection with the Third Mezzanine Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

**“Third Mezzanine Notes”** shall mean the “Notes” as defined in the Third Mezzanine Loan Agreement.

**“Threshold Amount”** shall have the meaning set forth in the definition of Material Alteration.

**“Title Insurance Policies”** shall mean, with respect to each Individual Property, an ALTA mortgagee title insurance policy in a form acceptable to Lender (or, if an Individual Property is in a State which does not permit the issuance of such ALTA policy, such form as shall be permitted in such State and acceptable to Lender) issued with respect to such Individual Property and insuring the lien of the Mortgage encumbering such Individual Property.

**“Tower Project”** shall mean that certain “New Atlantic City Tower Project” more fully described in (a) the Site, Design and Floor Plans, dated October 5, 2005, and prepared by Paul Steelman Design Group, and (b) Harrah’s Hotel/Podium/Garage Expansion: Summary of Project Costs, each delivered to Lender. The Tower Project will include a podium (of approximately 175,000 square feet) connecting the current Bayview Tower to a new approximately nine hundred (900) room tower to be built. The Tower Project will not be funded with the proceeds of the Loan (but will be funded by Mortgage Borrower or Operating Company, including with capital contributions).

**“Transfer”** shall mean to, directly or indirectly, sell, assign, convey, mortgage, transfer, pledge, hypothecate, encumber, grant a security interest in, exchange or otherwise dispose of any beneficial interest or grant any option or warrant with respect to, or where used as a noun, a direct or indirect sale, assignment, conveyance, transfer, pledge or other disposition of any beneficial interest by any means whatsoever whether voluntary, involuntary, by operation of law or otherwise. A Transfer shall include, but not be limited to, (a) an installment sales agreement wherein Mortgage Borrower agrees to sell an Individual Property or any part thereof or Borrower agrees to sell the Collateral, in each case, for a price to be paid in installments; and (b) an agreement by Mortgage Borrower leasing all or a substantial part of an Individual Property for other than actual occupancy by a space tenant thereunder or a sale, assignment or other transfer of, or the grant of a security interest in, Mortgage Borrower’s right, title and interest in and to any Leases or any Rents; (c) if a Person restricted or affected by the provisions of this Agreement is a corporation, any merger, consolidation or sale or pledge of such corporation’s stock or the creation or issuance of new stock; (d) if a Person restricted or affected by the provisions of this Agreement is a limited or general partnership or joint venture, any merger or consolidation or the change, removal, resignation or addition of a general partner or the sale or pledge of the partnership interest of any general partner or any profits or proceeds relating to such partnership interest, or the sale or pledge of limited partnership interests or any profits or proceeds relating to such limited partnership interest or the creation or issuance of new limited partnership interests; (e) if a Person restricted or affected by the provisions of this Agreement is a limited liability company, any merger or consolidation or the change, removal, resignation or addition of a managing member or non-member manager (or if no managing member, any member) or the sale or pledge of the membership interest of a managing member (or if no managing member, any member) or any profits or proceeds relating to such membership interest, or the sale or pledge of non-managing membership interests or the creation or issuance of new non-managing membership interests; (f) if a Person restricted or affected by the provisions of this Agreement is a trust or nominee trust, any merger, consolidation or the sale or pledge of the legal or beneficial interest in such Person or the creation or issuance of new legal or beneficial interests; or (g) any direct or indirect sale, assignment, conveyance, transfer, pledge or other disposition (by any means whatsoever whether voluntary, involuntary, by operation of law or otherwise) of the Collateral or any part thereof or any legal or beneficial interest therein.

**“Transferee”** shall mean the Person to whom a Transfer is being effected.

**“Trigger Event”** shall mean, as of the end of any calendar quarter, any period of time during which EBITDAR from the Properties, calculated for the trailing twelve (12) month period immediately prior to the applicable calculation date, is less than eighty-five percent (85%) of the EBITDAR (Closing Date), as determined by Lender.

**“Trigger Event Cure”** shall mean that EBITDAR (excluding, in making such calculation, any capital contributions made to or for the benefit of Borrower, Mortgage Borrower or Operating Company, or payments made on the account of Borrower, Mortgage Borrower or Operating Company by any Affiliate of Borrower, Mortgage Borrower or Operating Company) from the Properties, calculated for the trailing twelve (12) month period immediately prior to the applicable calculation date, is equal to or greater than eighty-five percent (85%) of the EBITDAR (Closing Date) for two (2) consecutive calendar quarters.

“**True Lease Opinion**” shall mean that certain true lease opinion letter dated the date hereof delivered by Cleary Gottlieb Steen & Hamilton LLP in connection with the Loan.

“**UCC**” or “**Uniform Commercial Code**” shall mean the Uniform Commercial Code as in effect in the applicable State in which an Individual Property is located.

“**UCC Title Insurance Policy**” shall have the meaning set forth in Section 3.13(b) hereof.

“**U.S. Obligations**” shall mean non-redeemable securities evidencing an obligation to timely pay principal and/or interest in a full and timely manner that are direct obligations of the United States of America for the payment of which its full faith and credit is pledged or other “government securities” within the meaning of Section 2(a)(16) of the Investment Company Act of 1940, as amended.

“**Windstorm Insurance Intercreditor Agreement**” means that certain Windstorm Insurance Intercreditor Agreement, dated as of the date hereof, by and among Lender, the Mortgage Lender, the Other Mezzanine Lenders, each of the “Other Owners” named therein and made a party thereto, Holdings, Bank of America, N.A., and the “Other Secured Parties” named therein and made a party thereto, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**Section 1.2. Principles of Construction.** All references to sections and schedules are to sections and schedules in or to this Agreement unless otherwise specified. All uses of the word “including” shall mean “including, without limitation” unless the context shall indicate otherwise. Unless otherwise specified, the words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. Unless otherwise specified, all meanings attributed to defined terms herein shall be equally applicable to both the singular and plural forms of the terms so defined. With respect to cross-references contained herein to the Mortgage Loan Documents or to the Other Mezzanine Loan Documents (including with respect to any cross-references to defined terms therein), unless otherwise specifically provided herein, such cross-references shall be with respect to the Mortgage Loan Documents or the Other Mezzanine Loan Documents, as the case may be, in existence as of the date hereof, and no modification or amendment to such cross-referenced sections of the Mortgage Loan Documents or the Other Mezzanine Loan Documents shall be binding upon Lender unless Lender shall have expressly agreed in writing to be bound by such modification or amendment. Terms used herein and not otherwise defined herein (but defined in the Mortgage Loan Agreement) shall have the meaning set forth in the Mortgage Loan Agreement as of the Closing Date, notwithstanding any subsequent amendment of the Mortgage Loan Agreement to such defined terms unless Lender shall have consented to such amendment. The words “Borrower shall cause Mortgage Borrower to”, “Borrower shall not permit Mortgage Borrower to”, “Borrower shall cause Operating Company to” or “Borrower shall not permit Operating Company to” (or words of similar meaning) shall mean Borrower shall cause Mortgage Borrower or Operating Company (subject to the provisions of Section 5.3), as applicable, to so act or not to so act, as applicable.

**Section 1.3 Direction of Mortgage Borrower or with Respect to the Properties.** Borrower and Lender hereby acknowledge and agree that, as to any clauses or provisions contained in this Agreement or any of the other Loan Documents to the effect that (i) Borrower shall cause Mortgage Borrower to act or to refrain from acting in any manner or (ii) Borrower shall cause to occur or not to occur, or otherwise be obligated in any manner with respect to, any matters pertaining to Mortgage Borrower or any of the Properties, such clause or provision, in each case, is intended to mean, and shall be construed as meaning, that Borrower has undertaken to act and is obligated to act only in Borrower's capacity as the sole member of Mortgage Borrower but not directly with respect to Mortgage Borrower or any of the Properties or in any other manner which would violate any of the covenants contained in Section 4.1.30 (Special Purpose Entity) hereof or other similar covenants contained in Borrower's organizational documents.

## **II. GENERAL TERMS**

### **Section 2.1. Loan Commitment; Disbursement to Borrower.**

**2.1.1 Agreement to Lend and Borrow.** Subject to and upon the terms and conditions set forth herein, Lender hereby agrees to make and Borrower hereby agrees to accept the Loan on the Closing Date.

**2.1.2 Single Disbursement to Borrower.** Borrower may request and receive only one borrowing hereunder in respect of the Loan and any amount borrowed and repaid hereunder in respect of the Loan may not be reborrowed.

**2.1.3 The Note, the Pledge Agreement and Loan Documents.** The Loan shall be evidenced by the Note (in the aggregate principal amount of Three Hundred Million and no/100 Dollars (\$300,000,000) and secured by the Pledge Agreement and the other Loan Documents.

**2.1.4 Use of Proceeds.** Borrower shall use the proceeds of the Loan solely to (a) make an equity contribution to Mortgage Borrower in order to cause Mortgage Borrower to use such amounts for any use permitted pursuant to Section 2.1.4 of the Mortgage Loan Agreement, (b) pay costs and expenses incurred in connection with the closing of the Loan, as approved by Lender, and (c) distribute the balance, if any, to Borrower.

**2.1.5 Component Notes.** Lender shall have the right at any time to modify the Loan in order to create an additional note or additional notes, adjust the interest rate spread on the Notes or notes, reduce the number of notes, reallocate the principal balances of the Notes or notes or eliminate the component note structure of the Loan provided that (a) the aggregate stated principal amount of the Loan on the date of each such adjustment shall equal the aggregate stated principal amount of the Loan immediately prior to such adjustment, and (b) the weighted average spread of the Loan on the date of such adjustment shall equal the weighted average spread which was applicable to the Loan immediately prior to such adjustment (Borrower acknowledging that such new notes or modified notes may, in connection with the application of principal to such new notes or modified note following the

occurrence of an Event of Default, but not otherwise, subsequently cause the weighted average spread of such new notes or modified notes to change). In connection with any such modification of the Note and notes, or the creation of additional note(s), (i) Borrower shall cooperate with all reasonable requests of Lender and shall execute and deliver such documents as shall reasonably be requested by Lender in connection therewith, all in form and substance reasonably satisfactory to Lender and, to the extent applicable, the Rating Agencies, including, without limitation, (y) revised title insurance policies and Interest Rate Protection Agreements, and (z) such amendments to the Loan Documents as are reasonably requested; (ii) Lender shall have received opinions of legal counsel with respect to due execution, authority and enforceability of the amended Loan Documents, and additional or updated nonconsolidation opinions for the Loan, each in form reasonably acceptable to Lender and prospective investors and in form acceptable to the Rating Agencies; and (iii) Lender shall pay the actual, reasonable out of pocket costs and expenses incurred by Borrower in connection with the foregoing, including, without limitation, the actual, reasonable out-of-pocket legal fees incurred by Borrower in connection with any of the foregoing matters. For the avoidance of doubt, and notwithstanding anything to the contrary contained herein, such modifications and any modifications under Sections 2.1.6 and 2.1.7 below shall not, absent an Event of Default, adversely affect the overall economics to Borrower of the Loan, taken as a whole, or expose Borrower to any additional costs (other than as set forth above) or increased risk of any liability (beyond that or greater than that existing in the Loan Documents in effect on the date hereof), and Borrower shall not be required to execute any document or agreement which would materially decrease its rights or materially increase its obligations relative to those set forth herein and in the other Loan Documents.

**2.1.6 Adjustment of Mortgage Loan and Mezzanine Loans.** Lender shall have the right at any time to adjust the respective principal amounts of the Mortgage Loan and the Mezzanine Loans (or either one of them) and/or to adjust the interest rate spread on the Mortgage Loan and the Mezzanine Loans (or either one of them) (such adjustment, a “**Loan Adjustment**”), provided that (a) the aggregate stated principal amount of the Mortgage Loan and the Mezzanine Loans on the date of each such Loan Adjustment shall equal the aggregate stated principal amount of the Mortgage Loan and the Mezzanine Loans immediately prior to such Loan Adjustment, and (b) Lender shall have the right to adjust the interest rate spread on the Mortgage Loan and the Mezzanine Loans, provided that the weighted average spread of the Mortgage Loan and the Mezzanine Loans on the date of each such Loan Adjustment shall equal the weighted average spread which was applicable to the Mortgage Loan and the Mezzanine Loans immediately prior to such Loan Adjustment (it being acknowledged that the weighted average spread will remain constant except in connection with the application of principal to such new notes or modified notes following the occurrence of an Event of Default). In connection with any Loan Adjustment, (i) Mortgage Borrower and Mezzanine Borrowers shall cooperate with all reasonable requests of Lender and shall execute and deliver such documents as shall reasonably be requested by Lender in connection therewith, all in form and substance reasonably satisfactory to Lender and, to the extent applicable, the Rating Agencies, including, without limitation, (y) revised title insurance policies, mezzanine endorsements, UCC policies and Interest Rate Protection Agreements, and (z) such amendments to the Mortgage Loan

Documents and the Mezzanine Loan Documents as are reasonably requested in connection with the Loan Adjustment (provided that such amendments do not or would not (i) materially decrease the rights of the Mortgage Borrower or Mezzanine Borrowers, or, absent an Event of Default, materially increase the obligations of the Mortgage Borrower or the Mezzanine Borrowers, as the case may be, under the Mortgage Loan Documents or the Mezzanine Loan Documents (as applicable) or (ii) absent an Event of Default, expose the Mortgage Borrower or any of the Mezzanine Borrowers to additional costs or increased risk of any liability under the Mortgage Loan Documents or the Mezzanine Loan Documents (as applicable) (beyond that or greater than that existing in the Mortgage Loan Documents, or the Mezzanine Loan Documents, as applicable, on the date hereof); (ii) Lender shall have received opinions of legal counsel with respect to due execution, authority and enforceability of the amended Mortgage Loan Documents or Mezzanine Loan Documents, as appropriate, and additional or updated nonconsolidation opinions for the Mortgage Loan and the Mezzanine Loans, each in form reasonably acceptable to Lender and prospective investors and in form acceptable to the Rating Agencies; and (iii) Lender shall pay the actual, reasonable out-of-pocket costs and expenses incurred by Borrower in connection with the foregoing, including, without limitation, the actual, reasonable out-of-pocket legal fees incurred by Borrower in connection with any of the foregoing matters.

**2.1.7 Creation of New Mezzanine Loans.** Lender shall at all times have the right to create one or more additional mezzanine loans (each, a “**New Mezzanine Loan**”), adjust the respective principal amounts of the Mortgage Loan and the Mezzanine Loans (or either one of them) upon the creation of the New Mezzanine Loan and/or to adjust the interest rate spread on the Mortgage Loan and the Mezzanine Loans (or either one of them) upon the creation of the New Mezzanine Loan, and to reallocate the principal balance and the interest rate spreads of the Mortgage Loan, the Mezzanine Loans and any New Mezzanine Loan amongst each other (or any one of them), provided that (a) the aggregate stated principal amount of the Mortgage Loan, the Mezzanine Loans and the New Mezzanine Loans on the date of such adjustment (and the creation of the New Mezzanine Loan) shall equal the aggregate stated principal amount of the Mortgage Loan, the Mezzanine Loans and the New Mezzanine Loan(s) immediately prior to such adjustment, (b) Lender shall have the right to adjust the interest rate spread on the Mortgage Loan, the Mezzanine Loans and the New Mezzanine Loan(s), provided that the weighted average spread of the Loan, the Mezzanine Loans and the New Mezzanine Loan(s) on the date of such adjustment shall equal the weighted average spread which was applicable to the Mortgage Loan and the Mezzanine Loans (and the New Mezzanine Loans, if applicable) immediately prior to such adjustment (it being acknowledged that the weighted average spread will remain constant except in connection with the application of principal to such new notes or modified notes following the occurrence of an Event of Default), and (c) the terms and provisions of each of the Mortgage Loan and the Mezzanine Loans (and the New Mezzanine Loans, if applicable) shall otherwise remain unchanged. In connection with any New Mezzanine Loan, (i) Borrower shall cause the formation of one or more special purpose, bankruptcy remote entities as required by Lender in order to serve as the borrower under any New Mezzanine Loan (each, a “**New Mezzanine Borrower**”) and the applicable organizational documents of Mortgage Borrower and each Mezzanine Borrower (and of each previously created New Mezzanine Borrower, if applicable) shall be amended and modified as necessary or required

in the formation of any New Mezzanine Borrower; (ii) Mortgage Borrower and Mezzanine Borrowers (and each previously created New Mezzanine Borrower, if applicable) shall cooperate with all reasonable requests of Lender and shall execute and deliver such documents as shall reasonably be requested by Lender in connection therewith, all in form and substance reasonably satisfactory to Lender and, to the extent applicable, the Rating Agencies, including, without limitation, (x) revised title insurance policies, mezzanine endorsements, UCC policies and Interest Rate Protection Agreements, (y) in connection with the creation of any New Mezzanine Loan, a promissory note and loan documents necessary to evidence such New Mezzanine Loan, and (z) such amendments to the Mortgage Loan Documents and the Mezzanine Loan Documents (and the loan documents of any previously created New Mezzanine Borrower, if applicable) as are reasonably necessary in connection with the creation of such New Mezzanine Loan (provided that such amendments do not or would not (i) materially decrease the rights of the Mortgage Borrower or Mezzanine Borrowers (and any previously created New Mezzanine Borrowers, if applicable), or, absent an Event of Default, materially increase the obligations of the Mortgage Borrower or the Mezzanine Borrowers (and any previously created New Mezzanine Borrowers, if applicable), as the case may be, under such borrower's applicable loan documents, or (ii) absent an Event of Default, expose the Mortgage Borrower or any of the Mezzanine Borrowers (or any previously created New Mezzanine Borrowers, if applicable) to additional costs or increased risk of any liability under such borrower's applicable loan documents (beyond that or greater than that existing in the existing loan documents on the date hereof)); (iii) Lender shall have received opinions of legal counsel with respect to due execution, authority and enforceability of the amended Mortgage Loan Documents, the amended Mezzanine Loan Documents and the loan documents for the New Mezzanine Loan, as appropriate, and additional or updated nonconsolidation opinions for the Mortgage Loan, the Mezzanine Loans and each such New Mezzanine Loan, as appropriate, each in form reasonably acceptable to Lender and prospective investors and in form acceptable to the Rating Agencies; and (iv) Lender shall pay the actual, reasonable out-of-pocket costs and expenses incurred by Borrower in connection with the foregoing, including, without limitation, the actual, reasonable out-of-pocket legal fees incurred by Borrower in connection with any of the foregoing matters.

**Section 2.2. Interest Rate.**

**2.2.1 Interest Generally.** Except as herein provided with respect to interest accruing at the Default Rate, interest on the principal balance of the Loan outstanding from time to time shall accrue from the Closing Date up to and including the Maturity Date (including, without limitation, all interest that would accrue on the outstanding principal balance of the Loan through the end of the Interest Period during which the Maturity Date occurs (even if such period extends beyond the Maturity Date)) at the Applicable Interest Rate. Interest on the outstanding principal balance of the Loan existing on the commencement of an Interest Period shall accrue for the entire Interest Period and shall be owed by Borrower for the entire Interest Period regardless of whether any principal portion of the Loan is repaid prior to the expiration of such Interest Period.

**2.2.2 Interest Calculation.** Interest on the outstanding principal balance of the Loan shall be calculated by multiplying (a) the actual number of days elapsed in the

period for which the calculation is being made by (b) a daily rate based on a three hundred sixty (360) day year (that is, the Applicable Interest Rate or the Default Rate, as then applicable, expressed as an annual rate divided by 360) by (c) the outstanding principal balance.

**2.2.3 Determination of Interest Rate.** (a) The Applicable Interest Rate with respect to the Loan shall be: (i) LIBOR plus the Spread with respect to the applicable Interest Period for a LIBOR Loan or (ii) the Prime Rate plus the Prime Rate Spread for a Prime Rate Loan if the Loan is converted to a Prime Rate Loan pursuant to the provisions of Section 2.2.3(c) or Section 2.2.3(f).

(b) Subject to the terms and conditions of this Section 2.2.3, the Loan shall be a LIBOR Loan and Borrower shall pay interest on the outstanding principal amount of the Loan at LIBOR plus the Spread for the applicable Interest Period. Any change in the rate of interest hereunder due to a change in the Applicable Interest Rate shall become effective as of the opening of business on the first day on which such change in the Applicable Interest Rate shall become effective. Each determination by Lender of the Applicable Interest Rate shall be conclusive and binding for all purposes, absent manifest error.

(c) In the event that Lender shall have determined (which determination shall be conclusive and binding upon Borrower absent manifest error) that by reason of circumstances affecting the interbank eurodollar market, adequate and reasonable means do not exist for ascertaining LIBOR, then Lender shall forthwith give notice by telephone of such determination, confirmed in writing, to Borrower at least one (1) Business Day prior to the last day of the related Interest Period. If such notice is given, the related outstanding LIBOR Loan shall be converted, on the last day of the then current Interest Period, to a Prime Rate Loan.

(d) If, pursuant to the terms of this Agreement, any portion of the Loan has been converted to a Prime Rate Loan and Lender shall determine (which determination shall be conclusive and binding upon Borrower absent manifest error) that the event(s) or circumstance(s) which resulted in such conversion shall no longer be applicable, Lender shall give notice by telephone of such determination, confirmed in writing, to Borrower at least one (1) Business Day prior to the last day of the related Interest Period. If such notice is given, the related outstanding Prime Rate Loan shall be converted to a LIBOR Loan on the last day of the then current Interest Period.

(e) With respect to a LIBOR Loan, all payments made by Borrower hereunder shall be made free and clear of, and without reduction for or on account of, income, stamp or other taxes, levies, imposts, duties, charges, fees, deductions, reserves or withholdings imposed, levied, collected, withheld or assessed by any Governmental Authority and imposed on any non-U.S. Lender due to a change in U.S. law after the date such non-U.S. Lender acquired its interest in the Loan (such non-excluded taxes, levies, imposts, duties, charges, fees, deductions, reserves or withholdings being referred to collectively as "**Foreign Taxes**"), excluding (i) income and franchise taxes, (ii) any Taxes imposed by reason of any connection between the non-U.S. Lender and the taxing jurisdiction other than entering into this Agreement and receiving payments hereunder, and (iii) any Taxes imposed by reason of the non-U.S. Lender's failure to

complete and deliver to the Borrower, prior to the date on which the first payment to such Lender is due hereunder and (so long as it remains eligible to do so) from time to time thereafter, (x) (i) an Internal Revenue Service Form W-9 (or successor form) establishing that the Lender is not subject to U.S. backup withholding tax, (ii) an Internal Revenue Service Form W-8BEN (or successor form) certifying that such Lender is entitled to benefits under an income tax treaty to which the United States is a party that reduces the rate of withholding tax on payments of interest to zero, or (iii) an Internal Revenue Service Form W-8ECI certifying that the income receivable pursuant to this Agreement is effectively connected with the conduct of a trade or business in the United States, as appropriate; and (y) any successor or additional form required by the Internal Revenue Service or any taxing authority reasonably requested by the Borrower in order to secure an exemption from, or reduction in the rate of, Foreign Taxes. If any Foreign Taxes are required to be withheld from any amounts payable to Lender hereunder, the amounts so payable to Lender shall be increased to the extent necessary to yield to Lender (after payment of all Foreign Taxes) interest or any such other amounts payable hereunder at the rate or in the amounts specified hereunder. Whenever any Foreign Tax is payable pursuant to applicable law by Borrower, as promptly as possible thereafter, Borrower shall send to Lender an original official receipt, if available, or certified copy thereof showing payment of such Foreign Tax. Borrower hereby indemnifies Lender for any incremental Foreign Taxes, interest or penalties that may become payable by Lender which may result from any failure by Borrower to pay any such Foreign Tax when due to the appropriate taxing authority or any failure by Borrower to remit to Lender the required receipts or other required documentary evidence thereof (provided such documents are reasonably available to the Borrower).

(f) If any requirement of law or any change therein or in the interpretation or application thereof, shall hereafter make it unlawful for Lender to make or maintain a LIBOR Loan as contemplated hereunder and the events giving rise thereto affect similarly situated banks or financial institutions generally, (i) the obligation of Lender hereunder to make a LIBOR Loan or to convert a Prime Rate Loan to a LIBOR Loan shall be canceled forthwith and (ii) any outstanding LIBOR Loan shall be converted automatically to a Prime Rate Loan on the next succeeding Payment Date or within such earlier period as required by law.

(g) In the event that any change in any requirement of law or in the interpretation or application thereof, or compliance by Lender with any request or directive (whether or not having the force of law) hereafter issued from any central bank or other Governmental Authority and the events giving rise thereto affect similarly situated banks or financial institutions generally:

(i) shall hereafter impose, modify or hold applicable any reserve, special deposit, compulsory loan or similar requirement against assets held by, or deposits or other liabilities in or for the account of, advances or loans by, or other credit extended by, or any other acquisition of funds by, the office of Lender that holds the Loan which is not otherwise included in the determination of LIBOR hereunder;

(ii) shall hereafter require the Lender to hold additional capital against the Loan in excess of that currently required by Governmental Authorities to be held against loans similar in nature to the Loan; or

(iii) shall hereafter impose on Lender any other condition affecting loans to borrowers subject to LIBOR-based interest rates and Lender determines that, by reason thereof, the cost to Lender of making or maintaining the Loan to Borrower is increased, or any amount received by Lender hereunder in respect of any portion of the Loan is reduced, in each case by an amount deemed by Lender in good faith to be material;

then, in any such case, Borrower shall promptly pay Lender, upon demand, any additional amounts necessary to compensate Lender for such additional cost or reduced amount receivable which Lender deems to be material as determined in good faith by Lender. If Lender becomes entitled to claim any additional amounts pursuant to this Section 2.2.3(g), Lender shall provide Borrower with not less than ninety (90) days notice specifying in reasonable detail the event by reason of which it has become so entitled and the additional amount required to fully compensate Lender for such additional cost or reduced amount. A certificate as to any additional costs or amounts payable pursuant to the foregoing sentence submitted by Lender to Borrower shall be conclusive in the absence of manifest error. This provision shall survive payment of the Note and the satisfaction of all other obligations of Borrower under this Agreement and the Loan Documents.

(h) Lender shall not be entitled to claim compensation pursuant to this Section 2.2.3 for any Foreign Taxes or other amounts incurred or which accrued more than ninety (90) days before the date Lender notified Borrower of the change in law or other circumstance on which such claim of compensation is based and delivered to Borrower a written statement setting forth in reasonable detail the basis for calculating the additional amounts owed to Lender under this Section 2.2.3, which statement shall be conclusive and binding upon all parties hereto absent manifest error.

(i) For purposes of this Section 2.2.3, the term "Lender" shall be deemed to include each Noteholder and Lender's (as well as each Noteholder's) present and future participants in the Loan to the extent of Foreign Taxes imposed by reason of such Noteholder or participant's interest in the Loan and each such Noteholder's or participant's increased costs or reduction in amount received or receivable hereunder or any reduced rate of return, in each case payable by Borrower under this Section 2.2.3.

**2.2.4 Additional Costs.** Lender will use reasonable efforts (consistent with legal and regulatory restrictions) to maintain the availability of the LIBOR Loan and to avoid or reduce any increased or additional costs payable by Borrower under Section 2.2.3, including, if requested by Borrower, a transfer or assignment of the Loan to a branch, office or Affiliate of Lender in another jurisdiction, or a redesignation of its lending office with respect to the Loan, in order to maintain the availability of the LIBOR Loan or to avoid or reduce such increased or additional costs, provided that the transfer or assignment or redesignation (a) would not result in any material additional costs, expenses or risk to Lender that are not reimbursed by Borrower and (b) would not be disadvantageous in any other material respect to Lender as determined by Lender in its sole but reasonable discretion.

**2.2.5 Default Rate.** In the event that, and for so long as, any Event of Default shall have occurred and be continuing, the outstanding principal balance of the Loan

and, to the extent permitted by law, all accrued and unpaid interest in respect of the Loan and any other amounts due pursuant to the Loan Documents, shall accrue interest at the Default Rate, calculated from the date such payment was due without regard to any grace or cure periods contained herein.

**2.2.6 Usury Savings.** This Agreement, the Note and the other Loan Documents are subject to the express condition that at no time shall Borrower be obligated or required to pay interest on the principal balance of the Loan at a rate which could subject Lender to either civil or criminal liability as a result of being in excess of the Maximum Legal Rate. If, by the terms of this Agreement or the other Loan Documents, Borrower is at any time required or obligated to pay interest on the principal balance due hereunder at a rate in excess of the Maximum Legal Rate, the Applicable Interest Rate or the Default Rate, as the case may be, shall be deemed to be immediately reduced to the Maximum Legal Rate and all previous payments in excess of the Maximum Legal Rate shall be deemed to have been payments in reduction of principal and not on account of the interest due hereunder. All sums paid or agreed to be paid to Lender for the use, forbearance, or detention of the sums due under the Loan, shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Loan until payment in full so that the rate or amount of interest on account of the Loan does not exceed the Maximum Legal Rate of interest from time to time in effect and applicable to the Loan for so long as the Loan is outstanding.

**2.2.7 Interest Rate Cap Agreement.** (a) On or prior to 5:00 p.m. (New York time) on the Closing Date, Borrower shall enter into an Interest Rate Cap Agreement with a LIBOR strike price equal to the required Strike Price. The Interest Rate Cap Agreement (i) shall be in a form and substance reasonably acceptable to Lender, (ii) shall be with an Acceptable Counterparty, (iii) shall direct such Acceptable Counterparty to deposit directly with Lender (or into an account or otherwise as directed by Lender) any amounts due Borrower under such Interest Rate Cap Agreement unless and until otherwise instructed by Lender (it being agreed as between Lender and Borrower that Lender will so instruct the Counterparty at such time as the Debt shall no longer exist, provided that the Debt shall be deemed to exist if the Collateral is transferred by secured party sale or otherwise), (iv) shall be for a period equal to the term of the Loan and (v) shall have an initial notional amount equal to the principal balance of the Loan. Borrower shall collaterally assign to Lender, pursuant to the Collateral Assignment of Interest Rate Cap Agreement, all of its right, title and interest to receive any and all payments under the Interest Rate Cap Agreement, and shall deliver to Lender an executed counterpart of such Interest Rate Cap Agreement (which shall, by its terms, authorize the assignment to Lender and require that payments be paid directly into an account pledged to Lender as provided above in this Section 2.2.7). Provided no Event of Default has occurred and is continuing, amounts contained in the foregoing pledged account shall be released to Borrower on a monthly basis to the extent not applied toward debt service on the Loan.

(b) Borrower shall comply with all of its obligations under the terms and provisions of the Interest Rate Cap Agreement. All amounts paid by the Counterparty under the Interest Rate Cap Agreement to Borrower or Lender shall be paid to Lender (or into an account

or otherwise as directed by Lender). Borrower shall take all actions reasonably requested by Lender to enforce Lender's rights under the Interest Rate Cap Agreement in the event of a default by the Counterparty and shall not waive, amend or otherwise modify any of its rights thereunder.

(c) In the event of any downgrade, withdrawal or qualification of the rating of the Counterparty by S&P or Moody's to below the ratings set forth in the definition of "Acceptable Counterparty", Borrower (i) shall replace the Interest Rate Cap Agreement with a Replacement Interest Rate Cap Agreement (or cause the Counterparty or an Affiliate thereof to post collateral acceptable to Lender and the Rating Agencies) not more than fifteen (15) Business Days following receipt of notice of such downgrade, withdrawal or qualification (and meeting the requirements set forth in this [Section 2.2.7](#)) from an Acceptable Counterparty, (ii) if a new cap is provided to Lender, then if requested by Lender shall provide to Lender an opinion of counsel to such Acceptable Counterparty in the form and containing the substance of the form of opinion set forth in [Exhibit A](#) to the Mortgage Loan Agreement (which such changes as shall be reasonably approved by Lender), and (iii) shall collaterally assign to Lender, pursuant to an assignment in the form of the Collateral Assignment of Interest Rate Cap Agreement, all of its right, title and interest to receive any and all payments under the Replacement Interest Rate Cap Agreement.

(d) In the event that Borrower fails to purchase and deliver to Lender the Interest Rate Cap Agreement or fails to maintain the Interest Rate Cap Agreement in accordance with the terms and provisions of this Agreement, Lender may purchase the Interest Rate Cap Agreement and the cost incurred by Lender in purchasing such Interest Rate Cap Agreement shall be paid by Borrower to Lender with interest thereon at the Default Rate from the date such cost was incurred by Lender until such cost is reimbursed by Borrower to Lender.

(e) In connection with any Interest Rate Cap Agreement provided to Lender as herein required, if requested by Lender, Borrower shall obtain and deliver to Lender an opinion from counsel (which counsel may be in-house counsel for the Counterparty) for the Counterparty (upon which Lender and its successors and assigns may rely) in the form and containing the substance of the form of opinion set forth in [Exhibit A](#) to the Mortgage Loan Agreement (which such changes as shall be reasonably approved by Lender).

(f) In connection with any prepayment of the Loan, provided no Event of Default shall have occurred and be continuing, Borrower may reduce the amount of any Interest Rate Cap Agreement (so that the same shall be in an initial notional amount equal to the principal balance of the Loan following such prepayment), provided that such reduction shall not affect any of the other terms of the Interest Rate Cap Agreement or the Collateral Assignment of Interest Rate Cap Agreement (or Lender's rights in respect thereof).

### **Section 2.3. Loan Payment.**

**2.3.1 Payments Generally.** Borrower shall make a payment to Lender of interest only on the Closing Date for the initial Interest Period. On the date hereof, Borrower shall make a payment to Lender of interest accruing hereunder during the period from the

Closing Date up to and including the initial Interest Period, calculated in the manner set forth herein, and on the Payment Date occurring in March 2008 and on each Payment Date thereafter to and including the Maturity Date, Borrower shall make a payment to Lender of interest accruing hereunder during the entire Interest Period in which such Payment Date occurs, calculated in the manner set forth herein. All amounts due pursuant to this Agreement and the other Loan Documents shall be payable without setoff, counterclaim, defense or any other deduction whatsoever. Each payment shall be applied *pro rata* and *pari passu* (a) first to accrued and unpaid interest on all of the Notes and (b) the balance shall be applied to principal of all the Notes.

**2.3.2 Payment on Maturity Date.** Borrower shall pay to Lender on the Maturity Date the outstanding principal balance of the Loan, all accrued and unpaid interest and all other amounts due hereunder and under the Note, the Pledge Agreement and the other Loan Documents, including, without limitation, all interest that would accrue on the outstanding principal balance of the Loan through and including the end of the Interest Period in which the Maturity Date occurs (even if such Interest Period extends beyond the Maturity Date).

**2.3.3 Late Payment Charge.** If any principal, interest or any other sums due under the Loan Documents, other than the payment of principal due on the Maturity Date, is not paid by Borrower by the date on which it is due, Borrower shall pay to Lender upon demand an amount equal to the lesser of one percent (1%) of such unpaid sum or the maximum amount permitted by applicable law in order to defray the expense incurred by Lender in handling and processing such delinquent payment and to compensate Lender for the loss of the use of such delinquent payment; provided, however that, except with respect to the payment of any monthly Debt Service payments with respect to which no notice or demand shall be required, no such late payment charge shall be due unless such payment of principal, interest or other sum shall be delinquent for more than five (5) Business Days following the date of demand therefor. Any such amount shall be secured by the Pledge Agreement and the other Loan Documents to the extent permitted by applicable law.

**2.3.4 Method and Place of Payment.** Except as otherwise specifically provided herein, all payments and prepayments under this Agreement and the Note shall be made to Lender not later than 3:00 P.M., New York City time, on the date when due and shall be made in lawful money of the United States of America in immediately available funds at Lender's office or as otherwise directed by Lender, and any funds received by Lender after such time shall, for all purposes hereof, be deemed to have been paid on the next succeeding Business Day.

#### **Section 2.4. Prepayments.**

**2.4.1 Voluntary Prepayments.** Borrower may, at its option, prepay the Debt in whole or in part, provided, the following conditions are satisfied:

(a) No Event of Default shall have occurred and be continuing (unless, in the case of a prepayment upon the release of an Individual Property, the Event of Default relates

solely to such Individual Property and therefore would be fully cured by the release of such Individual Property);

(b) Borrower shall provide prior written notice to Lender specifying the date upon which the prepayment is to be made (the "**Prepayment Date**"), which notice shall be delivered to Lender not less than ten (10) days prior to such Prepayment Date, and which notice shall be irrevocable (or such shorter period of time as may be permitted by Lender in its sole discretion) (Lender hereby agreeing that Borrower may revoke any notice of prepayment up until the date that is one (1) Business Day prior to the proposed Prepayment Date (provided that Borrower shall be required to pay Lender, promptly upon demand, any actual, out-of-pocket expenses incurred by Lender resulting from any such revocation));

(c) each such prepayment, in the case of partial prepayments, shall be in an amount not less than Five Million and no/100 Dollars (\$5,000,000.00), unless the outstanding principal balance of the Loan (prior to such prepayment) shall be less than Five Million and no/100 Dollars (\$5,000,000.00), in which event the amount of the prepayment shall be in such amount as shall prepay the Debt and all other amounts due in connection therewith in full, as more fully provided herein;

(d) if such prepayment is made on or prior to the Payment Date occurring in the Interest Period in which such prepayment was made, then, in connection with such prepayment, Borrower shall pay to Lender, simultaneously with such prepayment, all interest on the principal balance of the Note then being prepaid which would have accrued through the end of the Interest Period then in effect notwithstanding that such Interest Period extends beyond the Prepayment Date;

(e) if such prepayment is made after a Payment Date occurring in the Interest Period in which such prepayment was made, but prior to the last two (2) Business Days in such Interest Period, Borrower shall make such prepayment without paying any interest thereon (Borrower having already paid interest on such amount on the Payment Date occurring in such Interest Period);

(f) if such prepayment is made on either of the last two (2) Business Days in an Interest Period, Borrower will pay to Lender, simultaneously with such prepayment, interest on the principal amount of the Loan prepaid through the last day of the Interest Period immediately following the Interest Period in which such prepayment occurs, calculated at the Applicable Interest Rate;

(g) if such prepayment is a prepayment of the Loan in full, Lender shall have received a written consent to the repayment from the lender under each Other Mezzanine Loan (and, if any, a Permitted Mezzanine Loan) or receipt by Lender of other evidence satisfactory to Lender that all conditions imposed under the terms of each Other Mezzanine Loan and Permitted Mezzanine Loan shall have been complied with by the borrower thereunder or otherwise waived by the applicable lender, including the simultaneous pro rata prepayment of each Other Mezzanine Loan and Permitted Mezzanine Loan if required thereunder; and

(h) if such prepayment is made on or prior to the Spread Maintenance Outside Date, then in connection with any such prepayment, Borrower shall pay to Lender, simultaneously with such prepayment, the Spread Maintenance Premium in respect of such prepayment.

Any prepayment received by Lender on other than a Payment Date (but not any amount received between a Payment Date and the second to last Business Day in an Interest Period) shall be held by Lender in an interest-bearing account as collateral security for the Loan and shall be applied to the Debt on the next occurring Payment Date (with all interest and other income earned on such amount being for the account of Borrower and being remitted by Lender to Borrower promptly following such next Payment Date). Any prepayment made pursuant to this Section 2.4.1 shall be applied *pro rata* and *pari passu* (a) first to accrued and unpaid interest on all of the Notes and (b) the balance shall be applied to principal of all the Notes. Lender agrees that it shall provide a written consent to the repayment of the Loan upon satisfaction of the conditions set forth in clauses (a) through (f) and clause (h) of this Section 2.4.1.

**2.4.2 Mandatory Prepayments from Net Proceeds.** (a) On the next occurring Payment Date following the date on which Lender actually receives any Net Proceeds, if Lender is not obligated to make such Net Proceeds available to Borrower for the Restoration of any Individual Property, Borrower shall prepay, or authorize Lender to apply Net Proceeds as a prepayment of, the outstanding principal balance of the Note in an amount equal to, (x) if no Event of Default shall have occurred and be continuing, the product of (i) a fraction, the numerator of which is outstanding principal amount of the Loan and the denominator is the outstanding principal amount of the Mortgage Loan, the Loan and the Other Mezzanine Loans times (ii) the Net Proceeds, together with interest accruing on such amount calculated through and including the end of the Interest Period in which such Payment Date occurs (with the balance of the Net Proceeds to be paid over to the Second Mezzanine Lender, for application in accordance with the Second Mezzanine Loan Agreement), and (y) if an Event of Default shall have occurred and be continuing, 100% of the Net Proceeds. No Spread Maintenance Premium shall be due in connection with any prepayment made pursuant to this Section 2.4.2(a). Any prepayment received by Lender pursuant to this Section 2.4.2(a) on a date other than a Payment Date shall be held by Lender as collateral security for the Loan in an interest bearing account, with such interest accruing to the benefit of Borrower, and shall be applied by Lender on the next Payment Date. Following the prepayment made as described in this Section 2.4.2(a), the Allocated Loan Amount for the affected Individual Property, as set forth in this Agreement, shall be reduced in an amount equal to such prepayment. Any prepayment of the Notes made pursuant to this Section 2.4.2(a) shall be applied *pro rata* and *pari passu* (a) first to accrued and unpaid interest on all of the Notes and (b) the balance shall be applied to principal of all the Notes.

(b) In the event of (i) a Transfer of any Individual Property in connection with the realization thereon following a Mortgage Loan Default, (ii) any refinancing of any Individual Property or the Mortgage Loan, or (iii) the receipt by Mortgage Borrower of any excess proceeds realized under its owner's title insurance policy after application of such proceeds by Mortgage Borrower to cure any title defect (each, a "Liquidation Event"), Borrower shall cause the related Net Liquidation Proceeds After Debt Service to be remitted directly to Lender (or as directed by

Lender). On each date on which Lender actually receives a distribution of Net Liquidation Proceeds After Debt Service, Borrower shall prepay the outstanding principal balance of the Note in an amount equal to one hundred percent (100%) of such Net Liquidation Proceeds After Debt Service, together with interest accruing on such amount calculated through and including the end of the Interest Period in which such payment occurs. Any amounts of Net Liquidation Proceeds After Debt Service in excess of the Debt shall be remitted to Second Mezzanine Lender (or to an account designated by Second Mezzanine Lender). Any prepayment received by Lender pursuant to this Section 2.4.2(b) on a date other than a Payment Date shall be held by Lender as collateral security for the Loan in an interest bearing account, with such interest accruing to the benefit of Borrower, and shall be applied by Lender on the next Payment Date. A Spread Maintenance Premium or fee may be due in connection with any prepayment made pursuant to this Section 2.4.2(b) if made prior to the Spread Maintenance Outside Date). Following the prepayment made as described in this Section 2.4.2(b), the Allocated Loan Amount for the affected Individual Property, as set forth in this Agreement, shall be reduced in an amount equal to such prepayment. Any prepayment of the Notes made pursuant to this Section 2.4.2(b) shall be applied *pro rata* and *pari passu* (a) first to accrued and unpaid interest on all of the Notes and (b) the balance shall be applied to principal of all the Notes.

(c) Borrower shall immediately notify Lender of any Liquidation Event once Borrower has knowledge of such event. Borrower shall be deemed to have knowledge of (i) a sale (other than a foreclosure sale) of any Individual Property on the date on which a contract of sale for such sale is entered into, and a foreclosure sale, on the date notice of such foreclosure sale is given, and (ii) a refinancing of any Individual Property, on the date on which a commitment for such refinancing has been entered into. The provisions of this Section 2.4.2(c) shall not be construed to contravene in any manner the restrictions and other provisions regarding refinancing of the Mortgage Loan or Transfer of any Individual Property set forth in this Agreement, the other Loan Documents and the Mortgage Loan Documents.

**2.4.3 Prepayments After Default.** If, following the occurrence and during the continuance of an Event of Default, payment of all or any part of the Debt is tendered by Borrower or any other Person and accepted by Lender or otherwise recovered by Lender (including through application of any Reserve Funds), Borrower shall pay to Lender, in addition to the outstanding principal balance, (a) all accrued and unpaid interest at the Default Rate (including, without limitation, (i) in the event that such prepayment is received on a Payment Date or on any date in any Interest Period prior to a Payment Date, interest accruing (at the Default Rate) on such amount calculated through and including the end of the Interest Period in which such payment occurs, or (ii) in the event that such prepayment is received on a date after a Payment Date up to (and including) the last day of the Interest Period in which such Payment Date occurs, interest accruing (at the Default Rate) on such amount calculated through and including the end of the Interest Period in which the next Payment Date occurs, (b) the Spread Maintenance Premium, if such prepayment is made prior to the Spread Maintenance Outside Date, and (c) any and all other amounts payable under the Loan Documents. Any payment under this Section 2.4.3 shall be applied in such order, priority and proportions as Lender may direct in its sole and absolute discretion.

## **Section 2.5. Release of Collateral.**

Except as set forth in this Section 2.5, no repayment or prepayment of all or any portion of the Note shall cause, give rise to a right to require, or otherwise result in, the release or assignment of any Lien of the Pledge Agreement on the Collateral.

**2.5.1 Release of Individual Property.** Concurrently with the release of an Individual Property from the Lien of the Mortgage (and related Mortgage Loan Documents) pursuant to Section 2.5.1 of the Mortgage Loan Agreement (a “**Release**” and such Individual Property, a “**Release Property**”), Borrower may obtain the release of the related Individual Borrower with an indirect ownership interest in such Individual Property (a “**Release Borrower**”) and such Release Borrower’s obligations under the Loan Documents with respect to the Release Property (other than those expressly stated to survive), upon the satisfaction of each of the following conditions:

(a) No Event of Default shall have occurred and be continuing (unless, in the case of a prepayment upon the release of an Individual Property, the Event of Default relates solely to such Individual Property and therefore would be fully cured by the release of such Individual Property);

(b) Borrower shall submit to Lender, not less than ten (10) Business Days prior to the date of such release, a release of Lien of the Pledge Agreement (and related Loan Documents), only with respect to such Release Borrower, for execution by Lender. Such release shall contain standard provisions, if any, protecting the rights of the releasing lender;

(c) After giving effect to such release, the Debt Service Coverage Ratio for the Properties then remaining subject to the Liens of the Mortgages (including giving pro forma effect to the payment of the Release Price and any additional prepayment(s) made by Borrower in connection with such release) shall be equal to or greater than the greatest of (i) the Debt Service Coverage Ratio for the twelve (12) full calendar months immediately preceding the release of the Individual Property (assuming the contemplated release had not occurred, i.e., for all Properties subject to the Liens of the Mortgage prior to the proposed release), (ii) 90% of the Debt Service Coverage Ratio as of the Closing Date, and (iii) 1.0;

(d)(i) The Individual Property to be released shall be conveyed to a Person other than a Mortgage Borrower or Mezzanine Borrower, and other than to an Affiliate of Mortgage Borrower unless, in the latter case, such Affiliate is refinancing the Loan with a construction or development loan (or repaying the Loan with equity contributions to such Affiliate) and (ii) it is such Affiliate’s immediate intention to materially redevelop such Individual Property, which loan (or equity contribution) and intention shall be described in reasonable detail and represented to in an Officer’s Certificate submitted to Lender concurrently with (or prior to) the materials described in clause (b) of this Section 2.5.1;

(e) Lender shall have received a wire transfer of immediately available federal funds in an amount equal to the Release Price for the applicable Individual Property, together with (i) all accrued and unpaid interest calculated at the Applicable Interest Rate on the amount

of principal being prepaid as provided in Sections 2.4.1(d) or (e), as applicable, (ii) the Spread Maintenance Premium, if applicable and (iii) all other sums due under this Agreement, the Note or the other Loan Documents in connection with a partial prepayment;

(f) Lender shall have received a written consent to the transfer from the lender under the Mortgage Loan and each of the Other Mezzanine Loans (and, if any, a Permitted Mezzanine Loan) or receipt by Lender of other evidence satisfactory to Lender that all conditions imposed under the terms of the Mortgage Loan, each of the Other Mezzanine Loans and Permitted Mezzanine Loan shall have been complied with by the borrower thereunder or otherwise waived by the applicable lender, including the simultaneous pro rata prepayment of each Mortgage Loan, the Other Mezzanine Loans and Permitted Mezzanine Loan if required thereunder; and

(g) Lender shall have received payment of all Lender's reasonable out-of-pocket costs and expenses, including reasonable counsel fees and disbursements incurred in connection with the release of the Individual Property and/or Release Borrower from the lien of the Pledge Agreement and the review and approval of the documents and information required to be delivered in connection therewith. Lender acknowledges that it shall not charge any fee (other than costs and expenses, as provided in the preceding sentence) in connection with the release of an Individual Property or Release Borrower.

Lender agrees that it shall provide a written consent to the transfer upon satisfaction of the conditions set forth in clauses (a) through (e) and clause (g) of this Section 2.5.1.

**2.5.2 Release of Convention Center Parcel; Property Swap.** At any time after the date hereof, Mortgage Borrower may obtain the release of the Convention Center Parcel pursuant to the Mortgage Loan Agreement, without the payment of a Release Price and upon the satisfaction by Borrower of each of the following conditions:

(a) No Event of Default shall have occurred and be continuing (unless, in the case of a release of the Convention Center Parcel, the Event of Default relates solely to such parcel and therefore would be fully cured by the release of the Convention Center Parcel);

(b) The Convention Center Parcel shall be conveyed to a Person other than a Mortgage Borrower or any Mezzanine Borrower;

(c) Mortgage Borrower will enter into a restrictive covenant agreement, restricting the use of the Convention Center Parcel to the development of a Convention Center and ancillary uses which agreement shall be in form and substance reasonably satisfactory to Lender;

(d) Prior to the transfer and release of the Convention Center Parcel, each applicable municipal authority exercising jurisdiction over the Convention Center Parcel shall have approved a lot-split ordinance or other applicable action under local law dividing the Convention Center Parcel from the remainder of the Harrah's Atlantic City Property, and a

separate tax identification number has been issued for the Convention Center Parcel (with the result that, upon the transfer and release of the Convention Center Parcel, no part of the remaining Harrah's Atlantic City Property shall be part of a tax lot which includes any portion of the Convention Center Parcel);

(e) All requirements under all laws, statutes, rules and regulations (including, without limitation, all zoning and subdivision laws, setback requirements, sideline requirements, parking ratio requirements, use requirements, building and fire code requirements, environmental requirements and wetlands requirements) applicable to the Harrah's Atlantic City Property necessary to accomplish the lot split shall have been fulfilled, and all necessary variances, if any, shall have been obtained, and Borrower shall have delivered to Lender either (1) letters or other evidence from the appropriate municipal authorities confirming such compliance with laws, or (2) a zoning report or legal opinion confirming such compliance with laws, in each case in substance reasonably satisfactory to Lender;

(f) As a result of the lot split, the remaining Harrah's Atlantic City Property with all easements appurtenant and other Permitted Encumbrances thereto will not be in violation of any then applicable law, statute, rule or regulation (including, without limitation, all zoning and subdivision laws, setback requirements, sideline requirements, parking ratio requirements, use requirements, building and fire code requirements, environmental requirements and wetland requirements) and all necessary variances, if any, shall have been obtained and evidence thereof has been delivered to Lender which in form and substance is appropriate for the jurisdiction in which the Harrah's Atlantic City Property is located;

(g) If reasonably necessary, appropriate reciprocal easement agreements for the benefit and burden of the remaining Harrah's Atlantic City Property and the Convention Center Parcel requiring no cost or expense to Mortgage Borrower regarding the use of common facilities of such parcels, including, but not limited to, roadways, parking areas, utilities and community facilities, in a form and substance that would be reasonably acceptable to an ordinary prudent lender and which easements will not materially adversely affect the remaining Harrah's Atlantic City Property, shall be declared and recorded, and the remaining Harrah's Atlantic City Property and the Convention Center Parcel shall be in compliance with all applicable covenants under all easements and property agreements contained in the Permitted Encumbrances for the Harrah's Atlantic City Property;

(h) Borrower has delivered an Officer's Certificate to the effect that, to such officer's knowledge after diligent inquiry, the conditions in subsection (a)-(g) hereof have occurred or shall occur concurrently with the transfer and release of the Convention Center Parcel;

(i) Borrower shall execute such documents and instruments and obtain such opinions of counsel as are typical for similar transactions;

(j) Lender shall have received payment of all Lender's reasonable out-of-pocket costs and expenses, including reasonable counsel fees and disbursements incurred in connection with the review and approval of the documents and information required to be

delivered in connection with the release of the Convention Center Parcel from the Lien of the related Mortgage. Lender acknowledges that it shall not charge any fee (other than costs and expenses, as provided in the preceding sentence) in connection with the release of the Convention Center Parcel;

(k) Lender shall have received evidence reasonably satisfactory to it that Mortgage Borrower and each Other Mezzanine Borrower shall have satisfied all of the conditions to the proposed Release set forth in the Mortgage Loan Agreement and each Other Mezzanine Loan Agreement, as applicable; and

(l) There shall be no release of any portion of the Lien of the Pledge Agreement in connection with this Section 2.5.2.

Borrower agrees that it shall promptly use all reasonable best efforts to substitute, and Lender agrees (subject to the terms set forth below in this paragraph) that it shall accept the substitution of, the properties commonly known as “Paris Las Vegas” and “Harrah’s Laughlin” for the Individual Properties referred to as “Harrah’s Lake Tahoe”, “Harvey’s Lake Tahoe”, “Bill’s Lake Tahoe” and “Showboat Atlantic City” and the portion of the Flamingo Las Vegas Property known as O’Shea’s in a reasonably satisfactory manner, provided that Lender’s obligation to accept such substitution shall be conditioned on the following:

(i) that no Event of Default shall exist, either before or after giving effect to such substitution (unless such Event of Default would be fully cured by the substitution);

(ii) the satisfaction, with respect to both “Paris Las Vegas” and “Harrah’s Laughlin”, of the closing conditions set forth in Article III hereof and of the Mortgage Loan Agreement, except that references therein to the Closing Date shall be to the date of such substitution;

(iii) delivery of such agreements, instruments, title insurance policies, surveys, resolutions, certificates and opinions (including, without limitation, substitute notes, amendments to the Loan Documents (including amendments to adjust the Allocated Loan Amounts, the EBITDAR (Closing Date) and any other items that need to be adjusted to reflect the substitution), the Operating Lease, the Operating Lease Guaranty and the Windstorm Insurance Intercreditor Agreement, an appropriate subdivision and a reciprocal easement agreement in respect of O’Shea’s, written assurances that the substitution will have no negative effects on the existing Title Policies, updated “tie-in” endorsements for the Title Policies, an Additional True Lease Opinion and an Additional Insolvency Opinion), in each case as are reasonably required by Lender in connection with such substitution;

(iv) with respect to the release of O’Shea’s, delivery of evidence reasonably satisfactory to Lender that such release will not have either an Individual Material Adverse Effect on the remainder of the Flamingo Las Vegas Property or an Aggregate Material Adverse Effect (it being understood that, for purposes of such determinations, O’Shea’s shall be deemed to have closed as of the Closing Date and to have no value) and that the remainder of the Flamingo Las Vegas Property satisfies the conditions set forth in Sections 3.1.3(b), (c) and (f) of the Mortgage Loan Agreement and the representations and warranties set forth in Sections 4.1.4,

4.1.16, 4.1.22, 4.1.39 and 4.1.40 of the Mortgage Loan Agreement shall continue to be true and complete with respect to the remainder of the Flamingo Las Vegas Property, and satisfaction of conditions similar to those set forth in clauses (c), (d), (e), (f), (g) and (h) of Section 3.1.3 hereof, as applicable, with respect to O'Shea's;

(v) the satisfaction, with respect to "Harrah's Lake Tahoe", "Harvey's Lake Tahoe", "Bill's Lake Tahoe", "Showboat Atlantic City" and O'Shea's, of the conditions set forth above in Section 2.5.1(b) and (f) with respect to released Individual Properties to the extent applicable,

(vi) the conveyance of "Harrah's Lake Tahoe", "Harvey's Lake Tahoe", "Bill's Lake Tahoe", "Showboat Atlantic City" and O'Shea's to a Person other than a Mortgage Borrower or Mezzanine Borrower;

(vii) unless otherwise extended by Lender, the substitution shall be completed on or prior to May 28, 2008;

(viii) the payment by Borrower of all Lender's reasonable out-of-pocket costs and expenses in connection with the substitution contemplated by this paragraph, including reasonable counsel fees and disbursements, up to an aggregate amount of \$300,000, it being acknowledged that costs incurred to obtain title insurance and surveys in respect of the substituted properties shall be paid by Borrower directly and shall not be taken into account for purposes of the foregoing limitation on the reimbursement of Lender's expenses.

Lender acknowledges that it shall not charge any fee (other than costs and expenses, as provided in the preceding sentence) in connection with the release of an Individual Property in accordance with this paragraph. In addition, if all of "Harrah's Lake Tahoe", "Harvey's Lake Tahoe", "Bill's Lake Tahoe" and "Showboat Atlantic City" can be transferred from Mortgage Borrower as contemplated above, but O'Shea's cannot (including by reason of an inability to get a separate gaming license for O'Shea's independent of the "Flamingo Las Vegas"), then Borrower shall cause Mortgage Borrower to nevertheless proceed to consummate the swap without transferring O'Shea's (subject to Borrower's ongoing right to obtain the release of O'Shea's from the Lien of the Mortgage in accordance with the following sentence). Upon the satisfaction of such conditions set forth above in this paragraph (including clauses (i) through (viii) hereof), Borrower will have the right to choose between an immediate release of O'Shea's from the Lien of the Mortgage on the date of the swap or a free release subsequent to the date of the swap without conditions (in either case, subject to the conditions set forth above in this Section 2.5.2, except that the limitation on Borrower's payment of Lender's costs and expenses set forth in clause (viii) above shall not apply to any such costs and expenses incurred by Lender in connection with such release), and, pending such release, EBITDAR shall be computed without regard to O'Shea's; provided further, the Operating Company in respect of the "Flamingo Las Vegas" Individual Property, both before and after such release, shall be permitted to provide management and other similar services for O'Shea's and shall be reimbursed for the allocable share of expenses attributable to O'Shea's.

**2.5.3 Release on Payment in Full.** Lender shall, upon the written request and at the expense of Borrower, upon payment in full of all principal and interest due on the Loan and all other amounts due and payable under the Loan Documents in accordance with the terms and provisions of the Note and this Agreement, release the Lien of the Pledge Agreement on the Collateral.

**Section 2.6. Cash Management.**

**2.6.1 Establishment of Collection Accounts.**

(a) In accordance with the provisions of the Operating Lease, (i) Operating Company will establish within thirty (30) days after the Closing Date and will maintain for the benefit of Mortgage Borrower, as lessor under the Operating Lease, the Collection Accounts with Collection Banks throughout the term of the Mortgage Loan and (ii) the rights of Mortgage Borrower (as landlord) under the Operating Lease will be collaterally assigned to Mortgage Lender within such 30-day period. All Revenues, other than amounts retained on-site by each Operating Company as a Gaming Operating Reserve and amounts collected and maintained in Off-Shore Accounts, will be deposited in the Collection Accounts.

(b) Borrower hereby represents and warrants as follows: when established, the Collection Accounts will be the only accounts maintained by Operating Company in any jurisdiction that include funds arising out of, or are otherwise attributable to, the Properties or relate to the operation and management of any of the Properties other than accounts (collectively, the “OC Accounts”) that contain amounts theretofore released from Collection Accounts in accordance herewith, and other than Off-Shore Accounts, which shall not be subject to this Agreement; and neither Borrower nor Mortgage Borrower maintains any accounts that include funds arising out of, or are otherwise attributable to, any of the Properties or relate to the operation and management of any of the Properties or otherwise (except for accounts containing funds released from the Collection Accounts as herein provided and the Off-Shore Accounts). Borrower shall not (and Borrower shall not permit Operating Company or Mortgage Borrower to), without the prior consent of Lender (not to be unreasonably withheld, conditioned or delayed), open any accounts or new accounts or in any way alter the flow of funds and payment into such Collection Accounts, including, without limitation, changing the source, type or currency of any payments currently deposited and maintained in any such account (it being understood that the foregoing restriction shall not preclude Operating Company, Borrower or Mortgage Borrower from accepting and depositing in any Collection Accounts any capital contributions, or any disbursements from any Collection Accounts in accordance with the provisions of the Mortgage Loan Agreement and this Agreement). Borrower shall not (and Borrower shall not permit Operating Company or Mortgage Borrower to), without the prior consent of Lender (not to be unreasonably withheld, conditioned or delayed), establish and maintain any accounts with financial institutions outside of the United States of America, other than the Off-Shore Accounts.

(c) Borrower shall cause Mortgage Borrower and Operating Company to comply with Section 2.6.1 of the Mortgage Loan Agreement in all respects.

(d) Borrower hereby agrees that in the event that the Mortgage Loan Documents require Mortgage Borrower and/or Operating Company to maintain the Collection Accounts, but (due to repayment of the Mortgage Loan, waiver of the requirement by Mortgage Lender, or otherwise) the Collection Accounts are not being maintained, Borrower shall establish or cause the Operating Company to establish collection accounts substantially the same as that required under the Mortgage Loan Documents (and shall otherwise comply with the provisions of Section 2.6.1 of the Mortgage Loan Documents, and grant to Lender security interests in such accounts for the benefit of Lender, as if such provisions were incorporated herein for the benefit of Lender). In addition, if Borrower is required to deposit amounts with Lender pursuant to Article VII hereof but (due to repayment of the Mortgage Loan, waiver of the requirement by Mortgage Lender, or otherwise) the Collection Accounts and Cash Management Account are not being maintained, Borrower shall establish collection accounts and a cash management account and system with Lender substantially the same as that required under the Mortgage Loan Documents (and shall otherwise comply with the provisions of Sections 2.6.1 and 2.6.2 of the Mortgage Loan Documents, and grant to Lender security interests in such accounts for the benefit of Lender, as if such provisions were incorporated herein for the benefit of Lender). In addition, if Mortgage Borrower is required to provide security or other collateral to the Mortgage Lender pursuant to the terms of the Mortgage Loan Agreement (excluding any mortgage lien on the Properties or assignment of leases and rents with respect to the Properties) but (due to repayment of the Mortgage Loan, waiver of the requirement by Mortgage Lender, or otherwise) such security or other collateral was not provided to Mortgage Lender, Borrower shall provide such security or other collateral to Lender in substantially the same form and amount as that required under the Mortgage Loan Documents.

**2.6.2 Disbursements from, Security Interest in, Collection Accounts.** The Operating Lease provides, among other things, that all Revenues shall be collaterally assigned by Operating Company to Mortgage Borrower as additional security for Operating Company's obligations under the Operating Lease and that Mortgage Borrower shall have the right to collaterally assign and pledge such Revenues to Lender as additional security for the Loan. In furtherance thereof, Lender and Borrower agree as follows:

(a) Except as otherwise provided in subparagraphs (b) and (c) hereof, all amounts collected in the Collection Accounts shall be transferred on each Business Day to (or as directed by) Operating Company for use or distribution by the Operating Company in its discretion free of any rights or encumbrances of Lender.

(b) Upon the occurrence and during the continuance of an Event of Default hereunder, under the Mortgage Loan Documents or under any of the Other Mezzanine Loan Documents, and provided no Event of Default (as such term is defined in the Operating Lease) shall have occurred and be continuing under any Operating Lease, Borrower shall cause Mortgage Borrower to direct and cause Collection Bank to deposit directly into the Cash Management Account, all Rent payable under the Operating Lease for such the next thirty (30) days (it being the intent and agreement that, during the continuance of an Event of Default, the Cash Management Account shall at all times contain such amounts sufficient to cover the ensuing 30-day period), including the Monthly Tax and Insurance Amount, the Monthly Ground Rent Amount and Monthly FF&E Reserve Amount (the amounts described in the preceding

sentence, collectively, the “**Monthly Disbursements**”); provided that, notwithstanding the foregoing, Lender may not apply such Monthly Disbursements to the payment of amounts due hereunder in an amount in excess of the amounts owed by the Operating Company under the Operating Lease. In the event Borrower shall have failed to cause Mortgage Borrower to so instruct Collection Bank, Lender shall have the right to so direct the Collection Bank on behalf of Mortgage Borrower. Any amounts not required to be so deposited into the Cash Management Account shall be transferred on each Business Day thereafter to (or as directed by) Operating Company for use or distribution by the Operating Company in its discretion free of any rights or encumbrances of Lender. If no Event of Default has occurred and is continuing hereunder, to the extent Monthly Disbursements are not applied to the payment of amounts due hereunder, such excess shall be remitted to Second Mezzanine Lender (or to an account designated by Second Mezzanine Lender); provided that, notwithstanding the foregoing, Lender shall not remit any such amounts in excess of the amounts owed by the Operating Company under the Operating Lease. If an Event of Default has occurred and is continuing hereunder, to the extent Monthly Disbursements are not applied to the payment of amounts due hereunder, Lender shall have the right to retain such excess as collateral for the Loan and/or apply such excess to the payment of the Debt.

(c) Upon the occurrence and during the continuance of an Event of Default (as such term is defined in the Operating Lease) under any Operating Lease, Borrower shall cause Mortgage Borrower to notify Collection Bank to transfer to the Cash Management Account on each Business Day in immediately available funds by federal wire transfer all amounts on deposit in each Collection Account and, in the event Mortgage Borrower shall have failed to do so, Mortgage Lender (or Lender in the event of Mortgage Lender’s failure to so instruct) shall have the right to so direct the Collection Bank on behalf of Mortgage Borrower. Lender shall have the right to retain all amounts to be paid into the Cash Management Account in accordance with the first sentence of this Section 2.6.2(c) as collateral for the Loan and/or apply such amount to the payment of the Debt.

(d) Borrower and its Affiliates shall (and Borrower shall cause Operating Company to) execute and deliver such documents, instruments, certificates, assignments and other writings, and do such other acts necessary or desirable, to evidence, preserve and/or protect, maintain and perfect Lender’s security interest in the Collection Accounts.

**2.6.3 Cash Management Account.** (a) During the term of the Loan, Borrower shall cause Mortgage Borrower to comply with Section 2.6.3 of the Mortgage Loan Agreement which may require the establishment of the Cash Management Account to be held by and in trust for the benefit of Mortgage Lender. All costs and expenses for establishing and maintaining the Cash Management Account shall be paid by Mortgage Borrower or Borrower.

(b) Borrower shall not cause or permit Mortgage Borrower or Operating Company to further pledge, assign or grant any security interest in the Cash Management Account or the monies deposited therein or permit any lien or encumbrance to attach thereto, or any levy to be made thereon, or any UCC-1 Financing Statements, except those naming Mortgage Lender as the secured party, to be filed with respect thereto.

(c) Borrower hereby agrees that in the event that the Mortgage Loan Documents require Mortgage Borrower and/or Operating Company to maintain the Cash Management Account, but (due to repayment of the Mortgage Loan, waiver of the requirement by Mortgage Lender, or otherwise) the Cash Management Account is not being maintained, Borrower shall establish a cash management account and system with Lender substantially the same as that required under the Mortgage Loan Documents. If Borrower is required to deposit amounts with Lender pursuant to Article VII hereof, Borrower shall establish a cash management account and system with Lender substantially the same as that required under the Mortgage Loan Documents (and shall otherwise comply with the provisions of Section 2.6.2 of the Mortgage Loan Documents, and grant to Lender security interests in such accounts for the benefit of Lender, as if such provisions were incorporated herein for the benefit of Lender).

**2.6.4 Mezzanine Collection Account.** (a) Lender or Servicer may establish and maintain, to collect all amounts distributed to Lender under Section 2.6.3 of the Mortgage Loan Agreement, a segregated Eligible Account (the “**Mezzanine Collection Account**”) to be held by Servicer in trust for the benefit of Lender, which Mezzanine Collection Account shall be under the sole dominion and control of Lender (which may be exercised through Servicer). Lender (and its agents, including Servicer) shall have the sole right to make withdrawals from the Mezzanine Collection Account in accordance with the terms and conditions of this Agreement and the other Loan Documents, except as otherwise expressly provided in this Agreement or the other Loan Documents.

(b) Borrower hereby grants to Lender a first priority security interest in the Mezzanine Collection Account and all deposits at any time contained therein and the proceeds thereof and will take all actions necessary to maintain in favor of Lender a perfected first priority security interest in the Mezzanine Collection Account, including, without limitation, executing and filing UCC 1 Financing Statements and continuations thereof upon Lender’s request therefor. All costs and expenses for establishing and maintaining the Mezzanine Collection Account (and any sub account thereof) shall be at Borrower’s sole cost and expense.

(c) Borrower shall be responsible for payment of any federal, state or local income or other tax applicable to the interest or income earned on the Mezzanine Collection Account and any sub-account thereof. The Mezzanine Collection Account and any sub-account thereof shall be assigned the federal tax identification numbers of each Borrower set forth on Schedule I attached hereto. Borrower shall provide Lender, at any time upon request of Lender, with a Form W-8 or W-9 to evidence that Borrower is not subject to any back-up withholding under the Code.

(d) Upon the occurrence and during the continuance of an Event of Default, all funds on deposit in the Mezzanine Collection Account shall be applied by Lender in such order and priority as Lender shall determine.

(e) The insufficiency of funds on deposit in the Mezzanine Collection Account shall not relieve Borrower from the obligation to make any payments, as and when due pursuant to this Agreement and the other Loan Documents, and such obligations shall be separate and independent, and not conditioned on any event or circumstance whatsoever.

**Section 2.7. Intentionally Omitted.**

**Section 2.8. Permitted Mezzanine Loan.** Borrower shall have the one-time right, upon thirty (30) days prior written notice to Lender (the “**Permitted Mezzanine Loan Election**”), to obtain a loan (“**Permitted Mezzanine Loan**”) secured by a pledge of the ownership interests in the indirect owners of Borrower (above the level of the Ninth Mezzanine Borrower) provided that the following conditions precedent are satisfied:

(a) no Default or Event of Default shall have occurred and remains uncured;

(b) as of the date the Permitted Mezzanine Loan is advanced, the Permitted Mezzanine Debt Loan-to-Value Ratio for the Properties subject to the Lien of the Mortgage is equal to or less than eighty percent (80%);

(c) as of the date the Permitted Mezzanine Loan is advanced, Permitted Mezzanine DSCR for the four-quarter period preceding such date for the Properties then subject to the Lien of the Mortgage(s) is equal to or greater than 1.2 to 1.0;

(d) the Permitted Mezzanine Loan shall be evidenced by one (1) Loan, that may be advanced in multiple draws provided that Borrower complies with the requirements set forth in this Section 2.8 with respect to each draw;

(e) the Permitted Mezzanine Loan shall be issued by one (1) lender (the “**Permitted Mezzanine Loan Lender**”) which shall be an Institutional Lender; provided, however, that such single Lender that is an Institutional Lender may grant participations in such Permitted Mezzanine Loan or syndicate the Permitted Mezzanine Loan to multiple lenders so long as at least fifty-one percent (51%) of such participants and syndicate lenders are Institutional Lenders and, in addition, so long a single lender serves as agent with respect to all approvals, consents and other matters relating to the Permitted Mezzanine Loan;

(f) the Permitted Mezzanine Loan shall have the same maturity date as the Maturity Date under the Loan, or a maturity date extending beyond the Maturity Date under the Loan;

(g) the Permitted Mezzanine Loan (including all of the terms, provisions and conditions of the Permitted Mezzanine Loan, including, without limitation, the loan documents evidencing and securing the Permitted Mezzanine Loan (“**Permitted Mezzanine Loan Documents**”)) shall be acceptable to Lender in its reasonable discretion (it being agreed that with respect (only) to Lender’s approval of the form of loan documents that loan documents in substantially the same form as the Ninth Mezzanine Loan Documents, appropriately modified to reflect subordination to the Mezzanine Loans still outstanding, shall be deemed to be acceptable);

(h) the Permitted Mezzanine Loan Lender shall enter into a co-lender or intercreditor agreement substantially on the standard CMSA form (or the form entered into by Lender, Other Mezzanine Lenders and Mortgage Lender in connection with the closing of the Loan) or in form and substance reasonably acceptable to Lender, acknowledging the

subordination of the Permitted Mezzanine Loan in all respects to each of the Mezzanine Loans and the Mortgage Loan (and Lender agrees to enter into such co-lender or intercreditor agreement upon request);

(i) the Permitted Mezzanine Loan shall be a fixed rate loan, or a floating rate loan containing an interest rate that is capped at an amount that satisfies the debt service coverage ratio requirement set forth in subparagraph (c) above, with interest due and payable monthly (i.e., interest does not accrue) and such interest rate shall not be subject to adjustment except after an event of default (Borrower agreeing to cause the purchase of an interest rate cap to reflect the foregoing);

(j) if requested by Lender, Borrower shall execute amendments to the Loan Documents reasonably requested by Lender, to reflect the existence of such Permitted Mezzanine Loan, provided that any such amendments or agreements will not alter the payment terms of the Loan set forth in this Agreement or the other Loan Documents or materially and adversely affect Borrower or impose additional material obligations or liabilities upon Borrower;

(k) if required by Lender, Borrower shall deliver (i) Additional Insolvency Opinions and, if the Loan Documents are amended pursuant to Section 2.8(k), opinions regarding due execution and enforceability with respect to the Properties, Mortgage Borrower, Mezzanine Borrowers, Holdings, Guarantor and their respective Affiliates and the Loan Documents, and such related matters as Lender shall reasonably require, and (ii) revised organizational documents for Borrower, which opinions and organizational documents shall be reasonably satisfactory to Lender;

(l) all necessary or appropriate governmental or other third party consents (including any approvals, notices, filings or other actions under or pursuant to the Gaming Laws or other Legal Requirements) required to be obtained or taken by Borrower, any Mezzanine Borrower or the Permitted Mezzanine Borrower for the execution, delivery and performance by the Permitted Mezzanine Borrower of the Permitted Mezzanine Loan shall have been obtained or taken; and

(m) all reasonable out-of-pocket costs and expenses (including reasonable attorneys' fees and expenses) incurred by Lender in connection with this Section 2.8 shall be paid by Borrower (but no approval or consent fees shall be payable in connection therewith).

### **III. CONDITIONS PRECEDENT**

**Section 3.1. Conditions Precedent to Closing.** The obligation of Lender to make the Loan hereunder is subject to the fulfillment by Borrower or waiver by Lender of the following conditions precedent no later than the Closing Date:

**3.1.1 Representations and Warranties; Compliance with Conditions.** The representations and warranties of Borrower contained in this Agreement and the other Loan Documents shall be true and correct in all material respects on and as of the Closing Date with the same effect as if made on and as of such date, and no Default or an Event of Default shall have occurred and be continuing; and Borrower shall be in compliance in all

material respects with all terms and conditions set forth in this Agreement and in each other Loan Document on its part to be observed or performed.

**3.1.2 Loan Agreement and Note.** Lender shall have received a copy of this Agreement and the Note, in each case, duly executed and delivered on behalf of Borrower.

**3.1.3 Delivery of Loan Documents; Title Insurance; Reports; Leases.**

(a) **Pledge Agreement.** Lender shall have received from Borrower fully executed and acknowledged counterparts of the Pledge Agreement and delivery of the Pledged Company Interests, the UCC Financing Statements, and such other documents required pursuant to the Pledge Agreement, in the reasonable judgment of Lender, so as to effectively create valid and enforceable Liens upon the Collateral, of the requisite priority, in favor of Lender, subject only to the Permitted Encumbrances and such other Liens as are permitted pursuant to the Loan Documents. Lender shall have also received from Borrower fully executed counterparts of the other Loan Documents.

(b) **Title Insurance.** Lender shall have received a UCC Title Insurance Policy (the "**UCC Title Insurance Policy**") issued by a title company acceptable to Lender and dated as of the Closing Date, with reinsurance and direct access agreements acceptable to Lender. Such UCC Title Insurance Policy shall (i) provide coverage in amounts reasonably satisfactory to Lender, (ii) insure Lender that the Pledge Agreement and the documents executed and delivered in connection therewith create a valid lien on the Collateral of the requisite priority, free and clear of all exceptions from coverage other than Permitted Encumbrances and standard exceptions and exclusions from coverage (as modified by the terms of any endorsements), (iii) contain such endorsements and affirmative coverages as Lender may reasonably request, and (iv) name Lender as the insured. The UCC Title Insurance Policy shall be assignable. Lender also shall have received evidence that all premiums in respect of such UCC Title Insurance Policy have been paid. Lender shall have received each Owner's Title Policy in an amount equal to the value of the Property, together with an endorsement in favor of Lender and in form and substance reasonably satisfactory to Lender.

(c) **Survey.** Lender shall have received a current Survey for each Individual Property, certified to the title company and Lender and their successors and assigns, in form and content reasonably satisfactory to Lender and prepared by a professional and properly licensed land surveyor satisfactory to Lender in accordance with the Accuracy Standards for ALTA/ACSM Land Title Surveys as adopted by ALTA, American Congress on Surveying & Mapping and National Society of Professional Surveyors in 2005. Each such Survey shall reflect the same legal description contained in the Title Insurance Policies relating to such Individual Property and shall include, among other things, a metes and bounds description (or other description reasonably satisfactory to Lender) of the real property comprising part of such Individual Property reasonably satisfactory to Lender. The surveyor's seal shall be affixed to each Survey and the surveyor shall provide a certification for each Survey in form and substance reasonably acceptable to Lender.

(d) **Insurance.** Lender shall have received valid certificates of insurance for the Policies required hereunder, satisfactory to Lender in its reasonable discretion. Lender shall be included as an “additional insured” under such Policies and Lender shall have received evidence of the payment of all Insurance Premiums payable for the existing policy period.

(e) **Environmental Reports.** Lender shall have received a Phase I environmental report (and, if recommended by the Phase I environmental report, a Phase II environmental report) in respect of each Individual Property, in each case satisfactory in form and substance to Lender. Lender acknowledges that the foregoing condition has been satisfied, provided that the underground storage tank at Harrah’s Las Vegas shall be registered if and to the extent the same is required under Legal Requirements and Lender shall have received and reasonably approved the O&M Plans contemplated pursuant to the above-referenced environmental reports in respect of Flamingo Las Vegas and Harrah’s Las Vegas.

(f) **Zoning.** With respect to each Individual Property, Lender shall have received, at Lender’s option, either (i) (A) letters or other evidence with respect to each Individual Property from the appropriate municipal authorities (or other Persons) concerning applicable zoning and building laws, and (B) an ALTA 3.1 zoning endorsement for the applicable Title Insurance Policy or (ii) a zoning report, in each case in substance reasonably satisfactory to Lender.

(g) **Encumbrances.** Borrower shall have taken or caused to be taken such actions in such a manner so that Lender has a valid and perfected first priority Lien as of the Closing Date on the Collateral and with respect to the Pledge Agreement, and Lender shall have received satisfactory evidence thereof.

(h) **Mortgage Loan Documents.** The Mortgage Loan Documents shall have been duly authorized, executed and delivered by all parties thereto, the Mortgage Loan shall have been contemporaneously funded and Lender shall have received and approved certified copies thereof. All of the conditions precedent set forth in Article III of the Mortgage Loan Agreement shall have been satisfied and the Mortgage Loan shall have closed and been fully advanced in accordance therewith.

**3.1.4 Related Documents.** Each additional document not specifically referenced herein, but relating to the transactions contemplated herein, shall be in form and substance reasonably satisfactory to Lender, and shall have been duly authorized, executed and delivered by all parties thereto and Lender shall have received and approved certified copies thereof.

**3.1.5 Delivery of Organizational Documents.** Borrower shall deliver or cause to be delivered to Lender copies certified by Borrower of all organizational documentation related to Borrower and each Loan Party and/or the formation, structure, existence, good standing and/or qualification to do business, as Lender may request in its sole discretion, including, without limitation, good standing certificates, qualifications to do business in the appropriate jurisdictions, resolutions authorizing the entering into of the Loan and incumbency certificates as may be requested by Lender.

**3.1.6 Opinions of Borrower's Counsel.** Lender shall have received opinions from Borrower's counsel with respect to non-consolidation and the due execution, authority, enforceability of the Loan Documents and such other matters as Lender may require, including True Lease Opinions, an opinion with respect to the priority and perfection of the Collateral and all such opinions shall be in form, scope and substance satisfactory to Lender and Lender's counsel in their reasonable discretion.

**3.1.7 Budgets.** Borrower shall have delivered, and Lender shall have approved in its reasonable discretion, the Annual Budget for the current Fiscal Year.

**3.1.8 Basic Carrying Costs.** Borrower shall have caused Mortgage Borrower to have paid all Basic Carrying Costs relating to the Properties which are in arrears, including, without limitation, (a) accrued but unpaid Insurance Premiums, (b) currently due Taxes (including any in arrears) and (c) currently due Other Charges, which amounts shall be funded with proceeds of the Loan.

**3.1.9 Completion of Proceedings.** All corporate and other proceedings taken or to be taken in connection with the transactions contemplated by this Agreement and other Loan Documents and all documents incidental thereto shall be satisfactory in form and substance to Lender, and Lender shall have received all such counterpart originals or certified copies of such documents as Lender may reasonably request.

**3.1.10 Payments.** All payments, deposits or escrows required to be made or established by Borrower under this Agreement, the Note and the other Loan Documents on or before the Closing Date shall have been paid.

**3.1.11 Windstorm Insurance Intercreditor Agreement.** The Windstorm Insurance Intercreditor Agreement shall have been executed by all parties thereto and delivered to Lender.

**3.1.12 Transaction Costs.** Borrower shall have paid or reimbursed Lender for all UCC Title Insurance Policy premiums, all Owner's Title Policy premiums, costs of obtaining recording and filing fees, costs of environmental reports, Physical Conditions Reports, appraisals and other reports, the reasonable fees and costs of Lender's counsel and all other third party out-of-pocket expenses reasonably incurred in connection with the origination of the Loan to the extent such costs and expenses relating to third party costs have not already been paid or reimbursed by Mortgage Borrower to Mortgage Lender.

**3.1.13 Material Adverse Change.** There shall have been no material adverse change in the financial condition or business condition of Borrower, any Loan Party, the Collateral or the Properties since the date of the most recent financial statements delivered to Lender. The income and expenses of the Properties, the occupancy thereof, and all other features of the transaction shall be as represented to Lender without material adverse change. None of Borrower, any Loan Party or any of their respective constituent Persons shall be the subject of any bankruptcy, reorganization, or insolvency proceeding.

**3.1.14 Leases and Rent Roll.** Lender shall have received copies of all Leases and certified copies of any Leases as requested by Lender. Lender shall have received a current certified rent roll of the Properties, reasonably satisfactory in form and substance to Lender.

**3.1.15 Tax Lot.** Lender shall have received evidence that each Individual Property constitutes one (1) or more separate tax lots, which evidence shall be reasonably satisfactory in form and substance to Lender.

**3.1.16 Physical Conditions Reports.** Lender shall have received Physical Conditions Reports with respect to each Individual Property, which reports shall be reasonably satisfactory in form and substance to Lender. Lender acknowledges that the foregoing condition has been satisfied.

**3.1.17 Operating Leases; Operating Lease Guaranty.** Lender shall have received copies of the Operating Leases, each Operating Lease Guaranty and the Gaming Equipment Facility Agreements, which shall be reasonably satisfactory in form and substance to Lender.

**3.1.18 Appraisal.** Lender shall have received an appraisal of each Individual Property, which shall be reasonably satisfactory in form and substance to Lender.

**3.1.19 Financial Statements.** Lender shall have received a balance sheet with respect to each Individual Property for the two most recent Fiscal Years and statements of income and statements of cash flows with respect to each Individual Property for the three most recent Fiscal Years, each in form and substance reasonably satisfactory to Lender.

**3.1.20 Interest Rate Cap and Further Documents.** Lender or its counsel shall have received a fully executed Interest Rate Cap Agreement and a Collateral Assignment of Interest Rate Cap Agreement, together with an opinion of counsel in form and substance satisfactory to it, or shall have received reasonably satisfactory evidence that same will be delivered promptly following the Closing Date.

**3.1.21 Gaming Authority Approvals.** Mortgage Borrower and Operating Company shall have obtained all Operating Permits from Gaming Authorities that are required in order to permit the closing of the Mortgage Loan and the Mezzanine Loans (if required), or in connection with the Operating Lease or the Operating Lease Guaranty (if required), or to permit the conveyances of any of the Properties to Mortgage Borrower (effected immediately prior hereto) and the operation of the Properties as currently conducted.

#### **IV. REPRESENTATIONS AND WARRANTIES**

**Section 4.1. Borrower Representations.** Borrower represents and warrants as of the date hereof and as of the Closing Date, except as disclosed in Schedule XXIII, that:

**4.1.1 Organization.** (a) Borrower has been duly organized and is validly existing and in good standing with requisite power and authority to own the Individual Properties and to transact the businesses in which it is (or each of them is) now engaged. Borrower is duly qualified to do business and is in good standing in each jurisdiction where it is required to be so qualified in connection with its properties, businesses and operations. Borrower possesses all rights, licenses, permits and authorizations (governmental or otherwise) necessary to entitle it to own its properties and to transact the businesses in which it is now engaged and the failure to possess which would reasonably be expected to have an Individual Material Adverse Effect. The sole business of Borrower is the ownership of the Mortgage Borrower. The ownership interests of Borrower are as set forth on the organizational chart attached hereto as Schedule VIII.

(b) Each Operating Company has been duly organized and is validly existing and in good standing with requisite power and authority to own its properties or assets, including the Gaming Equipment, and to transact the businesses in which it is now engaged. Each Operating Company is duly qualified to do business and is in good standing in each jurisdiction where it is required to be so qualified in connection with its properties, businesses and operations, including the operation of the Casino Components at each Individual Property. Each Operating Company possesses all rights, licenses, permits and authorizations (governmental or otherwise) necessary to entitle it to operate the Properties currently operated by each such Operating Company and to transact the businesses in which it is now engaged and the failure to possess which would reasonably be expected to have an Individual Material Adverse Effect. The sole business of each Operating Company is the management and operation of the Individual Property or Properties currently operated by each such Operating Company. The ownership interests of each Operating Company are as set forth on the organizational chart attached hereto as Schedule VIII.

(c) Borrower has the power and authority and the requisite ownership interests in Mortgage Borrower to control the actions of Mortgage Borrower, and upon the realization of the Collateral under the Pledge Agreement, Lender or any other party succeeding to the Borrower's interest in the Collateral described in the Pledge Agreement would have such control. Without limiting the foregoing, Borrower has sufficient control over Mortgage Borrower to cause Mortgage Borrower to (i) take any action on Mortgage Borrower's part required by the Loan Documents and (ii) refrain from taking any action prohibited by the Loan Documents.

**4.1.2 Proceedings.** Borrower and Operating Company have taken all necessary action to authorize the execution, delivery and performance of this Agreement and the other Loan Documents. This Agreement and such other Loan Documents have been duly executed and delivered by or on behalf of Borrower and Operating Company, and constitute legal, valid and binding obligations of Borrower and Operating Company enforceable against Borrower and Operating Company (as applicable) in accordance with their respective terms, subject only to applicable bankruptcy, insolvency and similar laws affecting rights of creditors generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

**4.1.3 No Conflicts; Approvals.** (a) The execution, delivery and performance of this Agreement and the other Loan Documents by Borrower and Operating Company will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance (other than pursuant to the Loan Documents) upon any of the property or assets of Borrower or Operating Company pursuant to the terms of any indenture, mortgage, deed of trust, loan agreement, partnership agreement, management agreement, material lease or other material agreement or instrument to which Borrower or Operating Company (as applicable) is a party or by which any of Borrower's or Operating Company's property or assets is or are subject, nor will such action result in any violation of the provisions of any statute or any order, rule or regulation of any Governmental Authority having jurisdiction over Borrower or Operating Company any of Borrower's or Operating Company's properties or assets, and any consent, approval, authorization, order, registration or qualification of or with any such Governmental Authority required for the execution, delivery and performance by Borrower and Operating Company of this Agreement or any other Loan Documents (and the execution by Lender of the remedies provided in the Loan Documents, subject to the limitations thereon pursuant to applicable Gaming Laws) has been obtained and is in full force and effect.

(b) Borrower, Mortgage Borrower and Operating Company have obtained all consents and approvals, including all approvals of Governmental Authorities including Gaming Authorities, if required, in connection with the execution, delivery and performance of the Loan Documents (including by Mortgage Lender and each Mezzanine Lender), the Operating Lease, the Operating Lease Guaranty and the operation of the business currently conducted at any of the Properties, and shall promptly execute any and all such instruments and documents, deliver any certificates and do all such other acts or things required by the Gaming Authorities to maintain or keep current such approvals.

**4.1.4 Litigation.** There are no actions, suits or proceedings at law or in equity by or before any Governmental Authority or other agency now pending or, to Borrower's knowledge, threatened against or affecting any Loan Party, any Affiliates of Borrower, including Holdings, Operating Company or any Individual Property, or any prior owner or other holder of any interest in any Individual Property, which actions, suits or proceedings, if determined against any Loan Party, Holdings, Operating Company, any other Affiliate or any Individual Property, (taking into account the reasonably estimated damages payable in connection therewith), is reasonably likely to materially adversely affect the condition (financial or otherwise) or business of any Loan Party, any Affiliate of Borrower that is a direct or indirect owner of Mortgage Borrower, including Holdings and Operating Company, or the condition or ownership of any Individual Property, or any of the material rights, interests and remedies of Lender under the Loan Documents (taken as a whole). None of the actions described on Schedule XXIV, if determined adversely to Borrower, Mortgage Borrower, Operating Company and/or any of their respective Affiliates, as applicable, would result in the payment by Borrower, Operating Company or such Affiliate of an amount in excess of Ten Million and no/100 Dollars (\$10,000,000.00), except to the extent covered by insurance.

**4.1.5 Agreements.** None of Borrower, Mortgage Borrower or Operating Company is in default, in any material respect, in the performance, observance or fulfillment of

any of the obligations, covenants or conditions contained in any material agreement or instrument to which it is a party or by which Borrower, Mortgage Borrower, Operating Company, the Collateral or any of the Properties are bound. None of Borrower, Mortgage Borrower or Operating Company has any material financial obligation under any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which Borrower, Mortgage Borrower or Operating Company is a party or by which Borrower, Mortgage Borrower, Operating Company, the Collateral or the Properties is otherwise bound, other than (a) with respect to Mortgage Borrower, obligations incurred in the ordinary course of the operation of the Properties as permitted pursuant to clause (t) of the definition of "Special Purpose Entity" set forth in Section 1.1 of the Mortgage Loan Agreement, (b) with respect to Borrower, obligations under the Loan Documents and (c) with respect to Operating Company, the Operating Lease and Permitted Indebtedness (Operating Company).

**4.1.6 Title.** (a) The Borrower (as pledgor under the Pledge Agreement) is the record and beneficial owner of, and Borrower has good and marketable title to the Collateral, free and clear of all Liens whatsoever except the Liens created by the Loan Documents. The Permitted Encumbrances in the aggregate do not materially and adversely affect the value, operation or use of any of the Properties (as currently used) or Borrower's ability to repay the Loan. The Pledge Agreement, together with the delivery of the certificates evidencing ownership of the Pledged Company Interests and the endorsement in blank, as being delivered concurrently herewith, will create a valid perfected, first priority lien on, and security interest in and to, the Collateral, all in accordance with the terms thereof. There are no claims for payment for work, labor or materials affecting any of the Properties which are or may become a Lien prior to, or of equal priority with, the Liens created by the Mortgage Loan Documents.

Each Operating Company has good, marketable title to the Gaming Equipment, free and clear of all Liens whatsoever (except equipment financing and leasing arrangements entered into by Operating Company in the ordinary course of its business (subject to the limitations set forth in the definition of "Permitted Indebtedness (Operating Company)").

**4.1.7 Solvency.** Borrower has (a) not entered into the transaction or executed the Note, this Agreement or any other Loan Documents with the actual intent to hinder, delay or defraud any creditor and (b) received reasonably equivalent value in exchange for its obligations under such Loan Documents. The fair saleable value of Borrower's assets exceeds and will, immediately following the making of the Loan, exceed Borrower's total liabilities, including, without limitation, subordinated, unliquidated, disputed and contingent liabilities. The fair saleable value of Borrower's assets is and will, immediately following the making of the Loan, be greater than Borrower's probable liabilities, including the maximum amount of its contingent liabilities on its debts as such debts become absolute and matured. Borrower's assets do not and, immediately following the making of the Loan will not, constitute unreasonably small capital to carry out its business as conducted or as proposed to be conducted. Borrower does not intend to, and does not believe that it will, incur debt and liabilities (including contingent liabilities and other commitments) beyond its ability to pay such debt and liabilities as they mature (taking into account the timing and amounts of cash to be received by Borrower and the amounts to be payable on or in respect of obligations of Borrower). No petition in bankruptcy has been filed against Borrower, Operating Company, any Loan Party or any constituent Person, and none of

Borrower, Operating Company, any Loan Party or any constituent Person has ever made an assignment for the benefit of creditors or taken advantage of any insolvency act for the benefit of debtors. None of Borrower, Operating Company, any Loan Party or any of their respective constituent Persons are contemplating either the filing of a petition by it under any state or federal bankruptcy or insolvency laws or the liquidation of all or a major portion of Borrower's, Operating Company's or any Loan Party's assets or properties, and Borrower has no knowledge of any Person contemplating the filing of any such petition against it, Operating Company, any Loan Party or such constituent Persons.

**4.1.8 Full and Accurate Disclosure.** No statement of fact made by Borrower in this Agreement or in any of the other Loan Documents contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained herein or therein not misleading. There is no material fact presently known to Borrower which has not been disclosed to Lender which has, nor as far as Borrower can foresee, might reasonably be expected to have an Individual Material Adverse Effect or an Aggregate Material Adverse Effect.

**4.1.9 No Plan Assets.** Borrower is not an "employee benefit plan," as defined in Section 3(3) of ERISA, subject to Title I of ERISA, and none of the assets of Borrower constitutes or will constitute "plan assets" of one or more such plans within the meaning of 29 C.F.R. Section 2510.3-101. In addition, (a) Borrower is not a "governmental plan" within the meaning of Section 3(32) of ERISA and (b) transactions by or with Borrower are not subject to any state statute regulating investments of, or fiduciary obligations with respect to, governmental plans similar to the provisions of Section 406 of ERISA or Section 4975 of the Code currently in effect, which prohibit or otherwise restrict the transactions contemplated by this Loan Agreement.

**4.1.10 Compliance.** Except as disclosed in the zoning reports obtained by Lender in connection with the origination of the Loan, Borrower, Mortgage Borrower, Operating Company and each Individual Property (including the use thereof) comply in all material respects with all applicable Legal Requirements, including, without limitation, building and zoning ordinances and codes and Prescribed Laws. Borrower, Mortgage Borrower and Operating Company are not in default or violation of (i) any material order, writ, injunction, decree or demand of any Gaming Authority or (ii) any material order, writ, injunction, decree or demand of any other Governmental Authority. There has not been committed by Borrower, Mortgage Borrower, Operating Company or any other Person in occupancy of or involved with the operation or use of the Properties any act or omission affording the federal government or any other Governmental Authority the right of forfeiture as against any Individual Property or any part thereof or any monies paid in performance of Borrower's obligations under any of the Loan Documents.

**4.1.11 Financial Information.** All financial data, including, without limitation, the statements of cash flow and income and operating expense, that have been delivered to Lender in connection with the Loan, the Collateral, the Properties and each Loan Party (i) are true, complete and correct in all material respects, (ii) accurately represent in all material respects the financial condition of the Properties as of the date of such reports, and (iii) to the extent

prepared or audited by an independent certified public accounting firm, have been prepared in accordance with GAAP throughout the periods covered, except as disclosed therein. Except for Permitted Encumbrances, Borrower does not have any contingent liabilities, liabilities for taxes, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments that are known to Borrower and reasonably likely to have a materially adverse effect on the Collateral, Borrower, any Loan Party, any Individual Property or the operation thereof as mixed-use hotel and casino properties, except as referred to or reflected in said financial statements. Borrower has no Indebtedness other than the Loan. Except for Permitted Indebtedness (Operating Company), Operating Company does not have any Indebtedness or contingent liabilities, or due and unpaid liabilities for taxes, that are known to Borrower, Mortgage Borrower or Operating Company and reasonably likely to have a materially adverse effect on the Collateral, Borrower, any Loan Party, any Individual Property or the operation thereof as mixed-use hotel and casino properties, except as referred to or reflected in said financial statements. Since the date of such financial statements, there has been no material adverse change in the financial condition, operation or business of Borrower or Operating Company from that set forth in said financial statements.

**4.1.12 Condemnation.** No Condemnation or other similar proceeding has been commenced or, to Borrower's best knowledge, is threatened or contemplated with respect to all or any portion of any Individual Property or for the relocation of roadways providing access to any Individual Property.

**4.1.13 Federal Reserve Regulations.** No part of the proceeds of the Loan will be used for the purpose of purchasing or acquiring any "margin stock" within the meaning of Regulation U of the Board of Governors of the Federal Reserve System or for any other purpose which would be inconsistent with such Regulation U or any other Regulations of such Board of Governors, or for any purposes prohibited by Legal Requirements or by the terms and conditions of this Agreement or the other Loan Documents.

**4.1.14 Utilities and Public Access.** Each Individual Property has rights of access to public ways and is served by water, sewer, sanitary sewer and storm drain facilities adequate to service such Individual Property for its respective intended uses. All public utilities necessary or convenient to the full use and enjoyment of each Individual Property are located either in the public right-of-way abutting such Individual Property (which are connected so as to serve such Individual Property without passing over other property) or in recorded easements serving such Individual Property and such easements are set forth in and insured by the Title Insurance Policies. All roads necessary for the use of each Individual Property for their current respective purposes have been completed and dedicated to public use and accepted by all Governmental Authorities.

**4.1.15 Not a Foreign Person.** Borrower is not a "foreign person" within the meaning of §1445(f)(3) of the Code.

**4.1.16 Separate Lots.** Each Individual Property is comprised of one (1) or more parcels which constitute a separate tax lot or lots and does not constitute a portion of any other tax lot not a part of such Individual Property.

**4.1.17 Assessments.** There are no pending or, to Borrower's knowledge, proposed special or other assessments for public improvements or otherwise affecting any Individual Property, nor are there any contemplated improvements to any Individual Property that may result in such special or other assessments.

**4.1.18 Enforceability.** The Loan Documents are not subject to any right of rescission, set-off, counterclaim or defense by Borrower, any Affiliates of Borrower including Holdings, Operating Company or Guarantor, including the defense of usury, nor would the operation of any of the terms of the Loan Documents, or the exercise of any right thereunder, render the Loan Documents unenforceable (subject to principles of equity and bankruptcy, insolvency and other laws generally affecting creditors' rights and the enforcement of debtors' obligations), and Borrower, any Affiliates of Borrower including Holdings, Operating Company and Guarantor have not asserted any right of rescission, set-off, counterclaim or defense with respect thereto.

**4.1.19 No Prior Assignment.** There are no prior assignments of the Leases (including the Operating Leases) or of the Rents (or any Revenue) due and payable or to become due and payable which are presently outstanding. There are no prior assignments of the Collateral which are presently outstanding except in accordance with the Loan Documents.

**4.1.20 Insurance.** Borrower (or Mortgage Borrower or Operating Company) has obtained and has delivered to Lender certified copies of all Policies reflecting the insurance coverages, amounts and other requirements set forth in this Agreement. No material claims have been made under any such Policies except such as have been disclosed to Lender, and no Person, including Borrower, Mortgage Borrower and Operating Company, has done, by act or omission, anything which would impair the coverage of any such Policies.

**4.1.21 Use of Properties.** Each Individual Property is used exclusively as a mixed-use hotel and casino operation, and other appurtenant and related uses.

**4.1.22 Gaming Licenses and Operating Permits.**

(a) Schedule IX contains a correct and complete list of all Gaming Licenses and other material licenses, certification and permits for each of the Properties (and the holder thereof).

(b) Borrower possesses all licenses, permits, franchises, authorizations, certificates, approvals and consents which are material to the ownership of the Collateral. Mortgage Borrower possesses all licenses, permits, franchises, authorizations, certificates, approvals and consents, including, without limitation, all certificates of occupancy, which are material to the ownership and use of each of the Properties, and Operating Company possesses all licenses, permits, franchises, authorizations, certificates, approvals and consents, including, without limitation, all environmental, liquor, Gaming Licenses, health and safety licenses of all Governmental Authorities which are material to the conduct of their business and the use, occupation and operation of each of the Properties and the failure to possess which would have an Individual Material Adverse Effect (collectively, "**Operating Permits**"); each such Operating Permit is and will be in full force and effect (unless, in the case of any Operating Permit, such

Operating Permit is no longer necessary or advisable for the conduct of Borrower's, Mortgage Borrower's or Operating Company's business); Borrower, Mortgage Borrower, Operating Company and each of its Affiliates are in compliance in all material respects with all such Operating Permits, and no event (including, without limitation, any material violation of any law, rule or regulation) has occurred which would be reasonably likely to lead to the revocation or termination of any such Operating Permit or the imposition of any material restriction thereon.

(c) Operating Company and each of its Affiliates possesses all Gaming Licenses which are material to the conduct of their business and the ownership, use, occupation and operation of each of the Properties. Further, Borrower hereby represents and warrants as follows:

(i) Each Gaming License is in full force and effect (except for such Gaming Licenses as are no longer necessary or advisable for the conduct of Borrower's, Mortgage Borrower's or Operating Company's business); Operating Company and each of its Affiliates, respective directors, members, managers, officers, key personnel and Persons holding a five percent (5%) or greater equity or economic interests directly or indirectly in Operating Company is in compliance in all material respects with all such Gaming Licenses (to the extent required by Legal Requirements), and no event (including, without limitation, any material violation of any Legal Requirements) has occurred which would be reasonably likely to lead to the revocation or termination of any such Gaming Licenses or the imposition of any restriction thereon;

(ii) Borrower has no reason to believe Mortgage Borrower and Operating Company will not be able to maintain in effect all Gaming Licenses necessary for the lawful conduct of their respective businesses or operations wherever now conducted and as planned to be conducted, including the ownership and operation of the Casino Components, pursuant to all applicable Legal Requirements;

(iii) All Gaming Licenses are in full force and effect and have not been amended or otherwise modified, rescinded, revoked or assigned in any manner that would reasonably be expected to have an Individual Material Adverse Effect;

(iv) Neither Mortgage Borrower nor Operating Company is in default in any material respect under, or in violation in any material respect of, any Gaming License (and no event has occurred, and no condition exists, which, with the giving of notice or passage of time or both, would constitute a default thereunder or violation thereof that has caused or would reasonably be expected to cause the loss of any Gaming License) (unless, in the case of any Gaming License, such Gaming License is no longer necessary or advisable for the conduct of Borrower's or Operating Company's business);

(v) Neither Mortgage Borrower nor Operating Company has received any notice of any violation of Legal Requirements which has caused or would reasonably be expected to cause any Gaming License to be suspended, forfeited, modified in any manner that would have an Individual Material Adverse Effect, not renewed, rescinded or revoked (unless, in the case of any Gaming License, such Gaming License is no longer necessary or advisable for the conduct of Mortgage Borrower's or Operating Company's business);

(vi) No condition exists or event has occurred which would reasonably be expected to result in the suspension, revocation, impairment, forfeiture, rescission or non-renewal of any Gaming License (unless, in the case of any Gaming License, such Gaming License is no longer necessary or advisable for the conduct of Mortgage Borrower's or Operating Company's business); and

(vii) The continuation, validity and effectiveness of all Gaming Licenses will not be adversely affected by the transactions contemplated by this Agreement.

(d) There is no proceeding, investigation, or disciplinary action (including, without limitation, before any Gaming Authority, under any Gaming Law or under any Gaming License or other Operating Permit) pending or, to Borrower's knowledge, threatened against any of Borrower, Mortgage Borrower, Operating Company or, to Borrower's knowledge, any of their respective directors, members, managers, officers, key personnel or Persons holding a five percent (5%) or greater direct or indirect equity or economic interest in Mortgage Borrower or Operating Company and that could reasonably be expected to have an Individual Material Adverse Effect.

(e) There is no proceeding (including, without limitation, before any Gaming Authority, under any Gaming Law or under any Gaming License or other Operating Permit) pending or, to Borrower's knowledge, threatened either (a) in connection with, or that seeks to restrain, enjoin, prevent the consummation of or otherwise challenge, any of the Loan Documents or any of the transactions contemplated therein, or (b) that could reasonably be expected to have an Individual Material Adverse Effect.

(f) Neither the execution, delivery or performance of any of the Loan Documents (nor the Securitization or any participations in the Loan, or the creation or sale of any of the Mortgage Loan or Mezzanine Loans) will (i) require the consent of any Gaming Authority not heretofore obtained or (ii) allow or result in the imposition of any material penalty under, or the revocation or termination of, any Gaming License or any material impairment of the rights of the holder of any Gaming License.

**4.1.23 Intentionally Omitted.**

**4.1.24 Intentionally Omitted.**

**4.1.25 Intentionally Omitted.**

**4.1.26 Leases.** (a) The Operating Leases (together with any certificates and notifications entered into in connection therewith) and the Operating Lease Guaranty provided to Lender on the Closing Date are true, correct, accurate and complete copies of such documents and constitute the entire agreement between the parties thereto with respect to the subject matter therein and there are no written agreements modifying, amending, supplementing or restating such documents. Except as set forth on Schedule X, the Properties are not subject to any space Leases other than the Operating Lease and space Leases providing for occupancy of less than one hundred (100) square feet. Each Operating Lease is a "true lease" for all purposes of the Bankruptcy Code (including Section 365(d) and 502(b)(6) thereof) and applicable Legal

Requirements, and no Operating Lease constitutes a financing or conveys any interest in the Properties other than the leasehold interest therein demised thereby. Mortgage Borrower is the owner and lessor of landlord's interest in the Operating Lease and the Operating Lease Guaranty. Currently, no Person has any possessory interest in any Individual Property or right to occupy the same except under and pursuant to the provisions of the Operating Lease, any other space Leases listed on Schedule X and, with respect to a right to occupancy only (and not a possessory interest), hotel guests. Each Operating Lease and Operating Lease Guaranty is in full force and effect and there are no material events of default thereunder by any party thereto and there are no conditions that, with the passage of time or the giving of notice, or both, would constitute such a default thereunder. No Rent under any Operating Lease has been paid more than one (1) month in advance of its due date and no Rents or charges under the Operating Lease have been waived, released or otherwise discharged or compromised. There has been no prior sale, transfer or assignment, hypothecation or pledge of any Operating Lease, any Operating Lease Guaranty or of the Rents. No Operating Company has assigned the Operating Lease or sublet all or any portion of any Individual Property except pursuant to the Operating Lease and the terms hereof.

(b) The Properties are not subject to any space Leases other than the Leases described in Schedule X attached hereto. Operating Company is the owner and lessor of landlord's interest in all such space Leases. No Person has any possessory interest in any Individual Property except under and pursuant to the provisions of the space Leases, and no Person has any right to occupy any portion of any Individual Property except under and pursuant to the provisions of the space Leases and hotel guests. The current space Leases are in full force and effect and, except as shown in Schedule X attached hereto, to Borrower's knowledge, there are no material defaults thereunder by either party and there are no conditions that, with the passage of time or the giving of notice, or both, would constitute defaults thereunder. No Rent has been paid more than one (1) month in advance of its due date. Except as shown in Schedule X attached hereto, all work to be performed by Mortgage Borrower (or Operating Company) under each space Lease has been performed as and to the extent required and has been accepted by the applicable tenant, and any payments, free rent, partial rent, rebate of rent or other payments, credits, allowances or abatements required to be given by Mortgage Borrower (or Operating Company) to any tenant has already been received by such tenant. There has been no prior sale, transfer or assignment, hypothecation or pledge of any space Lease or of the Rents received therein which is still in effect. To Borrower's knowledge, except as shown on Schedule X, no tenant listed on Schedule X has assigned its space Lease or sublet all or any portion of the premises demised thereby, no such tenant holds its leased premises under assignment or sublease, nor does anyone except such tenant and its employees occupy such leased premises. No tenant under any space Lease has a right or option pursuant to such Lease or otherwise to purchase all or any part of the leased premises or the building of which the leased premises are a part. No tenant under any space Lease has any right or option for additional space in the Improvements except pursuant to such tenant's space Lease.

**4.1.27 Intentionally Omitted.**

**4.1.28 Principal Place of Business; State of Organization.** (a) Borrower's principal place of business as of the date hereof is the address set forth in Schedule I. Each Borrower is organized under the laws of the State of Delaware.

(b) Operating Company's principal place of business as of the date hereof is the address set forth in Schedule I. Each Operating Company is organized under the laws of the state of Delaware.

**4.1.29 Filing and Recording Taxes.** All transfer taxes, deed stamps, intangible taxes or other amounts in the nature of transfer taxes required to be paid by any Person under applicable Legal Requirements currently in effect in connection with the transfer of the Collateral to Borrower have been paid. All recording, stamp, intangible or other similar tax required to be paid by any Person under applicable Legal Requirements currently in effect in connection with the execution, delivery, recordation, filing, registration, perfection or enforcement of any of the Loan Documents, including, without limitation, the Pledge Agreement, have been paid, and, under current Legal Requirements, the Pledge Agreement is enforceable in accordance with their respective terms by Lender (or any subsequent holder thereof), subject to principles of equity and bankruptcy, insolvency and other laws generally applicable to creditors' rights and the enforcement of debtors' obligations.

**4.1.30 Special Purpose Entity/Separateness.** (a) Until the Debt has been paid in full, Borrower hereby represents, warrants and covenants that Borrower and each SPE Party is, shall be and shall continue to be a Special Purpose Entity.

(b) The representations, warranties and covenants set forth in Section 4.1.30(a) shall survive for so long as any amount remains payable to Lender under this Agreement or any other Loan Document.

(c) All of the assumptions made in the Insolvency Opinion, including, but not limited to, any exhibits attached thereto, are true and correct and any assumptions made in any subsequent non-consolidation opinion required to be delivered in connection with the Loan Documents (an "**Additional Insolvency Opinion**"), including, but not limited to, any exhibits attached thereto, will have been and shall be true and correct. Borrower has complied and will comply with, and Borrower shall cause each SPE Party and Operating Company to comply with, all of the assumptions made with respect to the SPE Parties and Operating Company in the Insolvency Opinion. The SPE Parties will have complied and will comply with all of the assumptions made with respect to the SPE Parties in any Additional Insolvency Opinion. Each entity with respect to which an assumption shall be made in any Additional Insolvency Opinion will have complied and will comply with all of the assumptions made with respect to it in any Additional Insolvency Opinion.

(d) All of the assumptions made in the True Lease Opinion, including, but not limited to, any exhibits attached thereto, are true and correct and any assumptions made in any subsequent true lease opinion required to be delivered in connection with the Loan Documents (an "**Additional True Lease Opinion**"), including, but not limited to, any exhibits attached thereto, will have been and shall be true and correct. Each SPE Party has complied and will comply with, and Borrower shall cause Operating Company to comply with, all of the assumptions made with respect to such SPE Parties and Operating Company in the True Lease Opinion. Each SPE Party will have complied and will comply with all of the assumptions made with respect to such SPE Parties in any Additional True Lease Opinion. Each entity with respect

to which an assumption shall be made in any Additional True Lease Opinion will have complied and will comply with all of the assumptions made with respect to it in any Additional True Lease Opinion.

**4.1.31 Operating Leases; Operating Lease Guaranty.** The Operating Leases and the Operating Lease Guaranty are in full force and effect and there is no default thereunder by any party thereto and no event has occurred that, with the passage of time and/or the giving of notice would constitute a default thereunder.

**4.1.32 Illegal Activity.** No portion of any Individual Property or the Collateral has been or will be purchased with proceeds of any illegal activity.

**4.1.33 Intentionally Omitted.**

**4.1.34 Investment Company Act.** Borrower is not an “investment company” or a company “controlled” by an “investment company,” within the meaning of the Investment Company Act of 1940, as amended.

**4.1.35 Embargoed Person.** At all times throughout the term of the Loan, including after giving effect to any Transfers permitted pursuant to the Loan Documents, (a) none of the funds or other assets of Borrower, Mortgage Borrower, Holdings, Operating Company and Guarantor constitute property of, or are beneficially owned, directly or indirectly, by any person, entity or government subject to trade restrictions under U.S. law, including, but not limited to, the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701 et seq., The Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., and any Executive Orders or regulations promulgated thereunder with the result that the investment in any Loan Party or Operating Company, as applicable (whether directly or indirectly), is prohibited by law or the Loan made by the Lender is in violation of law (“**Embargoed Person**”); (b) no Embargoed Person has any interest of any nature whatsoever in any Loan Party, Holdings or Operating Company, as applicable, with the result that the investment in any Loan Party, Holdings or Operating Company, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law; and (c) none of the funds of any Loan Party, Holdings or Operating Company, as applicable, have been derived from any unlawful activity with the result that the investment in any Loan Party, Borrower, Holdings or Operating Company, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law.

**4.1.36 Operating Lease Subsidiary.** Tahoe Propco, LLC is the owner of one hundred percent (100%) of the equity interests of Ground Lease Subsidiary; Ground Lease Subsidiary does not own any assets other than its interests in the Ground Lease and does not have any liabilities other than liabilities under the Ground Lease; Ground Lease Subsidiary does not engage in any business other than that related to its ownership of interests in the Ground Lease.

**4.1.37 Taxes including Gaming Taxes and Fees.** Mortgage Borrower, Borrower and each of their respective Affiliates, and Operating Company and each of its Affiliates, have filed or caused to be filed all Federal, state, local and foreign tax returns (including, without limitation, all reports relating to gaming taxes and fees to the Gaming

Authorities) which are required to be filed by them, on or prior to the date hereof, other than tax returns in respect of taxes that (i) are not franchise, capital or income taxes, (ii) in the aggregate are not material and (iii) would not, if unpaid, result in the imposition of any material Lien on any property or assets of Mortgage Borrower, Borrower, Operating Company or any of their respective Affiliates. All such filed tax returns were, to Borrower's knowledge, true, correct and complete when filed. Mortgage Borrower, Borrower, Operating Company and each of their respective Affiliates have paid or caused to be paid all taxes shown to be due and payable on such filed returns or on any assessments received by them, other than any taxes or assessments the validity of which Mortgage Borrower, Borrower, Operating Company or such Affiliate, as applicable, is contesting in good faith by appropriate proceedings, and with respect to which Mortgage Borrower, Borrower, Operating Company or such Affiliate, as applicable, shall have set aside adequate reserves. None of Mortgage Borrower, Borrower, Operating Company or any of their respective Affiliates has as of the date hereof requested or been granted any extension of time to file any Federal, state, local or foreign tax return. None of Mortgage Borrower, Borrower or Operating Company is party to (or has any obligation under) any tax sharing agreement.

**4.1.38 Intentionally Omitted.**

**4.1.39 Intentionally Omitted.**

**4.1.40 Operation of Properties.**

(a) The operation, management and use of each Individual Property by Mortgage Borrower and Operating Company is in compliance in all material respects with applicable Legal Requirements, including all applicable Gaming Laws, and all other federal, state, or local governmental authorities including, without limitation, those requirements relating to such Individual Property's physical structure and environment, except to the extent that non-compliance would not reasonably be expected to have an Individual Material Adverse Effect.

(b) The licenses, permits, and regulatory agreements, approvals and registrations relating to each Individual Property, including the Gaming Licenses, (i) may not be, and have not been, transferred to any location other than any Individual Property; have not been pledged as collateral security for any other loan or indebtedness; and are held free from restrictions or known conflicts that would materially impair the use or operation of any Individual Property as intended, (b) are in full force and effect and in good standing and (c) are not provisional, conditional or probationary in any manner.

(c) None of Mortgage Borrower, Borrower, Holdings, Guarantor or Operating Company is currently the subject of any proceeding by any Governmental Authority, and no notice of any violation has been received from a Governmental Authority that, in either case, would reasonably be expected to have an Individual Material Adverse Effect or an Aggregate Material Adverse Effect.

(d) None of Mortgage Borrower, Borrower or Operating Company has received a statement of charges or deficiencies and no penalty enforcement actions have been undertaken against any of them relating to any Individual Property by any Governmental

Authority during the last three (3) calendar years which caused or could cause an Individual Material Adverse Effect or an Aggregate Material Adverse Effect.

(e) Each Operating Lease and Operating Lease Guaranty is in full force and effect and no party to either agreement has defaulted thereunder in any material respect.

(f) None of Mortgage Borrower or Operating Company has pledged its receivables relating to any of the Properties as collateral security for any other loan or indebtedness.

**4.1.41 Mortgage Loan Representations and Warranties.** All of the representations and warranties contained in the Mortgage Loan Documents are hereby incorporated into this Agreement and deemed made hereunder as and when made thereunder and shall remain incorporated without regard to any waiver, amendment or other modification thereof by the Mortgage Lender or to whether the related Mortgage Loan Document has been repaid or otherwise terminated, unless otherwise consented to in writing by Lender.

**4.1.42 Affiliates.** Effective as of the consummation of the transactions contemplated by this Agreement, the sole member of Borrower is Principal, which owns one hundred percent (100%) of the membership interests in Borrower. Borrower does not have any subsidiaries except as set forth in Schedule VIII.

**Section 4.2. Survival of Representations.** Borrower agrees that all of the representations and warranties of Borrower set forth in Section 4.1 and elsewhere in this Agreement and in the other Loan Documents shall survive for so long as any amount remains owing to Lender under this Agreement or any of the other Loan Documents by Borrower. All representations, warranties, covenants and agreements made in this Agreement or in the other Loan Documents by Borrower shall be deemed to have been relied upon by Lender notwithstanding any investigation heretofore or hereafter made by Lender or on its behalf.

## **V. BORROWER COVENANTS**

**Section 5.1. Affirmative Covenants.** From the date hereof and until payment and performance in full of all obligations of Borrower under the Loan Documents or the earlier release of the Liens of the Pledge Agreement (and all related obligations) in accordance with the terms of this Agreement and the other Loan Documents, Borrower hereby covenants and agrees with Lender that:

**5.1.1 Existence; Compliance with Legal Requirements.** Borrower shall, and shall cause Mortgage Borrower and Operating Company to, do or cause to be done all things necessary to preserve, renew and keep in full force and effect their existence, rights, licenses, permits and franchises and comply with all Legal Requirements applicable to Borrower, Mortgage Borrower, the Collateral, Operating Company and the Properties, including, without limitation, Prescribed Laws. There shall never be committed by Borrower and Borrower shall not permit Mortgage Borrower to permit any other Person in occupancy of or involved with the operation or use of the Properties, including Operating Company, to commit any act or omission affording the federal government or any state or local government the right of forfeiture against,

the Collateral, any Individual Property or any part thereof or any monies paid in performance of Borrower's obligations under any of the Loan Documents. Borrower hereby covenants and agrees not to commit, permit or suffer to exist any act or omission affording such right of forfeiture. Borrower shall, and shall cause Mortgage Borrower to, at all times maintain, preserve and protect all franchises and trade names and preserve all the remainder of its property used or useful in the conduct of its business and shall keep the Properties in good working order and repair. Borrower shall cause Mortgage Borrower to keep the Properties insured at all times as (and in the amounts) provided elsewhere in this Agreement. Borrower shall cause Mortgage Borrower to operate any Individual Property that is the subject of the O&M Agreement in accordance with the terms and provisions thereof in all material respects. After prior notice to Lender, Borrower, at its own expense, may contest (or cause Mortgage Borrower to contest) by appropriate legal proceeding promptly initiated and conducted in good faith and with due diligence, the validity of any Legal Requirement, the applicability of any Legal Requirement to Borrower, Mortgage Borrower, the Collateral or any Individual Property or any alleged violation of any Legal Requirement, provided that (i) no Event of Default has occurred and remains uncured; (ii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any applicable material instrument to which Borrower or Mortgage Borrower is subject and shall not constitute a default thereunder and such proceeding shall be conducted in accordance with all Legal Requirements; (iii) neither the Collateral nor any Individual Property nor any material part thereof or interest therein will be in imminent danger of being sold, forfeited, terminated, cancelled or lost; (iv) Borrower shall promptly upon receipt of a final, non-appealable determination thereof comply with any such Legal Requirement determined to be valid or applicable or cure any violation of any such Legal Requirement; (v) such proceeding shall suspend the enforcement of the contested Legal Requirement against Borrower, Mortgage Borrower, the Collateral and any Individual Property; and (vi) Borrower shall furnish such security as may be required in the proceeding, or as may be reasonably requested by Lender, to insure compliance with such Legal Requirement, together with all interest and penalties payable in connection therewith. Lender may apply any such security, as necessary to cause compliance with such Legal Requirement at any time when, in the reasonable judgment of Lender, the validity, applicability or violation of such Legal Requirement is finally established or the Collateral or any Individual Property (or any part thereof or interest therein) shall be in imminent danger of being sold, forfeited, terminated, cancelled or lost.

**5.1.2 Taxes and Other Charges.** Borrower shall pay or shall cause Mortgage Borrower to pay or cause to be paid all Taxes and Other Charges now or hereafter levied or assessed or imposed against the Properties or any part thereof as the same become due and payable; provided, however, Borrower's obligation to cause Mortgage Borrower to directly pay or cause to be paid Taxes shall be suspended for so long as Borrower complies with the terms and provisions of Section 7.2 hereof. Borrower will deliver or cause to be delivered to Lender receipts for payment or other evidence satisfactory to Lender that the Taxes and Other Charges have been so paid or are not then delinquent no later than the date on which the Taxes and/or Other Charges would otherwise be delinquent if not paid. Borrower shall furnish or cause to be furnished to Lender receipts for the payment of the Taxes and the Other Charges prior to the date the same shall become delinquent provided, however, Borrower is not required to furnish such receipts for payment of Taxes in the event that such Taxes have been paid by Lender pursuant to Section 7.2 hereof. Borrower shall not suffer (and shall not permit Mortgage Borrower to suffer)

and shall promptly pay or cause to be paid and discharged (or cause Mortgage Borrower to pay or cause to be paid and discharged) any Lien or charge whatsoever which may be or become a Lien or charge against the Properties other than Permitted Encumbrances, and shall promptly pay or cause to be paid for all utility services provided to the Properties. After prior notice to Lender, Borrower, at its own expense, may contest (or cause Mortgage Borrower to contest) by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any Taxes or Other Charges, provided that (a) no Default or Event of Default has occurred and remains uncured; (b) such proceeding shall be permitted under and be conducted in accordance with the provisions of any applicable material other instrument to which Borrower or Mortgage Borrower is subject and shall not constitute a default thereunder and such proceeding shall be conducted in accordance with all Legal Requirements; (c) none of the Collateral, any Individual Property or any part of either or interest in either will be in imminent danger of being sold, forfeited, terminated, cancelled or lost; (d) Borrower shall promptly upon receipt of a final, non-appealable determination thereof pay (or cause Mortgage Borrower to pay) the amount of any such Taxes or Other Charges, together with all costs, interest and penalties which may be payable in connection therewith; (e) such proceeding shall suspend the collection of such contested Taxes or Other Charges from the applicable Individual Property; and (f) Borrower shall furnish or cause Mortgage Borrower to furnish such security as may be required in the proceeding, or as may be reasonably requested by Lender, to insure the payment of any such Taxes or Other Charges, together with all interest and penalties thereon. Lender may pay over any such cash deposit or part thereof held by Lender to the claimant entitled thereto at any time when, in the judgment of Lender, the entitlement of such claimant is established or any Individual Property (or part thereof or interest therein) shall be in danger of being sold, forfeited, terminated, cancelled or lost or there shall be any danger of the Lien of any Mortgage being primed by any related Lien.

**5.1.3 Litigation.** Borrower shall give prompt notice to Lender of any litigation or governmental proceedings pending or, to Borrower's knowledge, threatened against Borrower, Mortgage Borrower, the Collateral, Operating Company, Holdings or Guarantor which, in any such case, might materially adversely affect Borrower's, Mortgage Borrower's, the Collateral's, Operating Company's, Holdings's or Guarantor's condition (financial or otherwise) or business or any Individual Property. Borrower shall not, without the prior written consent of Lender (which may be furnished or withheld at its sole and absolute discretion), give its consent or approval to the settlement of any claim against Borrower, other than a fully insured third party claim, in any amount greater than One Hundred Thousand and no/100 Dollars (\$100,000.00).

**5.1.4 Access to Properties.** Borrower shall cause Mortgage Borrower to permit agents, representatives and employees of Lender and any Noteholder, and prospective purchasers of any Note or any interest therein, to inspect the Properties or any part thereof at reasonable hours upon reasonable advance notice, and Borrower shall cause Operating Company to permit such access by Lender, in each case subject to the rights of tenants under Leases and Hotel guests.

**5.1.5 Notice of Default.** Borrower shall promptly advise Lender of any material Default or Event of Default of which Borrower has knowledge, including any Mortgage Loan Default or Mortgage Loan Event of Default.

**5.1.6 Cooperate in Legal Proceedings.** Borrower shall cooperate fully with Lender with respect to any proceedings before any court, board or other Governmental Authority which may in any way affect the rights of Lender hereunder or any rights obtained by Lender under any of the other Loan Documents and, in connection therewith, permit Lender, at its election, to participate in any such proceedings.

**5.1.7 Perform Loan Documents.** Borrower shall observe, perform and satisfy all the terms, provisions, covenants and conditions of, and shall pay when due all costs, fees and expenses to the extent required under the Loan Documents executed and delivered by, or applicable to, Borrower.

**5.1.8 Award and Insurance Benefits.** Borrower shall cooperate with Lender in obtaining for Lender the benefits of any Awards or Insurance Proceeds lawfully or equitably payable in connection with any Individual Property, and Lender shall be reimbursed for any actual, reasonable out-of-pocket expenses incurred in connection therewith (including actual, reasonable out-of-pocket attorneys' fees and disbursements, and, if reasonably required, the payment by Borrower of the expense of an appraisal on behalf of Lender in case of Casualty or Condemnation affecting any Individual Property or any part thereof) out of such Insurance Proceeds.

**5.1.9 Further Assurances.** Borrower shall and shall cause Mortgage Borrower, Guarantor and Operating Company to, at Borrower's sole cost and expense:

(a) furnish to Lender all instruments, documents, boundary surveys, footing or foundation surveys, certificates, plans and specifications, appraisals, title and other insurance reports and agreements, and each and every other document, certificate, agreement and instrument, in each case in such party's possession, not subject to confidentiality restrictions barring the delivery of such materials, and which are either required to be furnished by Borrower or Operating Company pursuant to the terms of the Loan Documents or which are reasonably requested by Lender in connection therewith;

(b) execute and deliver to Lender such documents, instruments, certificates, assignments and other writings, and do such other acts necessary or desirable, to evidence, preserve and/or protect the collateral at any time securing or intended to secure the obligations of Borrower under the Loan Documents, as Lender may reasonably require; and

(c) do and execute all and such further lawful and reasonable acts, conveyances and assurances for the better and more effective carrying out of the intents and purposes of this Agreement and the other Loan Documents, as Lender shall reasonably require from time to time.

**5.1.10 Mortgage Taxes.** Borrower represents that it has caused Mortgage Borrower to pay all state, county and municipal recording and all other taxes imposed upon the execution and recordation of the Mortgage.

**5.1.11 Financial Reporting.** (a) Borrower will keep or will cause to be kept and maintained on a Fiscal Year basis, in accordance with GAAP (or such other accounting basis

acceptable to Lender), books, records and accounts reflecting all of the financial affairs of Borrower and all items of income and expense in connection with the operation on an individual basis of the Properties. Lender (at Lender's sole cost and expense) shall have the right from time to time at all times during normal business hours upon reasonable notice to examine the books, records and accounts of Borrower and Mortgage Borrower at the office of Borrower or any other Person maintaining such books, records and accounts and to make such copies or extracts thereof as Lender shall desire. After the occurrence and during the continuance of an Event of Default, Borrower shall pay any costs and expenses incurred by Lender to examine Borrower's, Mortgage Borrower's or to the extent permitted under the Operating Lease, Operating Company's accounting records with respect to the Properties, as Lender shall determine to be necessary or appropriate in the protection of Lender's interest.

(b) Borrower will furnish or cause to be furnished to Lender annually, by no later than April 30, 2009, and thereafter within no more than one hundred twenty (120) days following the end of each Fiscal Year of Borrower, a complete copy of the annual financial statements of the Operating Company, Mortgage Borrower and Borrower (and of no other entity or Person), audited by a "Big Four" accounting firm or other independent certified public accountant acceptable to Lender in accordance with GAAP (or such other accounting basis acceptable to Lender) covering the Properties on a combined basis for such Fiscal Year (and no other Persons, Properties or assets) and containing statements of profit and loss for the Operating Companies, Borrower, Mortgage Borrower and the Properties (on a combined basis) and a balance sheet for the Operating Company, Borrower, Mortgage Borrower and the Properties (on a combined basis), in each case showing no other assets than the Properties (and the interests of Operating Company, Borrower and Mortgage Borrower therein). In addition, Borrower will furnish or cause to be furnished to Lender by no later than April 30, 2008 (i) a "balance sheet only audit" prepared by a "Big Four" accounting firm or other independent certified public accountant acceptable to Lender (for the Fiscal Year ending December 31, 2007) and (ii) a complete copy of annual financial statements for the Operating Company, Mortgage Borrower and Borrower prepared in accordance with GAAP (or such other accounting basis acceptable to Lender), covering the Operating Companies, Mortgage Borrower, Borrower and the Properties on a combined basis for such Fiscal Year (ending December 31, 2007) and containing statements of profit and loss for the Operating Companies, Mortgage Borrower, Borrower and the Properties (in each case, on a combined basis), and a balance sheet for the Operating Companies, Mortgage Borrower, Borrower and the Properties (in each case, on a combined basis). All such statements (including statements for the Fiscal Year ending December 31, 2007, and thereafter for all statements provided yearly to Lender) shall set forth the financial condition and the results of operations for the Properties for such Fiscal Year, and shall include, but not be limited to, amounts representing Borrower's reasonable and good faith determination of aggregate annual EBITDAR from all of the Properties and capital expenditures (allocated between maintenance and growth) at the Properties (it being acknowledged that Borrower's statement of EBITDAR pursuant to the above provisions of this sentence and the balance of this Section 5.1.11 shall not be binding on Lender and shall be subject to Lender's reasonable review). All such statements (including statements for the Fiscal Year ending December 31, 2007, and thereafter for all statements provided yearly to Lender) shall also set forth unaudited schedules for each Individual Property, detailing the statements of profit and loss and a balance sheet for each Individual Property, as well as gross revenues, gross hotel and casino revenues, EBITDAR and capital

expenditures (allocated between maintenance and growth). The annual financial statements, as described above, shall be accompanied by (1) a comparison of the budgeted income and expenses and the actual income and expenses for the prior Fiscal Year, (2) in the case of any financial statements for Fiscal Year 2008 and thereafter, an unqualified opinion of a "Big Four" accounting firm or other independent certified public accountant reasonably acceptable to Lender, (3) room rate reports and RevPAR calculations, and (4) an Officer's Certificate certifying (A) that each annual financial statement presents fairly the financial condition and the results of operations of the Operating Companies, Mortgage Borrower, Borrower and the Properties being reported upon, (B) that such financial statements have been prepared in accordance with GAAP (or such other accounting basis acceptable to Lender) and (C) as of the date thereof whether there exists an event or circumstance which constitutes a Default or Event of Default, and if such Default or Event of Default exists, the nature thereof, the period of time it has existed and the action then being taken to remedy the same. Any audits performed by Borrower (and any audited materials and other information provided to Lender, as required hereunder in order for Borrower to comply with the requirements of this subparagraph (b)) may be performed with respect to the Properties on a "combining basis" (so that a single audit of the Properties, rather than individual audits of each of the separate Properties, may be performed and provided).

(c) Borrower will furnish, or cause to be furnished, to Lender on or before sixty (60) days after the end of each fiscal quarter the following items, accompanied by an Officer's Certificate stating that such items fairly present the financial condition and results of the Operating Company, Mortgage Borrower, Borrower and the Properties, subject to normal year-end adjustments, as applicable: (i) quarterly and year-to-date operating statements (including Capital Expenditures) noting such information as is necessary and sufficient to fairly represent the financial position and results of operation of the Properties during such quarter, and containing a comparison of budgeted income and expenses and the actual income and expenses together with a detailed explanation of any variances of ten percent (10%) or more between budgeted and actual amounts for such periods, all in form reasonably satisfactory to Lender; and (ii) a calculation reflecting the Debt Service Coverage Ratio, gross revenues, gross hotel and casino revenues, EBITDAR and capital expenditures (allocated between maintenance and growth), in each case for the immediately preceding twelve (12) month period as of the last day of such quarter (it being acknowledged that Borrower's statement of EBITDAR pursuant to the above provisions of this sentence and the balance of this [Section 5.1.11](#) shall not be binding on Lender and shall be subject to Lender's reasonable review). Borrower shall provide the statements and calculations required hereunder on both a "combined basis" for all Properties and on an Individual Property-by-Individual Property basis. In addition, such Officer's Certificate shall also state that the representations and warranties of Borrower set forth in [Section 4.1.30](#) are true and correct as of the date of such certificate and that there are no trade payables outstanding for more than ninety (90) days. In addition, prior to a Securitization or Syndication, Borrower shall be obligated to provide the statements and calculations, as well as the Officer's Certificate, described in this subparagraph (c) to Lender on a monthly basis (such requirements to be modified as appropriate to reflect the fact that the information shall be required to be provided monthly (e.g., monthly rent rolls, monthly and year-to-date operating statements, a calculation reflecting the Debt Service Coverage Ratio for the immediately preceding twelve (12) month

period as of the last day of such month), in each case within no more than thirty (30) days following the end of each calendar month.

(d) For the partial year period commencing on the date hereof, and for each Fiscal Year thereafter, Borrower shall submit to Lender for informational purposes only an Annual Budget not later than the commencement of such period or Fiscal Year in form reasonably satisfactory to Lender.

(e) Intentionally Omitted.

(f) If, at the time one or more Disclosure Documents are being prepared for a public Securitization, Lender expects that Borrower alone or Borrower and one or more Affiliates of Borrower collectively, or the Properties and Related Properties collectively, will be a “**Significant Obligor**”, as that term is defined in Item 1101(k) of Regulation AB (as defined below), Borrower shall furnish to Lender upon request (i) the selected financial data or, if applicable, net operating income, required under Item 1112(b)(1) of Regulation AB, if Lender expects that the principal amount of the Loan together with any other loans made to an Affiliate of Borrower or secured by a Related Property, that is included in a Securitization with the Loan (each, a “**Related Loan**”) as of the cut-off date for such Securitization may, or if the principal amount of the Loan together with any Related Loans as of the cut-off date for such Securitization and at any time during which the Loan and any Related Loans are included in a Securitization does, equal or exceed ten percent (10%) (but less than twenty percent (20%)) of the aggregate principal amount of all loans included or expected to be included, as applicable, in the Securitization or (ii) the financial statements required under Item 1112(b)(2) of Regulation AB, if Lender expects that the principal amount of the Loan together with any Related Loans as of the cut-off date for such Securitization may, or if the principal amount of the Loan together with any Related Loans as of the cut-off date for such Securitization and at any time during which the Loan and any Related Loans are included in a Securitization does, equal or exceed twenty percent (20%) of the aggregate principal amount of all loans included or expected to be included, as applicable, in the Securitization. Such financial data or financial statements shall be furnished to Lender (A) within ten (10) Business Days after written notice from Lender in connection with the preparation of Disclosure Documents for the Securitization, (B) not later than thirty (30) days after the end of each fiscal quarter of Borrower and (C) not later than sixty (60) days after the end of each fiscal year of Borrower; provided, however, that Borrower shall not be obligated to furnish financial data or financial statements pursuant to clauses (B) or (C) of this sentence with respect to any period for which a filing pursuant to the Exchange Act in connection with or relating to the Securitization (an “**Exchange Act Filing**”) is not required. If requested by Lender, in writing, Borrower shall use commercially reasonable efforts to furnish to Lender financial data and/or financial statements for any tenant of any of the Properties (other than a tenant that is a reporting company under the Exchange Act) if, in connection with a Securitization, Lender expects there to be, with respect to such tenant or group of affiliated tenants, a concentration within all of the loans included or expected to be included, as applicable, in the Securitization such that such tenant or group of affiliated tenants would constitute a Significant Obligor. “**Related Property**” shall mean a parcel of real property, together with improvements thereon and personal property related thereto, that is “related”, within the meaning of the definition of Significant Obligor, to any of the Properties. “**Regulation AB**” shall mean

(g) All financial data and financial statements provided by Borrower, Mortgage Borrower and Operating Company hereunder pursuant to Section 5.1.11(f) shall be prepared in accordance with GAAP, and all such financial statements shall meet the requirements of Regulation AB, Regulation S-X, Regulation S-K to the extent applicable and any other applicable legal requirements. All financial statements referred to in clause (ii) of Section 5.1.11(f) shall be audited by independent accountants of Borrower reasonably acceptable to Lender in accordance with Regulation AB, Regulation S-X, Regulation S-K to the extent applicable and all other applicable legal requirements, shall be accompanied by the manually executed report of the independent accountants thereon, which report shall meet the requirements of Regulation AB, Regulation S-X, Regulation S-K to the extent applicable and all other applicable legal requirements, and shall be further accompanied by a manually executed written consent of the independent accountants, in form and substance reasonably acceptable to Lender, to the inclusion of such financial statements in any Disclosure Document and any Exchange Act Filing and to the use of the name of such independent accountants and the reference to such independent accountants as “experts” in any Disclosure Document and Exchange Act Filing, all of which shall be provided at the same time as the related financial statements are required to be provided, in each case if applicable (i.e., in the case of a public securitization). All financial data and financial statements (audited or unaudited) provided by Borrower under this Section 5.1.11(g) shall be accompanied by an Officer’s Certificate which shall state that such financial statements meet the requirements set forth in the first sentence of this Section 5.1.11(g) to the extent applicable.

(h) If requested by Lender, Borrower shall provide Lender, promptly upon request, with any other or additional financial statements, or financial, statistical or operating information, as Lender shall reasonably determine to be required pursuant to Regulation AB, Regulation S-X, Regulation S-K or any amendment, modification or replacement thereto or other legal requirements in connection with any Disclosure Document or any Exchange Act Filing or as shall otherwise be reasonably requested by the Lender.

(i) In the event Lender reasonably determines, in connection with a Securitization, that the financial data and financial statements required in order to comply with Regulation AB, Regulation S-X, Regulation S-K or any amendment, modification or replacement thereto or other legal requirements are other than as provided herein, then notwithstanding the provisions of Sections 5.1.11(f) and (g), Lender may request, and Borrower shall promptly provide, such other financial statements as Lender determines to be necessary or appropriate for such compliance.

(j) Any reports, statements or other information required to be delivered under this Agreement shall be delivered (i) in paper form, and (ii) if requested by Lender and within the capabilities of Borrower’s data systems without change or modification thereto, in electronic form and prepared using a Microsoft Word for Windows or WordPerfect for Windows files (which files may be prepared using a spreadsheet program and saved as word processing files). Borrower agrees that Lender may disclose information regarding any of the Properties,

the Collateral, Mortgage Borrower, Borrower and Operating Company that is provided to Lender pursuant to this Section in connection with the Securitization to such parties reasonably requesting such information in connection with such Securitization.

**5.1.12 Business and Operations.** Borrower will, and will cause Mortgage Borrower and Operating Company to, continue to engage in the businesses presently conducted by it as and to the extent the same are necessary for the ownership, maintenance, management and operation of the Properties. Borrower will and will cause Mortgage Borrower and Operating Company to qualify to do business and will remain in good standing under the laws of each jurisdiction as and to the extent the same are required for the ownership, maintenance, management and operation of the Properties.

**5.1.13 Title to the Properties and the Collateral.** Borrower will cause Mortgage Borrower to warrant and defend (a) the title to each Individual Property and every part thereof, subject only to Liens permitted hereunder (including Permitted Encumbrances) and (b) the validity and priority of the Liens of the Mortgages and the Assignments of Leases, subject only to Liens permitted hereunder (including Permitted Encumbrances), in each case against the claims of all Persons whomsoever. Borrower shall reimburse Lender for any actual out-of-pocket losses, costs, damages or expenses (including reasonable attorneys' fees and court costs) incurred by Lender if an interest in any Individual Property, other than as permitted hereunder, is claimed by another Person. Borrower will warrant and defend (a) the title to the Collateral and every part thereof, subject only to Liens permitted hereunder and (b) the validity and priority of the Liens of the Pledge Agreement, in each case against the claims of all Persons whomsoever. Borrower shall reimburse Lender for any actual out-of-pocket losses, costs, damages or expenses (including reasonable attorneys' fees and court costs) incurred by Lender if an interest in any part of the Collateral, other than as permitted hereunder, is claimed by another Person.

**5.1.14 Costs of Enforcement.** In the event (a) that any Mortgage encumbering any Individual Property or the Lien of the Pledge Agreement is foreclosed in whole or in part or that any such Mortgage or Pledge Agreement is put into the hands of an attorney for collection, suit, action or foreclosure, (b) of the foreclosure of any mortgage prior to or subsequent to any Mortgage or any Lien prior to or subsequent to the Lien of the Pledge Agreement in which proceeding Mortgage Lender or Lender is made a party or exercises any or all of its rights or remedies under such Mortgage or the Pledge Agreement or any other Loan Documents as and when permitted thereby, or (c) of the bankruptcy, insolvency, rehabilitation or other similar proceeding in respect of Borrower, Mortgage Borrower or Operating Company or an assignment by Borrower, Mortgage Borrower or Operating Company for the benefit of its creditors, Borrower, its successors or assigns, shall be chargeable with and agrees to pay all reasonable out-of-pocket costs of collection and defense, including reasonable out-of-pocket attorneys' fees and costs, incurred by Lender, Mortgage Borrower or Borrower in connection therewith and in connection with any appellate proceeding or post-judgment action involved therein, together with all required service or use taxes.

**5.1.15 Estoppel Statement.** (a) After request by Lender, Borrower shall within ten (10) Business Days (but, provided there exists no Default or Event of Default, no more often than twice during the course of each fiscal year of Borrower) furnish Lender with a statement,

duly acknowledged and certified, (i) with respect to the Loan, setting forth (A) the original principal amount of the Note, (B) the unpaid principal amount of the Loan, (C) the Interest Rate of the Loan, (D) the date installments of interest and/or principal were last paid, (E) any offsets or defenses to the payment of the Debt, if any, and (F) that the Note, this Agreement, the Pledge Agreement and the other Loan Documents are valid, legal and binding obligations and have not been modified or if modified, giving particulars of such modification, and (ii) with respect to the Mortgage Loan, setting forth (A) the original principal amount of the Mortgage Loan, (B) the unpaid principal amount of the Mortgage Loan, (C) the interest rate of the Mortgage Loan, (D) the date installments of interest and/or principal were last paid, (E) any offsets or defenses to the payment of the debt, if any, and (F) that the Mortgage Note, the Mortgage Loan Agreement, the Security Instruments and the other Mortgage Loan Documents are valid, legal and binding obligations and have not been modified or if modified, giving particulars of such modification.

(b) Borrower shall exercise reasonable best efforts to deliver to Lender upon request, tenant estoppel certificates from each space tenant leasing space at the Properties, and shall exercise reasonable best efforts to deliver an estoppel certificate from each ground lessor, each in form and substance reasonably satisfactory to Lender, provided that Borrower shall not be required to deliver such certificates more frequently than two (2) times in any calendar year.

(c) After request by Borrower, but not more than twice during the course of each year, Lender shall furnish Borrower with a statement setting forth (i) the original principal amount of the Loan, (ii) the unpaid principal amount of the Loan, (iii) the Interest Rate of the Loan, (iv) the date installments of interest and/or principal were last paid, and (v) that the Loan Documents have not been modified or if modified, giving particulars of such modification.

**5.1.16 Loan Proceeds.** Borrower shall use the proceeds of the Loan received by it on the Closing Date only for the purposes set forth in Section 2.1.4.

**5.1.17 Performance by Borrower.** Borrower shall in a timely manner observe, perform and fulfill each and every covenant, term and provision of each Loan Document executed and delivered by, or applicable to, Borrower, and shall not enter into or otherwise suffer or permit any amendment, waiver, supplement, termination or other modification of any Loan Document executed and delivered by, or applicable to, Borrower without the prior consent of Lender. Borrower shall cause Mortgage Borrower, in a timely manner, to observe, perform and fulfill each and every covenant, term and provision of each Mortgage Loan Document executed and delivered by, or applicable to, Mortgage Borrower, and shall not cause or permit Mortgage Borrower to enter into or otherwise suffer or permit any amendment, waiver, supplement, termination or other modification of any Mortgage Loan Document executed and delivered by, or applicable to, Mortgage Borrower without the prior written consent of Lender.

**5.1.18 Confirmation of Representations.** Borrower shall deliver, in connection with any Securitization, (a) one or more Officer's Certificates certifying as to the accuracy of all representations made by Borrower in the Loan Documents as of the date of the closing of such Securitization in all relevant jurisdictions, and (b) certificates of the relevant Governmental Authorities in all relevant jurisdictions indicating the good standing and qualification of Mortgage Borrower, Borrower and Holdings as of the date of the Securitization.

**5.1.19 No Joint Assessment.** Borrower shall not, and shall not permit Mortgage Borrower to, suffer, permit or initiate the joint assessment of any Individual Property (a) with any other real property constituting a tax lot separate from such Individual Property, and (b) which constitutes real property with any portion of such Individual Property which may be deemed to constitute personal property, or any other procedure whereby the lien of any taxes which may be levied against such personal property shall be assessed or levied or charged to such real property portion of the Individual Property, except as required by Legal Requirements.

**5.1.20 Leasing Matters.** (a) Borrower shall not (and shall cause Mortgage Borrower and Guarantor (Operating Lease) not to), without the prior written consent of Lender (and, if a Securitization shall have occurred, Borrower shall have obtained and delivered to Lender a Rating Agency Confirmation) restate, materially modify, materially amend or materially supplement (or permit the restatement, material modification, amendment or supplement of) any Operating Lease or Operating Lease Guaranty (provided, that any modification, amendment or supplement affecting any of the economic terms of any Operating Lease or any of the terms of the Operating Lease Guaranty shall be deemed to be material for purposes hereof), terminate or accept the surrender (or permit the termination or surrender) of any Operating Lease or Operating Lease Guaranty, or release or materially waive (or permit the release or material waiver of) the Operating Company or Guarantor (Operating Lease) from the performance or observance of any obligation or condition under the Operating Leases or Operating Lease Guaranty. In connection with a material modification, Lender may request, and in such event, Borrower shall not effect such modification without, an Additional True Lease Opinion in form and substance reasonably satisfactory to Lender issued by Borrower's counsel (at Borrower's expense). Borrower shall not permit (or cause or permit Mortgage Borrower to permit) the prepayment of any rents under the Operating Leases for more than one (1) month prior to the due date thereof. Notwithstanding the foregoing, Lender's consent shall not be required in connection with any modification, amendment or waiver of any provision of the Operating Lease as may be reasonably necessary to comply with the requirements of this Agreement or any other Loan Document or that makes the provisions of the Operating Lease consistent with the provisions of this Agreement or any other Loan Document. Notwithstanding anything contained in this Section 5.1.20(a) to the contrary, (x) Lender's consent to any amendment, modification or supplement of the Operating Lease (or any new Operating Lease) or the Operating Lease Guaranty may also be conditioned on the delivery by Borrower, upon the reasonable request of Lender, of an Additional Insolvency Opinion and/or an Additional True Lease Opinion acceptable to Lender (and, if a Securitization shall have occurred, acceptable to the Rating Agencies), and (y) Lender's consent to any assignment of any Operating Lease or Operating Lease Guaranty (or of any interest therein) or any material amendment, material modification or material supplement of any Operating Lease shall also be conditioned on the delivery by Borrower, upon the reasonable request of Lender, of an Additional Insolvency Opinion and an Additional True Lease Opinion acceptable to Lender (and, if a Securitization shall have occurred, acceptable to the Rating Agencies).

(b) Borrower shall not permit (or consent to) an assignment by any Operating Company of any such Operating Company's interest(s) under any Operating Lease or an assignment by any Mortgage Borrower of any such Mortgage Borrower's interest(s) under any Operating Lease Guaranty without, in each case, Lender's prior written consent (and, if a

Securitization shall have occurred, at Lender's request, without Borrower providing to Lender a Rating Agency Confirmation and an Additional True Lease Opinion).

(c) All space Leases and all renewals of space Leases executed after the date hereof entered into by Operating Company shall (i) provide for rental rates, rent credits and free rent periods comparable to existing local market rates for comparable properties, (ii) be on commercially reasonable terms, (iii) provide that such Lease is subordinate to the Mortgage encumbering the Individual Property in question and that the lessee will attorn to Mortgage Lender and any purchaser at a foreclosure sale; (iv) not contain any terms which would materially adversely affect Lender's rights under the Loan Documents; (v) not grant to the Tenants thereunder any option or right to purchase the applicable Individual Property (or any portion thereof); and (v) in the case of Major Leases, have initial terms less than twenty (20) consecutive years, in each case (unless otherwise consented to by Lender pursuant to clause (d) below).

(d) (i) Any Major Lease entered into by Operating Company with respect to an Individual Property executed after the date hereof (and any renewal of any Major Lease with respect to an Individual Property), and any space Lease or space Lease renewal proposed to be entered into by Operating Company after the date hereof and that does not meet the criteria set forth in Sections 5.1.20(a) and subparagraph (c) above, shall be subject to the prior written approval of Lender, which approval shall not be unreasonably withheld, conditioned or delayed. Borrower shall not terminate or accept the surrender of (and shall not permit Operating Company or Mortgage Borrower to terminate or accept the surrender of) a Major Lease (unless by reason of a tenant default) without the consent of Lender.

(ii) Every submission to Lender of any proposed Major Lease (or Major Lease renewal, amendment, modification or termination) for Lender's approval shall be forwarded to Lender together with a notice from Borrower (in bold typeface) that states "YOUR FAILURE TO RESPOND TO THIS NOTICE AND REQUEST FOR APPROVAL WITHIN TEN (10) BUSINESS DAYS OF YOUR RECEIPT OF THIS NOTICE SHALL CONSTITUTE YOUR DEEMED CONSENT TO THE MATTERS DESCRIBED IN OR THAT ARE THE SUBJECT OF THIS NOTICE". If Lender responds to Borrower's request by identifying missing documents or materials that are incomplete or inaccurate (and that are the subject of the request for approval), then Borrower shall re-submit such documents or materials to Lender for its approval together with a second notice from Borrower that complies with this section.

(ii) If Lender fails to approve or disapprove any such proposed request or submission attached to a first notice or request sent by Borrower (or the matters that are the subject of the re-submitted notice or request for approval) within ten (10) Business Days of receipt of same, Borrower shall re-submit such instruments or materials to Lender for Lender's approval and give Lender a second notice (in bold typeface) that states "SECOND NOTICE — YOUR FAILURE TO RESPOND TO THIS NOTICE AND REQUEST FOR APPROVAL WITHIN FIVE (5) BUSINESS DAYS OF YOUR RECEIPT OF THIS NOTICE SHALL CONSTITUTE YOUR DEEMED CONSENT TO THE MATTERS DESCRIBED IN OR THAT ARE THE SUBJECT OF THIS NOTICE". If Lender fails to respond to such second notice

within five (5) Business Days of receipt of same, then Lender's consent to the proposed request or submission that is the subject of such notice shall be deemed granted.

(e) Borrower shall and shall cause Mortgage Borrower and Operating Company to (i) observe and perform the obligations imposed upon the lessor under the Leases in a commercially reasonable manner; (ii) enforce the terms, covenants and conditions contained in the Leases upon the part of the lessee thereunder to be observed or performed in a commercially reasonable manner and in a manner not to impair the value of the Individual Property involved; (iii) not collect any of the rents more than one (1) month in advance (other than security deposits); (iv) not execute any other assignment of lessor's interest in the Leases or the Rents (except as contemplated by the Loan Documents); (v) not alter, modify or change the terms of the Leases in a manner inconsistent with the provisions of the Loan Documents; and (vi) execute and deliver at the request of Lender all such further assurances, confirmations and assignments in connection with the Leases as Lender shall from time to time reasonably require.

(f) Upon request, Borrower shall furnish Lender with executed copies of all new Leases or Lease renewals or amendments.

(g) Notwithstanding anything to the contrary contained herein, Borrower shall not enter into (or permit Operating Company or Mortgage Borrower to enter into) a lease of all or substantially all of any Individual Property without Lender's prior consent.

**5.1.21 Alterations.** (a) Borrower shall cause all Alterations with respect to any portion of any of the Properties to be conducted and performed with due diligence in a good and workmanlike manner, and all materials used and work done shall be in accordance with all applicable Legal Requirements. In addition, with respect to the Convention Center Project and the Tower Project, to the extent such projects are pursued, Borrower agrees to cause Mortgage Borrower to (i) diligently pursue each such project to completion in a timely manner, subject to delays arising from Force Majeure events, (ii) cause the work to be performed in connection with each such project in substantial conformance with the plans and specifications for such project and otherwise in conformity with the Mortgage Loan Agreement and this Agreement, (iii) provide Lender with reasonably detailed monthly progress reports (and such information as Lender shall reasonably request from time to time) regarding the status of the Convention Center Project and the Tower Project, (iv) upon the substantial completion of each such project, provide Lender with evidence of the substantial completion of each such project, copies of final unconditional lien waivers from the general contractors, construction managers or subcontractors for such project (if requested by Lender) and evidence of the final payment of all amounts due in connection with each such project, and a title search for the affected Individual Property indicating that such Individual Property is free from all liens, claims and other encumbrances not previously approved by Lender, and (v) upon final completion of each such project, provide Lender with a final survey acceptable to Lender showing the "as-built" location of the completed Improvements and all easements appurtenant thereto, "as-built" plans and specifications for Lender's file and a certificate of occupancy to the extent issued by the relevant Governmental Authority.

(b) Borrower shall obtain Lender's prior consent to (i) any Material Alterations (unless collateral or a completion guaranty is provided as set forth in subparagraph (c) below) or (ii) any Alterations to any of the Improvements (even if otherwise described in clause (i) above) that is reasonably likely to have an Individual Material Adverse Effect. Lender's consent shall not be required for any Alterations other than the Alterations described in the preceding sentence. Notwithstanding any provision hereof to the contrary, without Lender's consent, not to be unreasonably withheld or delayed, in no event shall Borrower close or shutter, or undertake or permit any Tenant or other Person to undertake, an Alteration that, alone or together with other work then being undertaken, closes or shutters, more than ten percent (10%) of the income-generating space in any Individual Property at any one time. Prior to undertaking any Alteration with respect to an Individual Property in excess of five percent (5%) of the sum of the Allocated Loan Amount for such Individual Property and the "Allocated Loan Amounts" under (and as defined in each of) the Mortgage Loan Agreement and the Other Mezzanine Loan Agreements for such Individual Property, to afford Lender a prior and reasonable opportunity to determine whether or not the proposed Alteration would have an Individual Material Adverse Effect, Borrower will deliver such plans, specifications, project schedules, logistical plans, construction budgets (including a statement of sources and uses) and such other information as Lender may reasonably request in respect of such Alteration for review by Lender (and its consultants). All reasonable out-of-pocket costs and expenses incurred by Lender in connection with reviewing said Alterations proposal, including, without limitation, reasonable counsel fees and disbursements and Lender's consultants, shall be paid by Borrower. The above-referenced submission to Lender shall be delivered with a notice from Borrower (in bold typeface) that states "YOUR FAILURE TO RESPOND TO THIS NOTICE AND REQUEST FOR APPROVAL WITHIN TEN (10) BUSINESS DAYS OF YOUR RECEIPT OF THIS NOTICE SHALL CONSTITUTE YOUR DEEMED CONSENT TO THE MATTERS DESCRIBED IN OR THAT ARE THE SUBJECT OF THIS NOTICE". If Lender responds to Borrower's request by identifying missing documents or materials that are incomplete or inaccurate (and that are the subject of the request for approval), then Borrower shall re-submit such documents or materials to Lender for its approval together with a second notice from Borrower that complies with this Section. If Lender fails to approve or disapprove any such proposed request or submission attached to a first notice or request sent by Borrower (or the matters that are the subject of the re-submitted notice or request for approval) within ten (10) Business Days of receipt of same, Borrower shall re-submit such instruments or materials to Lender for Lender's approval and give Lender a second notice (in bold typeface) that states "SECOND NOTICE — YOUR FAILURE TO RESPOND TO THIS NOTICE AND REQUEST FOR APPROVAL WITHIN TEN (10) BUSINESS DAYS OF YOUR RECEIPT OF THIS NOTICE SHALL CONSTITUTE YOUR DEEMED CONSENT TO THE MATTERS DESCRIBED IN OR THAT ARE THE SUBJECT OF THIS NOTICE". If Lender fails to respond to such second notice within ten (10) Business Days of receipt of same, then Lender's consent to the proposed request or submission that is the subject of such notice shall be deemed granted.

(c) With respect to any Material Alteration, unless otherwise consented to by Lender, Borrower shall promptly deliver to Mortgage Lender as security for the payment of such amounts and as additional security for Borrower's obligations under the Loan Documents any of the following: (A) cash, (B) U.S. Obligations, (C) other securities having a rating acceptable to Lender and that the applicable Rating Agencies have confirmed in writing will not, in and of

itself, result in a downgrade, withdrawal or qualification of the initial, or, if higher, then current ratings assigned to any Securities or any class thereof in connection with any Securitization, (D) a completion and performance bond or an irrevocable letter of credit (payable on sight draft only) issued by an Eligible Institution, or (E) a completion guaranty from an Approved Guarantor in the form attached hereto as Exhibit A (with such changes as Lender shall approve), together with evidence reasonably satisfactory to Lender that the Approved Guarantor has reasonable liquidity taking into account the nature and amount of the guaranteed obligations under such completion guaranty (it being agreed that, if the Approved Guarantor in question is Holdings, then the amounts available for repayment of such obligations under any revolving credit facility in effect at such time in favor of Harrah's Operating Company, Inc. will be taken into account in determining whether Holdings has reasonable liquidity), and with, if required by applicable Rating Agency requirements, an Additional Insolvency Opinion. Such security, including the amount of the guaranteed obligations under any completion guaranty delivered as aforesaid, shall be in an amount equal to the sum of (i) the excess of the total unpaid amounts with respect to alterations to the Improvements on the applicable Individual Property (other than such amounts to be paid or reimbursed by tenants under the Leases) over the Threshold Amount and (ii) the costs of collection, and, upon the occurrence and during the continuance of an Event of Default, Lender may apply such security from time to time at the option of Lender to pay for such alterations.

**5.1.22 Operation of Properties.** (a) Borrower shall cause Mortgage Borrower to cause each of the Properties to be operated, in all material respects, in accordance with the Operating Leases and in accordance with all applicable Legal Requirements, including Gaming Laws, and all Gaming Licenses and other Operating Permits and in a manner consistent with their respective use as of the Closing Date. Borrower shall cause Operating Company to post all required bonds, if any, with any Gaming Authority as and in the amounts required under all applicable Legal Requirements (and shall, if Lender makes a request therefor, promptly provide Lender with copies of all such bonds).

(b) Borrower shall not, without Lender's prior written consent, permit Operating Company to assign or transfer, and Operating Company shall not, without Lender's prior written consent, assign or transfer, or delegate any responsibilities with respect to, any material Gaming License or Operating Permit.

(c) Borrower shall cause Operating Company to make all filings required under the Gaming Laws, or in connection with any Gaming Licenses or Operating Permits, including in connection with the origination of the Mortgage Loan and the Mezzanine Loans, and shall deliver copies of such filings as Lender shall reasonably request to Lender, promptly upon request. Borrower will timely pay all fees, investigative fees and costs required by the Gaming Authorities with respect to any such approvals and licenses. Borrower will and will cause Mortgage Borrower to diligently and comprehensively respond to any inquiries and requests from the Gaming Authorities and promptly file or cause to be filed any additional information required in connection with any required filings as soon as practicable after receipt of requests therefor.

(d) Upon request of Lender, Borrower shall deliver to Lender (or cause Operating Company to deliver to Lender) such evidence of compliance (by Borrower, Mortgage Borrower, Operating Company and each Individual Property) with all Legal Requirements, including Gaming Laws as shall be reasonably requested by Lender. Borrower shall immediately deliver to Lender (and shall cause Operating Company and Mortgage Borrower to deliver to Lender) any notice of material non-compliance or material violation of any Legal Requirement, or of any material inquiry or investigation commenced by the Gaming Authorities in connection with any of the Properties. Borrower shall immediately notify Lender if it, Mortgage Borrower or Operating Company believe that any material license, including any Gaming License, is being or could be revoked or suspended, or that any action is pending, being considered or being, or could be, taken to revoke or suspend Borrower's, Mortgage Borrower's or Operating Company's material licenses, including the Gaming Licenses, or to fine, penalize or impose remedies upon Borrower, Mortgage Borrower or Operating Company, or that any action is pending, being considered, or being, or could be, taken to discontinue, suspend, deny, decrease or recoup any payments due, made or coming due to Borrower, Mortgage Borrower or Operating Company, in each case if same might reasonably be expected to have an Individual Material Adverse Effect. Borrower shall immediately deliver to Lender any notice received by Borrower, Mortgage Borrower or Operating Company alleging or relating to the material non-compliance by Borrower, Mortgage Borrower or Operating Company with any Legal Requirements, including Gaming Laws.

(e) In the event that any of the Operating Leases expire or are terminated (without limiting any obligation of Borrower to obtain Lender's consent to any termination or modification of any of the Operating Leases in accordance with the terms and provisions of this Agreement), Borrower shall cause Mortgage Borrower to promptly enter into a replacement Operating Lease (in form and substance satisfactory to Lender) with Operating Company or another operating company reasonably satisfactory to Lender, provided Borrower will obtain a Rating Agency Confirmation as a condition to the effectiveness of such replacement Operating Lease and that Borrower will cause Guarantor (Operating Lease) to execute and deliver an operating lease guaranty in the same form and substance as the Operating Lease Guaranty.

(f) Borrower shall cause Mortgage Borrower to: (i) promptly perform and/or observe, in all material respects, all of the covenants and agreements required to be performed and observed by it under the Operating Lease and do all things necessary to preserve and to keep unimpaired its material rights thereunder; (ii) promptly notify Lender of any material default under any Operating Lease or Operating Lease Guaranty of which it is aware; (iii) promptly deliver to Lender a copy of each financial statement, business plan, capital expenditures plan, notice, report and estimate received by it under each Operating Lease; and (iv) enforce the performance and observance of all of the material covenants and agreements required to be performed and/or observed by each Operating Company under each Operating Lease and by each Guarantor (Operating Lease) under each Operating Lease Guaranty, in a commercially reasonable manner.

(g) Borrower shall cause Mortgage Borrower to cause the Hotel Components to be at all times open for business as a hotel and the Casino Components to be open for business as a casino, except to the extent necessary to undertake any alterations or repairs (subject to the

provisions of this Agreement with respect to the performance of any such alterations or repairs). Borrower shall cause each Individual Property to be at all times operated, managed and maintained, at all times and in the manner and accordance with the standards required pursuant to the Operating Leases and all applicable Legal Requirements in all material respects.

(h) If Mortgage Borrower shall be in material default under any Operating Lease, then, subject to the terms of such Operating Lease, Borrower shall cause Mortgage Borrower (subject to any applicable Legal Requirements) to grant Lender the right (but not the obligation), to cause the default or defaults under such Operating Lease to be remedied and otherwise exercise any and all rights of Mortgage Borrower under such Operating Lease, as may be necessary to prevent or cure any default provided such actions are necessary to protect Lender's interest under the Loan Documents, and Lender shall have the right to enter all or any portion of the affected Individual Property at such times and in such manner as Lender deems necessary, to prevent or to cure any such default. The actions or payments of Lender to cure any default by Mortgage Borrower under any Operating Lease shall not remove or waive, as between Borrower and Lender, any default that may occur or occurred under this Agreement by virtue of such default by Mortgage Borrower under such Operating Lease. All out-of-pocket sums reasonably expended by Lender to cure any such default shall be paid by Borrower to Lender, upon demand, with interest on such sum at the rate set forth in this Agreement from the date such sum is expended to and including the date the reimbursement payment is made to Lender. All such indebtedness shall be deemed to be secured by the Pledge Agreement and the Collateral.

(i) Borrower shall notify Lender promptly in writing of (i) the occurrence, to Borrower's knowledge, of any material default by any party to any Operating Lease or any Operating Lease Guaranty, (ii) the occurrence, to Borrower's knowledge, of any event that, with the passage of time or service of notice, or both, would constitute a material default by any party under any Operating Lease or any Operating Lease Guaranty, and (iii) the receipt by Borrower or its Affiliate of any notice (written or otherwise) from any party under any Operating Lease or any Operating Lease Guaranty noting or claiming the occurrence of any material default by Borrower under such Operating Lease or such Operating Lease Guaranty.

(j) Borrower shall (subject to any applicable Legal Requirements) promptly cause Mortgage Borrower to execute, acknowledge and deliver to Lender such instruments as may reasonably be required to permit Lender to cure any material default under any Operating Lease or permit Lender to take such other action required to enable Lender to cure or remedy the matter in default and preserve the value of the security interest of Lender under the Loan Documents with respect to the Collateral. Upon the occurrence and during the continuance of an Event of Default, Borrower irrevocably appoints Lender as its true and lawful attorney-in-fact to do, in its name or otherwise, any and all acts and to execute any and all documents that are necessary to preserve any rights of Mortgage Borrower under or with respect to any Operating Lease, including, without limitation, the right to effectuate any extension or renewal of any Operating Lease, or to preserve any rights of Mortgage Borrower whatsoever in respect of any part of any Operating Lease (and the above powers granted to Lender are coupled with an interest and shall be irrevocable).

(k) With respect to any Operating Lease or any Operating Lease Guaranty, Borrower shall, from time to time, upon ten (10) Business Days' prior written request from Lender, execute, acknowledge and deliver to Lender, a statement containing the following: (A) a statement that such Operating Lease or such Operating Lease Guaranty is unmodified and in full force and effect or, if there have been modifications, that the Operating Lease or the Operating Lease Guaranty is in full force and effect as modified and setting forth such modifications, (B) a statement that Mortgage Borrower is not in default thereunder beyond any applicable grace, cure or notice period or, if any such default shall exist thereunder, a description of such default and the steps being taken to cure such default, (C) a statement that, to Borrower's knowledge, either the other party thereto is not in default thereunder beyond any applicable grace, cure or notice period or, if any such default shall exist thereunder, a description of such default and the steps being taken to cure such default and (D) such other information with respect to the Operating Lease or the Operating Lease Guaranty as Lender shall reasonably request.

(l) With respect to any Operating Lease, Borrower shall, from time to time, upon ten (10) Business Days of Lender's prior written request from Lender, provide Lender with a statement from each Operating Company containing the following: (A) a statement that such Operating Lease is unmodified and in full force and effect or, if there have been modifications, that the Operating Lease is in full force and effect as modified and setting forth such modifications, (B) a statement that Operating Company is not in default thereunder beyond any applicable grace, cure or notice period or, if any such default shall exist thereunder, a description of such default and the steps being taken to cure such default, (C) a statement that, to Operating Company's knowledge, the Mortgage Borrower is not in default thereunder beyond any applicable grace, cure or notice period or, if any such default shall exist thereunder, a description of such default and the steps being taken to cure such default and (D) such other information with respect to Operating Company, any Operating Lease and/or any Operating Lease Guaranty as Lender shall reasonably request.

(m) With respect to any Operating Lease Guaranty, Borrower shall, from time to time, upon ten (10) Business Days of Lender's prior written request from Lender, provide Lender with a statement from Guarantor (Operating Lease) containing the following: (A) a statement that such Operating Lease Guaranty is unmodified and in full force and effect or, if there have been modifications, that the Operating Lease Guaranty is in full force and effect as modified and setting forth such modifications; (B) a statement that Guarantor (Operating Lease) is not in default thereunder beyond any applicable grace, cure or notice period or, if any such default shall exist thereunder, a description of such default and the steps being taken to cure such default and (C) such other information with respect to such Guarantor (Operating Lease) and/or Operating Lease Guaranty as Lender shall reasonably request

**5.1.23 Ground Lease Estoppel.** Borrower shall, on or prior to May 28, 2008, either (i) effect the substitution of the of the Properties commonly known as "Paris Las Vegas" and "Harrah's Laughlin" for the Individual Properties referred to as "Harrah's Lake Tahoe", "Harvey's Lake Tahoe", "Bill's Lake Tahoe" and "Showboat Atlantic City" as described in Section 2.5.2 of this Agreement or (ii) (x) cause the occurrence of the events set forth in paragraph 1, clause (ii) of the Ground Lease Side Letter and (y) in connection therewith, deliver to Lender updates to its UCC Title Insurance Policy and any endorsements to the Mortgage

Borrower's owner's policies delivered to Lender in connection with the closing of the Loan, together with such other documents, instruments and new or updated opinions (including as to enforceability, non-consolidation and true lease matters) as Lender may reasonably request. The failure by Borrower to cause the occurrence of the event described in clause (i) or of the events described in clause (ii) above, on or prior to May 28, 2008 shall constitute a **"Ground Lease Estoppel Trigger Event"** hereunder, but shall not constitute a Default or an Event of Default hereunder.

**5.1.24 Mortgage Loan Reserve Funds.** Borrower shall cause Mortgage Borrower to deposit and maintain each of the Mortgage Loan Reserve Funds (if any) as more particularly set forth in Article VII of the Mortgage Loan Agreement and to perform and comply with all the terms and provisions relating thereto. Borrower grants to Lender a first-priority perfected security interest in Borrower's interest in each of the Mortgage Loan Reserve Funds, if any, subject to the prior rights of Mortgage Lender, and any and all monies now or hereafter deposited in each Mortgage Loan Reserve Fund as additional security for payment of the Debt to the extent Borrower has an interest in same. Subject to the qualifications regarding Mortgage Lender's interest in the Mortgage Loan Reserve Funds, if any, until expended or applied in accordance with the Mortgage Loan Documents or the Loan Documents, Borrower's interest in the Mortgage Loan Reserve Funds shall constitute additional security for the Debt and upon the occurrence of an Event of Default, Lender may, in addition to any and all other remedies available to Lender, apply any sums then present in any or all of the Mortgage Loan Reserve Funds to the payment of the Debt in any order in its sole discretion and/or hold the same as Collateral for the Loan.

**5.1.25 Notices.** Borrower shall give notice, or cause notice to be given to Lender promptly upon the occurrence and during the continuance of an Event of Default and upon any of the following:

(a) any Mortgage Loan Event of Default;

(b) any default or event of default under any contractual obligation of Borrower, or, to the knowledge of Borrower, Mortgage Borrower, Operating Company, Principal or Guarantor that could reasonably be expected to have an Individual Material Adverse Affect or an Aggregate Material Adverse Affect;

(c) any litigation or proceeding affecting Borrower, or, to the knowledge of Borrower, affecting any of Mortgage Borrower, Operating Company, Principal or Guarantor, which could or could reasonably be expected to have an Individual Material Adverse Effect or an Aggregate Material Adverse Effect; or

(d) a change in the business, operations, property or financial or other condition or prospects of Borrower, or, to the knowledge of Borrower, Mortgage Borrower, Operating Company, Principal or Guarantor which could reasonably be expected to have an Individual Material Adverse Affect or an Aggregate Material Adverse Affect.

**5.1.26 Special Distributions.** On each date on which amounts are required to be paid to Lender under any of the Loan Documents (or required be disbursed to the

Mezzanine Collection Account, if applicable) Borrower shall exercise its rights under the Mortgage Borrower Company Agreement to cause Mortgage Borrower to make to Borrower a distribution in an aggregate amount such that Lender shall receive the amount required to be disbursed to the Mezzanine Collection Account or otherwise paid to Lender on such date.

**5.1.27 Curing.** Lender shall have the right, but shall not have the obligation, to exercise Borrower's rights under the Mortgage Borrower Company Agreement (a) to cure a Mortgage Loan Default or Mortgage Loan Event of Default and (b) to satisfy any Liens, claims or judgments against the Properties (except for Liens permitted by the Mortgage Loan Documents), unless Borrower or Mortgage Borrower shall be diligently pursuing remedies to cure the Mortgage Loan Default or Mortgage Loan Event of Default or to satisfy any such Liens, claims or judgments, in either case to Lender's sole satisfaction. Borrower shall reimburse Lender on demand for any and all costs incurred by Lender in connection with curing any such Mortgage Loan Default or Mortgage Loan Event of Default or satisfying any Liens, claims or judgments against any of the Properties.

**5.1.28 Mortgage Borrower Covenants.** Borrower shall cause Mortgage Borrower to comply with all obligations with which Mortgage Borrower has covenanted to comply under the Mortgage Loan Agreement and all other Mortgage Loan Documents (including, without limitation, those certain affirmative and negative covenants set forth in Article V of the Mortgage Loan Agreement) unless otherwise consented to in writing by Lender.

**Section 5.2. Negative Covenants.** From the date hereof until payment and performance in full of all obligations of Borrower under the Loan Documents or the earlier release of the Liens of the Collateral in accordance with the terms of this Agreement and the other Loan Documents, Borrower covenants and agrees with Lender that it will not do, directly or indirectly, any of the following (without, in each case, the prior written consent of Lender):

**5.2.1 Operation of Properties.** (a) Borrower shall not cause or permit Mortgage Borrower to, without Lender's prior consent: (i) surrender, terminate or cancel (or permit to be surrendered, terminated or canceled) any of the Operating Leases or any Operating Lease Guaranty; (ii) reduce or consent to the reduction of (or permit the reduction or the consent to the reduction) of the term of any of the Operating Leases; (iii) decrease or consent to any decrease (or permit to be decreased or the consent to the decrease) of the amount of any rent or other charges payable under any of the Operating Leases; (iv) Transfer, convey, assign, sell, mortgage, encumber, pledge, hypothecate, grant a security interest in, grant an option or options with respect to, or otherwise dispose of (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, whether or not for consideration) the Properties or any collateral for the Mortgage Loan (or permit Operating Company to do so), in each case without the prior written consent of Lender or except as expressly permitted in Section 5.2.10, or (v) otherwise modify, change, supplement, alter or amend, or waive or release (or permit to be modified, changed, supplemented, altered, amended, waived or released) any of the rights and remedies of Borrower, Mortgage Borrower or any Operating Company under any of the Operating Leases in any material respect or any Operating Lease Guaranty (provided that Lender shall not unreasonably withhold its consent to any modification, change, supplement, alteration,

amendment, waiver or release of the Operating Lease as may be reasonably necessary to comply with the requirements of this Agreement or any other Loan Document).

(b) During the continuance of an Event of Default, Borrower shall not exercise (and shall not cause or permit Mortgage Borrower to exercise) any rights, make any decisions, grant any approvals or otherwise take any action under any Operating Lease, Operating Lease Guaranty or any management agreement without, in each instance, the prior written consent of Lender, which consent may be withheld in Lender's sole discretion.

**5.2.2 Liens.** Borrower shall not create, incur, assume or suffer to exist any Lien on any of the Collateral, except Liens created by or permitted pursuant to the Loan Documents. Borrower shall not, and shall not cause or permit Mortgage Borrower to create, incur, assume or suffer to exist any Lien on any portion of any Individual Property or permit any such action to be taken, except:

- (i) Permitted Encumbrances;
- (ii) Liens created by or permitted pursuant to the Loan Documents or Mortgage Loan Documents; and
- (iii) Liens for Taxes or Other Charges not yet due.

(b) Borrower shall not incur any Indebtedness other than the Loan and shall not permit Mortgage Borrower to incur any Indebtedness other than the Mortgage Loan and Permitted Indebtedness (as defined in the Mortgage Loan Agreement). Borrower shall not permit any Operating Company to incur Indebtedness in excess or other than Permitted Indebtedness (Operating Company).

**5.2.3 Dissolution.** Borrower shall not, and shall not permit Mortgage Borrower or Operating Company to, (a) engage in any dissolution, liquidation or consolidation or merger with or into any other business entity, (b) engage in any business activity not related to (i) in the case of Borrower, the ownership of the Collateral, (ii) in the case of Mortgage Borrower, the ownership and operation of the Properties and (iii) in the case of Operating Company, the leasing and operation of the Properties, (c) transfer, lease or sell, in one transaction or any combination of transactions, the assets or all or substantially all of the properties or assets of Borrower or Mortgage Borrower except to the extent permitted by the Loan Documents, (d) modify (in any material respect), amend (in any material respect), waive or terminate its organizational documents or its qualification and good standing in any jurisdiction or (e) cause Holdings to (i) dissolve, wind up or liquidate or take any action, or omit to take an action, as a result of which Holdings or Mortgage Borrower would be dissolved, wound up or liquidated in whole or in part, or (ii) amend (in any material respect), modify (in any material respect), waive or terminate the certificate of incorporation or bylaws of Holdings or Mortgage Borrower, in each case, without obtaining the prior consent of Lender.

**5.2.4 Change in Business.** Borrower shall not cause Mortgage Borrower to enter into any line of business other than the ownership and operation of any of the Properties

and other activities reasonably ancillary thereto, or make any material change in the scope or nature of its business objectives, purposes or operations, or undertake or participate in activities other than the continuance of its present business. In addition, Borrower shall not permit or cause Mortgage Borrower to cancel or otherwise forgive or release any material claim or debt (other than termination of Leases in accordance herewith) owed to Mortgage Borrower by any Person, except for adequate consideration and in the ordinary course of Mortgage Borrower's business. Borrower shall not enter into any line of business other than the ownership of the Collateral, or make any material change in the scope or nature of its business objectives, purposes or operations, or undertake or participate in activities other than the continuance of its present business.

**5.2.5 Debt Cancellation.** Borrower shall not, and shall not permit Operating Company to, cancel or otherwise forgive or release any claim or debt (other than termination of Leases in accordance herewith) owed to Mortgage Borrower or Borrower by any Person, except for adequate consideration and in the ordinary course of Borrower's or Mortgage Borrower's business. In addition, Borrower shall not permit or cause itself or Mortgage Borrower to cancel or otherwise forgive or release any material claim or debt (other than termination of Leases in accordance herewith) owed to Borrower or Mortgage Borrower by any Person, except for adequate consideration and in the ordinary course of Borrower's or Mortgage Borrower's business.

**5.2.6 Zoning.** Borrower shall not, and shall not permit Mortgage Borrower or Operating Company to, initiate or consent to any zoning reclassification of any portion of any Individual Property or seek any variance under any existing zoning ordinance or use or permit the use of any portion of any Individual Property in any manner that could result in such use becoming a non-conforming use under any zoning ordinance or any other applicable land use law, rule or regulation, without the prior consent of Lender.

**5.2.7 Ground Lease.** Borrower shall not (or shall not cause or permit Mortgage Borrower or Ground Lease Subsidiary, as applicable, to) (a) fail to pay any rent, additional rent or other charge mentioned in or made payable under any Ground Lease as and when such rent or other charge is due (unless waived in writing by the ground lessor under such Ground Lease), (b) permit to occur any event of default (beyond any applicable notice, grace or cure periods) by any Mortgage Borrower or Ground Lease Subsidiary, as applicable, as tenant under the related Ground Lease, in the observance or performance of any term, covenant or condition of such Ground Lease on the part of such Mortgage Borrower or Ground Lease Subsidiary, as applicable, to be observed or performed (unless waived in writing by the ground lessor under such Ground Lease), (c) permit any one or more of the events referred to in any Ground Lease to occur which would cause such Ground Lease to terminate without notice or action by the ground lessor under such Ground Lease or which would entitle such ground lessor to terminate such Ground Lease and the term thereof by giving notice to the related Mortgage Borrower or Ground Lease Subsidiary, as applicable, as tenant thereunder (unless waived in writing by the ground lessor under such Ground Lease), (d) permit the leasehold estate created by any Ground Lease to be surrendered or any Ground Lease to be terminated or canceled for any reason or under any circumstances whatsoever or (e) permit any of the terms, covenants or conditions of any Ground Lease to be materially modified, materially changed, materially

supplemented, materially altered, or materially amended without the consent of Lender except as otherwise may be permitted by this Agreement.

**5.2.8 Principal Place of Business and Organization.** Borrower shall not, nor shall Borrower permit Mortgage Borrower or Operating Company to, change the place of its organization as set forth in Section 4.1.28 without the consent of Lender, which consent shall not be unreasonably withheld. Upon Lender's request, Borrower shall (and shall cause Mortgage Borrower and Operating Company to) execute and deliver additional financing statements, security agreements and other instruments which may be necessary to effectively evidence or perfect Mortgage Lender's security interest in any of the Properties or Lender's security interest in the Collateral as a result of such change of place of organization.

**5.2.9 ERISA.** (a) Borrower shall not engage in any transaction which would cause any obligation, or action taken or to be taken, hereunder (or the exercise by Lender of any of its rights under the Note, this Agreement or the other Loan Documents) to be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under ERISA.

(b) Borrower further covenants and agrees to deliver to Lender such certifications or other evidence from time to time throughout the term of the Loan, as requested by Lender in its sole discretion, that (i) Borrower is not an "employee benefit plan" as defined in Section 3(3) of ERISA, which is subject to Title I of ERISA, or a "governmental plan" within the meaning of Section 3(32) of ERISA; (ii) Borrower is not subject to any state statute regulating investments of, or fiduciary obligations with respect to, governmental plans; and (iii) one or more of the following circumstances is true:

(A) Equity interests in Borrower are publicly offered securities, within the meaning of 29 C.F.R. §2510.3-101(b)(2);

(B) Less than twenty-five percent (25%) of each outstanding class of equity interests in Borrower is held by "benefit plan investors" within the meaning of 29 C.F.R. §2510.3-101(f)(2); or

(C) Borrower qualifies as an "operating company" or a "real estate operating company" within the meaning of 29 C.F.R. §2510.3-101(c) or (e).

**5.2.10 Transfers.** (a) Without the prior consent of Lender and except to the extent otherwise set forth in this Section 5.2.10, Borrower shall not, and shall not permit any other Person holding any direct or indirect legal, economic, beneficial or other ownership interest in Borrower or the Collateral or one or more of the Properties to, (1) Transfer all or any part of the Collateral or one or more of the Properties, (2) permit any Transfer (directly or indirectly) of any direct or indirect interest in Borrower, or (3) permit any Transfer (directly or indirectly) of any direct or indirect interest in Operating Company or any transfer or assignment or subletting (of all or substantially of any Individual Property) by any Operating Company under any Operating Lease.

(b) A Transfer of (but not a mortgage, pledge, hypothecation, encumbrance or grant of a security interest in) an indirect beneficial interest in Borrower consisting of ownership

interests in or at any level above the level of Ninth Mezzanine Borrower shall be permitted without Lender's consent (but subject to the last sentence of Section 5.2.10(d)), provided that (i) immediately prior to such Transfer, no Event of Default shall have occurred and be continuing, (ii) Borrower is at all times Controlled and at least fifty percent (50%) owned (directly or indirectly) by Qualified Transferees, (iii) subsequent to such Transfer, Borrower will continue to be a Special Purpose Entity, (iv) if (1) such Transfer causes the Transferee to own, in the aggregate with the ownership interests of its Affiliates, more than a forty nine percent (49%) interest in Borrower (and the Transferee (together with the ownership interests of its Affiliates) did not, prior to such Transfer, own more than a forty nine percent (49%) interest in Borrower), or (2) such Transfer, together with all other Transfers by Borrower, whether in a single Transfer or in a series of Transfers and whether or not effected simultaneously, results in a Transfer of more than forty nine percent (49%) of the aggregate interests in Borrower, then, if required by applicable Rating Agency requirements, an acceptable non-consolidation opinion is delivered to the holder of the Loan and to each of the Rating Agencies concerning, as applicable, Borrower, the new Transferee and/or their respective owners, and (v) subsequent to such Transfer, the beneficial ownership of Borrower and Operating Company will be substantially identical. For purposes hereof, Control shall not be deemed absent solely because other parties have veto rights with respect to major decisions. Further, a Change in Control shall be deemed a Transfer hereunder and, unless clauses (ii) through (v) of this Section 5.2.10(b) shall be satisfied, the same shall be an Event of Default hereunder (and for the sake of clarity, nothing else contained in this Section 5.2.10 or this Agreement shall be deemed to limit or qualify the above terms of this sentence).

(c) A Transfer of (but not a mortgage, pledge, hypothecation, encumbrance or grant of a security interest in) a direct or indirect beneficial interest in Operating Company shall be permitted without Lender's consent (but subject to the last sentence of Section 5.2.10(d)), provided that (i) immediately prior to such Transfer, no Event of Default shall have occurred and be continuing, (ii) Operating Company is at all times Controlled and at least fifty percent (50%) owned (directly or indirectly) by Qualified Transferees, and (iii) subsequent to such Transfer, the beneficial ownership of Borrower and Operating Company will be substantially identical. For purposes hereof, Control shall not be deemed absent solely because other parties have veto rights with respect to major decisions.

(d) In the event that a permitted Transfer of more than a forty nine percent (49%) interest in Borrower is made pursuant to this Section 5.2.10, at Borrower's request, Lender shall release Guarantor from (i) the obligations and liabilities under any Guaranty for obligations and liabilities that occurred subsequent to such Transfer, provided that a replacement guarantor(s) reasonably satisfactory to Lender shall have executed and delivered to Lender replacement guarantees in form and substance substantially similar to the applicable Guaranty, pursuant to which such replacement guarantor(s) expressly assumes all of Guarantor's obligations under the applicable Guaranty for obligations and liabilities arising from and after the date of such Transfer, and (ii) the obligations and liabilities under any Guaranty for obligations and liabilities that occurred either prior or subsequent to such Transfer, provided that a replacement guarantor(s) reasonably satisfactory to Lender shall have executed and delivered to Lender replacement guarantees in form and substance substantially similar to the applicable Guaranty, pursuant to which such replacement guarantor(s) expressly assumes all of Guarantor's

obligations under the applicable Guaranty, including those which occurred prior to the Transfer. Notwithstanding the foregoing or anything else that may be construed to the contrary, in no event may Borrower effect a Transfer, or permit or suffer any Transfer, that would result in any loss or impairment of any Gaming License or in any similar event that would have an Individual Property Material Adverse Effect or Aggregate Property Material Adverse Effect.

(e) Notwithstanding the foregoing or anything herein to the contrary, but subject to the final sentence of Section 5.2.10(d), nothing contained in this Agreement or the other Loan Documents shall in any way restrict or prohibit, nor shall any notice to Lender or consent of Lender or Rating Agency Confirmation be required in connection with the Transfer or issuance in the ordinary course of any securities in any Person whose securities are publicly traded on a national exchange (except to the extent that the same would cause a Change of Control) or with an initial public offering of securities issued by Holdings or of subsidiary of Holdings (other than the Borrower and any Mezzanine Borrower (provided that, in the case of an issuance by a subsidiary, such issuance would not cause a Change of Control)).

(f) Assumptions of the Loan shall be permitted, provided that the following conditions are satisfied and/or occur to Lender's satisfaction:

(i) such sale has been approved or deemed approved under the Mortgage Loan Documents and all conditions set forth in the Mortgage Loan Documents relating thereto have been satisfied;

(ii) an assumption of this Agreement, the Note, the Pledge Agreement and the other Loan Documents as so modified by the proposed transferee, subject to the provisions of Section 9.3 hereof;

(iii) payment of all of reasonable out-of-pocket costs and expenses incurred in connection with such Transfer including, without limitation, the cost of any legal fees and expenses, Rating Agency fees and expenses or required legal opinions;

(iv) the payment of a non-refundable assumption fee equal to Lender's Share of One Million and No/100 Dollars (\$1,000,000) per transaction (effecting an assumption of the Loan) or series of related transactions (effectuated to implement an assumption of the Loan);

(v) the delivery of an Additional Insolvency Opinion reflecting the proposed transfer satisfactory in form and substance to Lender; and the delivery of an Additional True Lease Opinion in form and substance satisfactory to Lender;

(vi) the proposed Transferee being Controlled and at least 50% owned, directly or indirectly, by one or more Qualified Transferees;

(vii) the Operating Company being Controlled and at least 50% owned, directly or indirectly, by one or more Qualified Transferees, having sufficient experience (or having a manager that has sufficient experience) in the management of properties similar to the Properties, and such Operating Company or its manager not having

materially less than the same level of experience in the operation of properties similar to the Properties as the current Operating Company under the Operating Lease and, in each case, Lender shall be provided with reasonable evidence thereof (and Lender reserves the right to approve the Transferee(s) without approving the substitution of the Operating Company) and the operating tenant shall be either the Operating Company or, if permitted by applicable Legal Requirements, a manager acceptable to Lender under a management agreement acceptable to Lender; provided that so long as the Operating Lease is in force and effect and the current Operating Company shall continue to be the tenant thereunder and owned and Controlled by the same Person(s) that currently own and Control the Operating Company, the condition with respect to the Operating Company set forth in this subclause (vi) shall be deemed to have been met in all respects;

(viii) the delivery of evidence reasonably satisfactory to Lender that the single purpose nature and bankruptcy remoteness of Borrower, its shareholders, partners or members, as the case may be, following such transfers are in accordance with the then current standards of Lender and the Rating Agencies; and the Transferee(s)' continued compliance with the representations and covenants set forth in Section 4.1.30 and Section 5.2.9 hereof;

(ix) Borrower's delivery to Lender of evidence reasonably satisfactory to Lender of any required approval or consent of any Governmental Authority, including the Gaming Authorities, that has direct or indirect authority or oversight over Borrower, Mortgage Borrower, the Properties, Operating Company or the operations conducted at the Properties to the change in ownership and/or operator of the Properties (or any part thereof);

(x) prior to any release of the Guarantor, a substitute guarantor reasonably acceptable to Lender shall have assumed all of the obligations of the Guarantor under the Guaranty (FF&E), the Guaranty (Recourse Carveouts), the Operating Lease Guaranty, the Guaranty (Ground Lease Estoppel), any completion guaranty provided under Section 5.1.21 and the Environmental Indemnity or executed replacement guaranties and an environmental indemnity reasonably satisfactory to Lender;

(xi) receipt of evidence satisfactory to Lender that all of the entities which own interests in the transferee similar to the interests in Borrower owned by the Second Mezzanine Borrower (1) shall assume the Second Mezzanine Loan (if still outstanding) and all the agreements of Second Mezzanine Borrower under the Second Mezzanine Loan Documents (and without limiting the foregoing, all of the ownership interests in Borrower, all payments thereon and all proceeds thereof shall be pledged to Lender on terms no less favorable than the pledge of the Collateral under the applicable Pledge Agreement), (2) shall each be a bankruptcy-remote single purpose entity, and (3) shall otherwise have a legal, financial and ownership structure that is (a) substantially the same as the Second Mezzanine Borrower or (b) at least as favorable to the Second Mezzanine Lender, as determined by the Second Mezzanine Lender in its reasonable

discretion, as the legal, financial and ownership structure of Second Mezzanine Borrower;

(xii) receipt of evidence satisfactory to Lender that all of the entities which own interests in the transferee similar to the interests in Second Mezzanine Borrower owned by the Third Mezzanine Borrower (1) shall assume the Third Mezzanine Loan (if still outstanding) and all the agreements of Third Mezzanine Borrower under the Third Mezzanine Loan Documents (and without limiting the foregoing, all of the ownership interests in Second Mezzanine Borrower, all payments thereon and all proceeds thereof shall be pledged to Lender on terms no less favorable than the pledge of the Collateral under the applicable Pledge Agreement), (2) shall each be a bankruptcy-remote single purpose entity, and (3) shall otherwise have a legal, financial and ownership structure that is (a) substantially the same as the Third Mezzanine Borrower or (b) at least as favorable to the Third Mezzanine Lender, as determined by the Third Mezzanine Lender in its reasonable discretion, as the legal, financial and ownership structure of Third Mezzanine Borrower;

(xiii) receipt of evidence satisfactory to Lender that all of the entities which own interests in the transferee similar to the interests in Third Mezzanine Borrower owned by the Fourth Mezzanine Borrower (1) shall assume the Fourth Mezzanine Loan (if still outstanding) and all the agreements of Fourth Mezzanine Borrower under the Fourth Mezzanine Loan Documents (and without limiting the foregoing, all of the ownership interests in Third Mezzanine Borrower, all payments thereon and all proceeds thereof shall be pledged to Lender on terms no less favorable than the pledge of the Collateral under the applicable Pledge Agreement), (2) shall each be a bankruptcy-remote single purpose entity, and (3) shall otherwise have a legal, financial and ownership structure that is (a) substantially the same as the Fourth Mezzanine Borrower or (b) at least as favorable to the Fourth Mezzanine Lender, as determined by the Fourth Mezzanine Lender in its reasonable discretion, as the legal, financial and ownership structure of Fourth Mezzanine Borrower;

(xiv) receipt of evidence satisfactory to Lender that all of the entities which own interests in the transferee similar to the interests in Fourth Mezzanine Borrower owned by the Fifth Mezzanine Borrower (1) shall assume the Fifth Mezzanine Loan (if still outstanding) and all the agreements of Fifth Mezzanine Borrower under the Fifth Mezzanine Loan Documents (and without limiting the foregoing, all of the ownership interests in Fourth Mezzanine Borrower, all payments thereon and all proceeds thereof shall be pledged to Lender on terms no less favorable than the pledge of the Collateral under the applicable Pledge Agreement), (2) shall each be a bankruptcy-remote single purpose entity, and (3) shall otherwise have a legal, financial and ownership structure that is (a) substantially the same as the Fifth Mezzanine Borrower or (b) at least as favorable to the Fifth Mezzanine Lender, as determined by the Fifth Mezzanine Lender in its reasonable discretion, as the legal, financial and ownership structure of Fifth Mezzanine Borrower;

(xv) receipt of evidence satisfactory to Lender that all of the entities which own interests in the transferee similar to the interests in Fifth Mezzanine Borrower owned by the Sixth Mezzanine Borrower (1) shall assume the Sixth Mezzanine Loan (if still outstanding) and all the agreements of Sixth Mezzanine Borrower under the Sixth Mezzanine Loan Documents (and without limiting the foregoing, all of the ownership interests in Fifth Mezzanine Borrower, all payments thereon and all proceeds thereof shall be pledged to Lender on terms no less favorable than the pledge of the Collateral under the applicable Pledge Agreement), (2) shall each be a bankruptcy-remote single purpose entity, and (3) shall otherwise have a legal, financial and ownership structure that is (a) substantially the same as the Sixth Mezzanine Borrower or (b) at least as favorable to the Sixth Mezzanine Lender, as determined by the Sixth Mezzanine Lender in its reasonable discretion, as the legal, financial and ownership structure of Sixth Mezzanine Borrower;

(xvi) receipt of evidence satisfactory to Lender that all of the entities which own interests in the transferee similar to the interests in Sixth Mezzanine Borrower owned by the Seventh Mezzanine Borrower (1) shall assume the Seventh Mezzanine Loan (if still outstanding) and all the agreements of Seventh Mezzanine Borrower under the Seventh Mezzanine Loan Documents (and without limiting the foregoing, all of the ownership interests in Sixth Mezzanine Borrower, all payments thereon and all proceeds thereof shall be pledged to Lender on terms no less favorable than the pledge of the Collateral under the applicable Pledge Agreement), (2) shall each be a bankruptcy-remote single purpose entity, and (3) shall otherwise have a legal, financial and ownership structure that is (a) substantially the same as the Seventh Mezzanine Borrower or (b) at least as favorable to the Seventh Mezzanine Lender, as determined by the Seventh Mezzanine Lender in its reasonable discretion, as the legal, financial and ownership structure of Seventh Mezzanine Borrower;

(xvii) receipt of evidence satisfactory to Lender that all of the entities which own interests in the transferee similar to the interests in Seventh Mezzanine Borrower owned by the Eighth Mezzanine Borrower (1) shall assume the Eighth Mezzanine Loan (if still outstanding) and all the agreements of Eighth Mezzanine Borrower under the Eighth Mezzanine Loan Documents (and without limiting the foregoing, all of the ownership interests in Seventh Mezzanine Borrower, all payments thereon and all proceeds thereof shall be pledged to Lender on terms no less favorable than the pledge of the Collateral under the applicable Pledge Agreement), (2) shall each be a bankruptcy-remote single purpose entity, and (3) shall otherwise have a legal, financial and ownership structure that is (a) substantially the same as the Eighth Mezzanine Borrower or (b) at least as favorable to the Eighth Mezzanine Lender, as determined by the Eighth Mezzanine Lender in its reasonable discretion, as the legal, financial and ownership structure of Eighth Mezzanine Borrower;

(xviii) receipt of evidence satisfactory to Lender that all of the entities which own interests in the transferee similar to the interests in Eighth Mezzanine Borrower owned by the Ninth Mezzanine Borrower (1) shall assume the Ninth Mezzanine Loan (if still outstanding) and all the agreements of Ninth Mezzanine

Borrower under the Ninth Mezzanine Loan Documents (and without limiting the foregoing, all of the ownership interests in Eighth Mezzanine Borrower, all payments thereon and all proceeds thereof shall be pledged to Lender on terms no less favorable than the pledge of the Collateral under the applicable Pledge Agreement), (2) shall each be a bankruptcy-remote single purpose entity, and (3) shall otherwise have a legal, financial and ownership structure that is (a) substantially the same as the Ninth Mezzanine Borrower or (b) at least as favorable to the Ninth Mezzanine Lender, as determined by the Ninth Mezzanine Lender in its reasonable discretion, as the legal, financial and ownership structure of Ninth Mezzanine Borrower;

(xix) a written consent to the transfer from the lender under each Mezzanine Loan (and, if any, a Permitted Mezzanine Loan) or receipt by Lender of other evidence satisfactory to Lender that all conditions imposed under the terms of each Mezzanine Loan and Permitted Mezzanine Loan shall have been complied with by the borrower thereunder or otherwise waived by the applicable lender;

(xx) subsequent to such assumption of the Loan, the beneficial ownership of Borrower and Operating Company will be substantially identical; and

(xxi) the delivery of a new Owner's Title Policy, in an amount equal to the value of the Properties, together with an endorsement to Lender in form and substance reasonably satisfactory to Lender.

Lender agrees to provide a written consent to a transfer pursuant to this Section 5.2.10(f) upon satisfaction of all of the conditions set forth in this Section 5.2.10(f) other than the condition set forth in clause (xix) of this Section 5.2.10(f).

(g) Restrictions on Transfers set forth herein or in the Pledge Agreement shall not apply to (i) the pledge by Borrower of the ownership interests in Mortgage Borrower as security for the Loan pursuant to this Agreement, (ii) the pledge by Second Mezzanine Borrower of the ownership interests in Borrower as security for the Second Mezzanine Loan pursuant to the Second Mezzanine Loan Agreement, (iii) the pledge by Third Mezzanine Borrower of the ownership interests in Second Mezzanine Borrower as security for the Third Mezzanine Loan pursuant to the Third Mezzanine Loan Agreement, (iv) the pledge by Fourth Mezzanine Borrower of the ownership interests in Third Mezzanine Borrower as security for the Fourth Mezzanine Loan pursuant to the Fourth Mezzanine Loan Agreement, (v) the pledge by Fifth Mezzanine Borrower of the ownership interests in Fourth Mezzanine Borrower as security for the Fifth Mezzanine Loan pursuant to the Fifth Mezzanine Loan Agreement, (vi) the pledge by Sixth Mezzanine Borrower of the ownership interests in Fifth Mezzanine Borrower as security for the Sixth Mezzanine Loan pursuant to the Sixth Mezzanine Loan Agreement, (vii) the pledge by Seventh Mezzanine Borrower of the ownership interests in Sixth Mezzanine Borrower as security for the Seventh Mezzanine Loan pursuant to the Seventh Mezzanine Loan Agreement, (viii) the pledge by Eighth Mezzanine Borrower of the ownership interests in Seventh Mezzanine Borrower as security for the Eighth Mezzanine Loan pursuant to the Eighth Mezzanine Loan Agreement, (ix) the pledge by Ninth Mezzanine Borrower of the ownership interests in Eighth Mezzanine Borrower as security for the Ninth Mezzanine Loan pursuant to the Ninth Mezzanine

Loan Agreement, (x) any pledge pursuant to a New Mezzanine Loan or (xi) the Transfer or pledge of any direct or indirect interest in Holdings, provided that no Change in Control shall occur.

(h) Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Debt immediately due and payable upon a Transfer without Lender's consent. This provision shall apply to every Transfer regardless of whether voluntary or not, or whether or not Lender has consented to any previous Transfer.

**5.2.11 Operating Lease Subsidiary.** Borrower shall not cause or permit Mortgage Borrower to Transfer any of its interests in Ground Lease Subsidiary without the prior written consent of Lender; Borrower shall not permit Mortgage Borrower to cause or permit Ground Lease Subsidiary to own any assets other than its interests in the Ground Lease or to incur any liabilities other than liabilities under the Ground Lease; Borrower shall not permit Mortgage Borrower to cause or permit Ground Lease Subsidiary to engage in any business other than that related to its ownership of interests in the Ground Lease.

**5.2.12 Limitations on Distributions.** Following the occurrence and during the continuance of an Event of Default, Borrower shall not make any distributions to its members. If any Distributions shall be received by Borrower or any Affiliate of Borrower after the occurrence and during the continuance of an Event of Default, Borrower shall hold, or shall cause the same to be held, in trust for the benefit of Lender.

**5.2.13 Other Limitations.** Prior to the payment in full of the Debt, neither Borrower nor any of its Affiliates shall, without the prior written consent of Lender (which may be furnished or withheld at its sole and absolute discretion), give its consent or approval to any of the following actions or items: the distribution by Mortgage Borrower to Borrower of property other than cash.

**5.2.14 Refinancing or Prepayment.** Borrower shall not consent to or permit a refinancing of the Mortgage Loan unless it obtains the prior consent of Lender, unless the Loan shall be paid in full in connection with such refinancing in accordance with this Agreement. Borrower shall not consent to or permit a prepayment in full or in part of the Mortgage Loan unless it obtains the prior consent of Lender, unless the Loan shall likewise be prepaid (in the same proportion, in the case of any partial prepayment) in accordance with this Agreement.

**Section 5.3. General.** For avoidance of doubt, all requirements contained in this Article V with respect to the Operating Company shall mean that it shall be a Default or Event of Default hereunder if Operating Company fails to perform in the specified manner, but Lender acknowledges that Operating Company is not a party to this Agreement and that Borrower does not control Operating Company.

## **VI. INSURANCE; CASUALTY; CONDEMNATION**

### **Section 6.1. Insurance.**

(a) Borrower shall cause Mortgage Borrower to maintain at all times during the term of the Loan the Policies required under Section 6.1 of the Mortgage Loan Agreement, including, without limitation, meeting all insurer requirements thereunder. In addition, Borrower shall cause Lender to be named as a named insured together with Mortgage Lender, as their interest may appear, under the Policies required under Sections 6.1(a)(i), (ii), (iii), (iv), (v), (vi), (vii), (viii), (ix), (x) and (xi) of the Mortgage Loan Agreement. Borrower shall also cause all insurance policies required under this Section 6.1 to provide for at least thirty (30) days' prior notice to Lender in the event of policy cancellation or material changes. Borrower shall provide Lender with evidence of all such insurance required hereunder on or before the date on which Mortgage Borrower is required to provide such evidence to Mortgage Lender. For purposes of this Agreement, Lender shall have the same approval rights over the insurance referred to above and in the Mortgage Loan Agreement (including, without limitation, the insurers, deductibles and coverages thereunder, as well as the right to require other reasonable insurance pursuant to Section 6.1 of the Mortgage Loan Agreement) as are provided in favor of the Mortgage Lender in the Mortgage Loan Agreement.

(b) If at any time Lender is not in receipt of written evidence that all insurance required hereunder is in full force and effect, Lender shall have the right, without notice to Borrower, to take such action as Lender deems necessary to protect its interest in any of the Properties or the Collateral, including, without limitation, the obtaining of such insurance coverage as Lender in its sole discretion deems appropriate (but limited to the coverages and amounts required under the Mortgage Loan Agreement) and all premiums incurred by Lender in connection with such action or in obtaining such insurance and keeping it in effect shall be paid by Borrower to Lender upon demand and shall bear interest at the Default Rate.

**Section 6.2. Casualty.** If the Individual Property shall be materially damaged or destroyed, in whole or in part, by fire or other casualty (a "Casualty"), Borrower shall give prompt notice of such damage to Lender and shall cause Mortgage Borrower to promptly commence and diligently prosecute the completion of the Restoration of the Individual Property as nearly as possible to the condition the Individual Property was in immediately prior to such Casualty, with such alterations as may be reasonably approved by Lender and otherwise in accordance with Section 6.4 of the Mortgage Loan Agreement. Borrower shall cause Mortgage Borrower to pay all costs of such Restoration whether or not such costs are covered by insurance. Lender may, but shall not be obligated to make proof of loss if not made promptly by Borrower or Mortgage Borrower. In addition, Lender may participate in any settlement discussions with any insurance companies with respect to any Casualty in which the Net Proceeds or the costs of

completing the Restoration are equal to or greater than, in the case of each Casualty, an amount equal to five percent (5%) of the sum of the Allocated Loan Amount for the affected Individual Property and the "Allocated Loan Amounts" under (and as defined in each of) the Mortgage Loan Agreement and the Other Mezzanine Loan Agreements for the affected Individual Property, and Borrower shall deliver to Lender all instruments required by Lender to permit such participation.

**Section 6.3. Condemnation.** Borrower shall promptly give Lender notice of the actual or threatened commencement of any proceeding for the Condemnation of any Individual Property and shall cause Mortgage Borrower to deliver to Lender copies of any and all papers served in connection with such proceedings. Lender may participate in any such proceedings, and Borrower shall from time to time deliver to Lender all instruments requested by it to permit such participation. Borrower shall, at its expense, diligently prosecute any such proceedings, and shall consult with Lender, its attorneys and experts, and cooperate with them in the carrying on or defense of any such proceedings. Notwithstanding any taking by any public or quasi-public authority through Condemnation or otherwise (including, but not limited to, any transfer made in lieu of or in anticipation of the exercise of such taking), Borrower shall continue to pay the Debt at the time and in the manner provided for its payment in the Note and in this Agreement and the Debt shall not be reduced until any Award shall have been actually received and applied by Lender, after the deduction of expenses of collection, to the reduction or discharge of the Debt. Lender shall not be limited to the interest paid on the Award by the condemning authority but shall be entitled to receive out of the Award interest at the rate or rates provided herein or in the Note. If any Individual Property or any portion thereof is taken by a condemning authority, Borrower shall cause Mortgage Borrower to promptly commence and diligently prosecute the Restoration of the applicable Individual Property and otherwise comply with the provisions of Section 6.4 of the Mortgage Loan Agreement. If any Individual Property is sold, through foreclosure or otherwise, prior to the receipt by Lender of the Award, Lender shall have the right, whether or not a deficiency judgment on the Note shall have been sought, recovered or denied, to receive the Award, or a portion thereof sufficient to pay the Debt.

**Section 6.4. Restoration.** Borrower shall, or shall cause Mortgage Borrower to, deliver to Lender all reports, plans, specifications, documents and other materials that are delivered to Mortgage Lender under Section 6.4 of the Mortgage Loan Agreement in connection with the Restoration of any Individual Property after a Casualty or Condemnation.

## **VII. RESERVE FUNDS**

### **Section 7.1. Intentionally Omitted.**

**Section 7.2. Tax and Insurance Escrow Fund.** (a) If (and for so long as) a Trigger Event shall have occurred and shall not have been cured by a Trigger Event Cure, on each Payment Date during such period, Borrower shall pay to Lender (or Servicer, as directed by Lender) an amount equal to (i) one-twelfth of the Taxes that Lender estimates will be payable during the next ensuing twelve (12) months in order to accumulate with Lender sufficient funds to pay all such Taxes at least thirty (30) days prior to their respective due dates, and (ii) one-twelfth of the Insurance Premiums that Lender estimates will be payable for the renewal

of the coverage afforded by the Policies upon the expiration thereof in order to accumulate with Lender sufficient funds to pay all such Insurance Premiums at least thirty (30) days prior to the expiration of the Policies (said amounts in (i) and (ii) above hereinafter called the “**Tax and Insurance Escrow Fund**”). Lender shall apply the Tax and Insurance Escrow Fund to payments of Taxes and Insurance Premiums required to be made by Borrower pursuant to Section 5.1.2 hereof and under the Mortgage Loan Agreement. In making any payment relating to the Tax and Insurance Escrow Fund, Lender may do so according to any bill, statement or estimate procured from the appropriate public office (with respect to Taxes) or insurer or agent (with respect to Insurance Premiums), without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof. If the amount of the Tax and Insurance Escrow Fund shall exceed the amounts due for Taxes and Insurance Premiums pursuant to Section 5.1.2 hereof, provided no Event of Default shall have occurred and be continuing, then Lender shall return any excess to Borrower (or to Operating Company, if so directed by Borrower). In allocating such excess, Lender may deal with the Person shown on the records of Lender to be the owner of the Properties. If at any time Lender reasonably determines that the Tax and Insurance Escrow Fund is not or will not be sufficient to pay Taxes and Insurance Premiums by the dates set forth in (i) and (ii) above, Lender shall notify Borrower of such determination and Borrower shall increase its monthly payments to Lender by the amount that Lender estimates is sufficient to make up the deficiency at least thirty (30) days prior to the due date of the Taxes and/or thirty (30) days prior to expiration of the Policies, as the case may be.

(b) Notwithstanding the foregoing, Borrower shall not be required to make any deposits into the Tax and Insurance Escrow Fund on account of Insurance Premiums if (and for so long as) Borrower shall maintain a blanket insurance policy in respect of the Properties that is in accordance with the provisions of Section 6.1(a) and otherwise satisfactory to Lender in all material respects.

(c) Any amount remaining in the Tax and Insurance Escrow Fund following the occurrence of a Trigger Event Cure shall be returned to Borrower (or Operating Company, as directed by Borrower).

**7.2.1 Waiver of Tax Escrow.** Borrower shall be relieved of its obligation to make deposits of Tax and Insurance Escrow Fund under Section 7.2 above, provided that (a) Mortgage Borrower is required to and does make monthly deposits to a tax escrow account under the Mortgage Loan, and (b) Lender receives evidence acceptable to it of the making of such deposits and of the payment of all such Taxes.

**7.2.2 Tax and Insurance Escrow Funds After Debt Paid.** Any Tax and Insurance Escrow Funds remaining after the Debt has been paid in full shall be remitted (i) if the Second Mezzanine Loan is outstanding, then to the Second Mezzanine Lender or (ii) if the Second Mezzanine Loan is not then outstanding but the Third Mezzanine Loan is outstanding, then to the Third Mezzanine Lender in accordance with the Second Mezzanine Loan Agreement or (iii) if the Second Mezzanine Loan and the Third Mezzanine Loan are no longer outstanding, then to the Fourth Mezzanine Lender in accordance with the Third Mezzanine Loan Agreement or (iv) if the Second Mezzanine Loan, Third Mezzanine Loan and the Fourth Mezzanine Loan

are no longer outstanding, then to the Fifth Mezzanine Lender in accordance with the Fourth Mezzanine Loan Agreement or (v) if the Second Mezzanine Loan, the Third Mezzanine Loan, the Fourth Mezzanine Loan and the Fifth Mezzanine Loan are no longer outstanding, then to the Sixth Mezzanine Lender in accordance with the Fifth Mezzanine Loan Agreement or (vi) if the Second Mezzanine Loan, the Third Mezzanine Loan, the Fourth Mezzanine Loan, the Fifth Mezzanine Loan and the Sixth Mezzanine Loan are no longer outstanding, then to the Seventh Mezzanine Lender in accordance with the Sixth Mezzanine Loan Agreement or (vii) if the Second Mezzanine Loan, the Third Mezzanine Loan, the Fourth Mezzanine Loan, the Fifth Mezzanine Loan, the Sixth Mezzanine Loan and the Seventh Mezzanine Loan are no longer outstanding, then to the Eighth Mezzanine Lender in accordance with the Seventh Mezzanine Loan Agreement or (viii) if the Second Mezzanine Loan, the Third Mezzanine Loan, the Fourth Mezzanine Loan, the Fifth Mezzanine Loan, the Sixth Mezzanine Loan, the Seventh Mezzanine Loan and the Eighth Mezzanine Loan are no longer outstanding, then to the Ninth Mezzanine Lender in accordance with the Eighth Mezzanine Loan Agreement or (ix) if the Second Mezzanine Loan, the Third Mezzanine Loan, the Fourth Mezzanine Loan, the Fifth Mezzanine Loan, the Sixth Mezzanine Loan, the Seventh Mezzanine Loan, the Eighth Mezzanine Loan and the Ninth Mezzanine Loan are no longer outstanding then to Borrower or, at Borrower's election, shall be credited against the Debt simultaneously with the satisfaction of the balance of the Loan

### **Section 7.3. FF&E Reserve Account.**

**7.3.1 FF&E Reserve Fund.** (a) Unless Borrower shall have delivered to Lender a Guaranty (FF&E), Borrower shall pay to Lender (or Servicer, as directed by Lender) on each Payment Date an amount equal to (i) one-twelfth of three percent (3%) of the amount of all Revenues for the full calendar year prior to the first (1st) day of the month in which such Payment Date occurs, less (ii) any amount spent during the previous calendar month by Borrower or Operating Company on behalf of Borrower in accordance with the Operating Lease on account of FF&E (other than from the FF&E Reserve Fund, it being understood that amounts expended on account of FF&E from the FF&E Reserve Fund shall not be included in any deductions required pursuant to the preceding subclause (i) and that any FF&E that is purchased through disbursements from the FF&E Reserve Fund may not be subsequently financed by Borrower or Operating Company). Notwithstanding anything to the contrary contained herein, in no event shall Borrower be required to maintain in the FF&E Reserve Account an amount in excess of the aggregate amount of all FF&E deposits required to be made in the preceding calendar year (as determined, for purposes of this sentence, utilizing the monthly formula set forth in the preceding sentence). In addition, notwithstanding anything to the contrary contained herein, for purposes of determining the amount of any required FF&E Reserve Fund deposits (and for purposes of calculating such amount, monthly, based on the formula set forth in the first sentence of this Section 7.3.1), Revenues shall include Revenue from the Hotel Component and the Casino Component but shall not include non-Hotel or Casino related Revenues (e.g., Rents from retail tenants).

(b) Amounts deposited by Borrower as described in this Section 7.3.1 shall hereinafter be referred to as the “**FF&E Reserve Fund**” and the account in which such amounts are held shall hereinafter be referred to as the “**FF&E Reserve Account**”.

**7.3.2 Disbursements from FF&E Reserve Account.** (a) All disbursements from the FF&E Reserve Account shall be made solely for the purpose of reimbursing Borrower (or Operating Company for FF&E bought on behalf and in the name of Borrower in accordance with the Operating Lease, as directed by Borrower) for its costs and expenses incurred, or for paying costs to be incurred, in connection with the repair, replacement and/or upgrade of FF&E at the Properties. Provided no Event of Default shall have occurred and be continuing, Lender shall, within ten (10) days following request by Borrower, make disbursements from the FF&E Reserve Fund no more frequently than once in any thirty (30) day period, in amounts no less than \$10,000 per disbursement (or a lesser amount if the total amount in the FF&E Reserve Account is less than \$10,000, in which case only one disbursement of the amount remaining in the account shall be made), and upon delivery by Borrower (or Operating Company) of Lender's standard form of draw request accompanied by copies of invoices for the amounts requested and, if required by Lender for requests in excess of \$50,000 for a single item, receipts and releases from all parties furnishing materials and/or services in connection with the requested payment.

(b) Disbursements may be made from the FF&E Reserve Account, at Borrower's election, directly to third parties (as directed by Borrower).

(c) In no event shall funds in the FF&E Reserve Account be utilized to pay (or reimburse any Person) for any Capital Expenditures or non-recurring work being performed at the Properties.

**7.3.3 Balance in the FF&E Reserve Account.** (a) The insufficiency of any balance in the FF&E Reserve Account shall not relieve Borrower from its obligation to fulfill all preservation and maintenance covenants in the Loan Documents.

**7.3.4 Waiver of FF&E Reserve.** Borrower shall be relieved of its obligation to make deposits of FF&E Reserve Fund under Section 7.3 above, provided that either (a) (i) Mortgage Borrower is required to and does make monthly deposits to a FF&E reserve account under the Mortgage Loan, and (ii) Lender receives evidence acceptable to it of the making of such deposits or (b) an FF&E Guaranty is provided to Mortgage Lender.

**7.3.5 FF&E Reserve Funds After Debt Paid.** Any FF&E Reserve Funds remaining after the Debt has been paid in full shall be remitted (i) if the Second Mezzanine Loan is outstanding, to the Second Mezzanine Lender or (ii) if the Second Mezzanine Loan is not then outstanding but the Third Mezzanine Loan is outstanding, then to the Third Mezzanine Lender in accordance with the Second Mezzanine Loan Agreement or (iii) third, if the Second Mezzanine Loan and the Third Mezzanine Loan are no longer outstanding, then to the Fourth Mezzanine Lender in accordance with the Third Mezzanine Loan Agreement or (iv) if the Second Mezzanine Loan, the Third Mezzanine Loan and the Fourth Mezzanine Loan are no longer outstanding, then to the Fifth Mezzanine Lender in accordance with the Fourth Mezzanine Loan Agreement or (v) if the Second Mezzanine Loan, the Third Mezzanine Loan, the Fourth Mezzanine Loan and the Fifth Mezzanine Loan are no longer outstanding, then to the Sixth Mezzanine Lender in accordance with the Fifth Mezzanine Loan Agreement or (vi) if the Second Mezzanine Loan, the Third Mezzanine Loan, the Fourth Mezzanine Loan, the Fifth Mezzanine Loan and the Sixth Mezzanine Loan are no longer outstanding, then to the Seventh Mezzanine

Lender in accordance with the Sixth Mezzanine Loan Agreement or (vii) if the Second Mezzanine Loan, the Third Mezzanine Loan, the Fourth Mezzanine Loan, the Fifth Mezzanine Loan, the Sixth Mezzanine Loan and the Seventh Mezzanine Loan are no longer outstanding, then to the Eighth Mezzanine Lender in accordance with the Seventh Mezzanine Loan Agreement or (viii) if the Second Mezzanine Loan, the Third Mezzanine Loan, the Fourth Mezzanine Loan, the Fifth Mezzanine Loan, the Sixth Mezzanine Loan, the Seventh Mezzanine Loan and the Eighth Mezzanine Loan are no longer outstanding, then to the Ninth Mezzanine Lender in accordance with the Eighth Mezzanine Loan Agreement or (ix) if the Second Mezzanine Loan, the Third Mezzanine Loan, the Fourth Mezzanine Loan, the Fifth Mezzanine Loan, the Sixth Mezzanine Loan, the Seventh Mezzanine Loan, the Eighth Mezzanine Loan and the Ninth Mezzanine Loan are no longer outstanding then to Borrower.

**Section 7.4. Ground Rent Funds.**

**7.4.1 Deposits of Ground Rent Funds.** If (and for so long as) a Trigger Event shall have occurred and shall not have been cured by a Trigger Event Cure, Borrower shall deposit with Lender (or Servicer, as directed by Lender), at least ten (10) Business Days prior to each Payment Date during such period, an amount equal to the Ground Rent that will be payable under the Ground Lease for the month in which such Payment Date occurs. Amounts deposited by Borrower as described in this Section 7.4.1 shall hereinafter be referred to as the "Ground Rent Reserve Fund" and the account in which such amounts are held shall hereinafter be referred to as the "Ground Rent Reserve Account". Such deposit may be increased by Lender in the amount Lender deems is necessary in its reasonable discretion based on any increases in the Ground Rent.

**7.4.2 Release of Ground Rent Funds.** Provided no Event of Default has occurred and is continuing, Lender shall apply the Ground Rent Reserve Funds to payments of Ground Rent. In making any payment relating to Ground Rent, Lender may do so according to any bill or statement given by the Ground Lessor without inquiry into the accuracy of such bill or statement or into the validity of any rent, additional rent or other charge thereof. If the amount of the Ground Rent Reserve Funds shall exceed the amounts due for Ground Rent, Lender shall return any excess to Borrower.

**7.4.3 Waiver of Ground Rent Reserve.** Borrower shall be relieved of its obligation to make deposits of Ground Rent Reserve Funds under Section 7.4 above, provided that (a) Mortgage Borrower is required to and does make monthly deposits to a ground rent reserve account under the Mortgage Loan, and (b) Lender receives evidence acceptable to it of the making of such deposits and of the payment of all Ground Rent.

**7.4.4 Ground Rent Reserve Funds After Debt Paid.** Any Ground Rent Reserve Funds remaining after the Debt has been paid in full shall be remitted (i) first, if the Second Mezzanine Loan is outstanding, to the Second Mezzanine Lender or (ii) if the Second Mezzanine Loan is not then outstanding but the Third Mezzanine Loan is outstanding, then to the Third Mezzanine Lender in accordance with the Second Mezzanine Loan Agreement or (iv) if the Second Mezzanine Loan and the Third Mezzanine Loan are no longer outstanding, then to the Fourth Mezzanine Lender in accordance with the Third Mezzanine Loan Agreement or (v) if

the Second Mezzanine Loan, the Third Mezzanine Loan and the Fourth Mezzanine Loan are no longer outstanding, then to the Fifth Mezzanine Lender in accordance with the Fourth Mezzanine Loan Agreement or (vi) if the Second Mezzanine Loan, the Third Mezzanine Loan, the Fourth Mezzanine Loan and the Fifth Mezzanine Loan are no longer outstanding, then to the Sixth Mezzanine Lender in accordance with the Fifth Mezzanine Loan Agreement or (vii) if the Second Mezzanine Loan, the Third Mezzanine Loan, the Fourth Mezzanine Loan, the Fifth Mezzanine Loan and the Sixth Mezzanine Loan are no longer outstanding, then to the Seventh Mezzanine Lender in accordance with the Sixth Mezzanine Loan Agreement or (viii) if the Second Mezzanine Loan, the Third Mezzanine Loan, the Fourth Mezzanine Loan, the Fifth Mezzanine Loan, the Sixth Mezzanine Loan and the Seventh Mezzanine Loan are no longer outstanding, then to the Eighth Mezzanine Lender in accordance with the Seventh Mezzanine Loan Agreement or (ix) if the Second Mezzanine Loan, the Third Mezzanine Loan, the Fourth Mezzanine Loan, the Fifth Mezzanine Loan, the Sixth Mezzanine Loan, the Seventh Mezzanine Loan and the Eighth Mezzanine Loan are no longer outstanding, then to the Ninth Mezzanine Lender in accordance with the Eighth Mezzanine Loan Agreement or (x) if the Second Mezzanine Loan, the Third Mezzanine Loan, the Fourth Mezzanine Loan, the Fifth Mezzanine Loan, the Sixth Mezzanine Loan, the Seventh Mezzanine Loan, the Eighth Mezzanine Loan and the Ninth Mezzanine Loan are no longer outstanding then to Borrower.

**Section 7.5. Reserve Funds, Generally.** (a) Borrower grants to Lender a first-priority perfected security interest in each of the Reserve Funds and any and all monies now or hereafter deposited in each Reserve Fund as additional security for payment of the Debt. Until expended or applied in accordance herewith, the Reserve Funds shall constitute additional security for the Debt. Upon the occurrence and during the continuance of an Event of Default, Lender may, in addition to any and all other rights and remedies available to Lender, apply any sums then present in any or all of the Reserve Funds to the payment of the Debt in any order in its sole discretion. The Reserve Funds shall not constitute trust funds and may be commingled with other monies held by Lender.

(b) Borrower shall not, without obtaining the prior consent of Lender, further pledge, assign or grant any security interest in any Reserve Fund or the monies deposited therein or permit any lien or encumbrance to attach thereto, or any levy to be made thereon, or any UCC-1 Financing Statements, except those naming Lender as the secured party, to be filed with respect thereto.

(c) The Reserve Funds shall be held by Lender (or Servicer) and may be invested at Borrower's election and direction in Permitted Investments routinely offered by the Servicer of the Securitization for investment by Borrower. All interest or other earnings on a Reserve Fund shall be added to and become a part of such Reserve Fund for the benefit of Borrower and shall be disbursed in the same manner as other monies deposited in such Reserve Fund. Borrower shall have the right to direct Lender (or Servicer) to invest sums on deposit in the Eligible Account in Permitted Investments provided (a) such investments are permitted by applicable federal, state and local rules, regulations and laws, (b) the maturity date of the Permitted Investment is not later than the date on which the applicable Reserve Funds are required for payment of an obligation for which such Reserve Fund was created, and (c) no Event of Default shall have occurred and be continuing. Borrower shall be responsible for

payment of any federal, state or local income or other tax applicable to the interest or income earned on the Reserve Funds. No other investments of the sums on deposit in the Reserve Funds shall be permitted except as set forth in this Section 7.5. Borrower shall bear all reasonable costs associated with the investment of the sums in the account in Permitted Investments. Such costs shall be deducted from the income or earnings on such investment, if any, and to the extent such income or earnings shall not be sufficient to pay such costs, such costs shall be paid by Borrower promptly on demand by Lender. Lender shall have no liability for the rate of return earned or losses incurred on the investment of the sums in Permitted Investments.

(d) Borrower shall indemnify Lender and hold Lender harmless from and against any and all actions, suits, claims, demands, liabilities, losses, damages, obligations and costs and expenses (including litigation costs and reasonable attorneys fees and expenses) arising from or in any way connected with the Reserve Funds or the performance of the obligations for which the Reserve Funds were established. Borrower shall assign to Lender all rights and claims Borrower may have against all Persons supplying labor, materials or other services which are to be paid from or secured by the Reserve Funds; provided, however, that Lender may not pursue any such right or claim unless an Event of Default has occurred and remains uncured.

**Section 7.6. Transfer of Reserve Funds Under Mortgage Loan.** If Mortgage Lender waives any reserves or escrow accounts required in accordance with the terms of the Mortgage Loan Agreement which reserves or escrow accounts are also required in accordance with the terms of this Article VII, or if the Mortgage Loan is refinanced or paid off in full (without a prepayment of the Loan) and Reserve Funds that are required hereunder are not required under the new mortgage loan, if any, then Borrower shall cause any amounts that would have been deposited into any reserves or escrow accounts in accordance with the terms of the Mortgage Loan Agreement to be paid to and deposited with Lender in accordance with the terms of this Article VII (and Borrower shall enter into lockbox and cash management agreements for the benefit of Lender in form and substance acceptable to Lender).

#### **VIII. DEFAULTS**

**Section 8.1. Event of Default.** (a) Each of the following events shall constitute an event of default hereunder (an “**Event of Default**”):

(i) if (A) any portion of the Debt is not paid in full on the Maturity Date, (B) the Debt Service is not paid in full on or before the related Payment Date or (C) any other portion of the Debt is not paid within five (5) days of when due;

(ii) if any of the Taxes or Other Charges are not paid (with respect to each Individual Property) prior to Delinquency;

(iii) if the Policies (with respect to each Individual Property) are not kept in full force and effect, or if certified copies of the Policies (for each Individual Property) are not delivered to Lender upon request (or certificates thereof, if a Policy shall be renewed and certified copies of the Policy are not immediately available upon such

renewal (Borrower agreeing in such instance to provide copies of the Policies to Lender promptly thereafter));

(iv) if Borrower Transfers or otherwise encumbers any portion of the Properties or the Collateral, or there shall otherwise occur a Transfer, without Lender's prior consent in violation of the provisions of this Agreement, the Pledge Agreement or any other Loan Document or any Transfer is made in violation of the provisions of Section 5.2.10;

(v) if any representation or warranty made by Borrower or any other Loan Party herein or in any other Loan Document, or in any report, certificate, financial statement or other instrument, agreement or document furnished to Lender shall have been false or misleading in any material respect as of the date the representation or warranty was made (and, with respect to any such breach which is not the subject of any other subsection of this Section 8.1 and which is capable of being cured, Borrower fails to remedy such condition within ten (10) days following notice to Borrower from Lender, in the case of any such breach which can be cured by the payment of a sum of money, or within thirty (30) days following notice from Lender in the case of any other such breach);

(vi) if Borrower, Mortgage Borrower, Principal, Holdings, Operating Company or any Guarantor shall make an assignment for the benefit of creditors;

(vii) if a receiver, liquidator or trustee shall be appointed for Borrower, Mortgage Borrower, Principal, Holdings, Operating Company or Guarantor, or if Borrower, Mortgage Borrower, Principal, Holdings, Operating Company or Guarantor shall be adjudicated a bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to federal bankruptcy law, or any similar federal or state law, shall be filed by or against, consented to, or acquiesced in by, Borrower, Mortgage Borrower, Principal, Holdings, Operating Company or Guarantor, or if any proceeding for the dissolution or liquidation of Borrower, Mortgage Borrower, Principal, Holdings, Operating Company or Guarantor shall be instituted; provided, however, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by Borrower, Mortgage Borrower, Principal, Holdings, Operating Company or Guarantor, upon the same not being discharged, stayed or dismissed within ninety (90) days;

(viii) if Borrower attempts to assign its rights under this Agreement or any of the other Loan Documents or any interest herein or therein in contravention of the Loan Documents;

(ix) if Borrower breaches any of its respective negative covenants contained in Section 5.2 or any covenant contained in Section 4.1.30 or Section 5.1.11 hereof (and, with respect to any such breach of any covenant set forth in Section 5.1.11 which is not the subject of any other subsection of this Section 8.1, Borrower fails to remedy such condition within ten (10) days after notice to Borrower from Lender, in the case of any

such Default under Section 5.1.11 which can be cured by the payment of a sum of money, or for thirty (30) days after notice from Lender in the case of any other such Default under Section 5.1.11);

(x) with respect to any term, covenant or provision set forth herein which specifically contains a notice requirement or grace period, if Borrower shall be in default under such term, covenant or condition after the giving of such notice or the expiration of such grace period;

(xi) if any of the assumptions contained in the Insolvency Opinion delivered to Lender in connection with the Loan, or in the Additional Insolvency Opinion delivered subsequent to the closing of the Loan, is or shall become untrue in any material respect; or if any of the assumptions contained in the True Lease Opinion delivered to Lender in connection with the Loan, or in the Additional True Lease Opinion delivered subsequent to the closing of the Loan, is or shall become untrue in any material respect;

(xii) if Mortgage Borrower, Operating Company or Guarantor (Operating Lease) is in default of any of its material obligations under the Operating Lease (or under another lease and/or management agreement in substitution for the Operating Lease in accordance herewith) or under the Operating Lease Guaranty (or under another operating lease guaranty in substitution for the Operating Lease Guaranty in accordance herewith) beyond any applicable notice and cure periods contained therein; or if any Operating Lease (or such other lease and/or management agreement) or any Operating Lease Guaranty (or such other operating lease guaranty) shall be surrendered or any Operating Lease or any Operating Lease Guaranty shall be terminated or canceled for any reason or under any circumstances whatsoever, except with the consent of Lender; or if any of the terms, covenants or conditions of the Operating Lease (or such other lease and/or management agreement) or the Operating Lease Guaranty (or such other operating lease guaranty) shall in any manner be modified, changed, supplemented, altered, restated or amended without the consent of Lender except as may otherwise expressly permitted in this Agreement;

(xiii) if any Affiliate of Borrower that is or becomes a party to the Windstorm Insurance Intercreditor Agreement is in default of any of its material obligations under the Windstorm Insurance Intercreditor Agreement beyond any applicable notice and cure periods contained therein; or if the Windstorm Insurance Intercreditor Agreement shall be surrendered, terminated or canceled for any reason or under any circumstances whatsoever, except with the consent of Lender; or if any of the terms, covenants or conditions of the Windstorm Insurance Intercreditor Agreement shall in any manner be modified, changed, supplemented, altered, restated or amended without the consent of Lender;

(xiv) if Borrower or Mortgage Borrower fails to comply with the covenants as to Prescribed Laws set forth in Section 5.1.1 hereof;

(xv) if (A) subject to any notice and cure periods contained in the applicable Ground Lease, Mortgage Borrower or Ground Lease Subsidiary, as applicable, shall fail in the payment of any rent, additional rent or other charge mentioned in or made payable by such Ground Lease as and when such rent or other charge is payable (unless waived by the landlord under such Ground Lease), (B) subject to any notice and cure periods contained in the applicable Ground Lease, there shall occur any default by Mortgage Borrower or Ground Lease Subsidiary, as applicable, as tenant under such Ground Lease, in the observance or performance of any term, covenant or condition of the Ground Lease on the part of Mortgage Borrower or Ground Lease Subsidiary, as applicable, to be observed or performed (unless waived by the landlord under the Ground Lease) (other than any such default being contested by Borrower in good faith by appropriate proceedings, provided that (i) no Event of Default has occurred and remains uncured, (ii) such proceeding shall be conducted in accordance with all applicable statutes, laws and ordinances, (iii) in Lender's reasonable determination, the Ground Lease is not in imminent danger of being forfeited, terminated, cancelled or lost and the Operating Company's use and operation of the ground leased premises in connection with the operation of Harrah's Lake Tahoe", "Harvey's Lake Tahoe" or "Bill's Lake Tahoe" is not in imminent danger of being denied, forfeited, terminated, cancelled or lost and (iv) Borrower shall furnish such security as may be reasonably requested by Lender), (C) any one or more of the events referred to in any Ground Lease shall occur which would cause the Ground Lease to terminate without notice or action by the landlord under the Ground Lease or which would entitle the landlord to terminate the Ground Lease and the term thereof by giving notice to Mortgage Borrower or Ground Lease Subsidiary, as applicable, as tenant thereunder (unless waived by the landlord under the Ground Lease), (D) the leasehold estate created by any Ground Lease shall be surrendered or the Ground Lease shall be terminated or canceled for any reason or under any circumstances whatsoever unless Mortgage Borrower or Ground Lease Subsidiary, as applicable, acquires the fee interest and mortgages same to Lender (unless Mortgage Borrower or Ground Lease Subsidiary, as applicable, acquires the fee interest, with Lender's prior reasonable approval, and mortgages same to Mortgage Lender) or (E) if any of the terms, covenants or conditions of any Ground Lease shall in any manner be modified, changed, supplemented, altered, or amended without the consent of Lender except as otherwise permitted by this Agreement;

(xvi) any Gaming License shall be refused, suspended, revoked, modified in a materially adverse manner or canceled or allowed to lapse or any proceeding is commenced by any Governmental Authority for the purpose of suspending, revoking or canceling any Gaming License in any materially adverse respect, or any Governmental Authority shall have appointed a conservator, supervisor or trustee to or for any of the Casino Components and, in each case of the foregoing, such action could reasonably be expected to (A) have an Individual Material Adverse Effect, (B) materially and adversely effect the continued operation of the Casino Components in the usual course of business and in substantially the same manner and to at least the same standard as was maintained prior to such action, or (C) result in any material decrease in the then expected cash flow and revenues to be derived from the Casino Components;

(xvii) if Borrower shall continue to be in Default under any of the other terms, covenants or conditions of this Agreement not specified in subsections (i) to (xv) above, for ten (10) days after notice to Borrower from Lender, in the case of any Default which can be cured by the payment of a sum of money, or for thirty (30) days after notice from Lender in the case of any other Default; provided, however, that if such non-monetary Default is susceptible of cure but cannot reasonably be cured within such thirty (30) day period and provided further that Borrower shall have commenced to cure such Default within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for such time as is reasonably necessary for Borrower in the exercise of due diligence to cure such Default, such additional period not to exceed one hundred twenty (120) days;

(xviii) if there shall be a default under any of the other Loan Documents beyond any applicable cure periods contained in such documents, whether as to Borrower, Mortgage Borrower, the Collateral or any Individual Property, or if any other such event shall occur or condition shall exist, if the effect of such event or condition is to accelerate the maturity of any portion of the Debt or to permit Lender to accelerate the maturity of all or any portion of the Debt; or

(xix) if the Liens created pursuant to any Loan Document shall cease to be a fully protected enforceable first priority security interest in the Collateral, or any portion of the Collateral is Transferred without Lender's prior written consent except as permitted hereunder; or

(xx) if a Mortgage Loan Event of Default shall occur.

(b) Upon the occurrence of an Event of Default (other than an Event of Default described in clauses (vi) or (vii) above) and at any time thereafter, in addition to any other rights or remedies available to it pursuant to this Agreement and the other Loan Documents or at law or in equity, Lender may take such action, without notice or demand, that Lender deems advisable to protect and enforce its rights against Borrower and in and to all or any of the Collateral, including, without limitation, declaring the Debt to be immediately due and payable, and Lender may enforce or avail itself of any or all rights or remedies provided in the Loan Documents and may exercise all the rights and remedies of a secured party under the Uniform Commercial Code, as adopted and enacted by the State or States where any of the Collateral is located against Borrower and any or all of the Collateral, including, without limitation, all rights or remedies available at law or in equity; and upon any Event of Default described in clauses (vi) or (vii) above, the Debt and all other obligations of Borrower hereunder and under the other Loan Documents shall immediately and automatically become due and payable, without notice or demand, and Borrower hereby expressly waives any such notice or demand, anything contained herein or in any other Loan Document to the contrary notwithstanding.

**Section 8.2. Remedies.** (a) Upon the occurrence of an Event of Default, but in compliance with applicable Gaming Laws, all or any one or more of the rights, powers, privileges and other remedies available to Lender against Borrower under this Agreement or any

of the other Loan Documents executed and delivered by, or applicable to, Borrower or at law or in equity may be exercised by Lender at any time and from time to time, whether or not all or any of the Debt shall be declared due and payable, and whether or not Lender shall have commenced any foreclosure proceeding or other action for the enforcement of its rights and remedies under any of the Loan Documents with respect to all or any of the Collateral. Any such actions taken by Lender shall be cumulative and concurrent and may be pursued independently, singularly, successively, together or otherwise, at such time and in such order as Lender may determine in its sole discretion, to the fullest extent permitted by law, without impairing or otherwise affecting the other rights and remedies of Lender permitted by law, equity or contract or as set forth herein or in the other Loan Documents. Without limiting the generality of the foregoing, Borrower agrees that if an Event of Default is continuing (i) Lender is not subject to any "one action" or "election of remedies" law or rule, and (ii) all liens and other rights, remedies or privileges provided to Lender shall remain in full force and effect until Lender has exhausted all of its remedies against the Collateral and the Collateral has been foreclosed upon, sold and/or otherwise realized upon in satisfaction of the Debt or the Debt has been paid in full.

(b) With respect to Borrower and the Collateral, nothing contained herein or in any other Loan Document shall be construed as requiring Lender to resort to any portion of the Collateral for the satisfaction of any of the Debt in preference or priority to any other portion of the Collateral, and Lender may seek satisfaction out of all of the Collateral or any part thereof, in its absolute discretion in respect of the Debt. In addition, Lender shall have the right from time to time to partially foreclose upon the Collateral in any manner and for any amounts secured by the Pledge Agreement then due and payable as determined by Lender in its sole discretion including, without limitation, the following circumstances: (i) in the event Borrower defaults beyond any applicable grace period in the payment of one or more scheduled payments of principal and interest, Lender may foreclose upon the Collateral to recover such delinquent payments, or (ii) in the event Lender elects to accelerate less than the entire outstanding principal balance of the Loan, Lender may foreclose upon the Collateral to recover so much of the principal balance of the Loan as Lender may accelerate and such other sums secured by the Collateral as Lender may elect. Notwithstanding one or more partial foreclosures, the Collateral shall remain subject to the Pledge Agreement and the other Loan Documents to secure payment of sums secured by the Pledge Agreement and other Loan Documents and not previously recovered.

(c) Upon the occurrence and during the continuance of an Event of Default, Lender shall have the right from time to time to sever the Note and the other Loan Documents into one or more separate notes, pledges and other security documents (the "Severed Loan Documents") in such denominations as Lender shall determine in its sole discretion for purposes of evidencing and enforcing its rights and remedies provided hereunder. Borrower shall execute and deliver to Lender from time to time, promptly after the request of Lender, a severance agreement and such other documents as Lender shall request in order to effect the severance described in the preceding sentence, all in form and substance reasonably satisfactory to Lender. Borrower hereby absolutely and irrevocably appoints Lender as its true and lawful attorney, coupled with an interest, in its name and stead to make and execute all documents necessary or desirable to effect the aforesaid severance, Borrower ratifying all that its said attorney shall do by virtue thereof; provided, however, Lender shall not make or execute any such documents under

such power until three (3) days after notice has been given to Borrower by Lender of Lender's intent to exercise its rights under such power. Borrower shall be obligated to pay any costs or expenses incurred in connection with the preparation, execution, recording or filing of the Severed Loan Documents. The Severed Loan Documents shall not contain any representations, warranties or covenants not contained in the Loan Documents and any such representations and warranties contained in the Severed Loan Documents will be given by Borrower only as of the Closing Date. The Severed Loan Documents shall (a) not increase the aggregate stated principal amount of the Loan, (b) provide that the weighted average spread of the Loan on the date of such severance shall equal the weighted average spread which was applicable to the Loan immediately prior to such severance (Borrower acknowledging that such Severed Loan Document may, in connection with the application of principal to the amounts evidenced by such Severed Loan Documents, subsequently cause the weighted average spread of such new notes or modified notes to change), (c) not adversely affect the overall economics to Borrower of the Loan, taken as a whole, or (d) expose Borrower to any additional costs or increased risk of any liability (beyond that or greater than that existing in the Loan Documents in effect on the date hereof).

(d) **Remedies Cumulative; Waivers.** The rights, powers and remedies of Lender under this Agreement shall be cumulative and not exclusive of any other right, power or remedy which Lender may have against Borrower pursuant to this Agreement or the other Loan Documents, or existing at law or in equity or otherwise. Lender's rights, powers and remedies may be pursued singularly, concurrently or otherwise, at such time and in such order as Lender may determine in Lender's sole discretion. No delay or omission to exercise any remedy, right or power accruing upon an Event of Default shall impair any such remedy, right or power or shall be construed as a waiver thereof, but any such remedy, right or power may be exercised from time to time and as often as may be deemed expedient. A waiver of one Default or Event of Default with respect to Borrower shall not be construed to be a waiver of any subsequent Default or Event of Default by Borrower or to impair any remedy, right or power consequent thereon.

(e) Any amounts recovered from the Collateral after an Event of Default may be applied by Lender toward the payment of any interest and/or principal of the Loan and/or any other amounts due under the Loan Documents in such order, priority and proportions as Lender in its sole discretion shall determine.

(f) Upon the occurrence and during the continuance of an Event of Default, Lender may, but without any obligation to do so and without notice to or demand on Borrower and without releasing Borrower from any obligation hereunder or being deemed to have cured any Event of Default hereunder, make, do or perform any obligation of Borrower hereunder in such manner and to such extent as Lender may deem necessary. Borrower shall cause Mortgage Borrower to permit Lender to enter upon any Individual Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in any Individual Property for such purposes, and the cost and expense thereof (including reasonable attorneys' fees to the extent permitted by law), with interest as provided in this Section 8.2, shall constitute a portion of the Debt and shall be due and payable to Lender upon demand. All such costs and expenses incurred by Lender in remedying such Event of Default or such failed payment or act or in

appearing in, defending, or bringing any action or proceeding shall bear interest at the Default Rate, for the period after such cost or expense was incurred into the date of payment to Lender. All such costs and expenses incurred by Lender together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and be secured by the liens, claims and security interests provided to Lender under the Loan Documents and shall be immediately due and payable upon demand by Lender therefore. Upon the occurrence and during the continuance of a Mortgage Loan Event of Default, Lender may, but without any obligation to do so and without notice to or demand on Borrower or Mortgage Borrower and without releasing Mortgage Borrower from any obligation under the Mortgage Loan Documents or being deemed to have cured any Mortgage Loan Event of Default, make, do or perform any obligation of Mortgage Borrower under Mortgage Loan Documents in such manner and to such extent as Lender may deem necessary. All such costs and expenses incurred by Lender in remedying such Mortgage Loan Event of Default or such failed payment or act shall bear interest at the Default Rate, for the period after such cost or expense was incurred into the date of payment to Lender. All such costs and expenses incurred by Lender together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and be secured by the liens, claims and security interests provided to Lender under the Loan Documents and shall be immediately due and payable upon demand by Lender therefor.

(g) For the purpose of carrying out the provisions and exercising the rights, powers and privileges granted in this Section 8.2, Borrower hereby irrevocably constitutes and appoints the Lender its true and lawful attorney-in-fact to execute, acknowledge and deliver any instruments and do and perform any acts such as are referred to in this subsection in the name and on behalf of Borrower upon the occurrence and during the continuance of an Event of Default. This power of attorney is a power coupled with an interest and cannot be revoked.

**Section 8.3. Intentionally Omitted.**

**Section 8.4. Costs of Collection.** In the event that after an Event of Default and during the continuance thereof: (a) the Note or any of the Loan Documents is placed in the hands of an attorney for collection or enforcement or is collected or enforced through any legal proceeding; (b) an attorney is retained to represent Lender in any bankruptcy, reorganization, receivership, or other proceedings affecting creditors' rights and involving a claim under the Note or any of the Loan Documents or (c) an attorney is retained to protect or enforce the lien or any of the terms of this Agreement, the Pledge Agreement or any of the Loan Documents, then, in any such instance, Borrower shall pay to Lender all reasonable attorneys' fees, costs and expenses actually incurred in connection therewith, including costs of appeal, together with interest on any judgment obtained by Lender at the Default Rate.

**IX. SPECIAL PROVISIONS**

**Section 9.1. Sale of Notes and Securitization.** Borrower acknowledges and agrees that the Lender may sell all or any portion of the Loan and the Loan Documents, or issue one or more participations therein, or consummate one or more private or public securitizations of rated single- or multi-class securities (the "**Securities**") secured by or evidencing ownership interests in all or any portion of the Loan and the Loan Documents or a pool of assets that

include the Loan and the Loan Documents (such sales, participations and/or securitizations, collectively, a “**Securitization**”). At the request of Lender, and to the extent not already required to be provided by Borrower under this Agreement, Borrower shall use reasonable efforts to provide information not in the possession of Lender or which may be reasonably required by Lender in order to satisfy the market standards to which Lender customarily adheres or which may be reasonably required by prospective investors and/or the Rating Agencies in connection with any such Securitization including, without limitation, to:

(a) provide or cause Mortgage Borrower to provide additional and/or updated Provided Information, together with appropriate verification and/or consents related to the Provided Information through letters of auditors or opinions of counsel of independent attorneys reasonably acceptable to Lender and the Rating Agencies;

(b) cooperate in good faith in the preparation of descriptive materials for presentations to any or all of the Rating Agencies, and work with, and if requested, supervise, third-party service providers engaged by Borrower, Holdings and their respective affiliates to obtain, collect, and deliver information requested or required by Lender or the Rating Agencies;

(c) deliver, if required or requested by any Rating Agency, (i) updated opinions of counsel as to non-consolidation, due execution and enforceability with respect to the Properties, Borrower, Mortgage Borrower, the Collateral, Principal, Holdings and their respective Affiliates and the Loan Documents, and (ii) revised organizational documents for Borrower, which counsel opinions and organizational documents shall be reasonably satisfactory to Lender and the Rating Agencies;

(d) if required by any Rating Agency, use commercially reasonable efforts to deliver such additional tenant estoppel letters, subordination agreements or other agreements from parties to agreements that affect any of the Properties, which estoppel letters, subordination agreements or other agreements shall be reasonably satisfactory to Lender and the Rating Agencies;

(e) execute such amendments to the Loan Documents as may be requested by Lender or the Rating Agencies to effect the Securitization and/or deliver one or more new component notes to replace the original note or modify the original note to reflect multiple components of the Loan such that the pricing and marketability of the Securities and the size of each class of Securities and the rating assigned to each such class by the Rating Agencies shall provide the most favorable rating levels and achieve the optimum rating levels for the Loan, provided that (i) the aggregate stated principal amount of the notes, following such amendments or delivery of new or component notes, shall equal the aggregate stated principal amount of the Loan immediately prior thereto, (ii) the weighted average spread of the Loan on the date of such amendment or delivery of new or component notes shall equal the weighted average spread which was applicable to the Loan immediately prior to such adjustment (Borrower acknowledging that such new notes or modified notes may, in connection with the application of principal to such new notes or modified note following the occurrence of an Event of Default, but not otherwise, subsequently cause the weighted average spread of such new notes or modified notes to change and (iii) the provisions of Section 2.1.5 otherwise shall apply to any

such amendments and delivery of new or component notes (such provisions being incorporated herein by this reference);

(f) if requested by Lender, review any information regarding any of the Properties, Borrower, Mortgage Borrower, Principal, the Collateral, Holdings, the Operating Company and the Loan which is contained in a preliminary or final private placement memorandum, prospectus, prospectus supplement (including any amendment or supplement to either thereof), or other disclosure document to be used by Lender or any affiliate thereof; and

(g) supply to Lender such documentation, financial statements and reports in form and substance required in order to comply with any applicable securities laws (to the extent in Borrower's possession, or in the possession of Borrower's advisors, agents or employees), including, without limitation, if applicable, information necessary to comply with any applicable reporting or information requirements under Regulation D under the Securities Act of 1933 or Regulation S under the Securities Act of 1933.

Lender and Borrower each shall pay their respective costs and expenses incurred in connection with the foregoing, including, without limitation, legal fees in connection with any of the foregoing matters; except that all costs and expenses of Lender and Borrower associated with any restructuring of the Loan requested by Lender, including under Section 2.1.5, 2.1.6 and 2.1.7, shall be paid solely by Lender.

**Section 9.2. Securitization Indemnification.** (a) Borrower understands that certain of the Provided Information may be included in Disclosure Documents in connection with the Securitization and may also be included in filings with the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended (the "**Securities Act**"), or the Securities and Exchange Act of 1934, as amended (the "**Exchange Act**"), or provided or made available to investors or prospective investors in the Securities, the Rating Agencies, and service providers relating to the Securitization. In the event that the Disclosure Document is required to be revised prior to the sale of all Securities, Borrower will cooperate with the holder of the Note in updating the Disclosure Document by providing all current information necessary to keep the Disclosure Document accurate and complete in all material respects to the extent in Borrower's possession.

(b) Borrower agrees to provide, in connection with the Securitization, an indemnification agreement (i) certifying that (A) Borrower has carefully examined the Disclosure Documents, including, without limitation, the sections entitled "Risk Factors," "Special Considerations," "Description of the Collateral," "Description of the Mezzanine Loans," "The Operating Company," "The Borrower" and "Certain Legal Aspects of the Mezzanine Loans," and (B) such sections and such other information in the Disclosure Documents (to the extent such information relates to or includes any Provided Information or any information regarding the Properties, Borrower, Mortgage Borrower, the Collateral and/or Operating Company) (collectively with the Provided Information, the "**Covered Disclosure Information**") do not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, (ii) indemnifying Lender, each Noteholder, JPM

(whether or not it is the Lender), any Affiliate of JPM or a Noteholder that has filed any registration statement relating to the Securitization or has acted as the sponsor or depositor in connection with the Securitization, any Affiliate of JPM or a Noteholder that acts as an underwriter, placement agent or initial purchaser of Securities issued in the Securitization, any other co-underwriters, co-placement agents or co-initial purchasers of Securities issued in the Securitization, and each of their respective officers, directors, partners, employees, representatives, agents and Affiliates and each Person or entity who controls any such Person within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act (collectively, the “**Indemnified Persons**”), for any losses, claims, damages, liabilities, costs or expenses (including, without limitation, legal fees and expenses for enforcement of these obligations (collectively, the “**Liabilities**”)) to which any such Indemnified Person may become subject insofar as the Liabilities arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in the Covered Disclosure Information or arise out of or are based upon the omission or alleged omission to state in the Covered Disclosure Information a material fact required to be stated therein or necessary in order to make the statements in the Covered Disclosure Information, in light of the circumstances under which they were made, not misleading and (iii) agreeing to reimburse each Indemnified Person for any legal or other expenses incurred by such Indemnified Person, as they are incurred, in connection with investigating or defending the Liabilities provided, however, that Borrower shall have liability with respect to Liabilities arising out of or based upon the Covered Disclosure Information only to the extent that such Liabilities arise out of or are based upon any such untrue statement or omission made in the Covered Disclosure Information in reliance upon and in conformity with information furnished to Lender or such Noteholder by or on behalf of Borrower in connection with the preparation of the Disclosure Documents or in connection with the underwriting or the closing of the Loan (including without limitation financial statements of Borrower and operating statements and rent rolls with respect to the Properties), and in no event shall Borrower be liable for Liabilities arising from information contained in a Disclosure Document that was not provided to Borrower for comment at least five (5) Business Days prior to its dissemination or on which Borrower provided comments to Lender in writing and Lender failed to incorporate such comments (assuming such comments were accurate). This indemnity agreement will be in addition to any liability which Borrower may otherwise have. Moreover, the indemnification provided for in clauses (ii) and (iii) above shall be effective whether or not an indemnification agreement described in clause (i) above is provided.

(c) In connection with filings under the Exchange Act (if any), Borrower agrees to indemnify (i) the Indemnified Persons for Liabilities to which any such Indemnified Person may become subject insofar as the Liabilities arise out of or are based upon any untrue statement or alleged untrue statement of any material fact in the Covered Disclosure Information, or the omission or alleged omission to state in the Covered Disclosure Information a material fact required to be stated therein or necessary in order to make the statements in the Covered Disclosure Information, in light of the circumstances under which they were made, not misleading and (ii) reimburse each Indemnified Person for any legal or other expenses incurred by such Indemnified Persons, as they are incurred, in connection with defending or investigating the Liabilities.

(d) Promptly after receipt by an Indemnified Person of notice of any claim or the commencement of any action, the Indemnified Person shall, if a claim in respect thereof is to be made against Borrower, notify Borrower in writing of the claim or the commencement of that action; provided, however, that the failure to notify Borrower shall not relieve it from any liability which it may have under the indemnification provisions of this Section 9.2 except to the extent that it has been materially prejudiced by such failure and, provided further that the failure to notify Borrower shall not relieve it from any liability which it may have to an Indemnified Person otherwise than under the provisions of this Section 9.2. If any such claim or action shall be brought against an Indemnified Person, and it shall notify Borrower thereof, Borrower shall be entitled to participate therein and, to the extent that it wishes, assume the defense thereof with counsel reasonably satisfactory to the Indemnified Person. After notice from any Borrower to an Indemnified Person of its election to assume the defense of such claim or action, Borrower shall not be liable to the Indemnified Person for any legal or other expenses subsequently incurred by the Indemnified Person in connection with the defense thereof except as provided in the following sentence; provided, however, if the defendants in any such action include both Borrower, on the one hand, and one or more Indemnified Persons on the other hand, and an Indemnified Person shall have reasonably concluded that there are any legal defenses available to it and/or other Indemnified Persons that are different or in addition to those available to Borrower, the Indemnified Person or Persons shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on behalf of such Indemnified Person or Persons. The Indemnified Person shall instruct its counsel to maintain reasonably detailed billing records for fees and disbursements for which such Indemnified Person is seeking reimbursement hereunder and shall submit copies of such detailed billing records to substantiate that such counsel's fees and disbursements are solely related to the defense of a claim for which Borrower is required hereunder to indemnify such Indemnified Person. Borrower shall not be liable for the expenses of more than one (1) such separate counsel unless such Indemnified Person shall have reasonably concluded that there may be legal defenses available to it that are different from or additional to those available to another Indemnified Person.

(e) Without the prior consent of the Indemnified Person in question (which consent shall not be unreasonably withheld), Borrower shall not settle or compromise or consent to the entry of any judgment in any pending or threatened claim, action, suit or proceeding in respect of which indemnification may be sought hereunder (whether or not any Indemnified Person is an actual or potential party to such claim, action, suit or proceeding) unless Borrower shall have given such Indemnified Person reasonable prior notice thereof and shall have obtained an unconditional release of each Indemnified Person hereunder from all liability arising out of such claim, action, suit or proceedings. As long as Borrower has complied with its obligations to defend and indemnify hereunder, Borrower shall not be liable for any settlement made by any Indemnified Person without the consent of Borrower (which consent shall not be unreasonably withheld).

(f) Borrower agrees that if any indemnification or reimbursement sought pursuant to this Section 9.2 is finally judicially determined to be unavailable for any reason or is insufficient to hold any Indemnified Person harmless (with respect only to the Liabilities that are the subject of this Section 9.2), then Borrower, on the one hand, and such Indemnified Person, on

the other hand, shall contribute to the Liabilities for which such indemnification or reimbursement is held unavailable or is insufficient: (x) in such proportion as is appropriate to reflect the relative benefits to Borrower, on the one hand, and such Indemnified Person, on the other hand, from the transactions to which such indemnification or reimbursement relates; or (y) if the allocation provided by clause (x) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (x) but also the relative faults of Borrower, on the one hand, and all Indemnified Persons, on the other hand, as well as any other equitable considerations. Notwithstanding the provisions of this Section 9.2, (A) no party found liable for a fraudulent misrepresentation shall be entitled to contribution from any other party who is not also found liable for such fraudulent misrepresentation, and (B) Borrower agrees that in no event shall the amount to be contributed by the Indemnified Persons collectively pursuant to this paragraph exceed the amount of the fees (by underwriting discount or otherwise) actually received by the Indemnified Persons in connection with the closing of the Loan or the Securitization.

(g) Borrower agrees that the indemnification, contribution and reimbursement obligations set forth in this Section 9.2 shall apply whether or not any Indemnified Person is a formal party to any lawsuits, claims or other proceedings. Borrower further agrees that the Indemnified Persons are intended third party beneficiaries under this Section 9.2.

(h) The liabilities and obligations of the Indemnified Persons and Borrower under this Section 9.2 shall survive the termination of this Agreement and the satisfaction and discharge of the Debt.

(i) Notwithstanding anything to the contrary contained herein, Borrower shall have no obligation to act as depositor with respect to the Loan or an issuer or registrant with respect to the Securities issued in any Securitization.

**Section 9.3. Exculpation.** (a) Subject to the qualifications below, Lender shall not enforce the liability and obligation of Borrower to perform and observe the obligations contained in the Note, this Agreement, the Pledge Agreement or the other Loan Documents by any action or proceeding wherein a money judgment shall be sought against Borrower, except that Lender may bring a foreclosure action, an action for specific performance or any other appropriate action or proceeding to enable Lender and each Noteholder to enforce and realize upon its interest under the Note, this Agreement, the Pledge Agreement and the other Loan Documents, or in the Collateral or any other collateral given to Lender pursuant to the Loan Documents; provided, however, that, except as specifically provided herein, any judgment in any such action or proceeding shall be enforceable against Borrower only to the extent of Borrower's interest in the Collateral and in any other collateral given to Lender, and Lender, by accepting the Note, this Agreement, the Pledge Agreement and the other Loan Documents, agrees that it shall not sue for, seek or demand any deficiency judgment against Borrower in any such action or proceeding under, or by reason of, or in connection with, the Note, this Agreement, the Pledge Agreement or the other Loan Documents. The provisions of this Section shall not, however, (a) constitute a waiver, release or impairment of any obligation evidenced or secured by any of the Loan Documents; (b) impair the right of Lender to name Borrower as a party defendant in any action or suit for foreclosure and sale under the Pledge Agreement; (c) affect the validity or

enforceability of or any Guaranty made in connection with the Loan or any of the rights and remedies of Lender thereunder; (d) impair the right of Lender to obtain the appointment of a receiver; (e) intentionally omitted; (f) constitute a prohibition against Lender to seek a deficiency judgment against Borrower in order to fully realize the security granted by the Pledge Agreement or to commence any other appropriate action or proceeding in order for Lender to exercise its remedies against all of the Collateral; or (g) constitute a waiver of the right of Lender to enforce the liability and obligation of Borrower, by money judgment or otherwise, to the extent of any actual loss, damage, cost, expense, liability, claim or other obligation incurred by Lender (including attorneys' fees and costs reasonably incurred) arising out of or in connection with the following:

(i) fraud or intentional misrepresentation by Borrower, Mortgage Borrower, Operating Company or any Guarantor in connection with the execution and delivery of the Loan Documents and/or the Loan;

(ii) the misappropriation, conversion or misapplication in contravention of the Loan Documents by Borrower, Mortgage Borrower, Operating Company or any Guarantor of any funds of Borrower, Mortgage Borrower or Operating Company, including, without limitation, (A) any Revenues, (B) any Net Liquidation Proceeds or Insurance Proceeds, (C) any Awards received in connection with a Condemnation, (D) any Rents or security deposits (or any item of Revenue, from whatever source) following an Event of Default, or (E) any distribution or other payments made in connection with any part of the Collateral;

(iii) the misappropriation, conversion or misapplication by Borrower, Mortgage Borrower, Operating Company or any Guarantor of any security deposits or Rents paid more than one (1) month in advance;

(iv) any act of actual intentional physical waste by Borrower, Mortgage Borrower, Operating Company or any Guarantor;

(v) the breach of any representation, warranty, covenant or indemnification provision in the Environmental Indemnity concerning environmental laws, hazardous substances and asbestos and any indemnification of Lender with respect thereto in either document;

(vi) if Borrower, Mortgage Borrower or Operating Company fails to obtain Lender's prior consent to any voluntary intentional Transfer as required by this Agreement, the Mortgage Loan Agreement or the Mortgages, as applicable;

(vii) any security deposits, advance deposits or any other deposits collected with respect to any of the Properties which are not delivered to Mortgage Lender upon a foreclosure of any of the Properties or action in lieu thereof, except to the extent any such security deposits were applied in accordance with the terms and conditions of any of the Leases prior to the occurrence of the Event of Default that gave rise to such foreclosure or action in lieu thereof;

(viii) in the event of: (A) Borrower, Mortgage Borrower, Operating Company or any Guarantor filing a voluntary petition under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (B) the filing of an involuntary petition against Borrower, Mortgage Borrower, Operating Company or any Guarantor under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law by any Person in which Borrower, Mortgage Borrower, Operating Company or any Guarantor or any of their respective Affiliates, agents or employees colludes with or such other Person, or Borrower, Mortgage Borrower, Operating Company or any Guarantor soliciting or causing to be solicited petitioning creditors for any involuntary petition against Borrower, Operating Company or any Guarantor from any Person; (C) Borrower, Mortgage Borrower, Operating Company or any Guarantor filing an answer consenting to or otherwise acquiescing in or joining in any involuntary petition filed against it by any other Person, other than Lender, under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (D) Borrower, Mortgage Borrower, Operating Company or any Guarantor consenting to or acquiescing in or joining in an application for the appointment of a custodian, receiver, trustee, or examiner for Borrower, Mortgage Borrower, Operating Company or any Guarantor or any of the Properties or the Collateral or any portion thereof, other than at the request of Lender; or (E) Borrower, Mortgage Borrower, Operating Company or any Guarantor making an assignment for the benefit of creditors (other than Lender), or admitting, in writing or in any legal proceeding, its insolvency or inability to pay its debts as they become due;

(ix) if any of the limited liability companies constituting Borrower or Mortgage Borrower fails to maintain its status as a Special Purpose Entity or breaches any material representation or warranty set forth in Section 4.1.30 of this Agreement; and

(x) if Borrower, Mortgage Borrower or Operating Company fails to obtain Lender's prior consent to any voluntary Indebtedness (other than (x) with respect to Mortgage Borrower, Permitted Indebtedness and (y) with respect to Operating Company, Permitted Indebtedness (Operating Company), as applicable) or voluntary Lien (other than Permitted Encumbrances) encumbering any of the Properties or Collateral as required by this Agreement, the Mortgage Loan Agreement, the Pledge Agreement or the Mortgages.

Notwithstanding anything to the contrary under this Agreement, neither any present or future Affiliate of Borrower (other than Guarantor, to the extent provided under the Guaranty) nor any present or future shareholder, officer, director, employee, trustee, beneficiary, advisor, partner, member, principal, participant or agent of or in any Borrower or of or in any person or entity that is or becomes an Affiliate of any Borrower shall have any personal liability, directly or indirectly, under or in connection with the Loan Documents. Neither the negative capital account of any Affiliate of Borrower in Borrower, or in any other Affiliate of Borrower in any other Affiliate of Borrower, nor any obligation of any Affiliate of Borrower in any Borrower to restore a negative capital account or to contribute or loan capital to any Borrower or to any other Affiliate of Borrower shall at any time be deemed to be the property or an asset of any Borrower (or any other Affiliate of Borrower) and neither Lender nor its successors or assigns shall have

any right to collect, enforce or proceed against any such negative capital account or obligation to restore, contribute or loan capital.

(b) Notwithstanding anything to the contrary in this Agreement, the Note or any of the Loan Documents, Lender shall not be deemed to have waived any right which Lender may have under Section 506(a), 506(b), 1111(b) or any other provisions of the Bankruptcy Code to file a claim for the full amount of the Indebtedness or to require that all collateral shall continue to secure all of the Indebtedness owing to Lender in accordance with the Loan Documents.

**Section 9.4. Servicer.**

(a) At the option of Lender, the Loan may be serviced by a servicer/trustee (the “**Servicer**”) selected by Lender and Lender may delegate all or any portion of its responsibilities under this Agreement and the other Loan Documents to the Servicer pursuant to a servicing agreement (the “**Servicing Agreement**”) between Lender and Servicer. Lender shall be responsible for any set-up fees or any other initial costs relating to or arising under the Servicing Agreement (arising in connection with the Securitization) and the payment of the monthly servicing fee due to Servicer under the Servicing Agreement, and, unless otherwise specifically set forth herein, Borrower shall be responsible for the payment of all fees and other reasonable out-of-pocket expenses incurred by Servicer resulting from any Borrower requests (for approvals or otherwise) to Servicer.

(b) In the event of a Securitization or syndication, the grant of participations in the Loan or any secondary marketing by Lender, Mortgage Borrower and the Mezzanine Borrowers, collectively may rely upon approvals or consents given by one (1) agent or representative in respect of the Mortgage Lender and the Mezzanine Lenders for the matter in question (which such parties shall designate, and pending further notice from Lender, such agent shall be JPM). Borrower shall only pay legal fees for the outside counsel of one Servicer.

**Section 9.5. Assignments and Participations.** (a) In addition to the rights Lender has under Section 9.1, Lender shall have the right, subject to this Section 9.5, to assign, sell, negotiate, pledge or hypothecate all or any portion of their rights and obligations hereunder (a “**Syndication**”). Except in connection with a Securitization, no Lender shall assign, sell, negotiate, pledge, hypothecate or otherwise transfer all or any portion of its rights in and to the Loan to any other Person (an “**Assignee**”) (a) other than in compliance with Section 9.9 hereof; and (b) unless such transaction shall be an assignment of a constant (and not varying), ratable percentage of such Lender’s interest in the Loan; provided, however, any Lender shall have the right at any time without the consent of or notice to any other Lender or other Person to grant a security interest in all or any portion of such Lender’s interest in the Loan to any Federal Reserve Bank or the central reserve bank or similar authority of any other country to secure any obligation of such Lender to such bank or similar authority (a “**Central Bank Pledge**”). Effective on any such assignment and assumption by the assignee and on compliance with Section 9.9 hereof, the assigning Lender shall have no further liability hereunder with respect to the interest of such Lender that was the subject of such transfer and such Assignee shall be a Lender with respect to such interest, and Borrower shall have the same rights as to such Assignee with respect to such interest from and after the date of such assignment as if such Lender were an

original Lender hereunder. Except for a Central Bank Pledge or financing transaction under a repurchase agreement, a Lender making any such assignment shall notify Borrower of same, specifying the Assignee thereof and the amount of the assignment and shall provide such other detail as Borrower may reasonably request to substantiate compliance with the foregoing.

**Section 9.6. Participation.** Lender may, without the consent of the Borrower, in compliance with applicable law, sell participations to one or more banks or other entities (a **“Participant”**), in all or a portion of Lender’s rights and obligations under this Agreement (including all or a portion of the Loan owing to it); provided that (A) Lender’s obligations under this Agreement shall remain unchanged, (B) Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) the Borrower shall continue to deal solely and directly with Lender in connection with Lender’s rights and obligations under this Agreement. The Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.2.3 and 2.2.4 (subject to requirements and limitations therein) to the same extent as if it were a Noteholder and had acquired its interest by assignment pursuant to Section 9.5. Each Lender that sells a participation shall, acting solely for this purpose as an agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each participant’s interest in the Loans or other obligations under this Agreement (the **“Participant Register”**). The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each person whose name is recorded in the Participant Register as the owner of such Loan or other obligation hereunder as the owner thereof for all purposes of this Agreement notwithstanding any notice to the contrary.

**Section 9.7. Borrower’s Facilitation of Transfer.** In order to facilitate permitted assignments and other transfers to Assignees and sales to Participants, Borrower shall execute and deliver to Lender and shall cause Guarantor to execute and deliver to Lender such further documents, instruments or agreements as Lender may reasonably require, including, if required by Lender, supplemental notes in the principal amount of such Lender’s pro rata share of the Loan substantially in the form of such Lender’s Note against surrender of the prior notes, and such supplemental note shall (i) be payable to order of such Lender, (ii) be dated as of the date hereof, and (iii) mature on the Maturity Date. Such supplemental note shall provide that it evidences a portion of the existing indebtedness hereunder and under the Notes and not any new or additional indebtedness of Borrower. The term “Note” as used in this Agreement and in all the other Loan Documents shall include all such supplemental notes but exclude any Note it replaces. Notwithstanding the foregoing, such documents, instruments or agreements shall not (a) increase the obligations or liabilities of any such Person hereunder or under the other Loan Documents in excess of the obligations or liabilities intended to be provided herein or in the other Loan Documents or (b) decrease such Person’s rights hereunder or under the other Loan Documents to less than what they were prior to the execution of such documents, instruments or agreements. In addition, Borrower agrees to reasonably cooperate with Lender, including providing such information and documentation regarding Borrower, Mortgage Borrower, Holdings, the Operating Company and any other Person as Lender or any potential Assignee or Participant may reasonably request and to meet with potential Assignees and Participants upon reasonable notice. Lender and Borrower each shall pay their respective costs and expenses incurred in connection with the foregoing, including, without limitation, legal fees in connection with any of the foregoing matters, except that all costs and expenses of Lender and Borrower

associated with any restructuring of the Loan requested by Lender, including under Section 2.1.5, 2.1.6 and 2.1.7, shall be paid solely by Lender.

**Section 9.8. Notice; Registration Requirement.** No Syndication of any part of Lender's interest in and to the Loan shall be effective or permitted under Section 9.5 until (a) an assignment and acceptance agreement in a form reasonably acceptable to Lender (an "**Assignment and Acceptance**") with respect to such Syndication shall have been delivered to Lender, (b) Lender shall have registered such Assignee's name and address in the Register which Lender maintains for the recordation of the names, addresses and interests of Noteholders, and (c) if such Assignee is not already a Lender hereunder, such Assignee shall deliver any tax forms required hereunder. The entries in the Register shall be conclusive, absent manifest error. This Section 9.8 shall not apply to any Central Bank Pledge.

**Section 9.9. Registry.** Borrower hereby designates Lender to serve as Borrower's agent, solely for purposes of this Section 9.9, to maintain at one of its offices a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the names and addresses of each Assignee, and the principal amount of the Loan (or portions thereof) owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). Failure to make any such recordation, or any error in such recordation shall not affect Borrower's obligations in respect of the Loan. With respect to any Lender, the transfer of the rights to the principal of, and interest on, its interest in the Loan shall not be effective until such transfer is recorded on the Register maintained by Lender with respect to ownership of such Loan and prior to such recordation all amounts owing to the transferor with respect to such Note shall remain owing to the transferor. The registration of a transfer of all or part of the Loan shall be recorded by Lender on the Register only upon the acceptance by Lender of a properly executed and delivered Assignment and Acceptance by the assignor and assignee. At the assigning Lender's option, concurrently with the delivery of an Assignment and Acceptance pursuant to which an interest of such Lender in the Loan was assigned to such Assignee, the assigning Lender shall surrender to Borrower its Note, if any, evidencing the portion of the Loan corresponding to the interest so transferred and Borrower shall deliver to Lender one or more new promissory notes in the same aggregate principal amount issued to the assigning Lender and/or the Assignee.

**Section 9.10. Cooperation in Syndication.** Borrower agrees to assist the Lender in completing a Syndication satisfactory to the Lender. Such assistance shall include (i) direct contact between senior management and advisors of Borrower and the proposed Assignees and/or Participants, (ii) assistance in the preparation of a confidential information memorandum and other marketing materials to be used in connection with the Syndication, (iii) the hosting, with the Lender, of one or more meetings of prospective Assignees and/or Participants, (iv) the delivery of appraisals satisfactory to the Lender if required. To assist the Lender in its Syndication efforts, Borrower agrees promptly to prepare and provide to the Lender all information with respect to Borrower, Mortgage Borrower, Holdings, the Operating Company, Guarantor, the Collateral and the Properties contemplated hereby, including all financial information and projections (the "**Projections**"), as the Lender may reasonably request in connection with the Syndication of the Loan. If required in connection with the Syndication, Borrower hereby agrees to:

(a) deliver updated financial and operating statements and other information reasonably required by the Lender to facilitate the Syndication;

(b) use reasonable efforts to deliver reliance letters reasonably satisfactory to the Lender with respect to the environmental assessments and reports delivered to the Lender prior to the Closing Date, which will run to the Lender and its successors and assigns;

(c) execute modifications to the Loan Documents required by the Lender, provided that such modification will not (except as set forth in (d)) change any material or economic terms of the Loan Documents, or otherwise increase the obligations or decrease the rights of Borrower pursuant to the Loan Documents (except to a de minimis extent); and

(d) if the Lender elects, in its sole discretion, prior to or upon a Syndication, to exercise its rights under Section 2.1.5, Borrower agrees to cooperate with the Lender in connection with the foregoing and to execute the required modifications and amendments to the Notes, this Agreement and the Loan Documents and to use reasonable efforts to provide opinions necessary to effectuate the same. Such Notes or components may be assigned different interest rates, so long as the weighted average of such interest rates does not exceed the Applicable Interest Rate, except in connection with the application of principal to such Notes or components following the occurrence of an Event of Default.

Lender and Borrower each shall pay their respective costs and expenses incurred in connection with the foregoing, including, without limitation, legal fees in connection with any of the foregoing matters, except that all costs and expenses of Lender and Borrower associated with any restructuring of the Loan requested by Lender, including under Section 2.1.5, 2.1.6 and 2.1.7, shall be paid solely by Lender.

#### **X. MISCELLANEOUS**

**Section 10.1. Survival.** This Agreement and all covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the making by Lender of the Loan and the execution and delivery to Lender of the Note, and shall continue in full force and effect so long as all or any of the Debt is outstanding and unpaid unless a longer period is expressly set forth herein or in the other Loan Documents. Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the legal representatives, successors and assigns of such party. All covenants, promises and agreements in this Agreement, by or on behalf of Borrower, shall inure to the benefit of the legal representatives, successors and assigns of Lender.

**Section 10.2. Lender's Discretion.** Whenever pursuant to this Agreement, Lender exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Lender, the decision of Lender to approve or disapprove or to decide whether arrangements or terms are satisfactory or not satisfactory shall (except as is otherwise specifically herein provided) be in the sole discretion of Lender and shall be final and conclusive. Whenever this Agreement expressly provides that Lender may not withhold or shall be reasonable in granting its consent or its approval of an arrangement or term, such provisions shall also be deemed to prohibit Lender from delaying or conditioning such consent or approval.

**Section 10.3. Governing Law.**

(A) THIS AGREEMENT WAS NEGOTIATED IN THE STATE OF NEW YORK, THE LOAN WAS MADE BY LENDER AND ACCEPTED BY BORROWER IN THE STATE OF NEW YORK, AND THE PROCEEDS OF THE LOAN DELIVERED PURSUANT HERETO WERE DISBURSED FROM THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS AND THE OBLIGATIONS ARISING HEREUNDER AND THEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA, TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER AND LENDER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVE ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS, AND THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

(B) ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER OR BORROWER ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS MAY AT LENDER'S OPTION BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW AND BORROWER WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND BORROWER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. BORROWER DOES HEREBY DESIGNATE AND APPOINT:

Corporation Service Company  
2711 Centerville Road, Suite 400  
Wilmington, DE 19808

AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON ITS BEHALF SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY FEDERAL OR STATE COURT IN NEW YORK, NEW YORK, AND AGREES THAT SERVICE OF PROCESS UPON SAID AGENT AT SAID ADDRESS AND NOTICE OF SAID SERVICE MAILED

OR DELIVERED TO BORROWER IN THE MANNER PROVIDED HEREIN SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON BORROWER IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE STATE OF NEW YORK. BORROWER (I) SHALL GIVE PROMPT NOTICE TO LENDER OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER, (II) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN NEW YORK, NEW YORK (WHICH SUBSTITUTE AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS), AND (III) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE IF ITS AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN NEW YORK, NEW YORK OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR.

**Section 10.4. Modification, Waiver in Writing.** No modification, amendment, extension, discharge, termination or waiver of any provision of this Agreement, or of the Note, or of any other Loan Document, nor consent to any departure by Borrower therefrom, shall in any event be effective unless the same shall be in a writing signed by the party against whom enforcement is sought, and then such waiver or consent shall be effective only in the specific instance, and for the purpose, for which given. Except as otherwise expressly provided herein, no notice to, or demand on Borrower, shall entitle Borrower to any other or future notice or demand in the same, similar or other circumstances. To the extent required by any Gaming Law, Borrower shall notify all relevant Gaming Authorities of any amendment to this Agreement or any Loan Document.

**Section 10.5. Delay Not a Waiver.** Except as expressly set forth herein, neither any failure nor any delay on the part of Lender in insisting upon strict performance of any term, condition, covenant or agreement, or exercising any right, power, remedy or privilege hereunder, or under the Note or under any other Loan Document, or any other instrument given as security therefor, shall operate as or constitute a waiver thereof, nor shall a single or partial exercise thereof preclude any other future exercise, or the exercise of any other right, power, remedy or privilege. In particular, and not by way of limitation, by accepting payment after the due date of any amount payable under this Agreement, the Note or any other Loan Document, Lender shall not be deemed to have waived any right either to require prompt payment when due of all other amounts due under this Agreement, the Note or the other Loan Documents, or to declare a default for failure to effect prompt payment of any such other amount.

**Section 10.6. Notices.** All notices, consents, approvals and requests required or permitted hereunder or under any other Loan Document shall be given in writing and shall be effective for all purposes if hand delivered or sent by (a) certified or registered United States mail, postage prepaid, return receipt requested or (b) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery, and by telecopier (with answer back acknowledged), addressed as follows (or at such other address and Person as shall be designated from time to time by any party hereto, as the case may be, in a notice to the other parties hereto in the manner provided for in this [Section 10.6](#)):

If to Lender: JPMorgan Chase Bank, N.A.

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270 Park Avenue, 10th Floor  
New York, New York 10017  
Attention: Michael Mesard  
Facsimile No.: (212) 834-6592

with a copy to:

Sullivan & Cromwell LLP  
125 Broad Street  
New York, New York 10004  
Attention: Arthur S. Adler  
Facsimile No.: 212-558-3588

and

Cadwalader, Wickersham & Taft LLP  
One World Financial Center  
New York, New York 10281  
Attention: Fredric L. Altschuler  
Facsimile No. (212) 504-6666

If to Borrower:

One Caesars Palace Drive  
Las Vegas, Nevada 89109  
Attention: Chief Financial Officer  
Facsimile No. (702) 407-6081

With a copy to:

One Caesars Palace Drive  
Las Vegas, Nevada 89109  
Attention: General Counsel  
Facsimile No. (702) 407-6418

and

Cleary Gottlieb Steen & Hamilton LLP  
One Liberty Plaza  
New York, New York 10006  
Attention: Michael Weinberger  
Facsimile No. (212) 225-3999

and

Pircher, Nichols & Meeks  
1925 Century Park East, Seventeenth Floor  
Los Angeles, California 90067  
Attention: David Packer  
Facsimile No. (310) 201-8922

A notice shall be deemed to have been given: in the case of hand delivery, at the time of delivery; in the case of registered or certified mail, when delivered or the first attempted delivery on a Business Day; or in the case of expedited prepaid delivery and telecopy, upon the first attempted delivery on a Business Day; or in the case of telecopy, upon sender's receipt of a machine-generated confirmation of successful transmission after advice by telephone to recipient that a telecopy notice is forthcoming. Each Borrower hereby designates Tahoe Mezz 1, LLC, a Delaware limited liability company ("**Borrower Agent**"), as the party to give and receive notices on behalf of Borrower hereunder, and any notice received by Lender by a Borrower other than Borrower Agent shall not constitute effective notice to, or be binding upon Lender hereunder. Notwithstanding the foregoing, any notice by Lender to one or more Borrowers other than Borrower Agent shall be deemed to constitute effective notice to all of the Borrowers.

**Section 10.7. Trial by Jury.** BORROWER AND LENDER HEREBY AGREE NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVE ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY BORROWER AND LENDER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. BORROWER AND LENDER ARE HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER.

**Section 10.8. Headings.** The Article and/or Section headings and the Table of Contents in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

**Section 10.9. Severability.** Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

**Section 10.10. Preferences.** Lender shall have the continuing and exclusive right to apply or reverse and reapply any and all payments by Borrower to any portion of the obligations of Borrower hereunder (except that, unless there exists an Event of Default, payments of principal shall be applied to components of the Note on a pro-rata basis). To the extent Borrower makes a payment or payments to Lender, which payment or proceeds or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable cause, then, to the extent of such payment or proceeds received, the obligations hereunder or part thereof intended to be satisfied shall be revived and continue in full force and effect, as if such payment or proceeds had not been received by Lender.

**Section 10.11. Waiver of Notice.** Borrower hereby expressly waives, and shall not be entitled to, any notices of any nature whatsoever from Lender except with respect to matters for which this Agreement or the other Loan Documents specifically and expressly provide for the giving of notice by Lender to Borrower and except with respect to matters for which Borrower is not, pursuant to applicable Legal Requirements, permitted to waive the giving of notice.

**Section 10.12. Remedies of Borrower.** In the event that a claim or adjudication is made that Lender or its agents have acted unreasonably or unreasonably delayed acting in any case where by law or under this Agreement or the other Loan Documents, Lender or such agent, as the case may be, has an obligation to act reasonably or promptly, Borrower agrees that neither Lender nor its agents shall be liable for any monetary damages, and Borrower's sole remedies shall be limited to commencing an action seeking injunctive relief or declaratory judgment (except in cases of bad faith, gross negligence or willful misconduct). The parties hereto agree that any action or proceeding to determine whether Lender has acted reasonably shall be determined by an action seeking declaratory judgment.

**Section 10.13. Expenses; Indemnity.** (a) Borrower covenants and agrees to pay or, if Borrower fails to pay, to reimburse, Lender and each Noteholder upon receipt of notice from such Person for all reasonable out-of-pocket costs and expenses (including reasonable attorneys' fees and disbursements) incurred by such Person in connection with (i) the preparation, negotiation, execution and delivery of this Agreement and the other Loan Documents and the consummation of the transactions contemplated hereby and thereby and all the costs of furnishing all opinions by counsel for Borrower (including, without limitation, any opinions requested by such Person as to any legal matters arising under this Agreement or the other Loan Documents with respect to the Properties); (ii) Borrower's ongoing performance of and compliance with Borrower's respective agreements and covenants contained in this Agreement and the other Loan Documents on its part to be performed or complied with after the Closing Date, including, without limitation, confirming compliance with environmental, gaming and insurance requirements, if necessary or advisable due to reasonably suspected non-compliance; (iii) the negotiation, preparation, execution, delivery and administration of any consents, amendments, waivers or other modifications to this Agreement and the other Loan Documents and any other documents or matters requested by Borrower; (iv) securing Borrower's compliance with any requests made pursuant to the provisions of this Agreement, if Borrower defaults in its obligations hereunder; (v) the filing and recording fees and expenses, title insurance and reasonable fees and expenses of counsel for providing to Lender or any Noteholder all required legal opinions, and other similar expenses incurred in creating and perfecting the Liens in favor of Lender (or, as applicable, any Noteholder) pursuant to this Agreement and the other Loan Documents; (vi) enforcing or preserving any rights, either in response to third party claims or in prosecuting or defending any action or proceeding or other litigation, in each case against, under or affecting Borrower, Mortgage Borrower, Operating Company, this Agreement, the other Loan Documents, the Properties, the Collateral or any other security given for the Loan; and (vii) enforcing any obligations of or collecting any payments due from Borrower under this Agreement, the other Loan Documents or with respect to the Properties, Operating Company or in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a "work-out" or of any

insolvency or bankruptcy proceedings; provided, however, that Borrower shall not be liable for the payment of any such costs and expenses to any Person to the extent the same arise by reason of the gross negligence, illegal acts, fraud or willful misconduct of such Person. Any cost and expenses due and payable to Lender or any Noteholder may be paid from any amounts in the Mezzanine Collection Account upon the occurrence and during the continuance of an Event of Default.

(b) Borrower shall indemnify, defend and hold harmless Lender from and against any and all other actual liabilities, obligations, losses, damages (excluding, however, any punitive and consequential damages), penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel for Lender in connection with any investigative, administrative or judicial proceeding commenced or threatened, whether or not Lender shall be designated a party thereto), that may be imposed on, incurred by, or asserted against Lender in any manner relating to or arising out of (i) any breach by Borrower of its obligations under, or any material misrepresentation by Borrower contained in, this Agreement or the other Loan Documents, (ii) the use or intended use of the proceeds of the Loan, (iii) the Leases or any of the duties, responsibilities or obligations of Borrower or any Operating Company thereunder, (iv) the transactions contemplated in the Collection Account Agreements or (v) any third-party claims alleging that the Loan, the Mortgage Loan, the Operating Lease, the Operating Lease Guaranty or any of the Loan Documents violates any agreements or Legal Requirements binding on the Borrower or its Affiliates or their respective properties (collectively, the “**Indemnified Liabilities**”); provided, however, that Borrower shall not have any obligation to Lender hereunder to the extent that such Indemnified Liabilities arise from the gross negligence, illegal acts, fraud or willful misconduct of Lender. To the extent that the undertaking to indemnify, defend and hold harmless set forth in the preceding sentence may be unenforceable because it violates any law or public policy, Borrower shall pay the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by Lender.

(c) Borrower covenants and agrees to pay for or, if Borrower fails to pay, to reimburse Lender for, any fees and expenses incurred by any Rating Agency in connection with any request by Borrower that required Rating Agency Confirmation pursuant to the terms hereof.

**Section 10.14. Schedules Incorporated.** The Schedules annexed hereto are hereby incorporated herein as a part of this Agreement with the same effect as if set forth in the body hereof.

**Section 10.15. Offsets, Counterclaims and Defenses.** Any assignee of Lender’s interest in and to this Agreement, the Note and the other Loan Documents shall take the same free and clear of all offsets, counterclaims or defenses which are unrelated to such documents which Borrower may otherwise have against any assignor of such documents, and no such unrelated counterclaim or defense shall be interposed or asserted by Borrower in any action or proceeding brought by any such assignee upon such documents and any such right to interpose

or assert any such unrelated offset, counterclaim or defense in any such action or proceeding is hereby expressly waived by Borrower.

**Section 10.16. No Joint Venture or Partnership; No Third Party Beneficiaries.** (a) Borrower and Lender intend that the relationships created hereunder and under the other Loan Documents be solely that of borrower and lender. Nothing herein or therein is intended to create a joint venture, partnership, tenancy-in-common, or joint tenancy relationship between Borrower and Lender nor to grant Lender any interest in the Properties other than that of mortgagee, beneficiary or lender.

(b) Except as expressly provided herein, this Agreement and the other Loan Documents are solely for the benefit of Lender and Borrower and nothing contained in this Agreement or the other Loan Documents shall be deemed to confer upon anyone other than Lender and Borrower any right to insist upon or to enforce the performance or observance of any of the obligations contained herein or therein. Lender and Borrower acknowledge and agree that the Noteholders are intended third party beneficiaries of all rights and remedies of the Lender hereunder. All conditions to the obligations of Lender to make the Loan hereunder are imposed solely and exclusively for the benefit of Lender and no other Person shall have standing to require satisfaction of such conditions in accordance with their terms or be entitled to assume that Lender will refuse to make the Loan in the absence of strict compliance with any or all thereof and no other Person shall under any circumstances be deemed to be a beneficiary of such conditions, any or all of which may be freely waived in whole or in part by Lender if, in Lender's sole discretion, Lender deems it advisable or desirable to do so.

**Section 10.17. Intentionally Omitted.**

**Section 10.18. Waiver of Marshalling of Assets.** To the fullest extent permitted by law, Borrower, for itself and its successors and assigns, waives all rights to a marshalling of the assets of Borrower, Borrower's partners and others with interests in Borrower, and of the Properties, or to a sale in inverse order of alienation in the event of foreclosure of all or any of the Mortgages, and agrees not to assert any right under any laws pertaining to the marshalling of assets, the sale in inverse order of alienation, homestead exemption, the administration of estates of decedents, or any other matters whatsoever to defeat, reduce or affect the right of Lender under the Loan Documents to a sale of the Properties for the collection of the Debt without any prior or different resort for collection or of the right of Lender to the payment of the Debt out of the net proceeds of the Properties in preference to every other claimant whatsoever. In addition, Borrower, for itself and its successors and assigns, waives in the event of foreclosure of any or all of the Collateral, any equitable right otherwise available to Borrower which would require the separate sale of the Collateral with respect to each Mortgage Borrower or require Lender to exhaust its remedies against any Collateral with respect to each Mortgage Borrower or any combination of such Collateral before proceeding against any other Collateral with respect to one or more Mortgage Borrowers; and further in the event of such foreclosure Borrower does hereby expressly consent to and authorize, at the option of Lender, the foreclosure and sale either separately or together of any combination of the Collateral.

**Section 10.19. Waiver of Counterclaim.** Borrower hereby waives the right to assert a counterclaim, other than a compulsory counterclaim, in any action or proceeding brought against it by Lender or its agents.

**Section 10.20. Conflict; Construction of Documents; Reliance.** In the event of any conflict between the provisions of this Loan Agreement and any of the other Loan Documents, the provisions of this Loan Agreement shall control. The parties hereto acknowledge that they were represented by competent counsel in connection with the negotiation, drafting and execution of the Loan Documents and that such Loan Documents shall not be subject to the principle of construing their meaning against the party which drafted same. Borrower acknowledges that, with respect to the Loan, Borrower shall rely solely on its own judgment and advisors in entering into the Loan without relying in any manner on any statements, representations or recommendations of Lender or any parent, subsidiary or Affiliate of Lender. Lender shall not be subject to any limitation whatsoever in the exercise of any rights or remedies available to it under any of the Loan Documents or any other agreements or instruments which govern the Loan by virtue of the ownership by it or any parent, subsidiary or Affiliate of Lender of any equity interest any of them may acquire in Borrower, and Borrower hereby irrevocably waives the right to raise any defense or take any action on the basis of the foregoing with respect to Lender's exercise of any such rights or remedies. Borrower acknowledges that Lender engages in the business of real estate financings and other real estate transactions and investments which may be viewed as adverse to or competitive with the business of Borrower or its Affiliates.

**Section 10.21. Brokers and Financial Advisors.** Borrower hereby represents that it has dealt with no financial advisors, brokers, underwriters, placement agents, agents or finders in connection with the transactions contemplated by this Agreement (other than those the fees and other claims of which shall be paid by Borrower. Borrower hereby agrees to indemnify, defend and hold Lender and each Noteholder harmless from and against any and all claims, liabilities, costs and expenses of any kind (including Lender's attorneys' fees and expenses) in any way relating to or arising from a claim by any Person that such Person acted on behalf of Borrower or Lender in connection with the transactions contemplated herein. Each of Lender and (by its acceptance of its respective Note) the Noteholders hereby represents that it has dealt with no financial advisors, brokers, underwriters, placement agents, agents or finders in connection with the transactions contemplated by this Agreement. The provisions of this Section 10.21 shall survive the expiration and termination of this Agreement and the payment of the Debt.

**Section 10.22. Prior Agreements.** This Agreement and the other Loan Documents contain the entire agreement of the parties hereto and thereto in respect of the transactions contemplated hereby and thereby, and all prior agreements among or between such parties, whether oral or written, including, without limitation, the Commitment Letter dated December 19, 2006 between Affiliates of Borrower and Lender are superseded by the terms of this Agreement and the other Loan Documents.

**Section 10.23. Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which counterparts together

shall constitute one agreement with the same effect as if the parties had signed the same signature page.

**Section 10.24. Intentionally Omitted.**

**Section 10.25. Gaming Laws.** All rights, remedies and powers in or under this Agreement may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of the Gaming Laws.

**Section 10.26. Certain Additional Rights of Lender (VCOC).** Notwithstanding anything to the contrary contained in this Agreement, Lender shall have:

(a) the right to routinely consult with and advise Borrower's management regarding the significant business activities and business and financial developments of Borrower and Mortgage Borrower, provided that any such advice or consultation shall be completely nonbinding on Borrower, and; provided, however, that such consultations shall not include discussions of environmental compliance programs or disposal of hazardous substances;

(b) the right, in accordance with the terms of this Agreement, to examine the books and records of Borrower and Mortgage Borrower at any reasonable times upon reasonable notice;

(c) the right, in accordance with the terms of this Agreement, including, without limitation, Section 5.1.11 hereof, to receive monthly, quarterly and year end financial reports, including balance sheets, statements of income, shareholder's equity and cash flow, a management report and schedules of outstanding indebtedness, in each case to the extent explicitly set forth herein; and

(d) the right, without restricting any other rights of Lender under this Agreement (including any similar right), to reasonably approve any acquisition by Borrower or Mortgage Borrower of any other significant real property.

The rights described above in this Section 10.26 may be exercised by any entity which owns and controls, directly or indirectly, substantially all of the interests in Lender.

**XI. JOINT AND SEVERAL LIABILITY; WAIVERS**

**Section 11.1. Joint and Several Liability; Primary Obligors.** Each entity comprising Borrower (each, a "**Borrower Entity**") shall be a primary obligor with respect to payment of the Debt and performance of Borrower's obligations under the Loan Documents and all such Borrower Entities shall be jointly and severally liable for payment of the Debt and performance of such other obligations. As used in this Article, references to "**Other Borrowers**" shall mean all Borrower Entities other than the particular Borrower Entity referred to.

**Section 11.2. Waivers.** Without limiting the primary liability of each Borrower Entity as set forth above, to the extent any such Borrower Entity is determined to be

secondarily liable with respect to any portion of the Debt or any other obligation hereunder, the following shall apply:

**11.2.1 No Duty To Pursue Others.** It shall not be necessary for Lender (and each Borrower Entity hereby waives any rights which such Borrower Entity may have to require Lender), in order to enforce the obligations of such Borrower Entity hereunder, first to (a) institute suit or exhaust its remedies against any Other Borrower or others liable on the Debt or any other person, (b) enforce Lender's rights against any collateral mortgaged, pledged or granted by any Other Borrower which shall ever have been given to secure the Debt ("**Other Borrower Collateral**"), (c) enforce Lender's rights against any other guarantors of the Debt, (d) join Borrower or any others liable on the Debt in any action against any Other Borrower seeking to enforce the Loan Documents, (e) exhaust any remedies available to Lender against any collateral which shall ever have been given to secure the Debt, or (f) resort to any other means of obtaining payment of the Loan by any Other Borrower. Lender shall not be required to mitigate damages or take any other action pertaining to any Other Borrower or any Other Borrower Collateral to reduce, collect or enforce the Debt from any Other Borrower.

**11.2.2 Waivers.** Such Borrower Entity agrees to the provisions of the Loan Documents, and hereby waives notice of (a) any loans or advances made by Lender to any Other Borrower, (b) acceptance of the Loan Documents, (c) any amendment or extension of the Note, the Loan Agreement or of any other Loan Documents entered into by any Other Borrower, (d) the execution and delivery by any Other Borrower and Lender of any other loan or credit agreement or of any Other Borrower's execution and delivery of any promissory notes or other documents arising under the Loan Documents or in connection with the Other Borrower Collateral, (e) the occurrence of any breach by any Other Borrower or an Event of Default with respect to any Other Borrower or Other Borrower Collateral, (f) Lender's transfer or disposition of the Debt, or any part thereof, (g) sale or foreclosure (or posting or advertising for sale or foreclosure) of any Other Borrower Collateral, (h) protest, proof of non-payment or default by any Other Borrower and (i) any other action at any time taken or omitted by Lender, and, generally, all demands and notices to any Other Borrower of every kind in connection with the Loan Documents, any documents or agreements evidencing, securing or relating to any of the Debt.

**11.2.3 Waiver of Subrogation, Reimbursement and Contribution.** Notwithstanding anything to the contrary contained in the Loan Documents, each Borrower hereby unconditionally and irrevocably waives, releases and abrogates, prior to the payment in full of the Loan and for a period of ninety-one (91) days thereafter any and all rights it may now or hereafter have under any agreement, at law or in equity (including any law subrogating such Borrower Entity to the rights of Lender), to assert any claim against or seek contribution, indemnification or any other form of reimbursement (other than pursuant to the express provisions of the Contribution Agreement) from any Other Borrower or any other party liable for payment of any or all of the Debt for any payment made by such Borrower Entity under or in connection with the Loan Documents or otherwise.

**11.2.4 Events And Circumstances Not Reducing Or Discharging Guarantor's Obligations.** Each Borrower Entity hereby consents and agrees to each of the

following, and agrees that such Borrower Entity's obligations under the Loan Documents shall not be released, diminished, impaired, reduced or adversely affected by any of the following, and waives any common law, equitable, statutory or other rights (including rights to notice) which such Borrower Entity might otherwise have as a result of or in connection with any of the following:

(a) Modifications. Any renewal, extension, increase, modification, alteration, restatement or rearrangement entered into by any Other Borrower of all or any part of the Debt, the Note, the Loan Agreement, the other Loan Documents, or any other document, instrument, contract or understanding between any Other Borrower and Lender, or any other parties, pertaining to the Debt or any failure of Lender to notify Borrower Entity of any such action.

(b) Adjustment. Any adjustment, indulgence, forbearance or compromise that might be granted or given by Lender to any Other Borrower.

(c) Condition of Borrower or Borrower Entity. The insolvency, bankruptcy, arrangement, adjustment, composition, liquidation, disability, dissolution or lack of power of any Other Borrower or any other party at any time liable for the payment of all or part of the Debt; or any dissolution of any Other Borrower, or any sale, lease or transfer of any or all of the assets of Borrower or of any Other Borrower, or any changes in the shareholders, partners or members of any Other Borrower; or any reorganization of any Other Borrower.

(d) Invalidity of Debt. The invalidity, illegality or unenforceability of all or any part of the Debt, or any document or agreement executed in connection with the Debt, for any reason whatsoever, including the fact that (a) the Debt, or any part thereof, exceeds the amount permitted by law, (b) the act of creating the Debt or any part thereof is ultra vires, (c) the officers or representatives executing the Note, the Loan Agreement or the other Loan Documents or otherwise creating the Debt acted in excess of their authority, (d) the Debt violate applicable usury laws, (e) any Other Borrower has valid defenses, claims or offsets (whether at law, in equity or by agreement) which render the Debt wholly or partially uncollectible from such Other Borrower, (f) the creation, performance or repayment of the Debt (or the execution, delivery and performance of any document or instrument by any Other Borrower representing part of the Debt or executed in connection with the Debt, or given to secure the repayment of the Debt) is illegal, uncollectible or unenforceable, or (g) the Note, the Loan Agreement or any of the other Loan Documents have been forged or otherwise are irregular or not genuine or authentic, it being agreed that such Borrower Entity shall remain liable hereon regardless of whether any Other Borrower or any other Person be found not liable on the Debt or any part thereof for any reason.

(e) Release of Obligors. Any full or partial release of the liability of any Other Borrower on the Debt, or any part thereof, or of any guarantor(s) thereof, or any other person or entity now or hereafter liable, whether directly or indirectly, jointly, severally, or jointly and severally, to pay, perform, guarantee or assure the payment of the Debt, or any part thereof, it being recognized, acknowledged and agreed by such Borrower Entity that such Borrower Entity may be required to pay the Debt in full without assistance or support of any other party, and such Borrower Entity has not been induced to enter into the Loan Documents on

the basis of a contemplation, belief, understanding or agreement that other Persons will be liable to pay or perform the Debt, or that Lender will look to other Persons to pay or perform the Debt.

(f) Other Collateral. The taking or accepting of any other security, collateral or guaranty, or other assurance of payment, for all or any part of the Debt.

(g) Release of Collateral. Any release, surrender, exchange, subordination, deterioration, waste, loss or impairment (including negligent, willful, unreasonable or unjustifiable impairment) of any collateral, property or security at any time existing in connection with, or assuring or securing payment of, all or any part of the Debt.

(h) Care and Diligence. The failure of Lender or any other party to exercise diligence or reasonable care in the preservation, protection, enforcement, sale or other handling or treatment of Other Borrower Collateral, all or any part of such collateral, property or security, including any neglect, delay, omission, failure or refusal of Lender (a) to take or prosecute any action for the collection of any of the Debt or (b) to foreclose, or initiate any action to foreclose, or, once commenced, prosecute to completion any action to foreclose upon Other Borrower Collateral, or (c) to take or prosecute any action in connection with any instrument or agreement evidencing or securing all or any part of the Debt.

(i) Unenforceability. The fact that any collateral, security, security interest or lien contemplated or intended to be given, created or granted as security for the repayment of the Debt, or any part thereof, shall not be properly perfected or created, or shall prove to be unenforceable or subordinate to any other security interest or lien, it being recognized and agreed by such Borrower Entity that such Borrower Entity is not entering into the Loan Documents in reliance on, or in contemplation of the benefits of, the validity, enforceability, collectibility or value of any of the collateral for the Debt.

(j) Offset. Any existing or future right of offset, claim or defense of Borrower against Lender, or any other Person, or against payment of the Debt by any Other Borrower, whether such right of offset, claim or defense arises in connection with the Debt (or the transactions creating the Debt) or otherwise.

(k) Merger. The reorganization, merger or consolidation of any Other Borrower into or with any other corporation or entity.

(l) Preference. Any payment by Borrower to Lender is held to constitute a preference under bankruptcy laws, or for any reason Lender is required to refund such payment or pay such amount to Borrower or someone else.

**Section 11.3. Other Actions Taken or Omitted.** Any other action taken or omitted to be taken with respect to the Loan Documents, the Debt, or Other Borrower Collateral, whether or not such action or omission prejudices such Borrower Entity or increases the likelihood that such Borrower Entity will be required to pay the Debt pursuant to the terms hereof, it is the unambiguous and unequivocal intention of such Borrower Entity that such Borrower Entity shall be obligated to pay the Debt when due, notwithstanding any occurrence, circumstance, event, action, or omission whatsoever pertaining to any Other Borrower or any

Other Borrower Collateral, whether contemplated or not, and whether or not otherwise or particularly described herein, which obligation shall be deemed satisfied only upon the full and final payment and satisfaction of the Debt.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed by their duly authorized representatives, all as of the day and year first above written.

**BORROWER:**

**HARRAH'S LAS VEGAS MEZZ 1, LLC,**  
a Delaware limited liability company

By: /s/ Jonathan S. Halkyard

Name: Jonathan S. Halkyard

Title: President and Treasurer

**HARRAH'S ATLANTIC CITY MEZZ 1, LLC,**  
a Delaware limited liability company

By: /s/ Jonathan S. Halkyard

Name: Jonathan S. Halkyard

Title: President and Treasurer

**TAHOE MEZZ 1, LLC,**  
a Delaware limited liability company

By: /s/ Jonathan S. Halkyard

Name: Jonathan S. Halkyard

Title: President and Treasurer

**RIO MEZZ 1 LLC,**  
a Delaware limited liability company

By: /s/ Jonathan S. Halkyard

Name: Jonathan S. Halkyard

Title: President and Treasurer

**FLAMINGO LAS VEGAS MEZZ 1, LLC,**  
a Delaware limited liability company

By: /s/ Jonathan S. Halkyard  
Name: Jonathan S. Halkyard  
Title: President and Treasurer

**SHOWBOAT ATLANTIC CITY MEZZ 1, LLC,**  
a Delaware limited liability company

By: /s/ Jonathan S. Halkyard  
Name: Jonathan S. Halkyard  
Title: President and Treasurer

**LENDER:**

**JPMORGAN CHASE BANK, N.A.**

By: /s/ Jennifer A. Loughrey  
Name: Jennifer A. Loughrey  
Title: Vice President

**SECOND MEZZANINE LOAN AGREEMENT**

Dated as of January 28, 2008

Between

**THE ENTITIES IDENTIFIED ON THE SIGNATURE PAGES  
HEREOF AS BORROWER,**  
collectively, as Borrower

and

**JPMORGAN CHASE BANK N.A.,**  
as Lender

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## SECOND MEZZANINE LOAN AGREEMENT

**THIS SECOND MEZZANINE LOAN AGREEMENT**, dated as of January 28, 2008 (as amended, restated, replaced, supplemented or otherwise modified from time to time, this “**Agreement**”), between **JPMORGAN CHASE BANK, N.A.**, a banking association chartered under the laws of the United States of America, having an address at 270 Park Avenue, New York, New York 10017 (“**Lender**”), and **THE ENTITIES IDENTIFIED ON THE SIGNATURE PAGES HEREOF AS BORROWER**, each a Delaware limited liability company having its principal place of business at the addresses set forth on Schedule I attached hereto (collectively, “**Borrower**”).

### WITNESSETH:

**WHEREAS**, JPMorgan Chase Bank, N.A., having an address at 270 Park Avenue, New York, New York 10017, as mortgage lender (“**Mortgage Lender**”), is making a loan in the principal amount of Four Billion and No/100 Dollars (\$4,000,000,000) (the “**Mortgage Loan**”) to Mortgage Borrower (as hereinafter defined) pursuant to that certain Loan Agreement, dated as of the date hereof (as the same may be amended, supplemented, replaced or otherwise modified from time to time, the “**Mortgage Loan Agreement**”), which Mortgage Loan is evidenced by the Mortgage Notes (as hereinafter defined) made by Mortgage Borrower to Mortgage Lender and secured by, among other things, the Mortgage (as hereinafter defined) given by Mortgage Borrower in favor of Mortgage Lender pursuant to which Mortgage Borrower has granted Mortgage Lender a first priority mortgage on, among other things, the Properties and other collateral as more fully described in the Mortgage;

**WHEREAS**, JPMorgan Chase Bank, N.A., having an address at 270 Park Avenue, New York, New York 10017, as first mezzanine lender (“**First Mezzanine Lender**”), is making a loan in the principal amount of Three Hundred Million and No/100 Dollars (\$300,000,000) (the “**First Mezzanine Loan**”) to First Mezzanine Borrower (as hereinafter defined) pursuant to that certain First Mezzanine Loan Agreement, dated as of the date hereof (as the same may be amended, supplemented, replaced or otherwise modified from time to time, the “**First Mezzanine Loan Agreement**”), which First Mezzanine Loan is evidenced by the First Mezzanine Note (as hereinafter defined) made by First Mezzanine Borrower to First Mezzanine Lender and secured by, among other things, the First Mezzanine Pledge Agreement (as hereinafter defined) given by First Mezzanine Borrower in favor of First Mezzanine Lender pursuant to which First Mezzanine Borrower has granted First Mezzanine Lender a first priority security interest on, among other things, the Collateral (as defined in the First Mezzanine Pledge Agreement);

**WHEREAS**, First Mezzanine Borrower is the legal and beneficial owner of all of the interests in Mortgage Borrower;

**WHEREAS**, Borrower is the legal and beneficial owner of all of the interests in First Mezzanine Borrower;

**WHEREAS**, Borrower desires to obtain the Loan (as hereinafter defined) from Lender;

**WHEREAS**, as a condition precedent to the obligation of Lender to make the Loan to Borrower, Borrower has entered into that certain Pledge and Security Agreement (Second Mezzanine Loan), dated as of the date hereof, in favor of Lender (as amended, supplemented or otherwise modified from time to time, the "**Pledge Agreement**"), pursuant to which Borrower has granted to Lender a first priority security interest in the Collateral (as defined in the Pledge Agreement) as collateral security for the Debt (as hereinafter defined); and

**WHEREAS**, Lender is willing to make the Loan to Borrower, subject to and in accordance with the terms of this Agreement and the other Loan Documents (as hereinafter defined).

**NOW THEREFORE**, in consideration of the making of the Loan by Lender and the covenants, agreements, representations and warranties set forth in this Agreement, the parties hereto hereby covenant, agree, represent and warrant as follows:

**I. DEFINITIONS; PRINCIPLES OF CONSTRUCTION**

**Section 1.1. Definitions.** For all purposes of this Agreement, except as otherwise expressly required or unless the context clearly indicates a contrary intent:

"**Acceptable Counterparty**" shall mean any counterparty to the Interest Rate Cap Agreement that has and shall maintain, until the expiration of the applicable Interest Rate Cap Agreement, a long-term unsecured debt rating of at least "A+" by S&P and "Aa3" from Moody's, which rating shall not include a "t" or otherwise reflect a termination risk and is otherwise reasonably acceptable to Lender.

"**Additional Insolvency Opinion**" shall have the meaning set forth in Section 4.1.30(c) hereof.

"**Additional True Lease Opinion**" shall have the meaning set forth in Section 4.1.30(d) hereof.

"**Affiliate**" shall mean, as to any Person, any other Person that, directly or indirectly, is in Control of, is Controlled by or is under common Control with such Person or is a director or officer of such Person or of an Affiliate of such Person.

"**Aggregate Debt Service**" shall mean, with respect to any particular period of time, the sum of (a) the Debt Service, (b) the Mortgage Debt Service and (c) the Other Mezzanine Debt Service.

"**Aggregate Material Adverse Effect**" shall mean any event or condition that, either singly or in the aggregate, could reasonably be expected to have or result in a material adverse effect upon (a) the business, operations, economic performance, prospects, assets or

condition (financial or otherwise) of (i) Mortgage Borrower, Senior Mezzanine Borrower or Borrower (taken as a whole), (ii) Guarantor, (iii) Operating Company (taken as a whole), (iv) the Operating Lease or the Operating Lease Guaranty (taken as a whole) or (v) the Properties (taken as a whole), the Collateral, the Senior Mezzanine Collateral, the Hotel Components (taken as a whole) or the Casino Components (taken as a whole); (b) the ability of Mortgage Borrower (taken as a whole), Senior Mezzanine Borrower (taken as a whole), Borrower (taken as a whole) or Guarantor to perform, in all material respects, its obligations under the Loan Documents, Senior Mezzanine Loan Documents or Mortgage Loan Documents (taken as a whole) to which such entity is a party; (c) the ability of Operating Company (taken as a whole) to perform, in all material respects, the obligations under the Operating Leases (taken as a whole); or the ability of Guarantor (Operating Lease) (taken as a whole) to perform, in all material respects, the obligations under the Operating Lease Guaranty (taken as a whole); (d) the enforceability or validity of (i) the Operating Lease (taken as a whole) or the Operating Lease Guaranty (taken as a whole), (ii) the Loan Documents, Senior Mezzanine Loan Documents or Mortgage Loan Documents (taken as a whole) or the perfection or priority of the Liens created under the Loan Documents, Senior Mezzanine Loan Documents or Mortgage Loan Documents (taken as a whole); (e) the value of, or cash flow from, the Properties or the operations thereof (taken as a whole) or the Collateral; or (f) the material rights, interests and remedies of Lender under the Loan Documents (taken as a whole).

“**Allocated Loan Amount**” shall mean, for an Individual Property, the amount set forth on Schedule II attached hereto.

“**ALTA**” shall mean American Land Title Association, or any successor thereto.

“**Alteration**” shall mean, with respect to any Individual Property, any alteration, improvement, demolition, construction or removal of all or any portion of the Improvements at such Individual Property.

“**Annual Budget**” shall mean, individually and collectively as the context requires, (a) the Borrower Annual Budget and (b) the Operating Company Annual Budget.

“**Applicable Interest Rate**” shall mean the rate or rates at which the outstanding principal amount of the Loan bears interest from time to time in accordance with the provisions of Section 2.2.3 hereof.

“**Approved Guarantor**” means (x) Holdings, for so long Holdings meets the Minimum Value Test, or (y) any other guarantor that meets the Minimum Value Test and is otherwise reasonably satisfactory to Lender.

“**Assignee**” shall have the meaning set forth in Section 9.5 hereof.

“**Assignment and Acceptance**” shall have the meaning set forth in Section 9.8 hereof.

“**Award**” shall mean any compensation paid by any Governmental Authority in connection with a Condemnation with respect to all or any part of any Individual Property.

**“Bankruptcy Action”** shall mean with respect to any Person (a) such Person filing a voluntary petition under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (b) the filing of an involuntary petition against such Person under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law, or soliciting or causing to be solicited petitioning creditors for any involuntary petition against such Person; (c) such Person filing an answer consenting to or otherwise acquiescing in or joining in any involuntary petition filed against it, by any other Person under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law, or soliciting or causing to be solicited petitioning creditors for any involuntary petition from any Person; (d) such Person consenting to or acquiescing in or joining in an application for the appointment of a custodian, receiver, trustee, or examiner for such Person or any portion of its property; or (e) such Person making an assignment for the benefit of creditors, or admitting, in writing or in any legal proceeding, its insolvency or inability to pay its debts as they become due.

**“Bankruptcy Code”** shall mean Title 11 of the United States Code, 11 U.S.C. §101, et seq., as the same may be amended from time to time, and any successor statute or statutes and all rules and regulations from time to time promulgated thereunder, and any comparable foreign laws relating to bankruptcy, insolvency or creditors’ rights or any other Federal or state bankruptcy or insolvency law.

**“Basic Carrying Costs”** shall mean, for any period, with respect to each Individual Property, the sum of the following costs associated with such Individual Property for such period: (a) Taxes, (b) Insurance Premiums and (c) Ground Rent.

**“Bill’s Lake Tahoe Casino”** shall mean that certain property identified on Schedule II as “Bill’s Lake Tahoe” having a street address of 15 Highway 50, Stateline, Nevada.

**“Borrower”** shall have the meaning set forth in the introductory paragraph hereto, together with its successors and permitted assigns. As used herein, the term “Borrower” shall mean one of the Borrowers individually, or the Borrowers collectively, as the context shall require.

**“Borrower Agent”** shall have the meaning set forth in Section 10.6 hereof.

**“Borrower Annual Budget”** shall mean the operating budget of Mortgage Borrower, prepared by Mortgage Borrower for the applicable Fiscal Year or other period.

**“Borrower Entity”** shall have the meaning set forth in Section 11.1 hereof.

**“Business Day”** shall mean any day other than a Saturday, Sunday or any other day on which national banks in New York, New York are not open for business.

**“Capital Expenditures”** shall mean, for any period, the amount expended for items capitalized under GAAP (including expenditures for building improvements or major repairs, leasing commissions, tenant improvements and Fixtures).

**“Capitalized Software Expenditures”** shall mean, for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities) by a Person during such period

in respect of licensed or purchased software or internally developed software and software enhancements that, in accordance with GAAP, are or are required to be reflected as capitalized costs on the consolidated balance sheet of such Person.

“**Cash Management Account**” shall have the meaning set forth in the Mortgage Loan Agreement.

“**Casino Components**” shall mean, collectively, those portions of each Individual Property devoted to the operation of casino gaming operations, including (without limitation) those areas devoted to the conduct of games of chance, facilities associated directly with gaming operations including, without limitation, casino support areas such as surveillance and security areas, cash cages, counting and accounting areas and gaming back-of-the-house areas in each case, to the extent the operation thereof requires a Gaming License under applicable Gaming Laws. The Casino Components are more particularly described and set forth in each Operating Lease, as appropriate.

“**Casualty**” shall have the meaning set forth in Section 6.2 hereof.

“**Change in Control**” shall mean (1) a “Change in Control” as defined in the Credit Agreement, dated the date hereof, among Hamlet Merger Inc., a Delaware corporation, Harrah’s Operating Company, Inc., a Delaware corporation, the Lenders party thereto from time to time, Bank of America, N.A., as administrative agent and collateral agent for the Lenders, and certain other parties thereto, or (2) a Change in Control as defined in clause (b) of said definition except that references therein to Borrower shall be deemed to refer to Holdings.

“**Closing Date**” shall mean the date of the funding of the Loan.

“**Code**” shall mean the Internal Revenue Code of 1986, as amended, as it may be further amended from time to time, and any successor statutes thereto, and applicable U.S. Department of Treasury regulations issued pursuant thereto in temporary or final form.

“**Collateral**” shall have the meaning set forth in the Pledge Agreement.

“**Collateral Assignment of Interest Rate Cap Agreement**” shall mean that certain Collateral Assignment of Interest Rate Cap Agreement, dated as of the date hereof, executed by Borrower in connection with the Loan for the benefit of the Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Collection Account**” shall have the meaning set forth in the Mortgage Loan Agreement.

“**Collection Banks**” shall mean (a) any Eligible Institution(s) designated by Mortgage Borrower as Collection Bank and reasonably approved by Lender from time to time in accordance with the terms hereof, or (b) any other financial institution otherwise reasonably approved by Lender and, if a Securitization has occurred, with respect to which a Rating Agency Confirmation has been obtained.

“**Condemnation**” shall mean a temporary or permanent taking by any Governmental Authority as the result or in lieu or in anticipation of the exercise of the right of condemnation or eminent domain, of all or any part of any Individual Property, or any interest therein or right accruing thereto, including any right of access thereto or any change of grade affecting such Individual Property or any part thereof.

“**Consolidated Net Income**” shall mean, with respect to any Person for any period, the aggregate of the Net Income of such Person for such period, on a consolidated basis; provided, however, that, without duplication,

(i) any net after-tax extraordinary, nonrecurring or unusual gains or losses or income or expense or charge (less all fees and expenses relating thereto), including, without limitation, any severance, relocation or other restructuring expenses, any expenses related to any reconstruction, decommissioning, recommissioning or reconfiguration of fixed assets for alternative uses, fees, expenses or charges relating to new product lines, curtailments or modifications to pension and post-retirement employee benefit plans, excess pension charges, acquisition integration costs, facilities opening costs, project start-up costs, business optimization costs, signing, retention or completion bonuses, shall be excluded,

(ii) any net after tax income or loss from disposed, abandoned, transferred, closed or discontinued operations and any net after tax gain or loss on disposal of disposed, abandoned, transferred, closed or discontinued operations shall be excluded,

(iii) any net after tax gain or loss (less all fees and expenses or charges relating thereto) attributable to business dispositions or asset dispositions other than in the ordinary course of business (as determined in good faith by the management of the Borrower) shall be excluded,

(iv) Consolidated Net Income for such period shall not include the cumulative effect of a change in accounting principles during such period,

(v) effects of purchase accounting adjustments (including the effects of such adjustments pushed down to such Person) in component amounts required or permitted by GAAP, resulting from the application of purchase accounting in relation to any consummated acquisition or the amortization or write-off of any amounts thereof, net of taxes, shall be excluded,

(vi) any impairment charges or asset write-offs, in each case pursuant to GAAP, and the amortization of intangibles arising pursuant to GAAP, shall be excluded,

(vii) any non cash compensation charge or expenses realized or resulting from stock option plans, employee benefit plans or post-employment benefit plans, or grants or sales of stock, stock appreciation or similar rights, stock options, restricted stock, preferred stock or other rights shall be excluded,

(viii) accruals and reserves that are established or adjusted within twelve months after the Closing Date and that are so required to be established or adjusted in accordance

with GAAP or as a result of adoption or modification of accounting policies shall be excluded,

(ix) non-cash gains, losses, income and expenses resulting from fair value accounting required by the applicable standard under GAAP and related interpretations shall be excluded,

(x) (i) the non-cash portion of “straight-line” rent expense shall be excluded and (ii) the cash portion of “straight-line” rent expense which exceeds the amount expensed in respect of such rent expense shall be included,

(xi) to the extent covered by insurance and actually reimbursed, or, so long as such Person has made a determination that there exists reasonable evidence that such amount will in fact be reimbursed by the insurer and only to the extent that such amount is (i) not denied by the applicable carrier in writing within 180 days and (ii) in fact reimbursed within 365 days of the date of such evidence (with a deduction for any amount so added back to the extent not so reimbursed within 365 days), expenses with respect to liability or casualty events or business interruption shall be excluded, and

(xii) non-cash charges for deferred tax asset valuation allowances shall be excluded.

“**Contribution Agreement**” shall mean that certain Contribution Agreement, dated as of the date hereof, between Borrower and Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Control**” shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management, policies or activities of a Person, whether through ownership of voting securities, by contract or otherwise. “**Controlled**” and “**Controlling**” shall have correlative meanings.

“**Convention Center Parcel**” shall mean the parcel shown on Schedule XXII and comprising a part of the Harrah’s Atlantic City Property.

“**Convention Center Project**” shall mean that certain conference center currently contemplated to be constructed on the Convention Center Parcel by the Mortgage Borrower and/or the Operating Company owning the Harrah’s Atlantic City Property, and more fully described in the schematic designs for the Convention Center Project provided by Mortgage Borrower to Mortgage Lender. The Convention Center Project will not be funded with the proceeds of the Loan (but will be funded by Mortgage Borrower, including with capital contributions).

“**Counterparty**” shall mean, with respect to the Interest Rate Cap Agreement and any Replacement Interest Rate Cap Agreement, any Acceptable Counterparty.

“**Covered Disclosure Information**” shall have the meaning set forth in Section 9.2(b) hereof.

“**Debt**” shall mean the outstanding principal amount set forth in, and evidenced by, this Agreement and the Notes together with all interest accrued and unpaid thereon (including any interest that would accrue on the outstanding principal amount of the Loan through and including the end of any applicable Interest Period, even if such Interest Period extends beyond any applicable Payment Date, prepayment date or the Maturity Date) and all other sums due to Lender in respect of the Loan under the Notes, this Agreement, the Pledge Agreement and the other Loan Documents.

“**Debt Service**” shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under this Agreement and the Note.

“**Debt Service Coverage Ratio**” shall mean a ratio for the applicable period in which:

(a) the numerator is EBITDAR of the Operating Company for the four (4) quarter period preceding the date of determination, as set forth in the financial statements required hereunder; and

(b) the denominator is the sum of (i) the aggregate amount of Mortgage Debt Service which was due and payable for such preceding four (4) quarter period calculated, for these purposes, assuming that (A) the spread on the Mortgage Loan is the Spread (as defined in the Mortgage Loan Agreement) and (B) LIBOR is equal to the lesser of (y) LIBOR on the date of determination, or (z) the applicable Strike Price, (ii) the aggregate amount of Mezzanine Debt Service (including the Debt Service) which was due and payable for such preceding four (4) quarter period calculated, for these purposes, assuming that (A) the spread on the Mezzanine Loans is the “Spread” as defined in each Mezzanine Loan Agreement and (B) LIBOR is equal to the lesser of (y) LIBOR on the date of determination, or (z) the applicable Strike Price (as defined in the Mortgage Loan Agreement), and (iii) the aggregate amount of the Permitted Mezzanine Debt Service which was due and payable for such preceding four (4) quarter period (or the annualized amount, if the Permitted Mezzanine Loan were outstanding for less than 12 calendar months) calculated, for these purposes, assuming that (A) the spread on the Permitted Mezzanine Loan is the “Spread” (as defined in the documents evidencing the Permitted Mezzanine Loan Documents and (B) LIBOR is equal to the lesser of (y) LIBOR on the date of determination, or (z) the strike price under the related interest rate cap purchased in connection with the Permitted Mezzanine Loan);

provided, however, that, solely for the purpose of Section 2.5, the Debt Service Coverage Ratio shall be determined as described in Section 2.5.1(c).

“**Default**” shall mean the occurrence of any event hereunder or under any other Loan Document which, but for the giving of notice or passage of time, or both, would be an Event of Default.

“**Default Rate**” shall mean a rate per annum equal to the lesser of (a) the Maximum Legal Rate and (b) two percent (2%) above the Applicable Interest Rate.

**“Delinquency”** shall mean, with respect to each Individual Property, the latest date on which Taxes or Other Charges may be paid (with respect to such Individual Property) without the payment of a premium, penalty or interest.

**“Determination Date”** shall mean, with respect to any Interest Period, the date that is two (2) London Business Days prior to the fifteenth (15<sup>th</sup>) day of the calendar month in which such Interest Period commences.

**“Disclosure Document”** shall mean a prospectus, prospectus supplement, private placement memorandum, offering memorandum, offering circular, term sheet, road show presentation materials or other offering documents or marketing materials, in each case in preliminary or final form, used to offer Securities in connection with a Securitization.

**“EBITDAR”** shall mean, with respect to any Person for any period, the Consolidated Net Income of such Person plus the sum of (in each case without duplication and to the extent the respective amounts described in subclauses (i) through (vi) below reduced such Consolidated Net Income (and were not excluded therefrom) for the respective period for which EBITDAR is being determined):

(i) provision for Taxes based on income, profits or capital for such period, including, without limitation, state, franchise and similar taxes and foreign withholding taxes (including penalties and interest related to taxes or arising from tax examinations);

(ii) Interest Expense for such period (net of interest income for such period);

(iii) depreciation and amortization expenses for such period including, but not exclusively, the amortization of intangible assets, deferred financing fees and Capitalized Software Expenditures and amortization of unrecognized prior service costs and actuarial gains and losses related to pensions and other post-employment benefits;

(iv) any expenses or charges (other than depreciation or amortization expense as described in the preceding clause (iii)) related to any acquisition, disposition, recapitalization or the incurrence, modification or repayment of Indebtedness permitted to be incurred by this Agreement (including a refinancing thereof) (whether or not successful), including (y) any amendment or other modification of such Indebtedness, and (z) commissions, discounts, yield and other fees and charges (including any interest expense) related to any such Indebtedness;

(v) restructuring charges or reserves (which, for the avoidance of doubt, shall include, without limitation, the effect of inventory optimization programs, retention, severance, systems establishment costs, contract termination costs, future lease commitments and excess pension charges), to the extent that such expenses, charges or reserves are considered to be extraordinary expenses under GAAP;

(vi) any costs or expense incurred pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement or any stock subscription or shareholder agreement, to the extent that such cost or expenses are funded with cash proceeds contributed to the capital of such Person;

(vii) with respect to the Operating Company, the Fixed Rent payable under the Operating Lease; and

(viii) if the Captive Insurance Company shall be utilized to provide terrorism coverage hereunder, the amount of the premiums expended by Mortgage Borrower to obtain such terrorism coverage to the extent such amount exceeds the Terrorism Premium Limit and such excess is retained by the Captive Insurance Company;

provided that EBITDAR shall be reduced by the sum of the following for the respective period for which EBITDAR is being determined:

(A) management fees equal to the greater of (x) 3 percent per annum of gross revenues at the Properties and (y) the actual management fees payable under any management agreement (provided the foregoing shall not be construed as Lender's approval of any management agreement except in accordance with the terms hereof), without double counting actual amounts incurred and otherwise reflected in the calculation of EBITDAR, and

(B) FF&E reserves equal to 3 percent per annum of gross hotel and casino revenues at the Properties without double counting actual amounts incurred and otherwise reflected in the calculation of EBITDAR.

**"EBITDAR (Closing Date)"** shall mean EBITDAR for calendar year 2007, as agreed upon between Borrower and Lender.

**"Eighth Mezzanine Borrower"** shall mean, collectively, the entities set forth on Schedule XX hereto, each a Delaware limited liability company, together with their respective successors and permitted assigns. As used herein, the term "Eighth Mezzanine Borrower" shall mean one of the Eighth Mezzanine Borrowers individually, or the Eighth Mezzanine Borrowers collectively, as the context shall require.

**"Eighth Mezzanine Debt Service"** shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Eighth Mezzanine Note.

**"Eighth Mezzanine Lender"** shall mean JPMorgan Chase Bank, N.A., in its capacity as the holder of the Eighth Mezzanine Loan, together with its successors and assigns.

**"Eighth Mezzanine Loan"** shall mean that certain loan in the original principal amount of Two Hundred Seventy Five Million and No/100 Dollars (\$275,000,000) of even date herewith made by Eighth Mezzanine Lender to Eighth Mezzanine Borrower.

**"Eighth Mezzanine Loan Agreement"** shall mean that certain Eighth Mezzanine Loan Agreement, dated as of the date hereof, between Eighth Mezzanine Borrower and Eighth Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Eighth Mezzanine Loan Documents**” shall mean the Eighth Mezzanine Loan Agreement, the Eighth Mezzanine Notes and all other documents and instruments executed and delivered in connection with the Eighth Mezzanine Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

“**Eighth Mezzanine Notes**” shall mean the “Notes” as defined in the Eighth Mezzanine Loan Agreement.

“**Eligibility Requirements**” means, with respect to any Person, that such Person (a) has total assets (in name or under management) in excess of \$4,000,000,000 and (except with respect to a pension advisory firm or similar fiduciary) capital/statutory surplus or shareholder’s equity of \$1,000,000,000, (b) is regularly engaged in the business of owning and operating commercial real estate properties, (c) is not currently, and its principals are not currently, subject to a Bankruptcy Action and for the immediately preceding 10 years, neither it nor any material subsidiary has been subject to a Bankruptcy Action, and (d) has not been, and its principals have not been, convicted and is not under current indictment for a felony or crime involving moral turpitude, has not been found by a court of competent jurisdiction to have violated federal or state securities laws, and is not an organized crime figure.

“**Eligible Account**” shall mean a separate and identifiable account from all other funds held by the holding institution that is either (a) an account or accounts maintained with a federal or state-chartered depository institution or trust company which complies with the definition of Eligible Institution or (b) a segregated trust account or accounts maintained with a federal or state chartered depository institution or trust company acting in its fiduciary capacity which, in the case of a state chartered depository institution or trust company, is subject to regulations substantially similar to 12 C.F.R. §9.10(b), having in either case a combined capital and surplus of at least \$50,000,000 and subject to supervision or examination by federal and state authority. An Eligible Account will not be evidenced by a certificate of deposit, passbook or other instrument.

“**Eligible Institution**” shall mean a depository institution or trust company, the short term unsecured debt obligations or commercial paper of which are rated at least “A-1” by S&P, “P-1” by Moody’s and “F-1” by Fitch in the case of accounts in which funds are held for thirty (30) days or less (or, in the case of accounts in which funds are held for more than thirty (30) days, the long term unsecured debt obligations of which are rated at least “A” by Fitch and S&P and “A2” by Moody’s). After a Securitization of all or any portion of the Loan, only the ratings of those Rating Agencies rating the Securities shall be taken into account in determining whether institutions or trust companies constitute Eligible Institutions.

“**Embargoed Person**” shall have the meaning set forth in Section 4.1.35 hereof.

“**Environmental Indemnity**” shall mean that certain Environmental Indemnity Agreement, dated as of the date hereof, executed by Borrower and Guarantor in connection with the Loan for the benefit of Lender and the Noteholders, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

**“Equipment”** shall mean, with respect to each Individual Property, any equipment now owned or hereafter acquired by Mortgage Borrower or Operating Company, which is used at or in connection with the Improvements or such Individual Property or is located thereon or therein, including (without limitation) all Gaming Equipment, all machinery, equipment, furnishings, and electronic data-processing and other office equipment now owned or hereafter acquired by or on behalf of Mortgage Borrower or Operating Company and any and all additions, substitutions and replacements of any of the foregoing), together with all attachments, components, parts, equipment and accessories installed thereon or affixed thereto.

**“ERISA”** shall mean the Employee Retirement Income Security Act of 1974, as amended.

**“Event of Default”** shall have the meaning set forth in Section 8.1(a) hereof.

**“Exchange Act”** shall have the meaning set forth in Section 9.2(a) hereof.

**“Exchange Act Filing”** shall have the meaning set forth in Section 5.1.11(f) hereof.

**“FF&E”** shall mean, with respect to each Individual Property, collectively, furnishings, fixtures (other than Fixtures) and Equipment located in the guest rooms, hallways, lobbies, restaurants, lounges, meeting and banquet rooms, parking facilities, public areas or otherwise in any portion of such Individual Property, including (without limitation) all fixed asset supplies (including, but not limited to, linen, china, glassware, tableware, uniforms, other hotel inventory and similar items, whether used in connection with public space or guest rooms), beds, chairs, bookcases, tables, carpeting, drapes, couches, luggage carts, luggage racks, bars, bar fixtures, radios, television sets, intercom and paging equipment, electric and electronic equipment, heating, lighting and plumbing fixtures, fire prevention and extinguishing apparatus, cooling and air-conditioning systems, elevators, escalators, stoves, ranges, refrigerators, laundry machines, tools, machinery, boilers, incinerators, switchboards, conduits, compressors, vacuum cleaning systems, floor cleaning, waxing and polishing equipment, cabinets, lockers, shelving, dishwashers, garbage disposals, washer and dryers, gaming equipment and other casino equipment and all other customary hotel and casino resort equipment and other tangible property owned by Mortgage Borrower or Operating Company, or in which Mortgage Borrower or Operating Company has or shall have an interest, now or hereafter located at such Individual Property and useable in connection with the present or future operation and occupancy of such Individual Property; provided, however, that FF&E shall not include items owned by tenants under space Leases (other than the Operating Lease) or by third party operators (other than Operating Company).

**“FF&E Reserve Account”** shall have the meaning set forth in Section 7.3 hereof.

**“FF&E Reserve Fund”** shall have the meaning set forth in Section 7.3 hereof.

**“Fifth Mezzanine Borrower”** shall mean, collectively, the entities set forth on Schedule XVII hereto, each a Delaware limited liability company, together with their respective successors and permitted assigns. As used herein, the term “Fifth Mezzanine Borrower” shall

mean one of the Fifth Mezzanine Borrowers individually, or the Fifth Mezzanine Borrowers collectively, as the context shall require.

“**Fifth Mezzanine Debt Service**” shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Fifth Mezzanine Notes.

“**Fifth Mezzanine Lender**” shall mean JPMorgan Chase Bank, N.A., in its capacity as the holder of the Fifth Mezzanine Loan, together with its successors and assigns.

“**Fifth Mezzanine Loan**” shall mean that certain loan in the original principal amount of Two Hundred Seventy Five Million and No/100 Dollars (\$275,000,000) of even date herewith made by Fifth Mezzanine Lender to Fifth Mezzanine Borrower.

“**Fifth Mezzanine Loan Agreement**” shall mean that certain Fifth Mezzanine Loan Agreement, dated as of the date hereof, between Fifth Mezzanine Borrower and Fifth Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Fifth Mezzanine Loan Documents**” shall mean the Fifth Mezzanine Loan Agreement, the Fifth Mezzanine Notes and all other documents and instruments executed and delivered in connection with the Fifth Mezzanine Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

“**Fifth Mezzanine Notes**” shall mean the “Notes” as defined in the Fifth Mezzanine Loan Agreement.

“**First Mezzanine Borrower**” shall mean, collectively, the entities set forth on Schedule XIV hereto, each a Delaware limited liability company, together with their respective successors and permitted assigns. As used herein, the term “First Mezzanine Borrower” shall mean one of the First Mezzanine Borrowers individually, or the First Mezzanine Borrowers collectively, as the context shall require.

“**First Mezzanine Borrower Company Agreements**” shall mean, collectively, the Limited Liability Company Agreements of First Mezzanine Borrower, by each Borrower, as sole member, dated as of the date hereof.

“**First Mezzanine Debt Service**” shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the First Mezzanine Note.

“**First Mezzanine Lender**” shall have the meaning set forth in the Recitals.

“**First Mezzanine Loan**” shall have the meaning set forth in the Recitals.

“**First Mezzanine Loan Agreement**” shall have the meaning set forth in the Recitals.

“**First Mezzanine Loan Documents**” shall mean the First Mezzanine Loan Agreement, the First Mezzanine Notes, and all other documents and instruments executed and delivered in connection with the First Mezzanine Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

“**First Mezzanine Notes**” shall mean the “Notes” as defined in the First Mezzanine Loan Agreement.

“**First Mezzanine Pledge Agreement**” shall mean that certain Pledge and Security Agreement (First Mezzanine Loan), dated as of the date hereof, between First Mezzanine Borrower and First Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Fiscal Year**” shall mean each twelve (12) month period commencing on January 1 and ending on December 31 during each year of the term of the Loan.

“**Fitch**” shall mean Fitch, Inc.

“**Fixed Rent**” shall mean the Base Rent (as defined in the Operating Lease) payable under the Operating Lease.

“**Fixtures**” shall mean, with respect to each Individual Property, all Equipment now owned, or the ownership of which is hereafter acquired, by Mortgage Borrower which is so related to the Land and the Improvements forming part of the Individual Property in question that it is deemed fixtures or real property under applicable Legal Requirements, including, without limitation, all building or construction materials intended for construction, reconstruction, alteration, decoration or repair of or installation on the applicable Individual Property, construction equipment, appliances, machinery, plant equipment, fittings, apparatuses, fixtures and other items now or hereafter attached to, installed in or used in connection with (temporarily or permanently) any of the Improvements or the Land, including, but not limited to, engines, devices for the operation of pumps, pipes, plumbing, call and sprinkler systems, fire extinguishing apparatuses and equipment, heating, ventilating, incinerating, electrical, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances and equipment, pollution control equipment, security systems, disposals, dishwashers, refrigerators and ranges, recreational equipment and facilities of all kinds, and water, electrical, storm and sanitary sewer facilities, utility lines and equipment (whether owned individually or jointly with others, and, if owned jointly, to the extent of Mortgage Borrower’s interest therein) and all other utilities whether or not situated in easements, all water tanks, water supply, water power sites, fuel stations, fuel tanks, fuel supply, and all other structures, together with all accessions, appurtenances, additions, replacements, betterments and substitutions or any of the foregoing and the proceeds thereof.

“**Flamingo Las Vegas**” shall mean that certain Individual Property identified on Schedule II as the “Flamingo Las Vegas” and having a street address of 3555 Las Vegas Boulevard South, Las Vegas, Nevada.

“**Force Majeure**” shall mean any delay caused by reason of strike, lock-out or other labor trouble, casualty, governmental preemption of priorities or other controls in

connection with a national or other public emergency or shortages of fuel, supplies or labor resulting therefrom or other causes beyond Borrower's reasonable control.

**"Foreign Taxes"** shall have the meaning set forth in Section 2.2.3(e) hereof.

**"Fourth Mezzanine Borrower"** shall mean, collectively, the entities set forth on Schedule XVI hereto, each a Delaware limited liability company, together with their respective successors and permitted assigns. As used herein, the term "Fourth Mezzanine Borrower" shall mean one of the Fourth Mezzanine Borrowers individually, or the Fourth Mezzanine Borrowers collectively, as the context shall require.

**"Fourth Mezzanine Debt Service"** shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Fourth Mezzanine Notes.

**"Fourth Mezzanine Lender"** shall mean JPMorgan Chase Bank, N.A., in its capacity as the holder of the Fourth Mezzanine Loan, together with its successors and assigns.

**"Fourth Mezzanine Loan"** shall mean that certain loan in the original principal amount of Two Hundred Seventy Five Million and No/100 Dollars (\$275,000,000) of even date herewith made by Fourth Mezzanine Lender to Fourth Mezzanine Borrower.

**"Fourth Mezzanine Loan Agreement"** shall mean that certain Fourth Mezzanine Loan Agreement, dated as of the date hereof, between Fourth Mezzanine Borrower and Fourth Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**"Fourth Mezzanine Loan Documents"** shall mean the Fourth Mezzanine Loan Agreement, the Fourth Mezzanine Notes and all other documents and instruments executed and delivered in connection with the Fourth Mezzanine Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

**"Fourth Mezzanine Notes"** shall mean the "Notes" as defined in the Fourth Mezzanine Loan Agreement.

**"GAAP"** shall mean generally accepted accounting principles in the United States of America as of the date of the applicable financial report.

**"Gaming Authorities"** shall mean, in any jurisdiction in which Borrower, Senior Mezzanine Borrower, Mortgage Borrower, Operating Company or any of their respective subsidiaries manages or conducts any casino, gaming business or activities, the applicable gaming board, commission, or other governmental gaming regulatory authority, body or agency which (a) has, or may at any time after the Closing Date have, jurisdiction over the gaming activities at any of the Properties or any successor to such authority or (b) is, or may at any time after the Closing Date be, responsible for interpreting, administering and enforcing the Gaming Laws.

**“Gaming Equipment”** shall mean any and all gaming devices, gaming device parts inventory and other related gaming equipment and supplies used in connection with the operation of a casino, including (without limitation), slot machines, gaming tables, cards, dice, chips, tokens, player tracking systems, cashless wagering systems, electronic betting systems, mobile gaming systems and associated equipment which are located at the Casino Components, owned or leased by Operating Company or Mortgage Borrower and used or useable exclusively in the present or future operation of slot machines and live games at the Casino Component, together with all improvements and/or additions thereto.

**“Gaming Laws”** or **“Gaming Regulations”** shall mean all applicable constitutions, treaties, laws, statutes and municipal ordinances pursuant to which any Gaming Authority possesses regulatory, licensing or permitting authority over gaming, gambling or casino or casino-related activities and all rules, rulings, orders, ordinances and regulations of any Gaming Authority applicable to the gambling, casino, gaming businesses or casino or casino-related activities of Borrower, Senior Mezzanine Borrower, Mortgage Borrower or the Operating Companies or any of their respective subsidiaries in any jurisdiction, as in effect from time to time, including the policies, interpretations and administration thereof by the Gaming Authorities.

**“Gaming License”** shall mean, in any jurisdiction in which Borrower, Senior Mezzanine Borrower, Mortgage Borrower, Operating Company or any of their respective subsidiaries conducts any casino and gaming business or activities, any license, qualification, franchise, accreditation, approval, registration, permit, finding of suitability or other authorization relating to gaming, the gaming business or the operation of a casino under the Gaming Laws or required by the Gaming Authorities or otherwise necessary for the operation of gaming, the gaming business or a resort casino.

**“Gaming Liquidity Requirement”** shall mean the minimum bankroll requirements for cash and cash equivalents required to be maintained by each Operating Company pursuant to Gaming Laws in an amount no greater than is mandated by applicable law, which requirements may be subject to (a) adjustment in an amount equal to any incremental increase or decrease in the amount of the Gaming Liquidity Requirement that is required to be maintained by Operating Company under applicable Gaming Laws as a result of any increase or decrease in gaming business at the applicable Casino Component, or (b) subject to increase or decrease due to any change in the applicable requirements under Gaming Laws generally.

**“Gaming Operating Reserve”** shall mean, with respect to the Casino Component, such cash funds and reserves that are held and maintained on-site at each Individual Property by Operating Company, in its capacity as the duly licensed operator of the Casino Component, including (without limitation) casino chips, tokens, checks and markers; provided, however, that all such Gaming Operating Reserves (a) are established and maintained in compliance with all applicable Gaming Liquidity Requirements, (b) are solely for use in the day-to-day operation and management of each Casino Component in the ordinary course of business, and (c) in the case of each Individual Property, are in amounts customary and generally comparable for casinos comparable to the Individual Property in question.

“**Governmental Authority**” shall mean any court, board, agency, commission, office or other authority of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence, including, without limitation, all Gaming Authorities having jurisdiction over the Properties (and any operations conducted thereat), Mortgage Borrower, Borrower and Operating Company. For the avoidance of doubt, the term “Governmental Authority” shall include, and be deemed to include, all Gaming Authorities.

“**Ground Lease**” shall mean, individually and collectively, as the context requires, those certain ground leases listed in Schedule IV, as the same may be amended, supplemented, replaced or otherwise modified from time to time in accordance with the provisions hereof.

“**Ground Lease Estoppel Reserve Amount**” shall have the meaning set forth in the Ground Lease Side Letter.

“**Ground Lease Estoppel Trigger Event**” shall have the meaning set forth in Section 5.1.23 hereof.

“**Ground Lease Estoppel Trigger Spread**” shall have the meaning set forth in the Ground Lease Side Letter.

“**Ground Lease Side Letter**” shall have the meaning assigned to such term in the Mortgage Loan Agreement.

“**Ground Lease Subsidiary**” shall have the meaning assigned to such term in the Mortgage Loan Agreement.

“**Ground Rent**” shall mean any rent, additional rent or other charge payable by the tenant under the Ground Lease.

“**Ground Rent Reserve Account**” shall have the meaning set forth in Section 7.4 hereof.

“**Ground Rent Reserve Funds**” shall have the meaning set forth in Section 7.4.

“**Guarantor**” shall mean, collectively, Guarantor (FF&E), Guarantor (Recourse Carveouts), Guarantor (Operating Lease), Guarantor (Ground Lease Estoppel) and any guarantor under any completion guaranty provided under Section 5.1.21.

“**Guarantor (FF&E)**” shall mean any Approved Guarantor. Initially, Guarantor (FF&E) shall mean Holdings, and its successors. If Holdings fails to meet the Minimum Value Test, then Borrower shall replace Holdings, as the guarantor under the Guaranty (FF&E), with an Approved Guarantor.

“**Guarantor (Ground Lease Estoppel)**” shall mean Holdings, and its successors.

“**Guarantor (Operating Lease)**” shall mean Holdings, and its successors.

**“Guarantor (Recourse Carveouts)”** shall mean Holdings, and its successors.

**“Guaranty”** shall mean, collectively, the Guaranty (FF&E), the Guaranty (Recourse Carveouts), the Guaranty (Ground Lease Estoppel), the Operating Lease Guaranty and any completion guaranty provided under Section 5.1.21.

**“Guaranty (FF&E)”** shall mean that certain Guaranty (FF&E) (Second Mezzanine Loan), dated as of the date hereof, from Guarantor (FF&E) to Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

**“Guaranty (Ground Lease Estoppel)”** shall mean that certain Guaranty (Harvey’s - Payment) (Second Mezzanine), dated as of the date hereof, from Guarantor (Ground Lease Estoppel) to Lender, as the same may be amended, restated, supplemented or modified from time to time.

**“Guaranty (Recourse Carveouts)”** shall mean that certain Guaranty (Recourse Carveouts) (Second Mezzanine Loan), dated as of the date hereof, from Guarantor (Recourse Carveouts) to Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

**“Harrah’s Atlantic City Property”** shall mean that certain Individual Property identified on Schedule II as “Harrah’s Atlantic City” and having a street address of 777 Harrah’s Boulevard, Atlantic City, New Jersey.

**“Holdings”** shall mean Harrah’s Entertainment, Inc., and its successors.

**“Hotel Components”** shall mean, collectively, those portions of each Individual Property devoted to the operation of a hotel and related facilities, excluding the Casino Component, but including (without limitation) (a) all guest rooms and suites, hotel amenities, restaurants, conference centers, meeting, banquet and other public rooms, spa, parking spaces and other facilities of the hotel portion of such Individual Property, and (b) any theaters or performing arts spaces in the Individual Property in question. The Hotel Components are more particularly described and set forth in each Operating Lease, as applicable.

**“Improvements”** shall have the meaning set forth in the granting clause of the related Mortgage with respect to each Individual Property.

**“Indebtedness”** of a Person, at a particular date, means the sum (without duplication) at such date of (a) all indebtedness of such Person (including, without limitation, amounts for borrowed money and indebtedness in the form of mezzanine debt and preferred equity); (b) obligations evidenced by bonds, debentures, notes, or other similar instruments; (c) obligations for the deferred purchase price of property or services (including trade obligations); (d) obligations under letters of credit; (e) obligations under acceptance facilities; (f) all guaranties, endorsements (other than for collection or deposit in the ordinary course of business) and other contingent obligations to purchase, to provide funds for payment, to supply funds, to invest in any Person or entity, or otherwise to assure a creditor against loss; and (g) obligations secured by any Liens, whether or not the obligations have been assumed.

**“Indemnified Liabilities”** shall have the meaning set forth in Section 10.13 hereof.

**“Indemnified Person”** shall have the meaning set forth in Section 9.2(b), hereof.

**“Independent Director”** or **“Independent Manager”** shall mean a natural person who is not and will not be while serving and has not been during the five years preceding his or her initial appointment to such position any of the following: (a) a stockholder (other than a stockholder who owns a *de minimis* amount of shares and receive *de minimis* income therefrom, or who indirectly owns stock through its interest in one or more mutual funds), member (other than as a Special Member or Springing Member of Borrower), director, manager (except in his or her capacity as an Independent Manager on the Board of Managers of Borrower), officer, employee, partner, attorney, trustee or counsel of Borrower or any Affiliate of Borrower or any direct or indirect parent of either of them, including Holdings, (b) a creditor, customer (other than a retail customer of an Individual Property), supplier or other Person who derives any of its purchases or revenues from its activities with Borrower or any Affiliate of Borrower, including Holdings, (c) a Person or other entity controlling or under common control with any such stockholder, partner, member, director, manager or officer, customer, supplier or other Person excluded from serving as Independent Director or Independent Manager described in the foregoing subclause (a) or subclause (b), or (d) a member of the immediate family by blood or marriage of any such stockholder, member, manager, director, officer, employee, partner, attorney, customer, supplier or other Person excluded from serving as Independent Director or Independent Manager in subclause (a) or subclause (b). A natural person who satisfies the foregoing definition other than subclause (b) above shall not be disqualified from serving as an Independent Manager, if such individual is an independent director provided by a nationally recognized company that provides professional independent directors and managers, it being hereby acknowledged and agreed that Corporation Service Company satisfies such criteria. Further, a natural person who otherwise satisfies the foregoing definition except for subclause (a) by reason of being the independent director of a “special purpose entity” affiliated with the Borrower shall not be disqualified from serving as an Independent Director of the Borrower if such individual is either (i) a Professional Independent Director or (ii) the fees and other income that such individual earns from serving as independent director of affiliates of the Borrower in any given year constitute in the aggregate less than five percent (5%) of such individual’s annual income for that year. Notwithstanding the immediately preceding sentence, an Independent Director may not simultaneously serve as Independent Director of the Borrower and independent director of a special purpose entity that owns a direct or indirect equity interest in the Borrower or a direct or indirect interest in any co-borrower with the Borrower. For purposes of this paragraph, a “special purpose entity” is an entity, whose organizational documents contain restrictions on its activities and impose requirements intended to preserve such entity’s separateness that are substantially similar to the “special purpose entity” provisions of this Agreement. Notwithstanding anything herein to the contrary, an Independent Director may not simultaneously serve as Independent Director of a Borrower and an independent director of a special purpose entity that owns a direct or indirect equity interest in any Borrower; provided, however, that one Independent Director of Borrower (but not both Independent Directors simultaneously) may serve as an independent director of each Other Mezzanine Borrower.

**“Individual Material Adverse Effect”** shall mean any event or condition that, either singly or in the aggregate, could reasonably be expected to have or result in a material adverse effect upon (a) the business, operations, economic performance, prospects, assets or condition (financial or otherwise) of (i) any Borrower, any Senior Mezzanine Borrower or any Mortgage Borrower, (ii) Guarantor, (iii) any Operating Company, (iv) any Operating Lease or Operating Lease Guaranty or (v) the Collateral, the Senior Mezzanine Collateral or any Individual Property or any Hotel Component or Casino Component thereon; (b) the ability of any Borrower, any Senior Mezzanine Borrower, any Mortgage Borrower or Guarantor to perform, in all material respects, its obligations under each of the Loan Documents, Senior Mezzanine Loan Documents or Mortgage Loan Documents to which it is a party; (c) the ability of any Operating Company to perform, in all material respects, its obligations under its Lease; (d) the enforceability or validity of (i) any Operating Lease or Operating Lease Guaranty, or (ii) any Loan Document, Senior Mezzanine Loan Document, Mortgage Loan Document or the perfection or priority of any Lien created under any Loan Document, Senior Mezzanine Loan Document or Mortgage Loan Document; (e) the value of, or cash flow from, any Individual Property, the Collateral, the Senior Mezzanine Collateral or the operations thereof; or (f) the material rights, interests and remedies of Lender under any of the Loan Documents.

**“Individual Property”** shall mean, individually, any one of the properties identified on Schedule II (it being the Improvements thereon and all Fixtures and all Equipment, FF&E and personal property owned by Mortgage Borrower and encumbered by a Mortgage, together with all rights pertaining to such property and Improvements, as more particularly described in the Granting Clauses of each Mortgage and referred to therein as the “Property”). For all purposes herein and in the other Loan Documents and to the extent not prohibited by the Ground Lease, the premises leased by Ground Lease Subsidiary or Borrower, as applicable, under the Ground Lease shall constitute a part of the Individual Property known as “Harvey’s Lake Tahoe”, “Harrah’s Lake Tahoe” and “Bill’s Lake Tahoe”, except that such ground leased premises shall not be subject to a lien of a Mortgage or an Operating Lease unless and until required pursuant hereto, the Mortgage Loan Agreement or pursuant to the Ground Lease Side Letter.

**“Insolvency Opinion”** shall mean that certain non-consolidation opinion letter dated the date hereof delivered by Cleary Gottlieb Steen & Hamilton LLP in connection with the Loan.

**“Institutional Lender”** shall mean any Person reasonably acceptable to Lender in all respects that is either (a) a real estate investment trust, bank, saving and loan association, investment bank, insurance company, trust company, commercial credit corporation, pension plan, pension fund or pension advisory firm, mutual fund, government entity or plan, provided that any such Person referred to in this clause (a) satisfies the Eligibility Requirements; (b) an investment company, money management firm or “qualified institutional buyer” within the meaning of Rule 144A under the Securities Act of 1933, as amended, or an institutional “accredited investor” within the meaning of Regulation D under the Securities Act of 1933, as amended, provided that any such Person referred to in this clause (b) satisfies the Eligibility Requirements; (c) an institution substantially similar to any of the foregoing entities described in clauses (a) or (b) that satisfies the Eligibility Requirements; (d) any entity controlled by any of the entities described in clauses (a) or (c) above; or (e) an investment fund, limited liability

company, limited partnership or general partnership where a Permitted Fund Manager or an entity that is otherwise an Institutional Lender under clauses (a), (b), (c) or (d) of this definition acts as the general partner, managing member or fund manager and at least fifty percent (50%) of the equity interests in such investment fund are owned, directly or indirectly, by one or more entities that are otherwise Institutional Lenders under clauses (a), (b), (c) or (d) of this definition.

“**Insurance Premiums**” shall have the meaning set forth in the Mortgage Loan Agreement.

“**Insurance Proceeds**” shall have the meaning set forth in the Mortgage Loan Agreement.

“**Interest Expense**” shall mean, with respect to any Person for any period, the sum of (a) gross interest expense of such Person for such period on a consolidated basis, including (i) the amortization of debt discounts, (ii) the amortization of all fees payable in connection with the incurrence of Indebtedness to the extent included in interest expense and (iii) the portion of any payments or accruals with respect to equipment financing and equipment leases allocable to interest expense, (b) capitalized interest of such Person, and (c) commissions, discounts, yield and other fees and charges incurred in connection with any indebtedness which are payable to any Person other than Borrower. For purposes of the foregoing, interest on equipment financing or equipment leases shall be deemed to accrue at an interest rate reasonably determined by the Borrower to be the rate of interest implicit in such equipment financing or equipment lease in accordance with GAAP.

“**Interest Period**” shall mean (a) for the first interest period hereunder, (i) if the Closing Date occurs on or before the fourteenth (14<sup>th</sup>) day of a calendar month, the period commencing on the Closing Date and ending on (and including) the fourteenth (14<sup>th</sup>) day of the calendar month in which the Closing Date occurs, and (ii) if the Closing Date occurs on or after the fifteenth (15<sup>th</sup>) day of a calendar month, the period commencing on the Closing Date and ending on (and including) the fourteenth (14<sup>th</sup>) day of the following calendar month and (b) for each interest period thereafter commencing February 15, 2008, the period commencing on the fifteenth (15<sup>th</sup>) day of each calendar month and ending on (and including) the fourteenth (14<sup>th</sup>) day of the following calendar month. Each Interest Period as set forth in clause (b) above shall be a full month and shall not be shortened by reason of any payment of the Loan prior to the expiration of such Interest Period. Notwithstanding the foregoing, Lender shall have the right, in connection with a Securitization, to change the Interest Period and Payment Date, provided that in doing so, Lender shall not increase Borrower’s costs hereunder (other than the direct costs of implementing such change, such as legal fees, which Borrower hereby agrees to pay).

“**Interest Rate Cap Agreement**” shall mean, as applicable, an Interest Rate Cap Agreement (together with the confirmation and schedules relating thereto) in form and substance reasonably satisfactory to Lender between Borrower and an Acceptable Counterparty or a Replacement Interest Rate Cap Agreement.

“**JPM**” shall mean JPMorgan Chase Bank, N.A. and its successors in interest.

“**Lease**” shall mean any lease (including the Operating Lease), sublease or subsublease, letting, license, concession or other agreement (whether written or oral and whether now or hereafter in effect) pursuant to which any Person is granted a possessory interest in, or right to use or occupy all or any portion of any space in any Individual Property (other than short term arrangements with transient hotel guests entered into in the usual course of business), and (a) every modification, amendment or other agreement relating to such lease, sublease, subsublease, or other agreement entered into in connection with such lease, sublease, subsublease, or other agreement and (b) every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto (including the Operating Lease Guaranty).

“**Legal Requirements**” shall mean, with respect to each Individual Property and the Collateral, all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions of Governmental Authorities affecting such Individual Property, the Senior Mezzanine Collateral, the Collateral or any part thereof (including, without limitation, all Gaming Laws), or affecting the construction, use, alteration or operation thereof, or any part thereof, whether now or hereafter enacted and in force, and all permits, licenses and authorizations and regulations relating thereto (including, without limitation, all Gaming Licenses and Operating Permits), and all covenants, agreements, restrictions and encumbrances contained in any instruments, either of record or known to Borrower, Mortgage Borrower or Operating Company, at any time in force affecting such Individual Property or any part thereof, including, without limitation, any which may (a) require repairs, modifications or alterations in or to such Individual Property or any part thereof, or (b) in any way limit the use and enjoyment thereof. Legal Requirements shall include any (x) judicial, administrative or other governmental or quasi governmental order, injunction, writ, judgment, decree, ruling, interpretation, finding or other directive, whether domestic or foreign; (y) arbitrator’s, mediator’s or referee’s decision, finding, award or recommendation; or (z) charter, rule, regulation or other organizational or governance document of any self-regulatory or governing body or organization. For the avoidance of doubt, the term “Legal Requirements” shall include, and be deemed to include, all applicable Gaming Laws and Gaming Regulations.

“**Lender**” shall have the meaning set forth in the introductory paragraph hereto, together with its successors and assigns.

“**Lender’s Share**” shall mean a fraction, the numerator of which is the outstanding principal amount of the Loan and the denominator of which is the sum of the outstanding principal amounts of the Mortgage Loan, the Loan and the Other Mezzanine Loans (in each case, as of the date of determination).

“**Liabilities**” shall have the meaning set forth in Section 9.2(b) hereof.

“**LIBOR**” shall mean, with respect to each Interest Period, the rate (expressed as a percentage per annum and rounded to the next nearest 1/100 of 1%) for deposits in U.S. dollars, for a one-month period, that appears on Reuters Screen LIBOR01 Page (or the successor thereto) as of 11:00 a.m., London time, on the related Determination Date. If such rate does not appear on Reuters Screen LIBOR01 Page as of 11:00 a.m., London time, on such Determination

Date, LIBOR shall be the arithmetic mean of the offered rates (expressed as a percentage per annum) for deposits in U.S. dollars for a one-month period that appear on the Reuters Screen Libor Page as of 11:00 a.m., London time, on such Determination Date, if at least two such offered rates so appear. If fewer than two such offered rates appear on the Reuters Screen Libor Page as of 11:00 a.m., London time, on such Determination Date, Lender shall request the principal London office of any four major reference banks in the London interbank market selected by Lender to provide such bank's offered quotation (expressed as a percentage per annum) to prime banks in the London interbank market for deposits in U.S. dollars for a one-month period as of 11:00 a.m., London time, on such Determination Date for the amounts of not less than U.S. \$1,000,000. If at least two such offered quotations are so provided, LIBOR shall be the arithmetic mean of such quotations. If fewer than two such quotations are so provided, Lender shall request any three major banks in New York City selected by Lender to provide such bank's rate (expressed as a percentage per annum) for loans in U.S. dollars to leading European banks for a one-month period as of approximately 11:00 a.m., New York City time on the applicable Determination Date for amounts of not less than U.S. \$1,000,000. If at least two such rates are so provided, LIBOR shall be the arithmetic mean of such rates. LIBOR shall be determined conclusively by Lender or its agent. Notwithstanding the foregoing, for the Interest Period ending February 14, 2008, LIBOR is 3.31%.

**"LIBOR Loan"** shall mean the Loan at such time as interest thereon accrues at a rate of interest based upon LIBOR.

**"Lien"** shall mean, with respect to each Individual Property, the Senior Mezzanine Collateral and the Collateral, any mortgage, deed of trust, lien, pledge, hypothecation, assignment, security interest, or any other encumbrance, charge or restriction on transfer of, on or affecting Borrower, Senior Mezzanine Borrower, Mortgage Borrower, any Individual Property, the Senior Mezzanine Collateral or the Collateral, any portion of either or any interest therein, including, without limitation, any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, the filing of any financing statement, and mechanic's, materialmen's and other similar liens and encumbrances, in each case whether arising by contract, operation of law, or otherwise.

**"Liquidation Event"** shall have the meaning set forth in Section 2.4.2 hereof.

**"Loan"** shall mean the loan made by Lender to Borrower pursuant to this Agreement.

**"Loan Adjustment"** shall have the meaning set forth in Section 2.1.6 hereof.

**"Loan Amount"** shall mean, as determined from time to time, the outstanding principal amount of the Loan.

**"Loan Documents"** shall mean, collectively, this Agreement, the Note, the Pledge Agreement, the Environmental Indemnity, the O&M Agreement, the Guaranty (Recourse Carveouts), the Guaranty (FF&E), the Guaranty (Ground Lease Estoppel), the Collateral Assignment of Interest Rate Cap Agreement, the Contribution Agreement and all other documents executed and/or delivered in connection with the Loan.

“**Loan Party**” shall mean, collectively, Mortgage Borrower, Borrower, Senior Mezzanine Borrower, Principal and Guarantor.

“**London Business Day**” shall mean any day other than a Saturday, Sunday or any other day on which commercial banks in London, England are not open for business.

“**Major Lease**” shall mean any of the following: (a) with respect to any Individual Property, any Lease (i) covering in excess of forty thousand (40,000) net rentable square feet at such Individual Property or (ii) made with a Tenant that is a Tenant under another Lease at such Individual Property (or with a Tenant that is an Affiliate of a Tenant under another Lease at such Individual Property) if any such Leases, together, cover in excess of forty thousand (40,000) net rentable square feet or more at such Individual Property, (b) any Lease of space at any Individual Property with an Affiliate of Mortgage Borrower, or (c) any Lease that is not the result of arm’s length negotiations; provided, however, that the Operating Lease shall not constitute a Major Lease for purposes of this Agreement.

“**Material Alteration**” shall mean any Alteration with respect to all or a portion of any Individual Property that (i) when aggregated with all other Alterations at such Individual Property then being conducted involve an estimated total cost in excess of an amount equal to ten percent (10%) of the sum of the Allocated Loan Amount for such Individual Property and the “Allocated Loan Amounts” under (and as defined in each of) the Mortgage Loan Agreement and the Other Mezzanine Loan Agreements for such Individual Property or (ii) when aggregated with all other Alterations at the Properties, including such Individual Property, then being conducted, involve an estimated total cost in excess of an amount equal to five percent (5%) of the sum of the Loan Amount, the Mortgage Loan Amount and the Other Mezzanine Loan Amount (and, as used herein, “**Threshold Amount**” shall mean whichever of said 5% or 10% amount shall have been exceeded, provided that if both shall have been exceeded, then the lower of such two amounts shall be the “Threshold Amount”); provided, that, in determining whether one or more Alterations comprise a Material Alteration, there shall not be included (a) merely decorative work such as painting, wall papering, carpeting and replacement of FF&E to the extent the same are of a routine and recurring nature, performed in the ordinary course of business; (b) tenant improvement work performed by a tenant pursuant to the terms of any Lease (other than the Operating Lease) entered into in accordance with the terms hereof, so long as such work does not adversely affect any structural component of any Improvements, any utility or HVAC system contained in any Improvements or the exterior of any building constituting a part of any Improvements, (c) any Alterations which are performed in connection with the Restoration of any portion of any Individual Property after the occurrence of a Casualty or Condemnation in accordance with the terms and provisions of this Agreement, or (d) the Tower Project or the Convention Center Project.

“**Maturity Date**” shall mean the Scheduled Maturity Date or such other date on which the final payment of principal of the Note becomes due and payable as therein or herein provided, whether at such Scheduled Maturity, by declaration of acceleration, or otherwise.

“**Maximum Legal Rate**” shall mean the maximum nonusurious interest rate, if any, that at any time or from time to time may be contracted for, taken, reserved, charged or received on the indebtedness evidenced by the Note and as provided for herein or the other Loan

Documents, under the laws of such state or states whose laws are held by any court of competent jurisdiction to govern the interest rate provisions of the Loan.

**“Mezzanine Borrowers”** shall mean, collectively, Borrower, First Mezzanine Borrower, Third Mezzanine Borrower, Fourth Mezzanine Borrower, Fifth Mezzanine Borrower, Sixth Mezzanine Borrower, Seventh Mezzanine Borrower, Eighth Mezzanine Borrower, Ninth Mezzanine Borrower and any New Mezzanine Borrower.

**“Mezzanine Collection Account”** shall have the meaning set forth in Section 2.6.4 hereof.

**“Mezzanine Debt Service”** shall mean, with respect to any particular period of time, the sum of (a) the Debt Service, (b) the First Mezzanine Debt Service, (c) the Third Mezzanine Debt Service, (d) the Fourth Mezzanine Debt Service, (e) the Fifth Mezzanine Debt Service, (f) the Sixth Mezzanine Debt Service, (g) the Seventh Mezzanine Debt Service, (h) the Eighth Mezzanine Debt Service, (i) the Ninth Mezzanine Debt Service and (j) debt service on any New Mezzanine Loan.

**“Mezzanine Lenders”** shall mean, collectively, Lender, First Mezzanine Lender, Third Mezzanine Lender, Fourth Mezzanine Lender, Fifth Mezzanine Lender, Sixth Mezzanine Lender, Seventh Mezzanine Lender, Eighth Mezzanine Lender, Ninth Mezzanine Lender and Lender, as lender under any New Mezzanine Loan.

**“Mezzanine Loan Agreements”** shall mean collectively, this Agreement, the First Mezzanine Loan Agreement, the Third Mezzanine Loan Agreement, the Fourth Mezzanine Loan Agreement, the Fifth Mezzanine Loan Agreement, the Sixth Mezzanine Loan Agreement, the Seventh Mezzanine Loan Agreement, the Eighth Mezzanine Loan Agreement, the Ninth Mezzanine Loan Agreement and any New Mezzanine Loan Agreement.

**“Mezzanine Loan Amount”** shall mean, as determined from time to time, the outstanding principal amount of the Mezzanine Loans.

**“Mezzanine Loan Documents”** shall mean, collectively, the Loan Documents, the First Mezzanine Loan Documents, the Third Mezzanine Loan Documents, the Fourth Mezzanine Loan Documents, the Fifth Mezzanine Loan Documents, the Sixth Mezzanine Loan Documents, the Seventh Mezzanine Loan Documents, the Eighth Mezzanine Loan Documents, the Ninth Mezzanine Loan Documents and any loan documents entered into in connection with any New Mezzanine Loan.

**“Mezzanine Loans”** shall mean, collectively, the Loan, the First Mezzanine Loan, the Third Mezzanine Loan, the Fourth Mezzanine Loan, the Fifth Mezzanine Loan, the Sixth Mezzanine Loan, the Seventh Mezzanine Loan, the Eighth Mezzanine Loan, the Ninth Mezzanine Loan and any New Mezzanine Loan.

**“Minimum Value Test”** shall mean, with respect to any Person, that the greater of the book value or the fair market value of the assets of such Person (excluding, for purposes of making such determination, the value of the Properties) exceeds Five Billion and no/100 Dollars

(\$5,000,000,000.00) in the aggregate, as certified to Lender in an Officer's Certificate prepared in good faith based on the most recent financial statements of such Person.

**"Monthly Disbursements"** shall have the meaning provided in Section 2.6.2.

**"Monthly FF&E Reserve Amount"** means the monthly deposit for FF&E required pursuant to Section 7.3 of this Agreement.

**"Monthly Ground Rent Reserve Amount"** means the monthly deposit for Ground Rent required pursuant to Section 7.4 of this Agreement.

**"Monthly Tax and Insurance Amount"** means the monthly deposit for Taxes and Insurance required pursuant to Section 7.2 of this Agreement.

**"Moody's"** shall mean Moody's Investors Service, Inc.

**"Mortgage"** shall mean, with respect to each Individual Property, that certain first priority Mortgage (or Deed of Trust or Deed to Secure Debt) and Security Agreement, dated the date hereof, executed and delivered by Mortgage Borrower as security for the Mortgage Loan and encumbering such Individual Property and any first priority Mortgage (Deed of Trust or Deed to Secure Debt) and Security Agreement delivered pursuant to the Ground Lease Side Letter, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

**"Mortgage Borrower"** shall mean, collectively, the entities set forth on Schedule XIII hereto, each a Delaware limited liability company, together with their respective successors and permitted designs. As used herein the term "Mortgage Borrower" shall mean one of the Mortgage Borrowers individually or the Mortgage Borrowers collectively, as the context shall require.

**"Mortgage Debt Service"** shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Mortgage Note and the Mortgage Loan Agreement.

**"Mortgage Lender"** shall have the meaning set forth in the Recitals.

**"Mortgage Loan"** shall have the meaning set forth in the Recitals.

**"Mortgage Loan Agreement"** shall have the meaning set forth in the Recitals.

**"Mortgage Loan Amount"** shall mean, as determined from time to time, the outstanding principal amount of the Mortgage Loan.

**"Mortgage Loan Default"** shall mean a "Default" as defined in the Mortgage Loan Agreement.

**"Mortgage Loan Documents"** shall mean the Mortgage Loan Agreement, the Mortgage Note, the Mortgage and all other documents and instruments executed and delivered in

connection with the Mortgage Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

“**Mortgage Loan Event of Default**” shall mean an “Event of Default” as defined in the Mortgage Loan Agreement.

“**Mortgage Loan Reserve Funds**” shall mean the “Reserve Funds” as defined in the Mortgage Loan Agreement.

“**Mortgage Note**” shall mean the “Note” as defined in the Mortgage Loan Agreement.

“**Net Income**” shall mean, with respect to any Person, the net income (loss) of such Person, determined in accordance with GAAP and before any reduction in respect of preferred stock dividends.

“**Net Liquidation Proceeds After Debt Service**” shall mean, with respect to any Liquidation Event, all amounts paid to or received by or on behalf of Borrower, Senior Mezzanine Borrower or Mortgage Borrower in connection with such Liquidation Event, including, without limitation, proceeds of any sale, refinancing or other disposition or liquidation, less (a) Lender’s, Senior Mezzanine Lender’s and/or Mortgage Lender’s reasonable costs incurred in connection with the recovery thereof, (b) amounts required or permitted to be deducted therefrom and amounts paid pursuant to the Mortgage Loan Documents and Senior Mezzanine Loan Documents to Mortgage Lender and/or Senior Mezzanine Lender (as applicable), (c) in the case of a foreclosure sale, disposition or Transfer of the Property in connection with realization thereon following a Mortgage Loan Event of Default, such reasonable and customary costs and expenses of sale or other disposition (including attorneys’ fees and brokerage commissions), (d) in the case of a foreclosure sale, disposition or Transfer of any Senior Mezzanine Collateral in connection with realization thereon following a Senior Mezzanine Loan Default under any Senior Mezzanine Loan Documents, such reasonable and customary costs and expenses of sale or other disposition (including attorneys’ fees and brokerage commissions), (e) in the case of a foreclosure sale, such costs and expenses incurred by Mortgage Lender under the Mortgage Loan Documents as Mortgage Lender shall be entitled to receive reimbursement for under the terms of the Mortgage Loan Documents, (f) in the case of a foreclosure sale, such costs and expenses incurred by Senior Mezzanine Lender under the Senior Mezzanine Loan Documents as Senior Mezzanine Lender shall be entitled to receive reimbursement for under the terms of the Senior Mezzanine Loan Documents, (g) in the case of a refinancing of the Mortgage Loan and/or Senior Mezzanine Loan, such costs and expenses (including attorneys’ fees) of such refinancing as shall be reasonably approved by Mortgage Lender and/or Senior Mezzanine Lender, as the case may be, and (h) the amount of any prepayments required pursuant to the Mortgage Loan Documents, Senior Mezzanine Loan Documents, and/or the Loan Documents, in connection with any such Liquidation Event.

“**Net Proceeds**” shall have the meaning set forth in Section 6.4 hereof.

“**New Mezzanine Borrower**” shall have the meaning set forth in Section 2.1.7.

“**New Mezzanine Loan**” shall have the meaning set forth in Section 2.1.7.

**“Ninth Mezzanine Borrower”** shall mean, collectively, the entities set forth on Schedule XXI hereto, each a Delaware limited liability company, together with their respective successors and permitted assigns. As used herein, the term “Ninth Mezzanine Borrower” shall mean one of the Ninth Mezzanine Borrowers individually, or the Ninth Mezzanine Borrowers collectively, as the context shall require.

**“Ninth Mezzanine Debt Service”** shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Ninth Mezzanine Notes.

**“Ninth Mezzanine Lender”** shall mean JPMorgan Chase Bank, N.A., in its capacity as the holder of the Ninth Mezzanine Loan, together with its successors and assigns.

**“Ninth Mezzanine Loan”** shall mean that certain loan in the original principal amount of Two Hundred Seventy Five Million and No/100 Dollars (\$275,000,000) of even date herewith made by Ninth Mezzanine Lender to Ninth Mezzanine Borrower.

**“Ninth Mezzanine Loan Agreement”** shall mean that certain Ninth Mezzanine Loan Agreement, dated as of the date hereof, between Ninth Mezzanine Borrower and Ninth Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**“Ninth Mezzanine Loan Documents”** shall mean the Ninth Mezzanine Loan Agreement, the Ninth Mezzanine Notes and all other documents and instruments executed and delivered in connection with the Ninth Mezzanine Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

**“Ninth Mezzanine Notes”** shall mean the “Notes” as defined in the Ninth Mezzanine Loan Agreement.

**“Note”** or **“Notes”** shall mean, collectively, Note A-1, Note A-2, Note A-3, Note A-4, Note A-5, Note A-6, Note A-7, Note A-8 and Note A-9.

**“Note A-1”** shall mean that certain Promissory Note A-1 (Second Mezzanine Loan), dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of Forty One Million Two Hundred Fifty Four Thousand Five Hundred Eighty Three and 33/100 Dollars (\$41,254,583.33) as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**“Note A-2”** shall mean that certain Promissory Note A-2 (Second Mezzanine Loan), dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of Forty One Million Two Hundred Fifty Four Thousand Five Hundred Eighty Three and 33/100 Dollars (\$41,254,583.33), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**“Note A-3”** shall mean that certain Promissory Note A-3 (Second Mezzanine Loan), dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of Forty One Million Two Hundred Fifty Four Thousand Five Hundred Eighty Three and

33/100 Dollars (\$41,254,583.33), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Note A-4**” shall mean that certain Promissory Note A-4 (Second Mezzanine Loan), dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of Forty One Million Two Hundred Fifty Four Thousand Five Hundred Eighty Three and 33/100 Dollars (\$41,254,583.33), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Note A-5**” shall mean that certain Promissory Note A-5 (Second Mezzanine Loan), dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of Forty One Million Two Hundred Fifty Four Thousand Five Hundred Eighty Three and 34/100 Dollars (\$41,254,583.34), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Note A-6**” shall mean that certain Promissory Note A-6 (Second Mezzanine Loan), dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of Forty One Million Two Hundred Fifty Four Thousand Five Hundred Eighty Three and 34/100 Dollars (\$41,254,583.34), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Note A-7**” shall mean that certain Promissory Note A-7 (Second Mezzanine Loan), dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of Nine Million One Hundred Fifty Seven Thousand Five Hundred and No/100 Dollars (\$9,157,500.00), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Note A-8**” shall mean that certain Promissory Note A-8 (Second Mezzanine Loan), dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of Nine Million One Hundred Fifty Seven Thousand Five Hundred and No/100 Dollars (\$9,157,500.00), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Note A-9**” shall mean that certain Promissory Note A-9 (Second Mezzanine Loan), dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of Nine Million One Hundred Fifty Seven Thousand Five Hundred and No/100 Dollars (\$9,157,500.00), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Noteholders**” shall mean, collectively, the holders of the Notes from time to time and a “**Noteholder**” shall mean any holder of a Note from time to time (provided that the transfer of a Note shall not result in any prior Noteholder’s loss of any indemnification provided for hereunder to a Noteholder).

“**OC Accounts**” shall have the meaning set forth in Section 2.6.1(c).

“**O&M Agreement**” shall mean, with respect to each Individual Property (to the extent required by the environmental reports referenced in Section 3.1.3(e) hereof, that certain

Operations and Maintenance Agreement (Second Mezzanine Loan), dated as of the date hereof, between Borrower and Lender given in connection with the Loan, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Officer’s Certificate**” shall mean a certificate delivered to Lender by Borrower which is signed by an authorized senior officer of Borrower or the general partner or managing member of Borrower, as applicable.

“**Off-Shore Accounts**” shall mean the accounts more particularly described on Schedule V.

“**Operating Company**” shall mean, collectively, the tenants under the Operating Leases, and their successors and permitted assigns.

“**Operating Company Annual Budget**” shall mean, individually and collectively as the context requires, with respect to each Operating Company, the operating budget of such Operating Company, including all planned Capital Expenditures, prepared by such Operating Company for the applicable Fiscal Year or other period.

“**Operating Lease**” shall mean, collectively, those certain Lease Agreements listed on Schedule VI, dated as of the date hereof, having a term of fifteen (15) years commencing on the Closing Date, and any similar Lease Agreement executed and delivered pursuant to the Ground Lease Side Letter, as the same may be amended, supplemented, replaced or otherwise modified from time to time in accordance with the provisions hereof.

“**Operating Lease Guaranty**” shall mean, collectively, those certain Lease Guaranty Agreements listed on Schedule VIA, executed and delivered by Guarantor (Operating Lease), dated as of the date hereof, unconditionally guaranteeing the payment and performance by the Operating Company of all of its obligations under the Operating Lease, and any similar Lease Guaranty Agreement executed and delivered pursuant to the Ground Lease Side Letter, as such Lease Guaranty Agreements may be amended, supplemented, replaced or otherwise modified from time to time in accordance with the provisions hereof.

“**Operating Permits**” shall have the meaning set forth in Section 4.1.22 hereof.

“**O’Shea’s**” shall have the meaning ascribed to such term in the Mortgage Loan Agreement.

“**Other Borrower Collateral**” shall have the meaning set forth in Section 11.2.1 hereof.

“**Other Borrowers**” shall have the meaning set forth in Section 11.1 hereof.

“**Other Charges**” shall mean all ground rents, maintenance charges, impositions other than Taxes, and any other charges, including, without limitation, vault charges and license fees for the use of vaults, chutes and similar areas adjoining any Individual Property, now or hereafter levied or assessed or imposed against such Individual Property or any part thereof.

**“Other Mezzanine Borrowers”** shall mean, individually or collectively as the context may require, all of the Mezzanine Borrowers other than Borrower.

**“Other Mezzanine Debt Service”** shall mean, individually or collectively as the context may require, all of the Mezzanine Debt Service other than the Debt Service.

**“Other Mezzanine Lenders”** shall mean, individually or collectively as the context may require, all of the Mezzanine Lenders other than Lender.

**“Other Mezzanine Loans”** shall mean, individually or collectively as the context may require, all of the Mezzanine Loans other than the Loan.

**“Other Mezzanine Loan Agreements”** shall mean, individually or collectively as the context may require, all of the Mezzanine Loan Agreements other than this Agreement.

**“Other Mezzanine Loan Amounts”** shall mean, as determined from time to time, the outstanding principal amounts of all of the Mezzanine Loans other than the Loan.

**“Owner’s Title Policy”** shall mean those certain ALTA extended coverage owner’s policies of title insurance issued in connection with the closing of the Mortgage Loan insuring the Mortgage Borrower as the owner of the Property.

**“Participant”** shall have the meaning set forth in Section 9.6 hereof.

**“Participant Register”** shall have the meaning set forth in Section 9.6 hereof.

**“Payment Date”** shall mean the ninth (9<sup>th</sup>) calendar day of each calendar month during the term of the Loan, and if such day is not a Business Day, then the Business Day immediately preceding such day, commencing on March 9, 2008 and continuing to and including the Maturity Date. Notwithstanding the foregoing, the Payment Date in the final Interest Period shall be the Maturity Date (*i.e.*, the second to last Business Day in such Interest Period rather than the ninth calendar day of such month).

**“Permitted Encumbrances”** shall mean, with respect to an Individual Property, collectively (a) the Liens and security interests created by the Mortgage Loan Documents; (b) all Liens, encumbrances and other matters disclosed in the Title Insurance Policies relating to such Individual Property or any part thereof; (c) Liens, if any, for Taxes and Other Charges imposed by any Governmental Authority not yet due or delinquent; (d) the Operating Lease; (e) such other title and survey exceptions as Lender has approved or may approve in writing in Lender’s reasonable discretion; (f) any Lien being contested by Borrower in good faith by appropriate proceedings, provided that (i) no Default or Event of Default has occurred and remains uncured, (ii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any applicable material instrument to which Mortgage Borrower is subject and shall not constitute a default thereunder and such proceeding shall be conducted in accordance with all applicable statutes, laws and ordinances, (iii) no Individual Property nor any part thereof or interest therein will be in imminent danger of being sold, forfeited, terminated, cancelled or lost, (iv) such proceeding shall suspend the enforcement of the contested Lien against Mortgage Borrower and any Individual Property, and (v) Borrower shall furnish such security as may be

required by GAAP or as may be reasonably requested by Lender; (g) statutory Liens for amounts not yet due and payable, provided that no Individual Property nor any part thereof or interest therein will be in imminent danger of being sold, forfeited, terminated, cancelled or lost; (h) Liens incurred in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security; (i) any Lien securing the financing of FF&E (including equipment leases) entered into by Mortgage Borrower or Operating Company in the ordinary course of business, subject to the limitations specified in the definitions of "Permitted Indebtedness" and "Permitted Indebtedness (Operating Company)", as applicable; (j) rights of tenants under Leases, as tenants only; (k) rights of hotel guests at the Hotel Components of the Properties; (l) zoning restrictions, easements, rights-of-way, restrictions on use of real property and other similar encumbrances incurred or entered into in the ordinary course of business which do not, in each case, have an Individual Material Adverse Effect; and (m) liens granted by Operating Company securing equipment financing leases and/or equipment acquisition financings permitted hereunder as "Permitted Indebtedness (Operating Company)," subject to the final sentence of said definition, or as "Permitted Indebtedness".

"**Permitted Fund Manager**" means any Person that on the date of determination (a) is one of the entities listed on Schedule VII or any other nationally-recognized manager of investment funds investing in debt or equity interests relating to commercial real estate, (b) is investing through a fund with committed capital of at least \$1,000,000,000, (c) is not subject to a Bankruptcy Action, (d) has not been, and none of its material subsidiaries has been, subject to a Bankruptcy Action for the preceding 5 years, (e) has not been convicted and is not under current indictment for a felony or crime involving moral turpitude, (f) has not been found by a court of competent jurisdiction to have violated federal or state securities laws, and (g) is not an organized crime figure (as determined by Lender in its reasonable discretion).

"**Permitted Indebtedness**" shall have the meaning assigned to such term in the Mortgage Loan Agreement.

"**Permitted Indebtedness (Operating Company)**" shall mean, collectively, (a) trade and operational debt (including equipment financing leases, such as leases with providers of Gaming Equipment) relating to the operation of the Properties and the routine administration of Operating Company incurred in the ordinary course of business with trade creditors and in amounts as are normal and reasonable under the circumstances, are not evidenced by a note, are required to be paid within ninety (90) days after same are incurred (except in the case of operating leases) and are paid when due, (b) accrued and unpaid payroll, benefits and payroll taxes with respect to employees of Operating Company or its Affiliates engaged with respect to the Properties incurred in the ordinary course of business and paid when due, (c) debt owed to affiliates, provided such debt is made subject to an intercreditor and standstill agreement in favor of Lender in form and substance reasonably satisfactory to Lender, and (d) such other Indebtedness specifically permitted pursuant to the Operating Lease (including the Gaming Equipment Facility Agreements (as defined in the Mortgage Loan Agreement)). In no event shall Permitted Indebtedness (Operating Company) and Permitted Indebtedness of each Operating Company and Mortgage Borrower on an aggregate basis, excluding for purposes of this sentence the Indebtedness described in subclause (b) of the preceding sentence, exceed five percent (5%) of the sum of the Loan Amount, the Mortgage

Loan Amount and the Other Mezzanine Loan Amounts in the aggregate (each as determined from time to time).

“**Permitted Investments**” shall have the meaning set forth in the Mortgage Loan Agreement.

“**Permitted Mezzanine Debt Loan-to-Value Ratio**” shall mean the ratio, as of a particular date, in which (a) the numerator is equal to the sum of (i) the outstanding principal amount of the Mortgage Loan, (ii) the outstanding principal amount of the Mezzanine Loans, and any New Mezzanine Loan, plus (iii) the amount of the Permitted Mezzanine Loan, and (b) the denominator is equal to the appraised value of the Properties subject to the Lien of the Mortgage as determined by Lender based on Appraisals obtained by Lender (at Borrower’s sole cost and expense) and satisfactory to Lender and dated no earlier than ninety (90) days prior to the date of determination or such other Appraisals as are approved by Lender in its sole discretion.

“**Permitted Mezzanine Debt Service**” shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Permitted Mezzanine Loan Documents.

“**Permitted Mezzanine DSCR**” shall mean, for the applicable period, the ratio of (a) EBITDAR for such period from the Properties to (b) the sum of (i) the Mortgage Debt Service and Mezzanine Debt Service for such period, plus (ii) principal and/or interest due and payable (or, for purposes of the calculation to be made pursuant to Section 2.8(d), that would have been due and payable had the Permitted Mezzanine Loan then been in place) for such period on the Permitted Mezzanine Loan at the interest rate set forth in the Permitted Mezzanine Loan Documents or, if the Permitted Mezzanine Loan is a floating rate loan, assuming that (A) the spread on the Permitted Mezzanine Loan is the “Spread” as defined in the documents evidencing the Permitted Mezzanine Loan and (B) LIBOR is equal to the lesser of (y) LIBOR on the date of determination, or (z) the strike price under the related interest rate cap purchased in connection with the Permitted Mezzanine Loan.

“**Permitted Mezzanine Loan**” shall have the meaning set forth in Section 2.8 hereof.

“**Permitted Mezzanine Loan Documents**” shall have the meaning set forth in Section 2.8(g) hereof.

“**Permitted Mezzanine Loan Election**” shall have the meaning set forth in Section 2.8 hereof.

“**Permitted Mezzanine Loan Lender**” shall have the meaning set forth in Section 2.8 hereof.

“**Person**” shall mean any individual, corporation, partnership, joint venture, limited liability company, estate, trust, unincorporated association, any federal, state, county or municipal government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

**“Physical Conditions Report”** shall mean, with respect to each Individual Property, a report prepared by a company satisfactory to Lender regarding the physical condition of such Individual Property, satisfactory in form and substance to Lender in its sole discretion.

**“Pledge Agreement”** shall mean that certain Pledge Agreement dated as of the date hereof given by Borrower in favor of Lender.

**“Pledged Company Interests”** shall have the meaning set forth in the Pledge Agreement.

**“Policies”** shall have the meaning specified in Section 6.1(b) hereof.

**“Prepayment Date”** shall have the meaning specified in Section 2.4.1 hereof.

**“Prescribed Laws”** shall mean, collectively, (a) the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56) (The USA PATRIOT Act), as amended, (b) Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, and relating to Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, (c) the International Emergency Economic Power Act, 50 U.S.C. §1701 *et seq.* and (d) all other Legal Requirements relating to money laundering or terrorism.

**“Prime Rate”** shall mean the annual rate of interest publicly announced by Citibank, N.A. in New York, New York, as its base rate, as such rate shall change from time to time. If Citibank, N.A. ceases to announce a base rate, Prime Rate shall mean the rate of interest published in The Wall Street Journal from time to time as the “Prime Rate.” If more than one “Prime Rate” is published in The Wall Street Journal for a day, the average of such “Prime Rates” shall be used, and such average shall be rounded up to the nearest one-eighth of one percent (0.125%). If The Wall Street Journal ceases to publish the “Prime Rate,” Lender shall select an equivalent publication that publishes such “Prime Rate,” and if such “Prime Rates” are no longer generally published or are limited, regulated or administered by a governmental or quasi-governmental body, then Lender shall select a comparable interest rate index.

**“Prime Rate Loan”** shall mean the Loan at such time as interest thereon accrues at a rate of interest based upon the Prime Rate.

**“Prime Rate Spread”** shall mean the difference (expressed as the number of basis points) between (a) LIBOR plus the Spread on the date LIBOR was last applicable to the Loan and (b) the Prime Rate on the date that LIBOR was last applicable to the Loan; provided, however, in no event shall such difference be a negative number.

**“Principal”** shall mean Third Mezzanine Borrower.

**“Projections”** shall have the meaning set forth in Section 9.10 hereof.

**“Properties”** shall mean, collectively, each and every Individual Property which is subject to the terms of this Agreement.

**“Provided Information”** shall mean any and all financial and other information provided at any time by, or on behalf of, Borrower, Senior Mezzanine Borrower, or Mortgage Borrower with respect to the Properties, Borrower, any Affiliates of Borrower, including Holdings, Guarantor and/or Operating Company.

**“Qualified Transferee”** means (a) any of the Mezzanine Lenders, (b) Apollo Management, L.P., TPG Capital, L.P. f/k/a Texas Pacific Group, their respective Affiliates and senior or executive principals of Apollo Management, L.P. or TPG Capital, L.P. who are the holders from time to time of voting interests in Holdings, and investment funds Controlled by either of them (but excluding for purposes of this clause (b) “portfolio companies” of the foregoing), or (c) one or more of the following:

(i) a real estate investment trust, bank, saving and loan association, investment bank, insurance company, trust company, commercial credit corporation, pension plan, pension fund or pension advisory firm, mutual fund, government entity or plan, provided that any such Person referred to in this clause (i) satisfies the Eligibility Requirements;

(ii) an investment company, money management firm or “qualified institutional buyer” within the meaning of Rule 144A under the Securities Act of 1933, as amended, or an institutional “accredited investor” within the meaning of Regulation D under the Securities Act of 1933, as amended, provided that any such Person referred to in this clause (ii) satisfies the Eligibility Requirements;

(iii) an institution substantially similar to any of the foregoing entities described in clauses (c)(i) or (c)(ii) that satisfies the Eligibility Requirements;

(iv) any entity Controlled by any of the entities described in clause (a) or clauses (c)(i) or (c)(ii) above, or Holdings or any entity Controlled by Holdings (provided in each case there shall have occurred no Change in Control);

(v) a Qualified Trustee in connection with a securitization of, the creation of collateralized debt obligations (“CDO”) secured by or financing through an “owner trust” of, any Mezzanine Loan (collectively, “**Securitization Vehicles**”), so long as (A) the special servicer or manager of such Securitization Vehicle has the Required Special Servicer Rating and (B) the entire “controlling class” of such Securitization Vehicle, other than with respect to a CDO Securitization Vehicle, is held by one or more entities that are otherwise Qualified Transferees under clauses (c)(i), (ii), (iii) or (iv) of this definition; provided that the operative documents of the related Securitization Vehicle require that (1) in the case of a CDO Securitization Vehicle, the “equity interest” in such Securitization Vehicle is owned by one or more entities that are Qualified Transferees under clauses (c)(i), (ii), (iii) or (iv) of this definition and (2) if any of the relevant trustee, special servicer, manager fails to meet the requirements of this clause (v), such Person must be replaced by a Person meeting the requirements of this clause (v) within thirty (30) days; or

(vi) an investment fund, limited liability company, limited partnership or general partnership where a Permitted Fund Manager or an entity that is otherwise a Qualified Transferee under clauses (c)(i), (ii), (iii) or (iv) of this definition acts as the general partner, managing member or fund manager and at least 50% of the equity interests in such investment vehicle are owned, directly or indirectly, by one or more entities that are otherwise Qualified Transferees under clauses (c)(i), (ii), (iii) or (iv) of this definition;

provided, however, that no Transferee shall be a Qualified Transferee if (and for so long as) such Transferee is, or is Controlled by, an Embargoed Person or a Person that has been found “unsuitable,” for any reason, by a Gaming Authority.

“**Qualified Trustee**” means (a) a corporation, national bank, national banking association or a trust company, organized and doing business under the laws of any state or the United States of America, authorized under such laws to exercise corporate trust powers and to accept the trust conferred, having a combined capital and surplus of at least \$100,000,000 and subject to supervision or examination by federal or state authority, (b) an institution insured by the Federal Deposit Insurance Corporation or (c) an institution whose long-term senior unsecured debt is rated either of the then in effect top two rating categories of each of the Rating Agencies.

“**Rating Agencies**” shall mean each of S&P, Moody’s and Fitch, or any other nationally recognized statistical rating agency which has been approved by Lender and that rates a Securitization of the Loan (or any component thereof).

“**Rating Agency Confirmation**” means, collectively, a written affirmation from each of the Rating Agencies that the credit rating of the Securities given by such Rating Agency of such Securities immediately prior to the occurrence of the event with respect to which such Rating Agency Confirmation is sought will not be qualified, downgraded or withdrawn as a result of the occurrence of such event, which affirmation may be granted or withheld in such Rating Agency’s sole and absolute discretion. In the event that, at any given time, no such Securities shall have been issued and are then outstanding, then the term Rating Agency Confirmation shall be deemed instead to require the written approval of Lender based on its good faith determination of whether the Rating Agencies would issue a Rating Agency Confirmation if any such Securities were outstanding.

“**Regulation AB**” shall have the meaning set forth in Section 5.1.11(f) hereof.

“**Regulation S-K**” shall mean Regulation S-K under the Securities Act of 1933 and the Securities Exchange Act of 1934, as amended.

“**Regulation S-X**” shall mean Regulation S-X under the Securities Act of 1933 and the Securities Exchange Act of 1934, as amended.

“**Related Loan**” shall have the meaning set forth in Section 5.1.11(f) hereof.

“**Related Property**” shall have the meaning set forth in Section 5.1.11(f) hereof.

“**Release**” shall have the meaning set forth in Section 2.5.1 hereof.

“**Release Borrower**” shall have the meaning set forth in Section 2.5.1 hereof.

“**Release Price**” shall mean, in connection with a release of an Individual Property from the Lien of a Mortgage as provided in Section 2.5, an amount equal to one hundred ten percent (110%) of the applicable Allocated Loan Amount for the first and second Individual Properties released, 115% of the applicable Allocated Loan Amount for the third and fourth Individual Properties released and (110%) of the applicable Allocated Loan Amount for any Individual Property thereafter released; provided if the Paris Las Vegas property becomes an Individual Property as contemplated by the last paragraph of Section 2.5.2, then such Individual Property shall have a Release Price of 120% of its Allocated Loan Amount and each other Individual Property shall have a Release Price of 110% of its Allocated Loan Amount.

“**Rents**” shall mean, with respect to each Individual Property, and without duplication, all rents, rent equivalents, moneys payable as damages or in lieu of rent or rent equivalents, royalties (including, without limitation, all oil and gas-or other mineral royalties and bonuses), income, receivables, receipts, revenues, deposits (including, without limitation, security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, and other consideration of whatever form or nature received by or paid to or for the account of or benefit of Mortgage Borrower or the Operating Company (or employees of Mortgage Borrower or the Operating Company) from any and all sources arising from or attributable to such Individual Property, and proceeds, if any, from business interruption or other loss of income or insurance, including, without limitation, all hotel receipts, revenues and credit card receipts collected from guest rooms, restaurants, bars, meeting rooms, banquet rooms and recreational facilities, all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of property or rendering of services by Mortgage Borrower or any operator or manager of the Hotel Components or the commercial spaces located in the Improvements or acquired from others (including, without limitation, from the rental of any office space, retail space, guest rooms or other space, halls, stores and offices, and deposits securing reservations of such space), license, lease, sublease and concession fees and rentals, health club membership fees, food and beverage wholesale and retail sales, service charges, vending machine sales and proceeds, if any, from business interruption or other loss of income insurance.

“**Replacement Interest Rate Cap Agreement**” means an interest rate cap agreement from an Acceptable Counterparty with terms identical to the Interest Rate Cap Agreement except that the same shall be effective in connection with replacement of the Interest Rate Cap Agreement following a downgrade, withdrawal or qualification of the long-term unsecured debt rating of the Counterparty; provided that to the extent any such interest rate cap agreement does not meet the foregoing requirements, a “Replacement Interest Rate Cap Agreement” shall be such interest rate cap agreement approved in writing by each of the Rating Agencies and Lender with respect thereto.

“**Reserve Account**” shall mean any one of the Tax and Insurance Escrow Account, the FF&E Reserve Account, the Ground Rent Reserve Account and any other escrow fund or reserve account established pursuant to the Loan Documents.

**“Reserve Funds”** shall mean, collectively, the Tax and Insurance Escrow Fund, the FF&E Reserve Fund, the Ground Rent Reserve Fund, the Ground Lease Estoppel Reserve Amount and any other escrow fund established pursuant to the Loan Documents.

**“Restoration”** shall mean the repair and restoration of an Individual Property after a Casualty or Condemnation as nearly as possible to the condition the Individual Property was in immediately prior to such Casualty or Condemnation, with such alterations as may be reasonably approved by Lender.

**“Revenue”** shall mean all Rents and items of income or revenue (of any kind) collected by Mortgage Borrower or Operating Company.

**“S&P”** shall mean Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc.

**“Sale or Pledge”** shall mean a voluntary or involuntary sale, conveyance, assignment, transfer, encumbrance or pledge of a legal or beneficial interest.

**“Scheduled Maturity Date”** shall mean February 13, 2013.

**“Securities”** shall have the meaning set forth in Section 9.1 hereof.

**“Securities Act”** shall have the meaning set forth in Section 9.2(a) hereof.

**“Securitization”** shall have the meaning set forth in Section 9.1 hereof.

**“Senior Mezzanine Borrower”** shall mean, collectively, First Mezzanine Borrower.

**“Senior Mezzanine Collateral”** shall mean, collectively, the “Collateral” as defined in each Senior Mezzanine Loan Agreement.

**“Senior Mezzanine Lender”** shall mean First Mezzanine Lender.

**“Senior Mezzanine Loan”** shall mean the First Mezzanine Loan.

**“Senior Mezzanine Loan Agreement”** shall mean the First Mezzanine Loan Agreement.

**“Senior Mezzanine Loan Default”** shall mean, collectively, a “Default” under any of the Senior Mezzanine Loan Documents.

**“Senior Mezzanine Loan Documents”** shall mean, collectively, the First Mezzanine Loan Documents.

**“Senior Mezzanine Loan Event of Default”** shall mean, collectively, an “Event of Default” under any of the Senior Mezzanine Loan Documents.

“**Senior Mezzanine Loan Reserve Funds**” shall mean, collectively, the “Reserve Funds” as defined in the Senior Mezzanine Loan Agreement.

“**Servicer**” shall have the meaning set forth in Section 9.4 hereof.

“**Servicing Agreement**” shall have the meaning set forth in Section 9.4 hereof.

“**Seventh Mezzanine Borrower**” shall mean, collectively, the entities set forth on Schedule XIX hereto, each a Delaware limited liability company, together with their respective successors and permitted assigns. As used herein, the term “Seventh Mezzanine Borrower” shall mean one of the Seventh Mezzanine Borrowers individually, or the Seventh Mezzanine Borrowers collectively, as the context shall require.

“**Seventh Mezzanine Debt Service**” shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Seventh Mezzanine Notes.

“**Seventh Mezzanine Lender**” shall mean JPMorgan Chase Bank, N.A., in its capacity as the holder of the Seventh Mezzanine Loan, together with its successors and assigns.

“**Seventh Mezzanine Loan**” shall mean that certain loan in the original principal amount of Two Hundred Seventy Five Million and No/100 Dollars (\$275,000,000) of even date herewith made by Seventh Mezzanine Lender to Seventh Mezzanine Borrower.

“**Seventh Mezzanine Loan Agreement**” shall mean that certain Seventh Mezzanine Loan Agreement, dated as of the date hereof, between Seventh Mezzanine Borrower and Seventh Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Seventh Mezzanine Loan Documents**” shall mean the Seventh Mezzanine Loan Agreement, the Seventh Mezzanine Notes and all other documents and instruments executed and delivered in connection with the Seventh Mezzanine Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

“**Seventh Mezzanine Notes**” shall mean the “Notes” as defined in the Seventh Mezzanine Loan Agreement.

“**Severed Loan Documents**” shall have the meaning set forth in Section 8.2(c) hereof.

“**Significant Obligor**” shall have the meaning set forth in Section 5.1.11(f) hereof.

“**Sixth Mezzanine Borrower**” shall mean, collectively, the entities set forth on Schedule XVIII hereto, each a Delaware limited liability company, together with their respective successors and permitted assigns. As used herein, the term “Sixth Mezzanine Borrower” shall mean one of the Sixth Mezzanine Borrowers individually, or the Sixth Mezzanine Borrowers collectively, as the context shall require.

**“Sixth Mezzanine Debt Service”** shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Sixth Mezzanine Note.

**“Sixth Mezzanine Lender”** shall mean JPMorgan Chase Bank, N.A., in its capacity as the holder of the Sixth Mezzanine Loan, together with its successors and assigns.

**“Sixth Mezzanine Loan”** shall mean that certain loan in the original principal amount of Two Hundred Seventy Five Million and No/100 Dollars (\$275,000,000) of even date herewith made by Sixth Mezzanine Lender to Sixth Mezzanine Borrower.

**“Sixth Mezzanine Loan Agreement”** shall mean that certain Sixth Mezzanine Loan Agreement, dated as of the date hereof, between Sixth Mezzanine Borrower and Sixth Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**“Sixth Mezzanine Loan Documents”** shall mean the Sixth Mezzanine Loan Agreement, the Sixth Mezzanine Notes and all other documents and instruments executed and delivered in connection with the Sixth Mezzanine Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

**“Sixth Mezzanine Notes”** shall mean the “Notes” as defined in the Sixth Mezzanine Loan Agreement.

**“Special Member”** shall mean a Springing Member in a given Delaware limited liability company who has become a member in such limited liability company to the extent so provided in such limited liability company’s operating agreement.

**“Special Purpose Entity”** shall mean a corporation, limited partnership or limited liability company which at all times on and after the date hereof:

(a) is organized solely for the purpose of (i) owning, holding, selling, transferring, exchanging, managing and operating the Collateral, entering into this Agreement with the Lender, refinancing the Collateral in connection with a permitted repayment of the Loan, and transacting lawful business that is incident, necessary and appropriate to accomplish the foregoing; or (ii) acting as a general partner of the limited partnership that owns the Collateral or member of the limited liability company that owns the Collateral;

(b) is not engaged and will not engage in any business unrelated to (i) the ownership of the Collateral, (ii) acting as general partner of the limited partnership that owns the Collateral or (iii) acting as a member of the limited liability company that owns the Collateral, as applicable;

(c) does not have and will not have any assets other than those related to the Collateral or its partnership interest in the limited partnership or the member interest in the limited liability company that owns the Collateral or acts as the general partner or managing member thereof, as applicable;

(d) has not engaged, sought or consented to and will not engage in, seek or consent to any dissolution, winding up, liquidation, consolidation, merger, sale of all or substantially all of its assets, transfer of partnership or membership interests (if such entity is a general partner in a limited partnership or a member in a limited liability company) or amendment of its limited partnership agreement, articles of incorporation, articles of organization, certificate of formation or operating agreement (as applicable) with respect to the matters set forth in this definition;

(e) if such entity is a limited partnership, has, as its only general partners, Special Purpose Entities that are corporations, limited partnerships or limited liability companies;

(f) if such entity is a corporation, has at least two (2) Independent Directors, and has not caused or allowed and will not cause or allow the board of directors of such entity to take any action requiring the unanimous affirmative vote of one hundred percent (100%) of the members of its board of directors unless two (2) Independent Directors shall have participated in such vote;

(g) if such entity is a limited liability company with more than one member, has at least one member that is a Special Purpose Entity that is a Delaware corporation or limited liability company that has at least two (2) Independent Directors;

(h) if such entity is a limited liability company with only one member, is a limited liability company organized in the State of Delaware that has (i) as its only member a non-managing member, (ii) at least two (2) Independent Managers and has not caused or allowed and will not cause or allow the board of managers of such entity to take any action requiring the unanimous affirmative vote of one hundred percent (100%) of the managers unless two (2) Independent Managers shall have participated in such vote and (iii) at least one springing member that will become the non-managing member of such entity upon the dissolution of the existing non-managing member;

(i) if such entity is (i) a limited liability company, has articles of organization, a certificate of formation and/or an operating agreement, as applicable, (ii) a limited partnership, has a limited partnership agreement, or (iii) a corporation, has a certificate of incorporation or articles that, in each case, provide that such entity will not, while any obligations remain outstanding under the Loan Documents: (A) dissolve, merge, liquidate, consolidate; (B) sell all or substantially all of its assets or the assets of the Borrower (as applicable), except as permitted in connection with the release of an Individual Property as provided in Section 2.5.1; (C) engage in any other business activity, or amend its organizational documents with respect to the matters set forth in this definition without the consent of the Lender; or (D) without the affirmative vote of two (2) Independent Directors and of all other directors of the corporation (that is such entity or the general partner or managing or co-managing member of such entity), file a bankruptcy or insolvency petition or otherwise institute insolvency proceedings with respect to itself or to any other entity in which it has a direct or indirect legal or beneficial ownership interest;

(j) is and will remain solvent and pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from and to the extent of its assets as the same shall become due, and is maintaining and will maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations; provided, however, that the foregoing shall not require the Member to make additional capital contributions to the company;

(k) has not failed and will not fail to correct any known misunderstanding regarding the separate identity of such entity;

(l) has maintained and will maintain its bank accounts, books and records separate from any other Person and will file its own tax returns separate from those of any other Person, except to the extent the company is treated as a “disregarded entity” for tax purposes and is not required to file tax returns under applicable law;

(m) has maintained and will maintain its own records, books, resolutions and agreements;

(n) has not commingled and will not commingle its funds or assets with assets of any other Person;

(o) has held and will hold its assets in its own name;

(p) has conducted and will conduct its business in its own name;

(q) has maintained and will maintain its financial statements, accounting records and other entity documents separate and apart from any other Person and will have its assets listed on the financial statement of any other Person; provided, however, that the company’s assets may be included in a consolidated financial statement of its Affiliate, provided, that, (i) appropriate notation shall be made on such consolidated financial statements to indicate the separateness of the company from such Affiliate and to indicate the company’s assets and credit are not available to satisfy the debts and other obligations of such Affiliate or any other Person and (ii) such assets shall also be listed on the company’s own separate balance sheet;

(r) has paid and will pay its own liabilities and expenses, including the salaries of its own employees (if any), out of its own funds and assets, and has maintained and will maintain a sufficient number of employees (if any) in light of its contemplated business operations;

(s) has observed and will observe all partnership, corporate or limited liability company formalities necessary to maintain its separate existence;

(t) has and will not incur, create, or assume any Indebtedness other than (i) the Loan and (ii) certain Indebtedness to Affiliates that was incurred in connection with the formation of Borrower and Operating Company and the transfer of the Properties to Mortgage Borrower and was satisfied and/or released in full prior to the funding of the Loan hereunder;

(u) has not and will not assume or guarantee or become obligated for the debts of any other Person or hold out its credit as being available to satisfy the obligations of any other Person except as co-borrowers of the Loan;

(v) has not and will not acquire obligations or securities of its partners, members or shareholders or any Affiliate (other than Mortgage Borrower);

(w) has allocated and will allocate fairly and reasonably any overhead expenses that are shared with any Affiliate, including, but not limited to, paying for shared office space and services performed by any employee of an Affiliate;

(x) maintains and uses and will maintain and use separate stationery, invoices and checks, if any, bearing its name. The stationery, invoices, and checks, if any, utilized by the Special Purpose Entity or utilized to collect its funds or pay its expenses shall bear its own name and shall not bear the name of any other entity unless such entity is clearly designated as being the Special Purpose Entity's agent;

(y) has not pledged and will not pledge its assets for the benefit of any Person except as co-borrowers of the Loan;

(z) has held itself out and identified itself and will hold itself out to the public and all other Persons and identify itself as a separate and distinct entity under its own name or in a name franchised or licensed to it by an entity other than an Affiliate of Borrower and not as a division or part of any other Person;

(aa) has maintained and will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;

(bb) has not made and will not make loans to any Person or hold evidence of indebtedness issued by any other Person or entity (other than cash and investment-grade securities issued by an entity that is not an Affiliate of or subject to common ownership with such entity);

(cc) correct any known misunderstanding regarding its separate identity and has not identified and will not identify its partners, members or shareholders, or any Affiliate of any of them, as a division or part of it, and has not identified itself and shall not identify itself as a division of any other Person;

(dd) except for capital contributions or capital distributions permitted under the terms and conditions of this Agreement and properly reflected on the books and records of this company, has not entered into or been a party to, and will not enter into or be a party to, any transaction with its partners, members, shareholders or Affiliates except in the ordinary course of its business and on terms which are commercially reasonable and are no less favorable to it than would be obtained in a comparable arm's-length transaction with an unrelated third party (including an appropriate shared services agreement with Affiliates);

(ee) has not and will not have any obligation to, and will not, indemnify its partners, officers, directors or members, as the case may be, unless such an obligation is fully subordinated to the Debt and will not constitute a claim against it in the event that cash flow in excess of the amount required to pay the Debt is insufficient to pay such obligation;

(ff) if such entity is a corporation, it shall consider the interests of its creditors in connection with all corporate actions;

(gg) does not and will not have any of its obligations guaranteed by any Affiliate (except each Borrower as a co-borrower under the Loan);

(hh) has complied and will comply with all of the terms and provisions contained in its organizational documents. The statement of facts contained in its organizational documents are true and correct and will remain true and correct; and

(ii) form, acquire, or hold any subsidiary (whether corporate, partnership, limited liability company, or other) or own any equity interest in any other entity (other than, with respect to Borrower, its interest in Second Mezzanine Borrower, and with respect to Principal, its interest in Borrower).

“**SPE Party**” shall mean Borrower and any other Person that is required to be a “Special Purpose Entity” under applicable Rating Agency criteria so as to make Borrower a Special Purpose Entity.

“**Spread**” shall mean (i) unless and until a Ground Lease Estoppel Trigger Event exists, 3.00% and (ii) upon the occurrence of a Ground Lease Estoppel Trigger Event, the Ground Lease Estoppel Trigger Spread.

“**Spread Maintenance Outside Date**” shall mean February 10, 2009.

“**Spread Maintenance Premium**” shall mean, in connection with any repayment of any of the outstanding principal amount of the Loan prior to and including the Spread Maintenance Outside Date (whether a voluntary or mandatory prepayment), an amount equal to the product of (a) the principal amount of such prepayment, (b) the Spread and (c) a fraction, the numerator of which shall be the actual number of days from (but excluding) the date of such prepayment (or, if later, the last date of the Interest Period during which interest on the amount of such payment shall have been paid by Borrower, as required in this Agreement) through (and including) the Spread Maintenance Outside Date and the denominator of which is three hundred sixty (360).

“**Springing Member**” shall mean a Person who has signed the limited liability company agreement of a given Delaware limited liability company, which agreement provides that, upon the withdrawal, dissolution or disassociation of the last remaining member of such limited liability company (subject to applicable Gaming Laws), such Person shall become a member of such limited liability company having no economic interest therein.

“**State**” shall mean, with respect to an Individual Property, the State or Commonwealth in which such Individual Property or any part thereof is located.

“**Strike Price**” shall mean four and one-half percent (4.5%).

“**Survey**” shall mean a survey of the Individual Property in question prepared pursuant to the requirements contained in Section 3.1.3(c) hereof.

“**Syndication**” shall have the meaning set forth in Section 9.5 hereof.

“**Tax and Insurance Escrow Fund**” shall have the meaning set forth in Section 7.2 hereof.

“**Taxes**” shall mean all real estate and personal property taxes, assessments, water rates or sewer rents, now or hereafter levied or assessed or imposed against any Individual Property or part thereof.

“**Third Mezzanine Borrower**” shall mean, collectively, the entities set forth on Schedule XV hereto, each a Delaware limited liability company, together with their respective successors and permitted assigns. As used herein, the term “Third Mezzanine Borrower” shall mean one of the Third Mezzanine Borrowers individually, or the Third Mezzanine Borrowers collectively, as the context shall require.

“**Third Mezzanine Debt Service**” shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Third Mezzanine Notes.

“**Third Mezzanine Lender**” shall mean JPMorgan Chase Bank, N.A., in its capacity as the holder of the Third Mezzanine Loan, together with its successors and assigns.

“**Third Mezzanine Loan**” shall mean that certain loan in the original principal amount of Two Hundred Seventy Five Million and No/100 Dollars (\$275,000,000) of even date herewith made by Third Mezzanine Lender to Third Mezzanine Borrower.

“**Third Mezzanine Loan Agreement**” shall mean that certain Third Mezzanine Loan Agreement, dated as of the date hereof, between Third Mezzanine Borrower and Third Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Third Mezzanine Loan Documents**” shall mean the Third Mezzanine Loan Agreement, the Third Mezzanine Notes and all other documents and instruments executed and delivered in connection with the Third Mezzanine Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

“**Third Mezzanine Notes**” shall mean the “Notes” as defined in the Third Mezzanine Loan Agreement.

**“Threshold Amount”** shall have the meaning set forth in the definition of Material Alteration.

**“Title Insurance Policies”** shall mean, with respect to each Individual Property, an ALTA mortgagee title insurance policy in a form acceptable to Lender (or, if an Individual Property is in a State which does not permit the issuance of such ALTA policy, such form as shall be permitted in such State and acceptable to Lender) issued with respect to such Individual Property and insuring the lien of the Mortgage encumbering such Individual Property.

**“Tower Project”** shall mean that certain “New Atlantic City Tower Project” more fully described in (a) the Site, Design and Floor Plans, dated October 5, 2005, and prepared by Paul Steelman Design Group, and (b) Harrah’s Hotel/Podium/Garage Expansion: Summary of Project Costs, each delivered to Lender. The Tower Project will include a podium (of approximately 175,000 square feet) connecting the current Bayview Tower to a new approximately nine hundred (900) room tower to be built. The Tower Project will not be funded with the proceeds of the Loan (but will be funded by Mortgage Borrower or Operating Company, including with capital contributions).

**“Transfer”** shall mean to, directly or indirectly, sell, assign, convey, mortgage, transfer, pledge, hypothecate, encumber, grant a security interest in, exchange or otherwise dispose of any beneficial interest or grant any option or warrant with respect to, or where used as a noun, a direct or indirect sale, assignment, conveyance, transfer, pledge or other disposition of any beneficial interest by any means whatsoever whether voluntary, involuntary, by operation of law or otherwise. A Transfer shall include, but not be limited to, (a) an installment sales agreement wherein Mortgage Borrower agrees to sell an Individual Property or any part thereof or Borrower agrees to sell the Collateral, in each case, for a price to be paid in installments; (b) an agreement by Mortgage Borrower leasing all or a substantial part of an Individual Property for other than actual occupancy by a space tenant thereunder or a sale, assignment or other transfer of, or the grant of a security interest in, Mortgage Borrower’s right, title and interest in and to any Leases or any Rents; (c) if a Person restricted or affected by the provisions of this Agreement is a corporation, any merger, consolidation or sale or pledge of such corporation’s stock or the creation or issuance of new stock; (d) if a Person restricted or affected by the provisions of this Agreement is a limited or general partnership or joint venture, any merger or consolidation or the change, removal, resignation or addition of a general partner or the sale or pledge of the partnership interest of any general partner or any profits or proceeds relating to such partnership interest, or the sale or pledge of limited partnership interests or any profits or proceeds relating to such limited partnership interest or the creation or issuance of new limited partnership interests; (e) if a Person restricted or affected by the provisions of this Agreement is a limited liability company, any merger or consolidation or the change, removal, resignation or addition of a managing member or non-member manager (or if no managing member, any member) or the sale or pledge of the membership interest of a managing member (or if no managing member, any member) or any profits or proceeds relating to such membership interest, or the sale or pledge of non-managing membership interests or the creation or issuance of new non-managing membership interests; (f) if a Person restricted or affected by the provisions of this Agreement is a trust or nominee trust, any merger, consolidation or the sale or pledge of the legal or beneficial interest in such Person or the creation or issuance of new legal or beneficial interests; or (g) any direct or indirect sale, assignment, conveyance, transfer, pledge or

other disposition (by any means whatsoever whether voluntary, involuntary, by operation of law or otherwise) of the Collateral, the Senior Mezzanine Collateral or any part thereof or any legal or beneficial interest therein.

“**Transferee**” shall mean the Person to whom a Transfer is being effected.

“**Trigger Event**” shall mean, as of the end of any calendar quarter, any period of time during which EBITDAR from the Properties, calculated for the trailing twelve (12) month period immediately prior to the applicable calculation date, is less than eighty-five percent (85%) of the EBITDAR (Closing Date), as determined by Lender.

“**Trigger Event Cure**” shall mean that EBITDAR (excluding, in making such calculation, any capital contributions made to or for the benefit of Borrower, Mortgage Borrower or Operating Company, or payments made on the account of Borrower, Mortgage Borrower or Operating Company by any Affiliate of Borrower, Mortgage Borrower or Operating Company) from the Properties, calculated for the trailing twelve (12) month period immediately prior to the applicable calculation date, is equal to or greater than eighty-five percent (85%) of the EBITDAR (Closing Date) for two (2) consecutive calendar quarters.

“**True-Lease Opinion**” shall mean that certain true lease opinion letter dated the date hereof delivered by Cleary Gottlieb Steen & Hamilton LLP in connection with the Loan.

“**UCC**” or “**Uniform Commercial Code**” shall mean the Uniform Commercial Code as in effect in the applicable State in which an Individual Property is located.

“**UCC Title Insurance Policy**” shall have the meaning set forth in Section 3.13(b) hereof.

“**U.S. Obligations**” shall mean non-redeemable securities evidencing an obligation to timely pay principal and/or interest in a full and timely manner that are direct obligations of the United States of America for the payment of which its full faith and credit is pledged or other “government securities” within the meaning of Section 2(a)(16) of the Investment Company Act of 1940, as amended.

“**Windstorm Insurance Intercreditor Agreement**” means that certain Windstorm Insurance Intercreditor Agreement, dated as of the date hereof, by and among Lender, the Mortgage Lender, the Other Mezzanine Lenders, each of the “Other Owners” named therein and made a party thereto, Holdings, Bank of America, N.A., and the “Other Secured Parties” named therein and made a party thereto, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**Section 1.2. Principles of Construction.** All references to sections and schedules are to sections and schedules in or to this Agreement unless otherwise specified. All uses of the word “including” shall mean “including, without limitation” unless the context shall indicate otherwise. Unless otherwise specified, the words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. Unless otherwise specified, all meanings attributed to defined terms herein shall be equally applicable to both the singular and

plural forms of the terms so defined. With respect to cross-references contained herein to the Mortgage Loan Documents or to the Other Mezzanine Loan Documents (including with respect to any cross-references to defined terms therein), unless otherwise specifically provided herein, such cross-references shall be with respect to the Mortgage Loan Documents or the Other Mezzanine Loan Documents as the case may be, in existence as of the date hereof, and no modification or amendment to such cross-referenced sections of the Mortgage Loan Documents or the Other Mezzanine Loan Documents shall be binding upon Lender unless Lender shall have expressly agreed in writing to be bound by such modification or amendment. Terms used herein and not otherwise defined herein (but defined in the Mortgage Loan Agreement) shall have the meaning set forth in the Mortgage Loan Agreement as of the Closing Date, notwithstanding any subsequent amendment of the Mortgage Loan Agreement to such defined terms unless Lender shall have consented to such amendment. The words “Borrower shall cause Mortgage Borrower to”, “Borrower shall not permit Mortgage Borrower to”, “Borrower shall cause Senior Mezzanine Borrower to”, “Borrower shall not permit Senior Mezzanine Borrower to”, “Borrower shall cause Operating Company to” or “Borrower shall not permit Operating Company to” (or words of similar meaning) shall mean Borrower shall cause Mortgage Borrower, Senior Mezzanine Borrower or Operating Company (subject to the provisions of Section 5.3), as applicable, to so act or not to so act, as applicable.

**Section 1.3. Direction of Mortgage Borrower or with Respect to the Properties.** Borrower and Lender hereby acknowledge and agree that, as to any clauses or provisions contained in this Agreement or any of the other Loan Documents to the effect that (i) Borrower shall cause Mortgage Borrower and/or Senior Mezzanine Borrower to act or to refrain from acting in any manner or (ii) Borrower shall cause to occur or not to occur, or otherwise be obligated in any manner with respect to, any matters pertaining to Mortgage Borrower, Senior Mezzanine Borrower or any of the Properties, such clause or provision, in each case, is intended to mean, and shall be construed as meaning, that Borrower has undertaken to act and is obligated to act only in Borrower’s capacity as the sole member of Senior Mezzanine Borrower but not directly with respect to Senior Mezzanine Borrower, Mortgage Borrower or any of the Properties or in any other manner which would violate any of the covenants contained in Section 4.1.30 (Special Purpose Entity) hereof or other similar covenants contained in Borrower’s organizational documents.

## II. GENERAL TERMS

### **Section 2.1. Loan Commitment; Disbursement to Borrower.**

**2.1.1 Agreement to Lend and Borrow.** Subject to and upon the terms and conditions set forth herein, Lender hereby agrees to make and Borrower hereby agrees to accept the Loan on the Closing Date.

**2.1.2 Single Disbursement to Borrower.** Borrower may request and receive only one borrowing hereunder in respect of the Loan and any amount borrowed and repaid hereunder in respect of the Loan may not be reborrowed.

**2.1.3 The Note, the Pledge Agreement and Loan Documents.** The Loan shall be evidenced by the Note (in the aggregate principal amount of Two Hundred Seventy Five

Million and No/100 Dollars (\$275,000,000)) and secured by the Pledge Agreement and the other Loan Documents.

**2.1.4 Use of Proceeds.** Borrower shall use the proceeds of the Loan solely to (a) make an equity contribution to Mortgage Borrower (through each Senior Mezzanine Borrower) in order to cause Mortgage Borrower to use such amounts for any use permitted pursuant to Section 2.1.4 of the Mortgage Loan Agreement, (b) pay costs and expenses incurred in connection with the closing of the Loan, as approved by Lender, and (c) distribute the balance, if any, to Borrower.

**2.1.5 Component Notes.** Lender shall have the right at any time to modify the Loan in order to create an additional note or additional notes, adjust the interest rate spread on the Notes or notes, reduce the number of notes, reallocate the principal balances of the Notes or notes or eliminate the component note structure of the Loan provided that (a) the aggregate stated principal amount of the Loan on the date of each such adjustment shall equal the aggregate stated principal amount of the Loan immediately prior to such adjustment, and (b) the weighted average spread of the Loan on the date of such adjustment shall equal the weighted average spread which was applicable to the Loan immediately prior to such adjustment (Borrower acknowledging that such new notes or modified notes may, in connection with the application of principal to such new notes or modified note following the occurrence of an Event of Default, but not otherwise, subsequently cause the weighted average spread of such new notes or modified notes to change). In connection with any such modification of the Note and notes, or the creation of additional note(s), (i) Borrower shall cooperate with all reasonable requests of Lender and shall execute and deliver such documents as shall reasonably be requested by Lender in connection therewith, all in form and substance reasonably satisfactory to Lender and, to the extent applicable, the Rating Agencies, including, without limitation, (y) revised title insurance policies and Interest Rate Protection Agreements, and (z) such amendments to the Loan Documents as are reasonably requested; (ii) Lender shall have received opinions of legal counsel with respect to due execution, authority and enforceability of the amended Loan Documents, and additional or updated nonconsolidation opinions for the Loan, each in form reasonably acceptable to Lender and prospective investors and in form acceptable to the Rating Agencies; and (iii) Lender shall pay the actual, reasonable out-of-pocket costs and expenses incurred by Borrower in connection with the foregoing, including, without limitation, the actual, reasonable out-of-pocket legal fees incurred by Borrower in connection with any of the foregoing matters. For the avoidance of doubt, and notwithstanding anything to the contrary contained herein, such modifications and any modifications under Sections 2.1.6 and 2.1.7 below shall not, absent an Event of Default, adversely affect the overall economics to Borrower of the Loan, taken as a whole, or expose Borrower to any additional costs (other than as set forth above) or increased risk of any liability (beyond that or greater than that existing in the Loan Documents in effect on the date hereof), and Borrower shall not be required to execute any document or agreement which would materially decrease its rights or materially increase its obligations relative to those set forth herein and in the other Loan Documents.

**2.1.6 Adjustment of Mortgage Loan and Mezzanine Loans.** Lender shall have the right at any time to adjust the respective principal amounts of the Mortgage Loan and the Mezzanine Loans (or either one of them) and/or to adjust the interest rate spread on the Mortgage Loan and the Mezzanine Loans (or either one of them) (such adjustment, a “**Loan**

**Adjustment**”), provided that (a) the aggregate stated principal amount of the Mortgage Loan and the Mezzanine Loans on the date of each such Loan Adjustment shall equal the aggregate stated principal amount of the Mortgage Loan and the Mezzanine Loans immediately prior to such Loan Adjustment, and (b) Lender shall have the right to adjust the interest rate spread on the Mortgage Loan and the Mezzanine Loans, provided that the weighted average spread of the Mortgage Loan and the Mezzanine Loans on the date of each such Loan Adjustment shall equal the weighted average spread which was applicable to the Mortgage Loan and the Mezzanine Loans immediately prior to such Loan Adjustment (it being acknowledged that the weighted average spread will remain constant except in connection with the application of principal to such new notes or modified notes following the occurrence of an Event of Default). In connection with any Loan Adjustment, (i) Mortgage Borrower and Mezzanine Borrowers shall cooperate with all reasonable requests of Lender and shall execute and deliver such documents as shall reasonably be requested by Lender in connection therewith, all in form and substance reasonably satisfactory to Lender and, to the extent applicable, the Rating Agencies, including, without limitation, (y) revised title insurance policies, mezzanine endorsements, UCC policies and Interest Rate Protection Agreements, and (z) such amendments to the Mortgage Loan Documents and the Mezzanine Loan Documents as are reasonably requested in connection with the Loan Adjustment (provided that such amendments do not or would not (i) materially decrease the rights of the Mortgage Borrower or Mezzanine Borrowers, or, absent an Event of Default, materially increase the obligations of the Mortgage Borrower or the Mezzanine Borrowers, as the case may be, under the Mortgage Loan Documents or the Mezzanine Loan Documents (as applicable) or (ii) absent an Event of Default, expose the Mortgage Borrower or any of the Mezzanine Borrowers to additional costs or increased risk of any liability under the Mortgage Loan Documents or the Mezzanine Loan Documents (as applicable) (beyond that or greater than that existing in the Mortgage Loan Documents, or the Mezzanine Loan Documents, as applicable, on the date hereof); (ii) Lender shall have received opinions of legal counsel with respect to due execution, authority and enforceability of the amended Mortgage Loan Documents or Mezzanine Loan Documents, as appropriate, and additional or updated nonconsolidation opinions for the Mortgage Loan and the Mezzanine Loans, each in form reasonably acceptable to Lender and prospective investors and in form acceptable to the Rating Agencies; and (iii) Lender shall pay the actual, reasonable out-of-pocket costs and expenses incurred by Borrower in connection with the foregoing, including, without limitation, the actual, reasonable out-of-pocket legal fees incurred by Borrower in connection with any of the foregoing matters.

**2.1.7 Creation of New Mezzanine Loans.** Lender shall at all times have the right to create one or more additional mezzanine loans (each, a “**New Mezzanine Loan**”), adjust the respective principal amounts of the Mortgage Loan and the Mezzanine Loans (or any one of them) upon the creation of the New Mezzanine Loan and/or to adjust the interest rate spread on the Mortgage Loan and the Mezzanine Loans (or any one of them) upon the creation of the New Mezzanine Loan, and to reallocate the principal balance and the interest rate spreads of the Mortgage Loan, the Mezzanine Loans and any New Mezzanine Loan amongst each other (or any one of them), provided that (a) the aggregate stated principal amount of the Mortgage Loan, the Mezzanine Loans and the New Mezzanine Loans on the date of such adjustment (and the creation of the New Mezzanine Loan) shall equal the aggregate stated principal amount of the Mortgage Loan, the Mezzanine Loans and the New Mezzanine Loan(s) immediately prior to such adjustment, (b) Lender shall have the right to adjust the interest rate spread on the Mortgage Loan, the Mezzanine Loans and the New Mezzanine Loan(s), provided that the weighted average

spread of the Mortgage Loan, the Mezzanine Loans and the New Mezzanine Loan(s) on the date of such adjustment shall equal the weighted average spread which was applicable to the Mortgage Loan and the Mezzanine Loans (and the New Mezzanine Loans, if applicable) immediately prior to such adjustment (it being acknowledged that the weighted average spread will remain constant except in connection with the application of principal to such new notes or modified notes following the occurrence of an Event of Default), and (c) the terms and provisions of each of the Mortgage Loan and the Mezzanine Loans (and the New Mezzanine Loans, if applicable) shall otherwise remain unchanged. In connection with any New Mezzanine Loan, (i) Borrower shall cause the formation of one or more special purpose, bankruptcy remote entities as required by Lender in order to serve as the borrower under any New Mezzanine Loan (each, a “**New Mezzanine Borrower**”) and the applicable organizational documents of Mortgage Borrower and each Mezzanine Borrower (and of each previously created New Mezzanine Borrower, if applicable) shall be amended and modified as necessary or required in the formation of any New Mezzanine Borrower; (ii) Mortgage Borrower and Mezzanine Borrowers (and each previously created New Mezzanine Borrower, if applicable) shall cooperate with all reasonable requests of Lender and shall execute and deliver such documents as shall reasonably be requested by Lender in connection therewith, all in form and substance reasonably satisfactory to Lender and, to the extent applicable, the Rating Agencies, including, without limitation, (x) revised title insurance policies, mezzanine endorsements, UCC policies and Interest Rate Protection Agreements, (y) in connection with the creation of any New Mezzanine Loan, a promissory note and loan documents necessary to evidence such New Mezzanine Loan, and (z) such amendments to the Mortgage Loan Documents and the Mezzanine Loan Documents (and the loan documents of any previously created New Mezzanine Borrower, if applicable) as are reasonably necessary in connection with the creation of such New Mezzanine Loan (provided that such amendments do not or would not (i) materially decrease the rights of the Mortgage Borrower or Mezzanine Borrowers (and any previously created New Mezzanine Borrowers, if applicable), or, absent an Event of Default, materially increase the obligations of the Mortgage Borrower or the Mezzanine Borrowers (and any previously created New Mezzanine Borrowers, if applicable), as the case may be, under such borrower’s applicable loan documents, or (ii) absent an Event of Default, expose the Mortgage Borrower or any of the Mezzanine Borrowers (or any previously created New Mezzanine Borrowers, if applicable) to additional costs or increased risk of any liability under such borrower’s applicable loan documents (beyond that or greater than that existing in the existing loan documents on the date hereof)); (iii) Lender shall have received opinions of legal counsel with respect to due execution, authority and enforceability of the amended Mortgage Loan Documents, the amended Mezzanine Loan Documents and the loan documents for the New Mezzanine Loan, as appropriate, and additional or updated nonconsolidation opinions for the Mortgage Loan, the Mezzanine Loans and each such New Mezzanine Loan, as appropriate, each in form reasonably acceptable to Lender and prospective investors and in form acceptable to the Rating Agencies; and (iv) Lender shall pay the actual, reasonable out-of-pocket costs and expenses incurred by Borrower in connection with the foregoing, including, without limitation, the actual, reasonable out-of-pocket legal fees incurred by Borrower in connection with any of the foregoing matters.

**Section 2.2. Interest Rate.**

**2.2.1 Interest Generally.** Except as herein provided with respect to interest accruing at the Default Rate, interest on the principal balance of the Loan outstanding from time

to time shall accrue from the Closing Date up to and including the Maturity Date (including, without limitation, all interest that would accrue on the outstanding principal balance of the Loan through the end of the Interest Period during which the Maturity Date occurs (even if such period extends beyond the Maturity Date)) at the Applicable Interest Rate. Interest on the outstanding principal balance of the Loan existing on the commencement of an Interest Period shall accrue for the entire Interest Period and shall be owed by Borrower for the entire Interest Period regardless of whether any principal portion of the Loan is repaid prior to the expiration of such Interest Period.

**2.2.2 Interest Calculation.** Interest on the outstanding principal balance of the Loan shall be calculated by multiplying (a) the actual number of days elapsed in the period for which the calculation is being made by (b) a daily rate based on a three hundred sixty (360) day year (that is, the Applicable Interest Rate or the Default Rate, as then applicable, expressed as an annual rate divided by 360) by (c) the outstanding principal balance.

**2.2.3 Determination of Interest Rate.** (a) The Applicable Interest Rate with respect to the Loan shall be: (i) LIBOR plus the Spread with respect to the applicable Interest Period for a LIBOR Loan or (ii) the Prime Rate plus the Prime Rate Spread for a Prime Rate Loan if the Loan is converted to a Prime Rate Loan pursuant to the provisions of Section 2.2.3(c) or Section 2.2.3(f).

(b) Subject to the terms and conditions of this Section 2.2.3, the Loan shall be a LIBOR Loan and Borrower shall pay interest on the outstanding principal amount of the Loan at LIBOR plus the Spread for the applicable Interest Period. Any change in the rate of interest hereunder due to a change in the Applicable Interest Rate shall become effective as of the opening of business on the first day on which such change in the Applicable Interest Rate shall become effective. Each determination by Lender of the Applicable Interest Rate shall be conclusive and binding for all purposes, absent manifest error.

(c) In the event that Lender shall have determined (which determination shall be conclusive and binding upon Borrower absent manifest error) that by reason of circumstances affecting the interbank eurodollar market, adequate and reasonable means do not exist for ascertaining LIBOR, then Lender shall forthwith give notice by telephone of such determination, confirmed in writing, to Borrower at least one (1) Business Day prior to the last day of the related Interest Period. If such notice is given, the related outstanding LIBOR Loan shall be converted, on the last day of the then current Interest Period, to a Prime Rate Loan.

(d) If, pursuant to the terms of this Agreement, any portion of the Loan has been converted to a Prime Rate Loan and Lender shall determine (which determination shall be conclusive and binding upon Borrower absent manifest error) that the event(s) or circumstance(s) which resulted in such conversion shall no longer be applicable, Lender shall give notice by telephone of such determination, confirmed in writing, to Borrower at least one (1) Business Day prior to the last day of the related Interest Period. If such notice is given, the related outstanding Prime Rate Loan shall be converted to a LIBOR Loan on the last day of the then current Interest Period.

(e) With respect to a LIBOR Loan, all payments made by Borrower hereunder shall be made free and clear of, and without reduction for or on account of, income, stamp or other taxes, levies, imposts, duties, charges, fees, deductions, reserves or withholdings imposed, levied, collected, withheld or assessed by any Governmental Authority and imposed on any non-U.S. Lender due to a change in U.S. law after the date such non-U.S. Lender acquired its interest in the Loan (such non-excluded taxes, levies, imposts, duties, charges, fees, deductions, reserves or withholdings being referred to collectively as “**Foreign Taxes**”), excluding (i) income and franchise taxes, (ii) any Taxes imposed by reason of any connection between the non-U.S. Lender and the taxing jurisdiction other than entering into this Agreement and receiving payments hereunder, and (iii) any Taxes imposed by reason of the non-U.S. Lender’s failure to complete and deliver to the Borrower, prior to the date on which the first payment to such Lender is due hereunder and (so long as it remains eligible to do so) from time to time thereafter, (x) (i) an Internal Revenue Service Form W-9 (or successor form) establishing that the Lender is not subject to U.S. backup withholding tax, (ii) an Internal Revenue Service Form W-8BEN (or successor form) certifying that such Lender is entitled to benefits under an income tax treaty to which the United States is a party that reduces the rate of withholding tax on payments of interest to zero, or (iii) an Internal Revenue Service Form W-8ECI certifying that the income receivable pursuant to this Agreement is effectively connected with the conduct of a trade or business in the United States, as appropriate; and (y) any successor or additional form required by the Internal Revenue Service or any taxing authority reasonably requested by the Borrower in order to secure an exemption from, or reduction in the rate of, Foreign Taxes. If any Foreign Taxes are required to be withheld from any amounts payable to Lender hereunder, the amounts so payable to Lender shall be increased to the extent necessary to yield to Lender (after payment of all Foreign Taxes) interest or any such other amounts payable hereunder at the rate or in the amounts specified hereunder. Whenever any Foreign Tax is payable pursuant to applicable law by Borrower, as promptly as possible thereafter, Borrower shall send to Lender an original official receipt, if available, or certified copy thereof showing payment of such Foreign Tax. Borrower hereby indemnifies Lender for any incremental Foreign Taxes, interest or penalties that may become payable by Lender which may result from any failure by Borrower to pay any such Foreign Tax when due to the appropriate taxing authority or any failure by Borrower to remit to Lender the required receipts or other required documentary evidence thereof (provided such documents are reasonably available to the Borrower).

(f) If any requirement of law or any change therein or in the interpretation or application thereof, shall hereafter make it unlawful for Lender to make or maintain a LIBOR Loan as contemplated hereunder and the events giving rise thereto affect similarly situated banks or financial institutions generally, (i) the obligation of Lender hereunder to make a LIBOR Loan or to convert a Prime Rate Loan to a LIBOR Loan shall be canceled forthwith and (ii) any outstanding LIBOR Loan shall be converted automatically to a Prime Rate Loan on the next succeeding Payment Date or within such earlier period as required by law.

(g) In the event that any change in any requirement of law or in the interpretation or application thereof, or compliance by Lender with any request or directive (whether or not having the force of law) hereafter issued from any central bank or other Governmental Authority and the events giving rise thereto affect similarly situated banks or financial institutions generally:

(i) shall hereafter impose, modify or hold applicable any reserve, special deposit, compulsory loan or similar requirement against assets held by, or deposits or other liabilities in or for the account of, advances or loans by, or other credit extended by, or any other acquisition of funds by, the office of Lender that holds the Loan which is not otherwise included in the determination of LIBOR hereunder;

(ii) shall hereafter require the Lender to hold additional capital against the Loan in excess of that currently required by Governmental Authorities to be held against loans similar in nature to the Loan; or

(iii) shall hereafter impose on Lender any other condition affecting loans to borrowers subject to LIBOR-based interest rates and Lender determines that, by reason thereof, the cost to Lender of making or maintaining the Loan to Borrower is increased, or any amount received by Lender hereunder in respect of any portion of the Loan is reduced, in each case by an amount deemed by Lender in good faith to be material;

then, in any such case, Borrower shall promptly pay Lender, upon demand, any additional amounts necessary to compensate Lender for such additional cost or reduced amount receivable which Lender deems to be material as determined in good faith by Lender. If Lender becomes entitled to claim any additional amounts pursuant to this Section 2.2.3(g), Lender shall provide Borrower with not less than ninety (90) days notice specifying in reasonable detail the event by reason of which it has become so entitled and the additional amount required to fully compensate Lender for such additional cost or reduced amount. A certificate as to any additional costs or amounts payable pursuant to the foregoing sentence submitted by Lender to Borrower shall be conclusive in the absence of manifest error. This provision shall survive payment of the Note and the satisfaction of all other obligations of Borrower under this Agreement and the Loan Documents.

(h) Lender shall not be entitled to claim compensation pursuant to this Section 2.2.3 for any Foreign Taxes or other amounts incurred or which accrued more than ninety (90) days before the date Lender notified Borrower of the change in law or other circumstance on which such claim of compensation is based and delivered to Borrower a written statement setting forth in reasonable detail the basis for calculating the additional amounts owed to Lender under this Section 2.2.3, which statement shall be conclusive and binding upon all parties hereto absent manifest error.

(i) For purposes of this Section 2.2.3, the term "Lender" shall be deemed to include each Noteholder and Lender's (as well as each Noteholder's) present and future participants in the Loan to the extent of Foreign Taxes imposed by reason of such Noteholder or participant's interest in the Loan and each such Noteholder's or participant's increased costs or reduction in amount received or receivable hereunder or any reduced rate of return, in each case payable by Borrower under this Section 2.2.3.

**2.2.4 Additional Costs.** Lender will use reasonable efforts (consistent with legal and regulatory restrictions) to maintain the availability of the LIBOR Loan and to avoid or reduce any increased or additional costs payable by Borrower under Section 2.2.3, including, if requested by Borrower, a transfer or assignment of the Loan to a branch, office or Affiliate of

Lender in another jurisdiction, or a redesignation of its lending office with respect to the Loan, in order to maintain the availability of the LIBOR Loan or to avoid or reduce such increased or additional costs, provided that the transfer or assignment or redesignation (a) would not result in any material additional costs, expenses or risk to Lender that are not reimbursed by Borrower and (b) would not be disadvantageous in any other material respect to Lender as determined by Lender in its sole, but reasonable discretion.

**2.2.5 Default Rate.** In the event that, and for so long as, any Event of Default shall have occurred and be continuing, the outstanding principal balance of the Loan and, to the extent permitted by law, all accrued and unpaid interest in respect of the Loan and any other amounts due pursuant to the Loan Documents, shall accrue interest at the Default Rate, calculated from the date such payment was due without regard to any grace or cure periods contained herein.

**2.2.6 Usury Savings.** This Agreement, the Note and the other Loan Documents are subject to the express condition that at no time shall Borrower be obligated or required to pay interest on the principal balance of the Loan at a rate which could subject Lender to either civil or criminal liability as a result of being in excess of the Maximum Legal Rate. If, by the terms of this Agreement or the other Loan Documents, Borrower is at any time required or obligated to pay interest on the principal balance due hereunder at a rate in excess of the Maximum Legal Rate, the Applicable Interest Rate or the Default Rate, as the case may be, shall be deemed to be immediately reduced to the Maximum Legal Rate and all previous payments in excess of the Maximum Legal Rate shall be deemed to have been payments in reduction of principal and not on account of the interest due hereunder. All sums paid or agreed to be paid to Lender for the use, forbearance, or detention of the sums due under the Loan, shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Loan until payment in full so that the rate or amount of interest on account of the Loan does not exceed the Maximum Legal Rate of interest from time to time in effect and applicable to the Loan for so long as the Loan is outstanding.

**2.2.7 Interest Rate Cap Agreement.** (a) On or prior to 5:00 p.m. (New York time) on the Closing Date, Borrower shall enter into an Interest Rate Cap Agreement with a LIBOR strike price equal to the required Strike Price. The Interest Rate Cap Agreement (i) shall be in a form and substance reasonably acceptable to Lender, (ii) shall be with an Acceptable Counterparty, (iii) shall direct such Acceptable Counterparty to deposit directly with Lender (or into an account or otherwise as directed by Lender) any amounts due Borrower under such Interest Rate Cap Agreement unless and until otherwise instructed by Lender (it being agreed as between Lender and Borrower that Lender will so instruct the Counterparty at such time as the Debt shall not longer exist, provided that the Debt shall be deemed to exist if the Collateral is transferred by secured party sale or otherwise), (iv) shall be for a period equal to the initial term of the Loan and (v) shall have an initial notional amount equal to the principal balance of the Loan. Borrower shall collaterally assign to Lender, pursuant to the Collateral Assignment of Interest Rate Cap Agreement, all of its right, title and interest to receive any and all payments under the Interest Rate Cap Agreement, and shall deliver to Lender an executed counterpart of such Interest Rate Cap Agreement (which shall, by its terms, authorize the assignment to Lender and require that payments be paid directly into an account pledged to Lender as provided above in this Section 2.2.7). Provided no Event of Default has occurred and is continuing, amounts

contained in the foregoing pledged account shall be released to Borrower on a monthly basis to the extent not applied toward debt service on the Loan.

(b) Borrower shall comply with all of its obligations under the terms and provisions of the Interest Rate Cap Agreement. All amounts paid by the Counterparty under the Interest Rate Cap Agreement to Borrower or Lender shall be paid to Lender (or into an account or otherwise as directed by Lender). Borrower shall take all actions reasonably requested by Lender to enforce Lender's rights under the Interest Rate Cap Agreement in the event of a default by the Counterparty and shall not waive, amend or otherwise modify any of its rights thereunder.

(c) In the event of any downgrade, withdrawal or qualification of the rating of the Counterparty by S&P or Moody's to below the ratings set forth in the definition of "Acceptable Counterparty", Borrower (i) shall replace the Interest Rate Cap Agreement with a Replacement Interest Rate Cap Agreement (or cause the Counterparty or an Affiliate thereof to post collateral acceptable to Lender and the Rating Agencies) not more than fifteen (15) Business Days following receipt of notice of such downgrade, withdrawal or qualification (and meeting the requirements set forth in this [Section 2.2.7](#)) from an Acceptable Counterparty, (ii) if a new cap is provided to Lender, then if requested by Lender shall provide to Lender an opinion of counsel to such Acceptable Counterparty in the form and containing the substance of the form of opinion set forth in [Exhibit A](#) to the Mortgage Loan Agreement (which such changes as shall be reasonably approved by Lender), and (iii) shall collaterally assign to Lender, pursuant to an assignment in the form of the Collateral Assignment of Interest Rate Cap Agreement, all of its right, title and interest to receive any and all payments under the Replacement Interest Rate Cap Agreement.

(d) In the event that Borrower fails to purchase and deliver to Lender the Interest Rate Cap Agreement or fails to maintain the Interest Rate Cap Agreement in accordance with the terms and provisions of this Agreement, Lender may purchase the Interest Rate Cap Agreement and the cost incurred by Lender in purchasing such Interest Rate Cap Agreement shall be paid by Borrower to Lender with interest thereon at the Default Rate from the date such cost was incurred by Lender until such cost is reimbursed by Borrower to Lender.

(e) In connection with any Interest Rate Cap Agreement provided to Lender as herein required, if requested by Lender, Borrower shall obtain and deliver to Lender an opinion from counsel (which counsel may be in-house counsel for the Counterparty) for the Counterparty (upon which Lender and its successors and assigns may rely) in the form and containing the substance of the form of opinion set forth in [Exhibit A](#) to the Mortgage Loan Agreement (which such changes as shall be reasonably approved by Lender).

(f) In connection with any prepayment of the Loan, provided no Event of Default shall have occurred and be continuing, Borrower may reduce the amount of any Interest Rate Cap Agreement (so that the same shall be in an initial notional amount equal to the principal balance of the Loan following such prepayment), provided that such reduction shall not affect any of the other terms of the Interest Rate Cap Agreement or the Collateral Assignment of Interest Rate Cap Agreement (or Lender's rights in respect thereof).

### **Section 2.3. Loan Payment.**

**2.3.1 Payments Generally.** Borrower shall make a payment to Lender of interest only on the Closing Date for the initial Interest Period. On the date hereof, Borrower shall make a payment to Lender of interest accruing hereunder during the period from the Closing Date up to and including the initial Interest Period, calculated in the manner set forth herein, and on the Payment Date occurring in March 2008 and on each Payment Date thereafter to and including the Maturity Date, Borrower shall make a payment to Lender of interest accruing hereunder during the entire Interest Period in which such Payment Date occurs, calculated in the manner set forth herein. All amounts due pursuant to this Agreement and the other Loan Documents shall be payable without setoff, counterclaim, defense or any other deduction whatsoever. Each payment shall be applied *pro rata* and *pari passu* (a) first to accrued and unpaid interest on all of the Notes and (b) the balance shall be applied to principal of all the Notes.

**2.3.2 Payment on Maturity Date.** Borrower shall pay to Lender on the Maturity Date the outstanding principal balance of the Loan, all accrued and unpaid interest and all other amounts due hereunder and under the Note, the Pledge Agreement and the other Loan Documents, including, without limitation, all interest that would accrue on the outstanding principal balance of the Loan through and including the end of the Interest Period in which the Maturity Date occurs (even if such Interest Period extends beyond the Maturity Date).

**2.3.3 Late Payment Charge.** If any principal, interest or any other sums due under the Loan Documents, other than the payment of principal due on the Maturity Date, is not paid by Borrower by the date on which it is due, Borrower shall pay to Lender upon demand an amount equal to the lesser of one percent (1%) of such unpaid sum or the maximum amount permitted by applicable law in order to defray the expense incurred by Lender in handling and processing such delinquent payment and to compensate Lender for the loss of the use of such delinquent payment; provided, however that, except with respect to the payment of any monthly Debt Service payments with respect to which no notice or demand shall be required, no such late payment charge shall be due unless such payment of principal, interest or other sum shall be delinquent for more than five (5) Business Days following the date of demand therefor. Any such amount shall be secured by the Pledge Agreement and the other Loan Documents to the extent permitted by applicable law.

**2.3.4 Method and Place of Payment.** Except as otherwise specifically provided herein, all payments and prepayments under this Agreement and the Note shall be made to Lender not later than 3:00 P.M., New York City time, on the date when due and shall be made in lawful money of the United States of America in immediately available funds at Lender's office or as otherwise directed by Lender, and any funds received by Lender after such time shall, for all purposes hereof, be deemed to have been paid on the next succeeding Business Day.

### **Section 2.4. Prepayments.**

**2.4.1 Voluntary Prepayments.** Borrower may, at its option, prepay the Debt in whole or in part, provided, the following conditions are satisfied:

(a) No Event of Default shall have occurred and be continuing (unless, in the case of a prepayment upon the release of an Individual Property, the Event of Default relates solely to such Individual Property and therefore would be fully cured by the release of such Individual Property);

(b) Borrower shall provide prior written notice to Lender specifying the date upon which the prepayment is to be made (the "**Prepayment Date**"), which notice shall be delivered to Lender not less than ten (10) days prior to such Prepayment Date, and which notice shall be irrevocable (or such shorter period of time as may be permitted by Lender in its sole discretion) (Lender hereby agreeing that Borrower may revoke any notice of prepayment up until the date that is one (1) Business Day prior to the proposed Prepayment Date (provided that Borrower shall be required to pay Lender, promptly upon demand, any actual, out-of-pocket expenses incurred by Lender resulting from any such revocation));

(c) each such prepayment, in the case of partial prepayments, shall be in an amount not less than Five Million and no/100 Dollars (\$5,000,000.00), unless the outstanding principal balance of the Loan (prior to such prepayment) shall be less than Five Million and no/100 Dollars (\$5,000,000.00), in which event the amount of the prepayment shall be in such amount as shall prepay the Debt and all other amounts due in connection therewith in full, as more fully provided herein;

(d) if such prepayment is made on or prior to the Payment Date occurring in the Interest Period in which such prepayment was made, then, in connection with such prepayment Borrower shall pay to Lender, simultaneously with such prepayment, all interest on the principal balance of the Note then being prepaid which would have accrued through the end of the Interest Period then in effect notwithstanding that such Interest Period extends beyond the Prepayment Date;

(e) if such prepayment is made after a Payment Date occurring in the Interest Period in which such prepayment was made, but prior to the last two (2) Business Days in such Interest Period, Borrower shall make such prepayment without paying any interest thereon (Borrower having already paid interest on such amount on the Payment Date occurring in such Interest Period);

(f) if such prepayment is made on either of the last two (2) Business Days in an Interest Period, Borrower will pay to Lender, simultaneously with such prepayment, interest on the principal amount of the Loan prepaid through the last day of the Interest Period immediately following the Interest Period in which such prepayment occurs, calculated at the Applicable Interest Rate;

(g) if such prepayment is a prepayment of the Loan in full, Lender shall have received a written consent to the repayment from the lender under each Other Mezzanine Loan (and, if any, a Permitted Mezzanine Loan) or receipt by Lender of other evidence satisfactory to Lender that all conditions imposed under the terms of each Other Mezzanine Loan and Permitted Mezzanine Loan shall have been complied with by the borrower thereunder or otherwise waived by the applicable lender, including the simultaneous pro rata prepayment of each Other Mezzanine Loan and Permitted Mezzanine Loan if required thereunder; and

(h) if such prepayment is made on or prior to the Spread Maintenance Outside Date, then in connection with any such prepayment, Borrower shall pay to Lender, simultaneously with such prepayment, the Spread Maintenance Premium in respect of such prepayment.

Any prepayment received by Lender on other than a Payment Date (but not any amount received between a Payment Date and the second to last Business Day in an Interest Period) shall be held by Lender in an interest-bearing account as collateral security for the Loan and shall be applied to the Debt on the next occurring Payment Date (with all interest and other income earned on such amount being for the account of Borrower and being remitted by Lender to Borrower promptly following such next Payment Date). Any prepayment made pursuant to this Section 2.4.1 shall be applied *pro rata* and *pari passu* (a) first to accrued and unpaid interest on all of the Notes and (b) the balance shall be applied to principal of all the Notes. Lender agrees that it shall provide a written consent to the repayment of the Loan upon satisfaction of the conditions set forth in clauses (a) through (f) and clause (h) of this Section 2.4.1.

**2.4.2 Mandatory Prepayments from Net Proceeds.** (a) On the next occurring Payment Date following the date on which Lender actually receives any Net Proceeds, if Lender is not obligated to make such Net Proceeds available to Borrower for the Restoration of any Individual Property, Borrower shall prepay, or authorize Lender to apply Net Proceeds as a prepayment of, the outstanding principal balance of the Note in an amount equal to, (x) if no Event of Default shall have occurred and be continuing, the product of (i) a fraction, the numerator of which is outstanding principal amount of the Loan and the denominator is the outstanding principal amount of the Mortgage Loan, the Loan and the Other Mezzanine Loans times (ii) the Net Proceeds, together with interest accruing on such amount calculated through and including the end of the Interest Period in which such Payment Date occurs (with the balance of the Net Proceeds to be paid over to the Third Mezzanine Lender, for application in accordance with the Third Mezzanine Loan Agreement), and (y) if an Event of Default shall have occurred and be continuing, 100% of the Net Proceeds. No Spread Maintenance Premium shall be due in connection with any prepayment made pursuant to this Section 2.4.2(a). Any prepayment received by Lender pursuant to this Section 2.4.2(a) on a date other than a Payment Date shall be held by Lender as collateral security for the Loan in an interest bearing account, with such interest accruing to the benefit of Borrower, and shall be applied by Lender on the next Payment Date. Following the prepayment made as described in this Section 2.4.2(a), the Allocated Loan Amount for the affected Individual Property, as set forth in this Agreement, shall be reduced in an amount equal to such prepayment. Any prepayment of the Notes made pursuant to this Section 2.4.2(a) shall be applied *pro rata* and *pari passu* (a) first to accrued and unpaid interest on all of the Notes and (b) the balance shall be applied to principal of all the Notes.

(b) In the event of (i) a Transfer of any Individual Property or any Senior Mezzanine Collateral in connection with the realization thereon following a Mortgage Loan Default or a Senior Mezzanine Loan Default, as applicable, (ii) any refinancing of any Individual Property, any Senior Mezzanine Collateral, any Senior Mezzanine Loan or the Mortgage Loan, or (iii) the receipt by Mortgage Borrower of any excess proceeds realized under its owner's title insurance policy after application of such proceeds by Mortgage Borrower to cure any title defect (each, a "**Liquidation Event**"), Borrower shall cause the related Net Liquidation Proceeds After Debt Service to be remitted directly to Lender (or as directed by Lender). On each date on which

Lender actually receives a distribution of Net Liquidation Proceeds After Debt Service, Borrower shall prepay the outstanding principal balance of the Note in an amount equal to one hundred percent (100%) of such Net Liquidation Proceeds After Debt Service, together with interest accruing on such amount calculated through and including the end of the Interest Period in which such payment occurs. Any amounts of Net Liquidation Proceeds After Debt Service in excess of the Debt shall be remitted to Third Mezzanine Lender (or to an account designated by Third Mezzanine Lender). Any prepayment received by Lender pursuant to this Section 2.4.2(b) on a date other than a Payment Date shall be held by Lender as collateral security for the Loan in an interest bearing account, with such interest accruing to the benefit of Borrower, and shall be applied by Lender on the next Payment Date. A Spread Maintenance Premium or fee may be due in connection with any prepayment made pursuant to this Section 2.4.2(b) if made prior to the Spread Maintenance Outside Date. Following the prepayment made as described in this Section 2.4.2(b), the Allocated Loan Amount for the affected Individual Property, as set forth in this Agreement, shall be reduced in an amount equal to such prepayment. Any prepayment of the Notes made pursuant to this Section 2.4.2(b) shall be applied *pro rata* and *pari passu* (a) first to accrued and unpaid interest on all of the Notes and (b) the balance shall be applied to principal of all the Notes.

(c) Borrower shall immediately notify Lender of any Liquidation Event once Borrower has knowledge of such event. Borrower shall be deemed to have knowledge of (i) a sale (other than a foreclosure sale) of any Individual Property on the date on which a contract of sale for such sale is entered into, and a foreclosure sale, on the date notice of such foreclosure sale is given, and (ii) a refinancing of any Individual Property, on the date on which a commitment for such refinancing has been entered into. The provisions of this Section 2.4.2(c) shall not be construed to contravene in any manner the restrictions and other provisions regarding refinancing of the Mortgage Loan or Transfer of any Individual Property set forth in this Agreement, the other Loan Documents and the Mortgage Loan Documents.

**2.4.3 Prepayments After Default.** If, following the occurrence and during the continuance of an Event of Default, payment of all or any part of the Debt is tendered by Borrower or any other Person and accepted by Lender or otherwise recovered by Lender (including through application of any Reserve Funds), Borrower shall pay to Lender, in addition to the outstanding principal balance, (a) all accrued and unpaid interest at the Default Rate (including, without limitation, (i) in the event that such prepayment is received on a Payment Date or on any date in any Interest Period prior to a Payment Date, interest accruing (at the Default Rate) on such amount calculated through and including the end of the Interest Period in which such payment occurs, or (ii) in the event that such prepayment is received on a date after a Payment Date up to (and including) the last day of the Interest Period in which such Payment Date occurs, interest accruing (at the Default Rate) on such amount calculated through and including the end of the Interest Period in which the next Payment Date occurs, (b) the Spread Maintenance Premium, if such prepayment is made prior to the Spread Maintenance Outside Date, and (c) any and all other amounts payable under the Loan Documents. Any payment under this Section 2.4.3 shall be applied in such order, priority and proportions as Lender may direct in its sole and absolute discretion.

**Section 2.5. Release of Collateral.** Except as set forth in this Section 2.5, no repayment or prepayment of all or any portion of the Note shall cause, give rise to a right to

require, or otherwise result in, the release or assignment of any Lien of the Pledge Agreement on the Collateral.

**2.5.1 Release of Individual Property.** Concurrently with the release of an Individual Property from the Lien of the Mortgage (and related Mortgage Loan Documents) pursuant to Section 2.5.1 of the Mortgage Loan Agreement (a “**Release**” and such Individual Property, a “**Release Property**”), Borrower may obtain the release of the related Individual Borrower with an indirect ownership interest in such Individual Property (a “**Release Borrower**”) and such Release Borrower’s obligations under the Loan Documents with respect to the Release Property (other than those expressly stated to survive), upon the satisfaction of each of the following conditions:

(a) No Event of Default shall have occurred and be continuing (unless, in the case of a prepayment upon the release of an Individual Property, the Event of Default relates solely to such Individual Property and therefore would be fully cured by the release of such Individual Property);

(b) Borrower shall submit to Lender, not less than ten (10) Business Days prior to the date of such release, a release of Lien of the Pledge Agreement (and related Loan Documents), only with respect to such Release Borrower, for execution by Lender. Such release shall contain standard provisions, if any, protecting the rights of the releasing lender;

(c) After giving effect to such release, the Debt Service Coverage Ratio for the Properties then remaining subject to the Liens of the Mortgages (including giving pro forma effect to the payment of the Release Price and any additional prepayment(s) made by Borrower in connection with such release) shall be equal to or greater than the greatest of (i) the Debt Service Coverage Ratio for the twelve (12) full calendar months immediately preceding the release of the Individual Property (assuming the contemplated release had not occurred, *i.e.*, for all Properties subject to the Liens of the Mortgage prior to the proposed release), (ii) 90% of the Debt Service Coverage Ratio as of the Closing Date, and (iii) 1.0;

(d) (i) The Individual Property to be released shall be conveyed to a Person other than a Mortgage Borrower or Mezzanine Borrower, and other than to an Affiliate of Mortgage Borrower unless, in the latter case, such Affiliate is refinancing the Loan with a construction or development loan (or repaying the Loan with equity contributions to such Affiliate) and (ii) it is such Affiliate’s immediate intention to materially redevelop such Individual Property, which loan (or equity contribution) and intention shall be described in reasonable detail and represented to in an Officer’s Certificate submitted to Lender concurrently with (or prior to) the materials described in clause (b) of this Section 2.5.1;

(e) Lender shall have received a wire transfer of immediately available federal funds in an amount equal to the Release Price for the applicable Individual Property, together with (i) all accrued and unpaid interest calculated at the Applicable Interest Rate on the amount of principal being prepaid as provided in Sections 2.4.1(d) or (e), as applicable, (ii) the Spread Maintenance Premium, if applicable and (iii) all other sums due under this Agreement, the Note or the other Loan Documents in connection with a partial prepayment;

(f) Lender shall have received a written consent to the transfer from the lender under the Mortgage Loan and each of the Other Mezzanine Loans (and, if any, a Permitted Mezzanine Loan) or receipt by Lender of other evidence satisfactory to Lender that all conditions imposed under the terms of the Mortgage Loan, and each of the Other Mezzanine Loans and Permitted Mezzanine Loan shall have been complied with by the borrower thereunder or otherwise waived by the applicable lender, including the simultaneous pro rata prepayment of each Mortgage Loan, the Other Mezzanine Loans and Permitted Mezzanine Loan if required thereunder; and

(g) Lender shall have received payment of all Lender's reasonable out-of-pocket costs and expenses, including reasonable counsel fees and disbursements incurred in connection with the release of the Individual Property and or Release Borrower from the lien of the Pledge Agreement and the review and approval of the documents and information required to be delivered in connection therewith. Lender acknowledges that it shall not charge any fee (other than costs and expenses, as provided in the preceding sentence) in connection with the release of an Individual Property or Release Borrower.

Lender agrees that it shall provide a written consent to the transfer upon satisfaction of the conditions set forth in clauses (a) through (e) and clause (g) of this Section 2.5.1.

**2.5.2 Release of Convention Center Parcel; Property Swap.** At any time after the date hereof, Mortgage Borrower may obtain the release of the Convention Center Parcel pursuant to the Mortgage Loan Agreement, without the payment of a Release Price and upon the satisfaction by Borrower of each of the following conditions:

(a) No Event of Default shall have occurred and be continuing (unless, in the case of a release of the Convention Center Parcel, the Event of Default relates solely to such parcel and therefore would be fully cured by the release of the Convention Center Parcel);

(b) The Convention Center Parcel shall be conveyed to a Person other than a Mortgage Borrower or any Mezzanine Borrower;

(c) Mortgage Borrower will enter into a restrictive covenant agreement, restricting the use of the Convention Center Parcel to the development of a Convention Center and ancillary uses which agreement shall be in form and substance reasonably satisfactory to Lender;

(d) Prior to the transfer and release of the Convention Center Parcel, each applicable municipal authority exercising jurisdiction over the Convention Center Parcel shall have approved, a lot-split ordinance or other applicable action under local law dividing the Convention Center Parcel from the remainder of the Harrah's Atlantic City Property, and a separate tax identification number has been issued for the Convention Center Parcel (with the result that, upon the transfer and release of the Convention Center Parcel, no part of the remaining Harrah's Atlantic City Property shall be part of a tax lot which includes any portion of the Convention Center Parcel);

(e) All requirements under all laws, statutes, rules and regulations (including, without limitation, all zoning and subdivision laws, setback requirements, sideline requirements,

parking ratio requirements, use requirements, building and fire code requirements, environmental requirements and wetlands requirements) applicable to the Harrah's Atlantic City Property necessary to accomplish the lot split shall have been fulfilled, and all necessary variances, if any, shall have been obtained, and Borrower shall have delivered to Lender either (1) letters or other evidence from the appropriate municipal authorities confirming such compliance with laws, or (2) a zoning report or legal opinion confirming such compliance with laws, in each case in substance reasonably satisfactory to Lender;

(f) As a result of the lot split, the remaining Harrah's Atlantic City Property with all easements appurtenant and other Permitted Encumbrances thereto will not be in violation of any then applicable law, statute, rule or regulation (including, without limitation, all zoning and subdivision laws, setback requirements, sideline requirements, parking ratio requirements, use requirements, building and fire code requirements, environmental requirements and wetland requirements) and all necessary variances, if any, shall have been obtained and evidence thereof has been delivered to Lender which in form and substance is appropriate for the jurisdiction in which the Harrah's Atlantic City Property is located;

(g) If reasonably necessary, appropriate reciprocal easement agreements for the benefit and burden of the remaining Harrah's Atlantic City Property and the Convention Center Parcel requiring no cost or expense to Mortgage Borrower regarding the use of common facilities of such parcels, including, but not limited to, roadways, parking areas, utilities and community facilities, in a form and substance that would be reasonably acceptable to an ordinary prudent lender and which easements will not materially adversely affect the remaining Harrah's Atlantic City Property, shall be declared and recorded, and the remaining Harrah's Atlantic City Property and the Convention Center Parcel shall be in compliance with all applicable covenants under all easements and property agreements contained in the Permitted Encumbrances for the Harrah's Atlantic City Property;

(h) Borrower has delivered an Officer's Certificate to the effect that, to such officer's knowledge after diligent inquiry, the conditions in subsection (a)-(g) hereof have occurred or shall occur concurrently with the transfer and release of the Convention Center Parcel;

(i) Borrower shall execute such documents and instruments and obtain such opinions of counsel as are typical for similar transactions;

(j) Lender shall have received payment of all Lender's reasonable out-of-pocket costs and expenses, including reasonable counsel fees and disbursements incurred in connection with the review and approval of the documents and information required to be delivered in connection with the release of the Convention Center Parcel from the Lien of the related Mortgage. Lender acknowledges that it shall not charge any fee (other than costs and expenses, as provided in the preceding sentence) in connection with the release of the Convention Center Parcel;

(k) Lender shall have received evidence reasonably satisfactory to it that Mortgage Borrower and each Other Mezzanine Borrower shall have satisfied all of the

conditions to the proposed Release set forth in the Mortgage Loan Agreement and each Other Mezzanine Loan Agreement, as applicable; and

(l) There shall be no release of any portion of the Lien of the Pledge Agreement in connection with this Section 2.5.2.

Borrower agrees that it shall promptly use all reasonable best efforts to substitute, and Lender agrees (subject to the terms set forth below in this paragraph) that it shall accept the substitution of, the properties commonly known as “Paris Las Vegas” and “Harrah’s Laughlin” for the Individual Properties referred to as “Harrah’s Lake Tahoe”, “Harvey’s Lake Tahoe”, “Bill’s Lake Tahoe”, “Showboat Atlantic City” and the portion of the Flamingo Las Vegas Property known as O’Shea’s in a reasonably satisfactory manner, provided that Lender’s obligation to accept such substitution shall be conditioned on the following:

(i) that no Event of Default shall exist, either before or after giving effect to such substitution (unless such Event of Default would be fully cured by the substitution);

(ii) the satisfaction, with respect to both “Paris Las Vegas” and “Harrah’s Laughlin”, of the closing conditions set forth in Article III hereof and of the Mortgage Loan Agreement, except that references therein to the Closing Date shall be to the date of such substitution;

(iii) delivery of such agreements, instruments, title insurance policies, surveys, resolutions, certificates and opinions (including, without limitation, substitute notes, amendments to the Loan Documents (including amendments to adjust the Allocated Loan Amounts, the EBITDAR (Closing Date) and any other items that need to be adjusted to reflect the substitution), the Operating Lease, the Operating Lease Guaranty and the Windstorm Insurance Intercreditor Agreement, an appropriate subdivision and a reciprocal easement agreement in respect of O’Shea’s, written assurances that the substitution will have no negative effects on the existing Title Policies, updated “tie-in” endorsements for the Title Policies, an Additional True Lease Opinion and an Additional Insolvency Opinion), in each case as are reasonably required by Lender in connection with such substitution;

(iv) with respect to the release of O’Shea’s, delivery of evidence reasonably satisfactory to Lender that such release will not have either an Individual Material Adverse Effect on the remainder of the Flamingo Las Vegas Property or an Aggregate Material Adverse Effect (it being understood that, for purposes of such determinations, O’Shea’s shall be deemed to have closed as of the Closing Date and to have no value) and that the remainder of the Flamingo Las Vegas Property satisfies the conditions set forth in Sections 3.1.3(b), (c) and (f) of the Mortgage Loan Agreement and the representations and warranties set forth in Sections 4.1.4, 4.1.16, 4.1.22, 4.1.39 and 4.1.40 of the Mortgage Loan Agreement shall continue to be true and complete with respect to the remainder of the Flamingo Las Vegas Property, and satisfaction of conditions similar to those set forth in clauses (c), (d), (e), (f), (g) and (h) of Section 3.1.3 hereof, as applicable, with respect to O’Shea’s;

(v) the satisfaction, with respect to “Harrah’s Lake Tahoe”, “Harvey’s Lake Tahoe”, “Bill’s Lake Tahoe”, “Showboat Atlantic City” and O’Shea’s, of the conditions set forth above in Section 2.5.1(b) and (f) with respect to released Individual Properties to the extent applicable,

(vi) the conveyance of “Harrah’s Lake Tahoe”, “Harvey’s Lake Tahoe”, “Bill’s Lake Tahoe”, “Showboat Atlantic City” and O’Shea’s to a Person other than a Mortgage Borrower or Mezzanine Borrower;

(vii) unless otherwise extended by Lender, the substitution shall be completed on or prior to May 28, 2008;

(viii) the payment by Borrower of all Lender’s reasonable out-of-pocket costs and expenses in connection with the substitution contemplated by this paragraph, including reasonable counsel fees and disbursements, up to an aggregate amount of \$300,000, it being acknowledged that costs incurred to obtain title insurance and surveys in respect of the substituted properties shall be paid by Borrower directly and shall not be taken into account for purposes of the foregoing limitation on the reimbursement of Lender’s expenses.

Lender acknowledges that it shall not charge any fee (other than costs and expenses, as provided in the preceding sentence) in connection with the release of an Individual Property in accordance with this paragraph. In addition, if all of “Harrah’s Lake Tahoe”, “Harvey’s Lake Tahoe”, “Bill’s Lake Tahoe” and “Showboat Atlantic City” can be transferred from Mortgage Borrower as contemplated above, but O’Shea’s cannot (including by reason of an inability to get a separate gaming license for O’Shea’s independent of the “Flamingo Las Vegas”), then Borrower shall cause Mortgage Borrower to nevertheless proceed to consummate the swap without transferring O’Shea’s (subject to Borrower’s ongoing right to obtain the release of O’Shea’s from the Lien of the Mortgage in accordance with the following sentence). Upon the satisfaction of such conditions set forth above in this paragraph (including clauses (i) through (viii) hereof), Borrower will have the right to choose between an immediate release of O’Shea’s from the Lien of the Mortgage on the date of the swap or a free release subsequent to the date of the swap without conditions (in either case, subject to the conditions set forth above in this Section 2.5.2, except that the limitation on Borrower’s payment of Lender’s costs and expenses set forth in clause (viii) above shall not apply to any such costs and expenses incurred by Lender in connection with such release) and, pending such release, EBITDAR shall be computed without regard to O’Shea’s; provided further, the Operating Company in respect of the “Flamingo Las Vegas” Individual Property, both before and after such release, shall be permitted to provide management and other similar services for O’Shea’s and shall be reimbursed for the allocable share of expenses attributable to O’Shea’s.

**2.5.3 Release on Payment in Full.** Lender shall, upon the written request and at the expense of Borrower, upon payment in full of all principal and interest due on the Loan and all other amounts due and payable under the Loan Documents in accordance with the terms and provisions of the Note and this Agreement, release the Lien of the Pledge Agreement on the Collateral.

## **Section 2.6. Cash Management.**

### **2.6.1 Establishment of Collection Accounts.**

(a) In accordance with the provisions of the Operating Lease, (i) Operating Company will establish within thirty (30) days after the Closing Date and will maintain for the benefit of Mortgage Borrower, as lessor under the Operating Lease, the Collection Accounts with Collection Banks throughout the term of the Mortgage Loan and (ii) the rights of Mortgage Borrower (as landlord) under the Operating Lease will be collaterally assigned to Mortgage Lender within such 30-day period. All Revenues, other than amounts retained on-site by each Operating Company as a Gaming Operating Reserve and amounts collected and maintained in Off-Shore Accounts, will be deposited in the Collection Accounts.

(b) Borrower hereby represents and warrants as follows: when established, the Collection Accounts will be the only accounts maintained by Operating Company in any jurisdiction that include funds arising out of, or are otherwise attributable to, the Properties or relate to the operation and management of any of the Properties (other than accounts (collectively, the “OC Accounts”) that contain amounts theretofore released from Collection Accounts in accordance herewith, and other than Off-Shore Accounts, which shall not be subject to this Agreement; and neither Borrower nor Mortgage Borrower maintains any accounts that include funds arising out of, or are otherwise attributable to, any of the Properties or relate to the operation and management of any of the Properties or otherwise (except for accounts containing funds released from the Collection Accounts as herein provided and the Off-Shore Accounts). None of Mortgage Borrower, Senior Mezzanine Borrower, Borrower or Operating Company may (and Borrower shall not permit Mortgage Borrower, Senior Mezzanine Borrower or Operating Company to), without the prior consent of Lender (not to be unreasonably withheld, conditioned or delayed), open any accounts or new accounts or in any way alter the flow of funds and payment into such Collection Accounts, including, without limitation, changing the source, type or currency of any payments currently deposited and maintained in any such account (it being understood that the foregoing restriction shall not preclude Operating Company, Mortgage Borrower, Senior Mezzanine Borrower or Borrower from accepting and depositing in any Collection Accounts any capital contributions, or any disbursements from any Collection Accounts in accordance with the provisions of the Mortgage Loan Agreement, this Agreement and the Senior Mezzanine Loan Agreements. None of Mortgage Borrower, Senior Mezzanine Borrower, Borrower or Operating Company may (and Borrower shall not permit Mortgage Borrower, Senior Mezzanine Borrower, or Operating Company to), without the prior consent of Lender (not to be unreasonably withheld, conditioned or delayed), establish and maintain any accounts with financial institutions outside of the United States of America, other than the Off-Shore Accounts).

(c) Borrower shall cause Mortgage Borrower, Senior Mezzanine Borrower and Operating Company to comply with Section 2.6.1 of the Mortgage Loan Agreement and Senior Mezzanine Loan Agreement (as applicable) in all respects.

(d) Borrower hereby agrees that in the event that (i) the Mortgage Loan Documents require Mortgage Borrower and/or Operating Company to maintain the Collection Accounts, but (due to repayment of the Mortgage Loan, waiver of the requirement by Mortgage

Lender, or otherwise) the Collection Accounts are not being maintained and (ii) the Collection Accounts are not being maintained under Section 2.6.1(d) of the Senior Mezzanine Loan Agreement, Borrower shall establish or cause the Operating Company to establish or cause the Operating Company to establish collection accounts substantially the same as that required under the Mortgage Loan Documents (and shall otherwise comply with the provisions of Section 2.6.1 of the Mortgage Loan Documents, and grant to Lender security interests in such accounts for the benefit of Lender, as if such provisions were incorporated herein for the benefit of Lender). In addition, if Borrower is required to deposit amounts with Lender pursuant to Article VII hereof but (due to repayment of the Mortgage Loan, waiver of the requirement by Mortgage Lender, or otherwise) the Collection Accounts and Cash Management Account are not being maintained, Borrower shall establish collection accounts and a cash management account and system with Lender substantially the same as that required under the Mortgage Loan Documents (and shall otherwise comply with the provisions of Sections 2.6.1 and 2.6.2 of the Mortgage Loan Documents, and grant to Lender security interests in such accounts for the benefit of Lender, as if such provisions were incorporated herein for the benefit of Lender). In addition, if Mortgage Borrower is required to provide security or other collateral to the Mortgage Lender pursuant to the terms of the Mortgage Loan Agreement (excluding any mortgage lien on the Properties or assignment of leases and rents with respect to the Properties) but (due to repayment of the Mortgage Loan, waiver of the requirement by Mortgage Lender, or otherwise) such security or other collateral was not provided to Mortgage Lender, Borrower shall provide such security or other collateral to Lender in substantially the same form and amount as that required under the Mortgage Loan Documents.

**2.6.2 Disbursements from, Security Interest in, Collection Accounts.** The Operating Lease provides, among other things, that all Revenues shall be collaterally assigned by Operating Company to Mortgage Borrower as additional security for Operating Company's obligations under the Operating Lease and that Mortgage Borrower shall have the right to collaterally assign and pledge such Revenues to Lender as additional security for the Loan. In furtherance thereof, Lender and Borrower agree as follows:

(a) Except as otherwise provided in subparagraphs (b) and (c) hereof, all amounts collected in the Collection Accounts shall be transferred on each Business Day to (or as directed by) Operating Company for use or distribution by the Operating Company in its discretion free of any rights or encumbrances of Lender.

(b) Upon the occurrence and during the continuance of an Event of Default hereunder, under the Mortgage Loan Documents or under any of the Other Mezzanine Loan Documents, and provided no Event of Default (as such term is defined in the Operating Lease) shall have occurred and be continuing under any Operating Lease, Borrower shall cause Mortgage Borrower to direct and cause Collection Bank to deposit directly into the Cash Management Account, all Rent payable under the Operating Lease for the next thirty (30) days (it being the intent and agreement that, during the continuance of an Event of Default, the Cash Management Account shall at all times contain such amounts sufficient to cover the ensuing 30-day period), including the Monthly Tax and Insurance Amount, the Monthly Ground Rent Amount and Monthly FF&E Reserve Amount (the amounts described in the preceding sentence, collectively, the "**Monthly Disbursements**"); provided that, notwithstanding the foregoing, Lender may not apply such Monthly Disbursements to the payment of amounts due hereunder in

an amount in excess of the amounts owed by the Operating Company under the Operating Lease. In the event Borrower shall have failed to cause Mortgage Borrower to so instruct Collection Bank, Lender shall have the right to so direct the Collection Bank on behalf of Mortgage Borrower. Any amounts not required to be so deposited into the Cash Management Account shall be transferred on each Business Day thereafter to (or as directed by) Operating Company for use or distribution by the Operating Company in its discretion free of any rights or encumbrances of Lender. If no Event of Default has occurred and is continuing hereunder, to the extent Monthly Disbursements are not applied to the payment of amounts due hereunder, such excess shall be remitted to Third Mezzanine Lender (or to an account designated by Third Mezzanine Lender); provided that, notwithstanding the foregoing, Lender shall not remit any such amounts in excess of the amounts owed by the Operating Company under the Operating Lease. If an Event of Default has occurred and is continuing hereunder, to the extent Monthly Disbursements are not applied to the payment of amounts due hereunder, Lender shall have the right to retain the amount so remitted to the Collection Account as collateral for the Loan and/or apply such amount to the payment of the Debt.

(c) Upon the occurrence and during the continuance of an Event of Default (as such term is defined in the Operating Lease) under any Operating Lease, Borrower shall cause Mortgage Borrower to notify Collection Bank to transfer to the Cash Management Account on each Business Day in immediately available funds by federal wire transfer all amounts on deposit in each Collection Account and, in the event Mortgage Borrower shall have failed to do so, Mortgage Lender (or Lender in the event of Mortgage Lender's failure to so instruct) shall have the right to so direct the Collection Bank on behalf of Mortgage Borrower. Lender shall have the right to retain all amounts to be paid into the Cash Management Account in accordance with the first sentence of this Section 2.6.2(c) as collateral for the Loan and/or apply such amount to the payment of the Debt.

(d) Borrower and its Affiliates shall (and Borrower shall cause Operating Company to) execute and deliver such documents, instruments, certificates, assignments and other writings, and do such other acts necessary or desirable, to evidence, preserve and/or protect, maintain and perfect Lender's security interest in the Collection Accounts, if any.

**2.6.3 Cash Management Account.** (a) During the term of the Loan, Borrower shall cause Mortgage Borrower and Senior Mezzanine Borrower to comply with Section 2.6.3 of the Mortgage Loan Agreement and Senior Mezzanine Loan Agreement (as applicable) which may require the establishment of the Cash Management Account to be held by and in trust for the benefit of Mortgage Lender. All costs and expenses for establishing and maintaining the Cash Management Account shall be paid by Mortgage Borrower.

(b) Borrower shall not cause or permit Mortgage Borrower or Operating Company to further pledge, assign or grant any security interest in the Cash Management Account or the monies deposited therein or permit any lien or encumbrance to attach thereto, or any levy to be made thereon, or any UCC-1 Financing Statements, except those naming Mortgage Lender as the secured party, to be filed with respect thereto.

(c) Borrower hereby agrees that in the event that (i) the Mortgage Loan Documents require Mortgage Borrower and/or Operating Company to maintain the Cash

Management Account, but (due to repayment of the Mortgage Loan, waiver of the requirement by Mortgage Lender, or otherwise) the Cash Management Account is not being maintained and (ii) the Cash Management Account is not being maintained under Section 2.6.3 of the Senior Mezzanine Loan Agreement, Borrower shall establish a cash management account and system with Lender substantially the same as that required under the Mortgage Loan Documents. If Borrower is required to deposit amounts with Lender pursuant to Article VII hereof, Borrower shall establish a cash management account and system with Lender substantially the same as that required under the Mortgage Loan Documents (and shall otherwise comply with the provisions of Section 2.6.2 of the Mortgage Loan Documents, and grant to Lender security interests in such accounts for the benefit of Lender, as if such provisions were incorporated herein for the benefit of Lender).

**2.6.4 Mezzanine Collection Account.** (a) Lender or Servicer may establish and maintain, to collect all amounts distributed to Lender under Section 2.6.3 of the Mortgage Loan Agreement, a segregated Eligible Account (the “**Mezzanine Collection Account**”) to be held by Servicer in trust for the benefit of Lender, which Mezzanine Collection Account shall be under the sole dominion and control of Lender (which may be exercised through Servicer). Lender (and its agents, including Servicer) shall have the sole right to make withdrawals from the Mezzanine Collection Account in accordance with the terms and conditions of this Agreement and the other Loan Documents, except as otherwise expressly provided in this Agreement or the other Loan Documents. Borrower shall cause Senior Mezzanine Borrower to comply with Section 2.6.4 of the Senior Mezzanine Loan Agreements.

(b) Borrower hereby grants to Lender a first priority security interest in the Mezzanine Collection Account and all deposits at any time contained therein and the proceeds thereof and will take all actions necessary to maintain in favor of Lender a perfected first priority security interest in the Mezzanine Collection Account, including, without limitation, executing and filing UCC 1 Financing Statements and continuations thereof upon Lender’s request therefor. All costs and expenses for establishing and maintaining the Mezzanine Collection Account (and any sub account thereof) shall be at Borrower’s sole cost and expense.

(c) Borrower shall be responsible for payment of any federal, state or local income or other tax applicable to the interest or income earned on the Mezzanine Collection Account and any sub-account thereof. The Mezzanine Collection Account and any sub-account thereof shall be assigned the federal tax identification numbers of Borrower set forth on Schedule I attached hereto. Borrower shall provide Lender, at any time upon request of Lender, with a Form W-8 or W-9 to evidence that Borrower is not subject to any back-up withholding under the Code.

(d) Upon the occurrence and during the continuance of an Event of Default, all funds on deposit in the Mezzanine Collection Account shall be applied by Lender in such order and priority as Lender shall determine.

(e) The insufficiency of funds on deposit in the Mezzanine Collection Account shall not relieve Borrower from the obligation to make any payments, as and when due pursuant to this Agreement and the other Loan Documents, and such obligations shall be separate and independent, and not conditioned on any event or circumstance whatsoever.

**Section 2.7. Intentionally Omitted.**

**Section 2.8. Permitted Mezzanine Loan.** Borrower shall have the one-time right, upon thirty (30) days prior written notice to Lender (the “**Permitted Mezzanine Loan Election**”), to obtain a loan (“**Permitted Mezzanine Loan**”) secured by a pledge of the ownership interests in the indirect owners of Borrower (above the level of the Ninth Mezzanine Borrower) provided that the following conditions precedent are satisfied:

(a) no Default or Event of Default shall have occurred and remains uncured;

(b) as of the date the Permitted Mezzanine Loan is advanced, the Permitted Mezzanine Debt Loan-to-Value Ratio for the Properties subject to the Lien of the Mortgage is equal to or less than eighty percent (80%);

(c) as of the date the Permitted Mezzanine Loan is advanced, Permitted Mezzanine DSCR for the four-quarter period preceding such date for the Properties then subject to the Lien of the Mortgage(s) is equal to or greater than 1.2 to 1.0;

(d) the Permitted Mezzanine Loan shall be evidenced by one (1) Loan, that may be advanced in multiple draws provided that Borrower complies with the requirements set forth in this Section 2.8 with respect to each draw;

(e) the Permitted Mezzanine Loan shall be issued by one (1) lender (the “**Permitted Mezzanine Loan Lender**”) which shall be an Institutional Lender; provided, however, that such single Lender that is an Institutional Lender may grant participations in such Permitted Mezzanine Loan or syndicate the Permitted Mezzanine Loan to multiple lenders so long as at least fifty-one percent (51%) of such participants and syndicate lenders are Institutional Lenders and, in addition, so long a single lender serves as agent with respect to all approvals, consents and other matters relating to the Permitted Mezzanine Loan;

(f) the Permitted Mezzanine Loan shall have the same maturity date as the Maturity Date under the Loan, or a maturity date extending beyond the Maturity Date under the Loan;

(g) the Permitted Mezzanine Loan (including all of the terms, provisions and conditions of the Permitted Mezzanine Loan, including, without limitation, the loan documents evidencing and securing the Permitted Mezzanine Loan (“**Permitted Mezzanine Loan Documents**”)) shall be acceptable to Lender in its reasonable discretion (it being agreed that with respect (only) to Lender’s approval of the form of loan documents that loan documents in substantially the same form as the Ninth Mezzanine Loan Documents, appropriately modified to reflect subordination to the Mezzanine Loans still outstanding, shall be deemed to be acceptable);

(h) the Permitted Mezzanine Loan Lender shall enter into a co-lender or intercreditor agreement substantially on the standard CMSA form (or the form entered into by Lender, Other Mezzanine Lenders and Mortgage Lender in connection with the closing of the Loan) or in form and substance reasonably acceptable to Lender, acknowledging the subordination of the Permitted Mezzanine Loan in all respects to each of the Mezzanine Loans

and the Mortgage Loan (and Lender agrees to enter into such co-lender or intercreditor agreement upon request);

(i) the Permitted Mezzanine Loan shall be a fixed rate loan, or a floating rate loan containing an interest rate that is capped at an amount that satisfies the debt service coverage ratio requirement set forth in subparagraph (c) above, with interest due and payable monthly (*i.e.*, interest does not accrue) and such interest rate shall not be subject to adjustment except after an event of default (Borrower agreeing to cause the purchase of an interest rate cap to reflect the foregoing);

(j) if requested by Lender, Borrower shall execute amendments to the Loan Documents reasonably requested by Lender, to reflect the existence of such Permitted Mezzanine Loan, provided that any such amendments or agreements will not alter the payment terms of the Loan set forth in this Agreement or the other Loan Documents or materially and adversely affect Borrower or impose additional material obligations or liabilities upon Borrower;

(k) if required by Lender, Borrower shall deliver (i) Additional Insolvency Opinions and, if the Loan Documents are amended pursuant to Section 2.8(k), opinions regarding due execution and enforceability with respect to the Properties, Mortgage Borrower, Mezzanine Borrowers, Holdings, Guarantor and their respective Affiliates and the Loan Documents, and such related matters as Lender shall reasonably require, and (ii) revised organizational documents for Borrower, which opinions and organizational documents shall be reasonably satisfactory to Lender;

(l) all necessary or appropriate governmental or other third party consents (including any approvals, notices, filings or other actions under or pursuant to the Gaming Laws or other Legal Requirements) required to be obtained or taken by Borrower, Mortgage Borrower, any Mezzanine Borrower or the Permitted Mezzanine Borrower for the execution, delivery and performance by the Permitted Mezzanine Borrower of the Permitted Mezzanine Loan shall have been obtained or taken; and

(m) all reasonable out-of-pocket costs and expenses (including reasonable attorneys' fees and expenses) incurred by Lender in connection with this Section 2.8 shall be paid by Borrower (but no approval or consent fees shall be payable in connection therewith).

### III. CONDITIONS PRECEDENT

**Section 3.1. Conditions Precedent to Closing.** The obligation of Lender to make the Loan hereunder is subject to the fulfillment by Borrower or waiver by Lender of the following conditions precedent no later than the Closing Date:

**3.1.1 Representations and Warranties; Compliance with Conditions.** The representations and warranties of Borrower contained in this Agreement and the other Loan Documents shall be true and correct in all material respects on and as of the Closing Date with the same effect as if made on and as of such date, and no Default or an Event of Default shall have occurred and be continuing; and Borrower shall be in compliance in all material respects

with all terms and conditions set forth in this Agreement and in each other Loan Document on its part to be observed or performed.

**3.1.2 Loan Agreement and Note.** Lender shall have received a copy of this Agreement and the Note, in each case, duly executed and delivered on behalf of Borrower.

**3.1.3 Delivery of Loan Documents; Title Insurance; Reports; Leases.**

(a) **Pledge Agreement.** Lender shall have received from Borrower fully executed and acknowledged counterparts of the Pledge Agreement and delivery of the Pledged Company Interests, the UCC Financing Statements, and such other documents required pursuant to the Pledge Agreement, in the reasonable judgment of Lender, so as to effectively create valid and enforceable Liens upon the Collateral, of the requisite priority, in favor of Lender, subject only to the Permitted Encumbrances and such other Liens as are permitted pursuant to the Loan Documents. Lender shall have also received from Borrower fully executed counterparts of the other Loan Documents.

(b) **Title Insurance.** Lender shall have received a UCC Title Insurance Policy (the “**UCC Title Insurance Policy**”) issued by a title company acceptable to Lender and dated as of the Closing Date, with reinsurance and direct access agreements acceptable to Lender. Such UCC Title Insurance Policy shall (i) provide coverage in amounts reasonably satisfactory to Lender, (ii) insure Lender that the Pledge Agreement and the documents executed and delivered in connection therewith create a valid lien on the Collateral of the requisite priority, free and clear of all exceptions from coverage other than Permitted Encumbrances and standard exceptions and exclusions from coverage (as modified by the terms of any endorsements), (iii) contain such endorsements and affirmative coverages as Lender may reasonably request, and (iv) name Lender as the insured. The UCC Title Insurance Policy shall be assignable. Lender also shall have received evidence that all premiums in respect of such UCC Title Insurance Policy have been paid. Lender shall have received each Owner’s Title Policy in an amount equal to the value of the Property, together with an endorsement in favor of Lender and in form and substance reasonably satisfactory to Lender.

(c) **Survey.** Lender shall have received a current Survey for each Individual Property, certified to the title company and Lender and their successors and assigns, in form and content reasonably satisfactory to Lender and prepared by a professional and properly licensed land surveyor satisfactory to Lender in accordance with the Accuracy Standards for ALTA/ACSM Land Title Surveys as adopted by ALTA, American Congress on Surveying & Mapping and National Society of Professional Surveyors in 2005. Each such Survey shall reflect the same legal description contained in the Title Insurance Policies relating to such Individual Property and shall include, among other things, a metes and bounds description (or other description reasonably satisfactory to Lender) of the real property comprising part of such Individual Property reasonably satisfactory to Lender. The surveyor’s seal shall be affixed to each Survey and the surveyor shall provide a certification for each Survey in form and substance reasonably acceptable to Lender.

(d) **Insurance.** Lender shall have received valid certificates of insurance for the Policies required hereunder, satisfactory to Lender in its reasonable discretion. Lender shall

be included as an "additional insured" under such Policies and Lender shall have received evidence of the payment of all Insurance Premiums payable for the existing policy period.

(e) **Environmental Reports.** Lender shall have received a Phase I environmental report (and, if recommended by the Phase I environmental report, a Phase II environmental report) in respect of each Individual Property, in each case satisfactory in form and substance to Lender, Lender acknowledges that the foregoing condition has been satisfied, provided that the underground storage tank at Harrah's Las Vegas shall be registered if and to the extent the same is required under Legal Requirements and Lender shall have received and reasonably approved the O&M Plans contemplated pursuant to the above-referenced environmental reports in respect of Flamingo Las Vegas and Harrah's Las Vegas.

(f) **Zoning.** With respect to each Individual Property, Lender shall have received, at Lender's option, either (i) (A) letters or other evidence with respect to each Individual Property from the appropriate municipal authorities (or other Persons) concerning applicable zoning and building laws, and (B) an ALTA 3.1 zoning endorsement for the applicable Title Insurance Policy or (ii) a zoning report, in each case in substance reasonably satisfactory to Lender.

(g) **Encumbrances.** Borrower shall have taken or caused to be taken such actions in such a manner so that Lender has a valid and perfected first priority Lien as of the Closing Date on the Collateral and with respect to the Pledge Agreement and Lender shall have received satisfactory evidence thereof.

(h) **Senior Loan Documents.** The Mortgage Loan Documents and Senior Mezzanine Loan Documents shall have been duly authorized, executed and delivered by all parties thereto, the Mortgage Loan and Senior Mezzanine Loan shall have been contemporaneously funded and Lender shall have received and approved certified copies thereof. All of the conditions precedent set forth in Article III of the Mortgage Loan Agreement and Senior Mezzanine Loan Agreements shall have been satisfied and the Mortgage Loan and Senior Mezzanine Loans shall have closed and been fully advanced in accordance therewith.

**3.1.4 Related Documents.** Each additional document not specifically referenced herein, but relating to the transactions contemplated herein, shall be in form and substance reasonably satisfactory to Lender, and shall have been duly authorized, executed and delivered by all parties thereto and Lender shall have received and approved certified copies thereof.

**3.1.5 Delivery of Organizational Documents.** Borrower shall deliver or cause to be delivered to Lender copies certified by Borrower of all organizational documentation related to Borrower and each Loan Party and/or the formation, structure, existence, good standing and/or qualification to do business, as Lender may request in its sole discretion, including, without limitation, good standing certificates, qualifications to do business in the appropriate jurisdictions, resolutions authorizing the entering into of the Loan and incumbency certificates as may be requested by Lender.

**3.1.6 Opinions of Borrower's Counsel.** Lender shall have received opinions from Borrower's counsel with respect to non-consolidation and the due execution, authority, enforceability of the Loan Documents and such other matters as Lender may require, including True-Lease Opinions, an opinion with respect to the priority and perfection of the Collateral and all such opinions shall be in form, scope and substance satisfactory to Lender and Lender's counsel in their reasonable discretion.

**3.1.7 Budgets.** Borrower shall have delivered, and Lender shall have approved in its reasonable discretion, the Annual Budget for the current Fiscal Year.

**3.1.8 Basic Carrying Costs.** Borrower shall have caused Mortgage Borrower to have paid all Basic Carrying Costs relating to the Properties which are in arrears, including, without limitation, (a) accrued but unpaid Insurance Premiums, (b) currently due Taxes (including any in arrears) and (c) currently due Other Charges, which amounts shall be funded with proceeds of the Loan.

**3.1.9 Completion of Proceedings.** All corporate and other proceedings taken or to be taken in connection with the transactions contemplated by this Agreement and other Loan Documents and all documents incidental thereto shall be satisfactory in form and substance to Lender, and Lender shall have received all such counterpart originals or certified copies of such documents as Lender may reasonably request.

**3.1.10 Payments.** All payments, deposits or escrows required to be made or established by Borrower under this Agreement, the Note and the other Loan Documents on or before the Closing Date shall have been paid.

**3.1.11 Windstorm Insurance Intercreditor Agreement.** The Windstorm Insurance Intercreditor Agreement shall have been executed by all parties thereto and delivered to Lender.

**3.1.12 Transaction Costs.** Borrower shall have paid or reimbursed Lender for all UCC Title Insurance Policy premiums, all Owner's Title Policy premiums, costs of obtaining recording and filing fees, costs of environmental reports, Physical Conditions Reports, appraisals and other reports, the reasonable fees and costs of Lender's counsel and all other third party out-of-pocket expenses reasonably incurred in connection with the origination of the Loan to the extent such costs and expenses relating to third party costs have not already been paid or reimbursed by Mortgage Borrower to Mortgage Lender.

**3.1.13 Material Adverse Change.** There shall have been no material adverse change in the financial condition or business condition of Borrower, any Loan Party, the Collateral, the Senior Mezzanine Collateral or the Properties since the date of the most recent financial statements delivered to Lender. The income and expenses of the Properties, the occupancy thereof, and all other features of the transaction shall be as represented to Lender without material adverse change. None of Borrower, any Loan Party, or any of their respective constituent Persons shall be the subject of any bankruptcy, reorganization, or insolvency proceeding.

**3.1.14 Leases and Rent Roll.** Lender shall have received copies of all Leases and certified copies of any Leases as requested by Lender. Lender shall have received a current certified rent roll of the Properties, reasonably satisfactory in form and substance to Lender.

**3.1.15 Tax Lot.** Lender shall have received evidence that each Individual Property constitutes one (1) or more separate tax lots, which evidence shall be reasonably satisfactory in form and substance to Lender.

**3.1.16 Physical Conditions Reports.** Lender shall have received Physical Conditions Reports with respect to each Individual Property, which reports shall be reasonably satisfactory in form and substance to Lender. Lender acknowledges that the foregoing condition has been satisfied.

**3.1.17 Operating Leases; Operating Lease Guaranty.** Lender shall have received copies of the Operating Leases, each Operating Lease Guaranty and the Gaming Equipment Facility Agreements, which shall be reasonably satisfactory in form and substance to Lender.

**3.1.18 Appraisal.** Lender shall have received an appraisal of each Individual Property, which shall be reasonably satisfactory in form and substance to Lender.

**3.1.19 Financial Statements.** Lender shall have received a balance sheet with respect to each Individual Property for the two most recent Fiscal Years and statements of income and statements of cash flows with respect to each Individual Property for the three most recent Fiscal Years, each in form and substance reasonably satisfactory to Lender.

**3.1.20 Further Documents.** Lender or its counsel shall have received a fully executed Interest Rate Cap Agreement and a Collateral Assignment of Interest Rate Cap Agreement, together with an opinion of counsel in form and substance satisfactory to it, or shall have received reasonably satisfactory evidence that same will be delivered promptly following the Closing Date.

**3.1.21 Gaming Authority Approvals.** Mortgage Borrower and Operating Company shall have obtained all Operating Permits from Gaming Authorities that are required in order to permit the closing of the Mortgage Loan and the Mezzanine Loans (if required), or in connection with the Operating Lease or the Operating Lease Guaranty (if required), or to permit the conveyances of any of the Properties to Mortgage Borrower (effected immediately prior hereto) and the operation of the Properties as currently conducted.

#### **IV. REPRESENTATIONS AND WARRANTIES**

**Section 4.1. Borrower Representations.** Borrower represents and warrants as of the date hereof and as of the Closing Date, except as disclosed in Schedule XXIII, that:

**4.1.1 Organization.** (a) Borrower has been duly organized and is validly existing and in good standing with requisite power and authority to own the Individual Properties and to transact the businesses in which it is (or each of them is) now engaged. Borrower is duly

qualified to do business and is in good standing in each jurisdiction where it is required to be so qualified in connection with its properties, businesses and operations. Borrower possesses all rights, licenses, permits and authorizations (governmental or otherwise) necessary to entitle it to own its properties and to transact the businesses in which it is now engaged and the failure to possess which would reasonably be expected to have an Individual Material Adverse Effect. The sole business of Borrower is the ownership of Senior Mezzanine Borrower. The ownership interests of Borrower are as set forth on the organizational chart attached hereto as Schedule VIII.

(b) Each Operating Company has been duly organized and is validly existing and in good standing with requisite power and authority to own its properties or assets, including the Gaming Equipment, and to transact the businesses in which it is now engaged. Each Operating Company is duly qualified to do business and is in good standing in each jurisdiction where it is required to be so qualified in connection with its properties, businesses and operations, including the operation of the Casino Components at each Individual Property. Each Operating Company possesses all rights, licenses, permits and authorizations (governmental or otherwise) necessary to entitle it to operate the Properties currently operated by each such Operating Company and to transact the businesses in which it is now engaged and the failure to possess which would reasonably be expected to have an Individual Material Adverse Effect. The sole business of each Operating Company is the management and operation of the Individual Property or Properties currently operated by each such Operating Company. The ownership interests of each Operating Company are as set forth on the organizational chart attached hereto as Schedule VIII.

(c) Borrower has the power and authority and the requisite ownership interests in Senior Mezzanine Borrower and Mortgage Borrower to control the actions of Senior Mezzanine Borrower and Mortgage Borrower, and upon the realization of the Collateral under the Pledge Agreement, Lender or any other party succeeding to the Borrower's interest in the Collateral described in the Pledge Agreement would have such control. Without limiting the foregoing, Borrower has sufficient control over Senior Mezzanine Borrower and Mortgage Borrower to cause Senior Mezzanine Borrower and Mortgage Borrower to (i) take any action on Senior Mezzanine Borrower's or Mortgage Borrower's part required by the Loan Documents and (ii) refrain from taking any action prohibited by the Loan Documents.

**4.1.2 Proceedings.** Borrower and Operating Company have taken all necessary action to authorize the execution, delivery and performance of this Agreement and the other Loan Documents. This Agreement and such other Loan Documents have been duly executed and delivered by or on behalf of Borrower and Operating Company and constitute legal, valid and binding obligations of Borrower and Operating Company enforceable against Borrower and Operating Company (as applicable) in accordance with their respective terms, subject only to applicable bankruptcy, insolvency and similar laws affecting rights of creditors generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

**4.1.3 No Conflicts; Approvals.** (a) The execution, delivery and performance of this Agreement and the other Loan Documents by Borrower and Operating Company will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default

under, or result in the creation or imposition of any lien, charge or encumbrance (other than pursuant to the Loan Documents) upon any of the property or assets of Borrower or Operating Company pursuant to the terms of any indenture, mortgage, deed of trust, loan agreement, partnership agreement, management agreement, material lease or other material agreement or instrument to which Borrower or Operating Company (as applicable) is a party or by which any of Borrower's or Operating Company's property or assets is or are subject, nor will such action result in any violation of the provisions of any statute or any order, rule or regulation of any Governmental Authority having jurisdiction over Borrower or Operating Company any of Borrower's or Operating Company's properties or assets, and any consent, approval, authorization, order, registration or qualification of or with any such Governmental Authority required for the execution, delivery and performance by Borrower and Operating Company of this Agreement or any other Loan Documents (and the execution by Lender of the remedies provided in the Loan Documents, subject to the limitations thereon pursuant to applicable Gaming Laws) has been obtained and is in full force and effect.

(b) Borrower, Senior Mezzanine Borrower, Mortgage Borrower and Operating Company have obtained all consents and approvals, including all approvals of Governmental Authorities including Gaming Authorities, if required, in connection with the execution, delivery and performance of the Loan Documents (including by Mortgage Lender and each Mezzanine Lender), the Operating Lease, the Operating Lease Guaranty and the operation of the business currently conducted at any of the Properties, and shall promptly execute any and all such instruments and documents, deliver any certificates and do all such other acts or things required by the Gaming Authorities to maintain or keep current such approvals.

**4.1.4 Litigation.** There are no actions, suits or proceedings at law or in equity by or before any Governmental Authority or other agency now pending or, to Borrower's knowledge, threatened against or affecting any Loan Party, any Affiliates of Borrower, including Holdings, Operating Company or any Individual Property, or any prior owner or other holder of any interest in any Individual Property, which actions, suits or proceedings, if determined against any Loan Party, Holdings, Operating Company, any other Affiliate or any Individual Property (taking into account the reasonably estimated damages payable in connection therewith), is reasonably likely to materially adversely affect the condition (financial or otherwise) or business of any Loan Party, any Affiliate of Borrower that is a direct or indirect owner of Mortgage Borrower, including Holdings and Operating Company, or the condition or ownership of any Individual Property, or any of the material rights, interests and remedies of Lender under the Loan Documents (taken as a whole). None of the actions described on Schedule XXIV, if determined adversely to Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Mortgage Borrower, Operating Company and/or any of their respective Affiliates, as applicable, would result in the payment by Borrower, Mortgage Borrower, Operating Company or such Affiliate of an amount in excess of Ten Million and no/100 Dollars (\$10,000,000.00), except to the extent covered by insurance.

**4.1.5 Agreements.** None of Borrower, Mortgage Borrower, Senior Mezzanine Borrower or Operating Company is in default, in any material respect, in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any material agreement or instrument to which it is a party or by which Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company, the Collateral or any of the

Properties are bound. None of Borrower, Mortgage Borrower, Senior Mezzanine Borrower or Operating Company has any material financial obligation under any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which Borrower, Mortgage Borrower, Senior Mezzanine Borrower or Operating Company is a party or by which Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company, the Collateral or the Properties is otherwise bound, other than (a) with respect to Mortgage Borrower, obligations incurred in the ordinary course of the operation of the Properties as permitted pursuant to clause (t) of the definition of "Special Purpose Entity" set forth in Section 1.1 of the Mortgage Loan Agreement, (b) with respect to Borrower, obligations under the Loan Documents, (c) with respect to Senior Mezzanine Borrower, obligations under the Senior Mezzanine Loan Documents, and (d) with respect to Operating Company, the Operating Lease and Permitted Indebtedness (Operating Company).

**4.1.6 Title.** (a) The Borrower (as pledgor under the Pledge Agreement) is the record and beneficial owner of, and Borrower has good and marketable title to the Collateral, free and clear of all Liens whatsoever except the Liens created by the Loan Documents. The Permitted Encumbrances in the aggregate do not materially and adversely affect the value, operation or use of any of the Properties (as currently used) or Borrower's ability to repay the Loan. The Pledge Agreement, together with the delivery of the certificates evidencing ownership of the Pledged Company Interests and the endorsement in blank, as being delivered concurrently herewith, will create a valid perfected, first priority lien on, and security interest in and to, the Collateral, all in accordance with the terms thereof. There are no claims for payment for work, labor or materials affecting any of the Properties which are or may become a Lien prior to, or of equal priority with, the Liens created by the Mortgage Loan Documents.

(b) Each Operating Company has good, marketable title to the Gaming Equipment, free and clear of all Liens whatsoever (except equipment financing and leasing arrangements entered into by Operating Company in the ordinary course of its business (subject to the limitations set forth in the definition of "Permitted Indebtedness (Operating Company)").

**4.1.7 Solvency.** Borrower has (a) not entered into the transaction or executed the Note, this Agreement or any other Loan Documents with the actual intent to hinder, delay or defraud any creditor and (b) received reasonably equivalent value in exchange for its obligations under such Loan Documents. The fair saleable value of Borrower's assets exceeds and will, immediately following the making of the Loan, exceed Borrower's total liabilities, including, without limitation, subordinated, unliquidated, disputed and contingent liabilities. The fair saleable value of Borrower's assets is and will, immediately following the making of the Loan, be greater than Borrower's probable liabilities, including the maximum amount of its contingent liabilities on its debts as such debts become absolute and matured. Borrower's assets do not and, immediately following the making of the Loan will not, constitute unreasonably small capital to carry out its business as conducted or as proposed to be conducted. Borrower does not intend to, and does not believe that it will, incur debt and liabilities (including contingent liabilities and other commitments) beyond its ability to pay such debt and liabilities as they mature (taking into account the timing and amounts of cash to be received by Borrower and the amounts to be payable on or in respect of obligations of Borrower). No petition in bankruptcy has been filed against Borrower, Operating Company, any Loan Party or any constituent Person, and none of Borrower, Operating Company, any Loan Party or any constituent Person has ever made an

assignment for the benefit of creditors or taken advantage of any insolvency act for the benefit of debtors. None of Borrower, Operating Company, any Loan Party or any of their respective constituent Persons are contemplating either the filing of a petition by it under any state or federal bankruptcy or insolvency laws or the liquidation of all or a major portion of Borrower's, Operating Company's, or any Loan Party's assets or properties, and Borrower has no knowledge of any Person contemplating the filing of any such petition against it, Operating Company, any Loan Party or such constituent Persons.

**4.1.8 Full and Accurate Disclosure.** No statement of fact made by Borrower in this Agreement or in any of the other Loan Documents contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained herein or therein not misleading. There is no material fact presently known to Borrower which has not been disclosed to Lender which has, nor as far as Borrower can foresee, might reasonably be expected to have an Individual Material Adverse Effect or an Aggregate Material Adverse Effect.

**4.1.9 No Plan Assets.** Borrower is not an "employee benefit plan," as defined in Section 3(3) of ERISA, subject to Title I of ERISA, and none of the assets of Borrower constitutes or will constitute "plan assets" of one or more such plans within the meaning of 29 C.F.R. Section 2510.3-101. In addition, (a) Borrower is not a "governmental plan" within the meaning of Section 3(32) of ERISA and (b) transactions by or with Borrower are not subject to any state statute regulating investments of, or fiduciary obligations with respect to, governmental plans similar to the provisions of Section 406 of ERISA or Section 4975 of the Code currently in effect, which prohibit or otherwise restrict the transactions contemplated by this Loan Agreement.

**4.1.10 Compliance.** Except as disclosed in the zoning reports obtained by Lender in connection with the origination of the Loan, Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company and each Individual Property (including the use thereof) comply in all material respects with all applicable Legal Requirements, including, without limitation, building and zoning ordinances and codes and Prescribed Laws. Borrower, Mortgage Borrower, Senior Mezzanine Borrower and Operating Company are not in default or violation of (i) any material order, writ, injunction, decree or demand of any Gaming Authority or (ii) any material order, writ, injunction, decree or demand of any other Governmental Authority. There has not been committed by Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any other Person in occupancy of or involved with the operation or use of the Properties any act or omission affording the federal government or any other Governmental Authority the right of forfeiture as against any Individual Property or any part thereof or any monies paid in performance of Borrower's obligations under any of the Loan Documents.

**4.1.11 Financial Information.** All financial data, including, without limitation, the statements of cash flow and income and operating expense, that have been delivered to Lender in connection with the Loan, the Collateral, the Senior Mezzanine Collateral, the Properties and each Loan Party (i) are true, complete and correct in all material respects, (ii) accurately represent in all material respects the financial condition of the Properties as of the date of such reports, and (iii) to the extent prepared or audited by an independent certified public

accounting firm, have been prepared in accordance with GAAP throughout the periods covered, except as disclosed therein. Except for Permitted Encumbrances, Borrower does not have any contingent liabilities, liabilities for taxes, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments that are known to Borrower and reasonably likely to have a materially adverse effect on the Collateral, the Senior Mezzanine Collateral, Borrower, any Loan Party, any Individual Property or the operation thereof as mixed-use hotel and casino properties, except as referred to or reflected in said financial statements. Borrower has no Indebtedness other than the Loan. Except for Permitted Indebtedness (Operating Company), Operating Company does not have any Indebtedness or contingent liabilities, or due and unpaid liabilities for taxes, that are known to Borrower, Mortgage Borrower, Senior Mezzanine Borrower or Operating Company and reasonably likely to have a materially adverse effect on the Collateral, any Senior Mezzanine Collateral, Borrower, any Loan Party, any Individual Property or the operation thereof as mixed-use hotel and casino properties, except as referred to or reflected in said financial statements. Since the date of such financial statements, there has been no material adverse change in the financial condition, operation or business of Borrower or Operating Company from that set forth in said financial statements.

**4.1.12 Condemnation.** No Condemnation or other similar proceeding has been commenced or, to Borrower's best knowledge, is threatened or contemplated with respect to all or any portion of any Individual Property or for the relocation of roadways providing access to any Individual Property.

**4.1.13 Federal Reserve Regulations.** No part of the proceeds of the Loan will be used for the purpose of purchasing or acquiring any "margin stock" within the meaning of Regulation U of the Board of Governors of the Federal Reserve System or for any other purpose which would be inconsistent with such Regulation U or any other Regulations of such Board of Governors, or for any purposes prohibited by Legal Requirements or by the terms and conditions of this Agreement or the other Loan Documents.

**4.1.14 Utilities and Public Access.** Each Individual Property has rights of access to public ways and is served by water, sewer, sanitary sewer and storm drain facilities adequate to service such Individual Property for its respective intended uses. All public utilities necessary or convenient to the full use and enjoyment of each Individual Property are located either in the public right-of-way abutting such Individual Property (which are connected so as to serve such Individual Property without passing over other property) or in recorded easements serving such Individual Property and such easements are set forth in and insured by the Title Insurance Policies. All roads necessary for the use of each Individual Property for their current respective purposes have been completed and dedicated to public use and accepted by all Governmental Authorities.

**4.1.15 Not a Foreign Person.** Borrower is not a "foreign person" within the meaning of §1445(f)(3) of the Code.

**4.1.16 Separate Lots.** Each Individual Property is comprised of one (1) or more parcels which constitute a separate tax lot or lots and does not constitute a portion of any other tax lot not a part of such Individual Property.

**4.1.17 Assessments.** There are no pending or, to Borrower's knowledge, proposed special or other assessments for public improvements or otherwise affecting any Individual Property, nor are there any contemplated improvements to any Individual Property that may result in such special or other assessments.

**4.1.18 Enforceability.** The Loan Documents are not subject to any right of rescission, set-off, counterclaim or defense by Borrower, any Affiliates of Borrower including Holdings, Operating Company or Guarantor, including the defense of usury, nor would the operation of any of the terms of the Loan Documents, or the exercise of any right thereunder, render the Loan Documents unenforceable (subject to principles of equity and bankruptcy, insolvency and other laws generally affecting creditors' rights and the enforcement of debtors' obligations), and Borrower, any Affiliates of Borrower including Holdings, Operating Company and Guarantor have not asserted any right of rescission, set-off, counterclaim or defense with respect thereto.

**4.1.19 No Prior Assignment.** There are no prior assignments of the Leases (including the Operating Leases) or of the Rents (or any Revenue) due and payable or to become due and payable which are presently outstanding. There are no prior assignments of the Collateral which are presently outstanding except in accordance with the Loan Documents.

**4.1.20 Insurance.** Borrower (or Mortgage Borrower or Operating Company) has obtained and has delivered to Lender certified copies of all Policies reflecting the insurance coverages, amounts and other requirements set forth in this Agreement. No material claims have been made under any such Policies except such as have been disclosed to Lender, and no Person, including Borrower, Mortgage Borrower, Senior Mezzanine Borrower and Operating Company, has done, by act or omission, anything which would impair the coverage of any such Policies.

**4.1.21 Use of Property.** Each Individual Property is used exclusively as a mixed-use hotel and casino operation, and other appurtenant and related uses.

**4.1.22 Gaming Licenses and Operating Permits.** (a) Schedule IX contains a correct and complete list of all Gaming Licenses and other material licenses, certification and permits for each of the Properties (and the holder thereof).

(b) Borrower possesses all licenses, permits, franchises, authorizations, certificates, approvals and consents which are material to the ownership of the Collateral. Mortgage Borrower possesses all licenses, permits, franchises, authorizations, certificates, approvals and consents, including, without limitation, all certificates of occupancy, which are material to the ownership and use of each of the Properties, and Operating Company possesses all licenses, permits, franchises, authorizations, certificates, approvals and consents, including, without limitation, all environmental, liquor, Gaming Licenses, health and safety licenses of all Governmental Authorities which are material to the conduct of their business and the use, occupation and operation of each of the Properties and the failure to possess which would have an Individual Material Adverse Effect (collectively, "**Operating Permits**"); each such Operating Permit is and will be in full force and effect (unless, in the case of any Operating Permit, such Operating Permit is no longer necessary or advisable for the conduct of Borrower's, Senior Mezzanine Borrower's, Mortgage Borrower's or Operating Company's business); Borrower,

Senior Mezzanine Borrower, Mortgage Borrower, Operating Company and each of its Affiliates are in compliance in all material respects with all such Operating Permits, and no event (including, without limitation, any material violation of any law, rule or regulation) has occurred which would be reasonably likely to lead to the revocation or termination of any such Operating Permit or the imposition of any material restriction thereon.

(c) Operating Company and each of its Affiliates possesses all Gaming Licenses which are material to the conduct of their business and the ownership, use, occupation and operation of each of the Properties. Further, Borrower hereby represents and warrants as follows:

(i) Each Gaming License is in full force and effect (except for such Gaming Licenses as are no longer necessary or advisable for the conduct of Borrower's, Senior Mezzanine Borrower's, Mortgage Borrower's or Operating Company's business); Operating Company and each of its Affiliates, respective directors, members, managers, officers, key personnel and Persons holding a five percent (5%) or greater equity or economic interests directly or indirectly in Operating Company is in compliance in all material respects with all such Gaming Licenses (to the extent required by Legal Requirements), and no event (including, without limitation, any material violation of any Legal Requirements) has occurred which would be reasonably likely to lead to the revocation or termination of any such Gaming Licenses or the imposition of any restriction thereon;

(ii) Borrower has no reason to believe Mortgage Borrower and Operating Company will not be able to maintain in effect all Gaming Licenses necessary for the lawful conduct of their respective businesses or operations wherever now conducted and as planned to be conducted, including the ownership and operation of the Casino Components, pursuant to all applicable Legal Requirements;

(iii) All Gaming Licenses are in full force and effect and have not been amended or otherwise modified, rescinded, revoked or assigned in any manner that would reasonably be expected to have an Individual Material Adverse Effect;

(iv) Neither Mortgage Borrower nor Operating Company is in default in any material respect under, or in violation in any material respect of, any Gaming License (and no event has occurred, and no condition exists, which, with the giving of notice or passage of time or both, would constitute a default thereunder or violation thereof that has caused or would reasonably be expected to cause the loss of any Gaming License) (unless, in the case of any Gaming License, such Gaming License is no longer necessary or advisable for the conduct of Borrower's or Operating Company's business);

(v) Neither Mortgage Borrower nor Operating Company has received any notice of any violation of Legal Requirements which has caused or would reasonably be expected to cause any Gaming License to be suspended, forfeited, modified in any manner that would have an Individual Material Adverse Effect, not renewed, rescinded or revoked (unless, in the case of any Gaming License, such Gaming License is no longer

necessary or advisable for the conduct of Mortgage Borrower's or Operating Company's business);

(vi) No condition exists or event has occurred which would reasonably be expected to result in the suspension, revocation, impairment, forfeiture, rescission or non-renewal of any Gaming License (unless, in the case of any Gaming License, such Gaming License is no longer necessary or advisable for the conduct of Mortgage Borrower's or Operating Company's business); and

(vii) The continuation, validity and effectiveness of all Gaming Licenses will not be adversely affected by the transactions contemplated by this Agreement.

(d) There is no proceeding, investigation, or disciplinary action (including, without limitation, before any Gaming Authority, under any Gaming Law or under any Gaming License or other Operating Permit) pending or, to Borrower's knowledge, threatened against any of Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or, to Borrower's knowledge, any of their respective directors, members, managers, officers, key personnel or Persons holding a five percent (5%) or greater direct or indirect equity or economic interest in Mortgage Borrower, Senior Mezzanine Borrower or Operating Company and that could reasonably be expected to have an Individual Material Adverse Effect.

(e) There is no proceeding (including, without limitation, before any Gaming Authority, under any Gaming Law or under any Gaming License or other Operating Permit) pending or, to Borrower's knowledge, threatened either (a) in connection with, or that seeks to restrain, enjoin, prevent the consummation of or otherwise challenge, any of the Loan Documents or any of the transactions contemplated therein, or (b) that could reasonably be expected to have an Individual Material Adverse Effect.

(f) Neither the execution, delivery or performance of any of the Loan Documents (nor the Securitization or any participations in the Loan, or the creation or sale of any of the Mortgage Loan or Mezzanine Loans) will (i) require the consent of any Gaming Authority not heretofore obtained or (ii) allow or result in the imposition of any material penalty under, or the revocation or termination of, any Gaming License or any material impairment of the rights of the holder of any Gaming License.

**4.1.23 Intentionally Omitted.**

**4.1.24 Intentionally Omitted.**

**4.1.25 Intentionally Omitted.**

**4.1.26 Leases.** (a) The Operating Leases (together with any certificates and notifications entered into in connection therewith) and the Operating Lease Guaranty provided to Lender on the Closing Date are true, correct, accurate and complete copies of such documents and constitute the entire agreement between the parties thereto with respect to the subject matter therein and there are no written agreements modifying, amending, supplementing or restating such documents. Except as set forth on Schedule X, the Properties are not subject to any space Leases other than the Operating Lease and space Leases providing for occupancy of less than

one hundred (100) square feet. Each Operating Lease is a “true lease” for all purposes of the Bankruptcy Code (including Section 365(d) and 502(b)(6) thereof) and applicable Legal Requirements, and no Operating Lease constitutes a financing or conveys any interest in the Properties other than the leasehold interest therein demised thereby. Mortgage Borrower is the owner and lessor of landlord’s interest in the Operating Lease and the Operating Lease Guaranty. Currently, no Person has any possessory interest in any Individual Property or right to occupy the same except under and pursuant to the provisions of the Operating Lease, any other space Leases listed on Schedule X and, with respect to a right to occupancy only (and not a possessory interest), hotel guests. Each Operating Lease and Operating Lease Guaranty is in full force and effect and there are no material events of default thereunder by any party thereto and there are no conditions that, with the passage of time or the giving of notice, or both, would constitute a default thereunder. No Rent under any Operating Lease has been paid more than one (1) month in advance of its due date and no Rents or charges under the Operating Lease have been waived, released or otherwise discharged or compromised. There has been no prior sale, transfer or assignment, hypothecation or pledge of any Operating Lease, any Operating Lease Guaranty or of the Rents. No Operating Company has assigned the Operating Lease or sublet all or any portion of any Individual Property except pursuant to the Operating Lease and the terms hereof.

(b) The Properties are not subject to any space Leases other than the Leases described in Schedule X attached hereto. Operating Company is the owner and lessor of landlord’s interest in all such space Leases. No Person has any possessory interest in any Individual Property except under and pursuant to the provisions of the space Leases, and no Person has any right to occupy any portion of any Individual Property except under and pursuant to the provisions of the space Leases and hotel guests. The current space Leases are in full force and effect and, except as shown in Schedule X attached hereto, to Borrower’s knowledge, there are no material defaults thereunder by either party and there are no conditions that, with the passage of time or the giving of notice, or both, would constitute defaults thereunder. No Rent has been paid more than one (1) month in advance of its due date. Except as shown in Schedule X attached hereto, all work to be performed by Mortgage Borrower (or Operating Company) under each space Lease has been performed as and to the extent required and has been accepted by the applicable tenant, and any payments, free rent, partial rent, rebate of rent or other payments, credits, allowances or abatements required to be given by Mortgage Borrower (or Operating Company) to any tenant has already been received by such tenant. There has been no prior sale, transfer or assignment, hypothecation or pledge of any space Lease or of the Rents received therein which is still in effect. To Borrower’s knowledge, except as shown on Schedule X, no tenant listed on Schedule X has assigned its space Lease or sublet all or any portion of the premises demised thereby, no such tenant holds its leased premises under assignment or sublease, nor does anyone except such tenant and its employees occupy such leased premises. No tenant under any space Lease has a right or option pursuant to such Lease or otherwise to purchase all or any part of the leased premises or the building of which the leased premises are a part. No tenant under any space Lease has any right or option for additional space in the Improvements except pursuant to such tenant’s space Lease.

**4.1.27 Intentionally Omitted.**

**4.1.28 Principal Place of Business; State of Organization.** (a) Borrower's principal place of business as of the date hereof is the address set forth in Schedule I. Each Borrower is organized under the laws of the State of Delaware.

(b) Operating Company's principal place of business as of the date hereof is the address set forth in Schedule I. Each Operating Company is organized under the laws of the state of Delaware.

**4.1.29 Filing and Recording Taxes.** All transfer taxes, deed stamps, intangible taxes or other amounts in the nature of transfer taxes required to be paid by any Person under applicable Legal Requirements currently in effect in connection with the transfer of the Collateral to Borrower have been paid. All recording, stamp, intangible or other similar tax required to be paid by any Person under applicable Legal Requirements currently in effect in connection with the execution, delivery, recordation, filing, registration, perfection or enforcement of any of the Loan Documents, including, without limitation, the Pledge Agreement, have been paid, and, under current Legal Requirements, the Pledge Agreement is enforceable in accordance with their respective terms by Lender (or any subsequent holder thereof), subject to principles of equity and bankruptcy, insolvency and other laws generally applicable to creditors' rights and the enforcement of debtors' obligations.

**4.1.30 Special Purpose Entity/Separateness.** (a) Until the Debt has been paid in full, Borrower hereby represents, warrants and covenants that Borrower and each SPE Party is, shall be and shall continue to be a Special Purpose Entity.

(b) The representations, warranties and covenants set forth in Section 4.1.30(a) shall survive for so long as any amount remains payable to Lender under this Agreement or any other Loan Document.

(c) All of the assumptions made in the Insolvency Opinion, including, but not limited to, any exhibits attached thereto, are true and correct and any assumptions made in any subsequent non-consolidation opinion required to be delivered in connection with the Loan Documents (an "**Additional Insolvency Opinion**"), including, but not limited to, any exhibits attached thereto, will have been and shall be true and correct. Borrower has complied and will comply with, and Borrower shall cause each SPE Party and Operating Company to comply with, all of the assumptions made with respect to the SPE Parties and Operating Company in the Insolvency Opinion. The SPE Parties will have complied and will comply with all of the assumptions made with respect to the SPE Parties in any Additional Insolvency Opinion. Each entity with respect to which an assumption shall be made in any Additional Insolvency Opinion will have complied and will comply with all of the assumptions made with respect to it in any Additional Insolvency Opinion.

(d) All of the assumptions made in the True Lease Opinion, including, but not limited to, any exhibits attached thereto, are true and correct and any assumptions made in any subsequent true lease opinion required to be delivered in connection with the Loan Documents (an "**Additional True Lease Opinion**"), including, but not limited to, any exhibits attached thereto, will have been and shall be true and correct. Each SPE Party has complied and will comply with, and Borrower shall cause Operating Company to comply with, all of the

assumptions made with respect to such SPE Parties and Operating Company in the True Lease Opinion. Each SPE Party will have complied and will comply with all of the assumptions made with respect to such SPE Parties in any Additional True Lease Opinion. Each entity with respect to which an assumption shall be made in any Additional True Lease Opinion will have complied and will comply with all of the assumptions made with respect to it in any Additional True Lease Opinion.

**4.1.31 Operating Leases; Operating Lease Guaranty.** The Operating Leases and the Operating Lease Guaranty are in full force and effect and there is no default thereunder by any party thereto and no event has occurred that, with the passage of time and/or the giving of notice would constitute a default thereunder.

**4.1.32 Illegal Activity.** No portion of any Individual Property or the Collateral has been or will be purchased with proceeds of any illegal activity.

**4.1.33 Intentionally Omitted.**

**4.1.34 Investment Company Act.** Borrower is not an “investment company” or a company “controlled” by an “investment company,” within the meaning of the Investment Company Act of 1940, as amended.

**4.1.35 Embargoed Person.** At all times throughout the term of the Loan, including after giving effect to any Transfers permitted pursuant to the Loan Documents, (a) none of the funds or other assets of Borrower, Senior Mezzanine Borrower, Mortgage Borrower, Holdings, Operating Company and Guarantor constitute property of, or are beneficially owned, directly or indirectly, by any person, entity or government subject to trade restrictions under U.S. law, including, but not limited to, the International Emergency Economic Powers Act, 50 U.S.C. § 1701 *et seq.*, The Trading with the Enemy Act, 50 U.S.C. App. 1 *et seq.*, and any Executive Orders or regulations promulgated thereunder with the result that the investment in any Loan Party or Operating Company, as applicable (whether directly or indirectly), is prohibited by law or the Loan made by the Lender is in violation of law (“**Embargoed Person**”); (b) no Embargoed Person has any interest of any nature whatsoever in any Loan Party, Holdings or Operating Company, as applicable, with the result that the investment in any Loan Party, Holdings or Operating Company, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law; and (c) none of the funds of any Loan Party, Holdings or Operating Company, as applicable, have been derived from any unlawful activity with the result that the investment in any Loan Party, Borrower, Holdings or Operating Company, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law.

**4.1.36 Operating Lease Subsidiary.** Tahoe Propco, LLC is the owner of one hundred percent (100%) of the equity interests of Ground Lease Subsidiary; Ground Lease Subsidiary does not own any assets other than its interests in the Ground Lease and does not have any liabilities other than liabilities under the Ground Lease; Ground Lease Subsidiary does not engage in any business other than that related to its ownership of interests in the Ground Lease.

**4.1.37 Taxes including Gaming Taxes and Fees.** Mortgage Borrower, Borrower and each of their respective Affiliates, and Operating Company and each of its Affiliates, have filed or caused to be filed all Federal, state, local and foreign tax returns (including, without limitation, all reports relating to gaming taxes and fees to the Gaming Authorities) which are required to be filed by them, on or prior to the date hereof, other than tax returns in respect of taxes that (i) are not franchise, capital or income taxes, (ii) in the aggregate are not material and (iii) would not, if unpaid, result in the imposition of any material Lien on any property or assets of Mortgage Borrower, Senior Mezzanine Borrower, Borrower or Operating Company or any of their respective Affiliates. All such filed tax returns were, to Borrower's knowledge, true, correct and complete when filed. Mortgage Borrower, Senior Mezzanine Borrower, Borrower, Operating Company and each of their respective Affiliates, have paid or caused to be paid all taxes shown to be due and payable on such filed returns or on any assessments received by them, other than any taxes or assessments the validity of which Mortgage Borrower, Senior Mezzanine Borrower, Borrower, Operating Company or such Affiliate, as applicable) is contesting in good faith by appropriate proceedings, and with respect to which Mortgage Borrower, Senior Mezzanine Borrower, Borrower, Operating Company or such Affiliate, as applicable, shall have set aside adequate reserves. None of Mortgage Borrower, Senior Mezzanine Borrower, Borrower, Operating Company or any of their respective Affiliates, has as of the date hereof requested or been granted any extension of time to file any Federal, state, local or foreign tax return. None of Mortgage Borrower, Senior Mezzanine Borrower, Borrower or Operating Company is party to (or has any obligation under) any tax sharing agreement.

**4.1.38 Intentionally Omitted.**

**4.1.39 Intentionally Omitted.**

**4.1.40 Operation of Property.**

(a) The operation, management and use of each Individual Property by Mortgage Borrower and Operating Company is in compliance in all material respects with applicable Legal Requirements, including all applicable Gaming Laws, and all other federal, state, or local governmental authorities including, without limitation, those requirements relating to such Individual Property's physical structure and environment, except to the extent that non-compliance would not reasonably be expected to have an Individual Material Adverse Effect.

(b) The licenses, permits, and regulatory agreements, approvals and registrations relating to each Individual Property, including the Gaming Licenses, (i) may not be, and have not been, transferred to any location other than any Individual Property; have not been pledged as collateral security for any other loan or indebtedness; and are held free from restrictions or known conflicts that would materially impair the use or operation of any Individual Property as intended, (b) are in full force and effect and in good standing and (c) are not provisional, conditional or probationary in any manner.

(c) None of Mortgage Borrower, Borrower, Senior Mezzanine Borrower, Holdings, Guarantor or Operating Company is currently the subject of any proceeding by any Governmental Authority, and no notice of any violation has been received from a Governmental

Authority that, in either case, would reasonably be expected to have an Individual Material Adverse Effect or an Aggregate Material Adverse Effect.

(d) None of Mortgage Borrower, Senior Mezzanine Borrower, Borrower or Operating Company has received a statement of charges or deficiencies and no penalty enforcement actions have been undertaken against any of them relating to any Individual Property by any Governmental Authority during the last three (3) calendar years which caused or could cause an Individual Material Adverse Effect or an Aggregate Material Adverse Effect.

(e) Each Operating Lease and Operating Lease Guaranty is in full force and effect and no party to either agreement has defaulted thereunder in any material respect.

(f) None of Mortgage Borrower or Operating Company has pledged its receivables relating to any of the Properties as collateral security for any other loan or indebtedness.

**4.1.41 Senior Loan Representations and Warranties.** All of the representations and warranties contained in the Mortgage Loan Documents and Senior Mezzanine Loan Documents are hereby incorporated into this Agreement and deemed made hereunder as and when made thereunder and shall remain incorporated without regard to any waiver, amendment or other modification thereof by the Mortgage Lender or Senior Mezzanine Lender or to whether the related Mortgage Loan Document or Senior Mezzanine Loan Document has been repaid or otherwise terminated, unless otherwise consented to in writing by Lender.

**4.1.42 Affiliates.** Effective as of the consummation of the transactions contemplated by this Agreement, the sole member of Borrower is Principal, which owns one hundred percent (100%) of the membership interests in Borrower. Borrower does not have any subsidiaries except as set forth in Schedule VIII.

**Section 4.2. Survival of Representations.** Borrower agrees that all of the representations and warranties of Borrower set forth in Section 4.1 and elsewhere in this Agreement and in the other Loan Documents shall survive for so long as any amount remains owing to Lender under this Agreement or any of the other Loan Documents by Borrower. All representations, warranties, covenants and agreements made in this Agreement or in the other Loan Documents by Borrower shall be deemed to have been relied upon by Lender notwithstanding any investigation heretofore or hereafter made by Lender or on its behalf.

## **V. BORROWER COVENANTS**

**Section 5.1. Affirmative Covenants.** From the date hereof and until payment and performance in full of all obligations of Borrower under the Loan Documents or the earlier release of the Liens of the Pledge Agreement (and all related obligations) in accordance with the terms of this Agreement and the other Loan Documents, Borrower hereby covenants and agrees with Lender that:

**5.1.1 Existence; Compliance with Legal Requirements.** Borrower shall, and shall cause Mortgage Borrower, Senior Mezzanine Borrower and Operating Company to, do or cause to be done all things necessary to preserve, renew and keep in full force and effect their existence, rights, licenses, permits and franchises and comply with all Legal Requirements applicable to Borrower, Senior Mezzanine Borrower, Mortgage Borrower, the Collateral, the Senior Mezzanine Collateral, Operating Company and the Properties, including, without limitation, Prescribed Laws. There shall never be committed by Borrower and Borrower shall not permit Mortgage Borrower or Senior Mezzanine Borrower to permit any other Person in occupancy of or involved with the operation or use of the Properties, including Operating Company, to commit any act or omission affording the federal government or any state or local government the right of forfeiture against the Collateral, the Senior Mezzanine Collateral, any Individual Property or any part thereof or any monies paid in performance of Borrower's obligations under any of the Loan Documents. Borrower hereby covenants and agrees not to commit, permit or suffer to exist any act or omission affording such right of forfeiture. Borrower shall, and shall cause Mortgage Borrower to, at all times maintain, preserve and protect all franchises and trade names and preserve all the remainder of its property used or useful in the conduct of its business and shall keep the Properties in good working order and repair. Borrower shall cause Mortgage Borrower to keep the Properties insured at all times as (and in the amounts) provided elsewhere in this Agreement. Borrower shall cause Mortgage Borrower to operate any Individual Property that is the subject of the O&M Agreement in accordance with the terms and provisions thereof in all material respects. After prior notice to Lender, Borrower, at its own expense, may contest (or cause Mortgage Borrower to contest) by appropriate legal proceeding promptly initiated and conducted in good faith and with due diligence, the validity of any Legal Requirement, the applicability of any Legal Requirement to Borrower, Senior Mezzanine Borrower, Mortgage Borrower, the Collateral, the Senior Mezzanine Collateral or any Individual Property or any alleged violation of any Legal Requirement, provided that (i) no Event of Default has occurred and remains uncured; (ii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any applicable material instrument to which Borrower, Senior Mezzanine Borrower or Mortgage Borrower is subject and shall not constitute a default thereunder and such proceeding shall be conducted in accordance with all Legal Requirements; (iii) none of the Collateral, the Senior Mezzanine Collateral or any Individual Property nor any material part thereof or interest therein will be in imminent danger of being sold, forfeited, terminated, cancelled or lost; (iv) Borrower shall promptly upon receipt of a final, non-appealable determination thereof comply with any such Legal Requirement determined to be valid or applicable or cure any violation of any such Legal Requirement; (v) such proceeding shall suspend the enforcement of the contested Legal Requirement against Borrower, Senior Mezzanine Borrower, Mortgage Borrower, the Collateral, the Senior Mezzanine Collateral and any Individual Property; and (vi) Borrower shall furnish such security as may be required in the proceeding, or as may be reasonably requested by Lender, to insure compliance with such Legal Requirement, together with all interest and penalties payable in connection therewith. Lender may apply any such security, as necessary to cause compliance with such Legal Requirement at any time when, in the reasonable judgment of Lender, the validity, applicability or violation of such Legal Requirement is finally established or the Collateral, the Senior Mezzanine Collateral or any Individual Property (or any part thereof or interest therein) shall be in imminent danger of being sold, forfeited, terminated, cancelled or lost.

**5.1.2 Taxes and Other Charges.** Borrower shall pay or shall cause Mortgage Borrower to pay or cause to be paid all Taxes and Other Charges now or hereafter levied or assessed or imposed against the Properties or any part thereof as the same become due and payable; provided, however, Borrower's obligation to cause Mortgage Borrower to directly pay or cause to be paid Taxes shall be suspended for so long as Borrower complies with the terms and provisions of Section 7.2 hereof. Borrower will deliver or cause to be delivered to Lender receipts for payment or other evidence satisfactory to Lender that the Taxes and Other Charges have been so paid or are not then delinquent no later than the date on which the Taxes and/or Other Charges would otherwise be delinquent if not paid. Borrower shall furnish or cause to be furnished to Lender receipts for the payment of the Taxes and the Other Charges prior to the date the same shall become delinquent provided, however, Borrower is not required to furnish such receipts for payment of Taxes in the event that such Taxes have been paid by Lender pursuant to Section 7.2 hereof. Borrower shall not suffer (and shall not permit Mortgage Borrower to suffer) and shall promptly pay or cause to be paid and discharged (or cause Mortgage Borrower to pay or cause to be paid and discharged any Lien or charge whatsoever which may be or become a Lien or charge against the Properties other than Permitted Encumbrances, and shall promptly pay or cause to be paid for all utility services provided to the Properties. After prior notice to Lender, Borrower, at its own expense, may contest (or cause Mortgage Borrower to contest) by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any Taxes or Other Charges, provided that (a) no Default or Event of Default has occurred and remains uncured; (b) such proceeding shall be permitted under and be conducted in accordance with the provisions of any applicable material other instrument to which Borrower or Mortgage Borrower is subject and shall not constitute a default thereunder and such proceeding shall be conducted in accordance with all Legal Requirements; (c) none of the Collateral, the Senior Mezzanine Collateral, any Individual Property or any part of either or interest in either will be in imminent danger of being sold, forfeited, terminated, cancelled or lost; (d) Borrower shall promptly upon receipt of a final, non-appealable determination thereof pay (or cause Mortgage Borrower to pay) the amount of any such Taxes or Other Charges, together with all costs, interest and penalties which may be payable in connection therewith; (e) such proceeding shall suspend the collection of such contested Taxes or Other Charges from the applicable Individual Property; and (f) Borrower shall furnish or cause Mortgage Borrower to furnish such security as may be required in the proceeding, or as may be reasonably requested by Lender, to insure the payment of any such Taxes or Other Charges, together with all interest and penalties thereon. Lender may pay over any such cash deposit or part thereof held by Lender to the claimant entitled thereto at any time when, in the judgment of Lender, the entitlement of such claimant is established or any Individual Property (or part thereof or interest therein) shall be in danger of being sold, forfeited, terminated, cancelled or lost or there shall be any danger of the Lien of any Mortgage being primed by any related Lien.

**5.1.3 Litigation.** Borrower shall give prompt notice to Lender of any litigation or governmental proceedings pending or, to Borrower's knowledge, threatened against Borrower, Senior Mezzanine Borrower, Mortgage Borrower, the Collateral, Operating Company, Holdings or Guarantor which, in any such case, might materially adversely affect Borrower's, Senior Mezzanine Borrower's, Mortgage Borrower's, the Collateral's, Operating Company's, Holdings's or Guarantor's condition (financial or otherwise) or business or any Individual Property. Borrower shall not, without the prior written consent of Lender (which may be

furnished or withheld at its sole and absolute discretion), give its consent or approval to the settlement of any claim against Borrower, other than a fully insured third party claim, in any amount greater than One Hundred Thousand and no/100 Dollars (\$100,000.00).

**5.1.4 Access to Properties.** Borrower shall cause Mortgage Borrower to permit agents, representatives and employees of Lender and any Noteholder, and prospective purchasers of any Note or any interest therein, to inspect the Properties or any part thereof at reasonable hours upon reasonable advance notice, and Borrower shall cause Operating Company to permit such access by Lender, in each case subject to the rights of tenants under Leases and Hotel guests.

**5.1.5 Notice of Default.** Borrower shall promptly advise Lender of any material Default or Event of Default of which Borrower has knowledge, including any Mortgage Loan Default, Senior Mezzanine Loan Default, Senior Mezzanine Loan Event of Default or Mortgage Loan Event of Default.

**5.1.6 Cooperate in Legal Proceedings.** Borrower shall cooperate fully with Lender with respect to any proceedings before any court, board or other Governmental Authority which may in any way affect the rights of Lender hereunder or any rights obtained by Lender under any of the other Loan Documents and, in connection therewith, permit Lender, at its election, to participate in any such proceedings.

**5.1.7 Perform Loan Documents.** Borrower shall observe, perform and satisfy all the terms, provisions, covenants and conditions of, and shall pay when due all costs, fees and expenses to the extent required under the Loan Documents executed and delivered by, or applicable to, Borrower.

**5.1.8 Award and Insurance Benefits.** Borrower shall cooperate with Lender in obtaining for Lender the benefits of any Awards or Insurance Proceeds lawfully or equitably payable in connection with any Individual Property, and Lender shall be reimbursed for any actual, reasonable out-of-pocket expenses incurred in connection therewith (including actual, reasonable out-of-pocket attorneys' fees and disbursements, and, if reasonably required, the payment by Borrower of the expense of an appraisal on behalf of Lender in case of Casualty or Condemnation affecting any Individual Property or any part thereof) out of such Insurance Proceeds.

**5.1.9 Further Assurances.** Borrower shall and shall cause Mortgage Borrower, Senior Mezzanine Borrower, Guarantor and Operating Company to, at Borrower's sole cost and expense:

(a) furnish to Lender all instruments, documents, boundary surveys, footing or foundation surveys, certificates, plans and specifications, appraisals, title and other insurance reports and agreements, and each and every other document, certificate, agreement and instrument, in each case in such party's possession, not subject to confidentiality restrictions barring the delivery of such materials, and which are either required to be furnished by Borrower or Operating Company pursuant to the terms of the Loan Documents or which are reasonably requested by Lender in connection therewith;

(b) execute and deliver to Lender such documents, instruments, certificates, assignments and other writings, and do such other acts necessary or desirable, to evidence, preserve and/or protect the collateral at any time securing or intended to secure the obligations of Borrower under the Loan Documents, as Lender may reasonably require; and

(c) do and execute all and such further lawful and reasonable acts, conveyances and assurances for the better and more effective carrying out of the intents and purposes of this Agreement and the other Loan Documents, as Lender shall reasonably require from time to time.

**5.1.10 Mortgage Taxes.** Borrower represents that it has caused Mortgage Borrower to pay all state, county and municipal recording and all other taxes imposed upon the execution and recordation of the Mortgage.

**5.1.11 Financial Reporting.** (a) Borrower will keep or will cause to be kept and maintained on a Fiscal Year basis, in accordance with GAAP (or such other accounting basis acceptable to Lender), books, records and accounts reflecting all of the financial affairs of Borrower, Senior Mezzanine Borrower and Mortgage Borrower and all items of income and expense in connection with the operation on an individual basis of the Properties. Lender (at Lender's sole cost and expense) shall have the right from time to time at all times during normal business hours upon reasonable notice to examine the books, records and accounts of Borrower, Senior Mezzanine Borrower and Mortgage Borrower at the office of Borrower or any other Person maintaining such books, records and accounts and to make such copies or extracts thereof as Lender shall desire. After the occurrence and during the continuance of an Event of Default, Borrower shall pay any costs and expenses incurred by Lender to examine Borrower's, Senior Mezzanine Borrower's, Mortgage Borrower's or to the extent permitted under the Operating Lease, Operating Company's accounting records with respect to the Properties, as Lender shall determine to be necessary or appropriate in the protection of Lender's interest.

(b) Borrower will furnish or cause to be furnished to Lender annually, by no later than April 30, 2009, and thereafter within no more than one hundred twenty (120) days following the end of each Fiscal Year of Borrower, a complete copy of the annual financial statements of the Operating Company, Mortgage Borrower, Senior Mezzanine Borrower and Borrower (and of no other entity or Person), audited by a "Big Four" accounting firm or other independent certified public accountant acceptable to Lender in accordance with GAAP (or such other accounting basis acceptable to Lender) covering the Properties on a combined basis for such Fiscal Year (and no other Persons, Properties or assets) and containing statements of profit and loss for the Operating Companies, Borrower, Senior Mezzanine Borrower, Mortgage Borrower and the Properties (on a combined basis) and a balance sheet for the Operating Companies, Borrower, Senior Mezzanine Borrower, Mortgage Borrower and the Properties (on a combined basis), in each case showing no other assets than the Properties (and the interests of Operating Company, Mortgage Borrower, Senior Mezzanine Borrower and Borrower therein). In addition, Borrower will furnish or cause to be furnished to Lender by no later than April 30, 2008 (i) a "balance sheet only audit" prepared by a "Big Four" accounting firm or other independent certified public accountant acceptable to Lender (for the Fiscal Year ending December 31, 2007) and (ii) a complete copy of annual financial statements for the Operating Company, Mortgage Borrower, Senior Mezzanine Borrower and Borrower prepared in

accordance with GAAP (or such other accounting basis acceptable to Lender) covering the Operating Companies, Mortgage Borrower, Borrower, Senior Mezzanine Borrower, and the Properties on a combined basis for such Fiscal Year (ending December 31, 2007) and containing statements of profit and loss for the Operating Companies, Mortgage Borrower, Senior Mezzanine Borrower, Borrower and the Properties (in each case, on a combined basis), and a balance sheet for the Operating Companies, Mortgage Borrower, Senior Mezzanine Borrower, Borrower and the Properties (in each case on a combined basis). All such statements (including statements for the Fiscal Year ending December 31, 2007, and thereafter for all statements provided yearly to Lender) shall set forth the financial condition and the results of operations for the Properties for such Fiscal Year, and shall include, but not be limited to, amounts representing Borrower's reasonable and good faith determination of aggregate annual EBITDAR from all of the Properties and capital expenditures (allocated between maintenance and growth) at the Properties (it being acknowledged that Borrower's statement of EBITDAR pursuant to the above provisions of this sentence and the balance of this Section 5.1.11 shall not be binding on Lender and shall be subject to Lender's reasonable review). All such statements (including statements for the Fiscal Year ending December 31, 2007, and thereafter for all statements provided yearly to Lender) shall also set forth unaudited schedules for each Individual Property, detailing the statements of profit and loss and a balance sheet for each Individual Property, as well as gross revenues, gross hotel and casino revenues, EBITDAR and capital expenditures (allocated between maintenance and growth). The annual financial statements, as described above, shall be accompanied by (1) a comparison of the budgeted income and expenses and the actual income and expenses for the prior Fiscal Year, (2) in the case of any financial statements for Fiscal Year 2008 and thereafter, an unqualified opinion of a "Big Four" accounting firm or other independent certified public accountant reasonably acceptable to Lender, (3) room rate reports and RevPAR calculations, and (4) an Officer's Certificate certifying (A) that each annual financial statement presents fairly the financial condition and the results of operations of the Operating Companies, Borrower, Mortgage Borrower, Senior Mezzanine Borrower and the Properties being reported upon, (B) that such financial statements have been prepared in accordance with GAAP (or such other accounting basis acceptable to Lender) and (C) as of the date thereof whether there exists an event or circumstance which constitutes a Default or Event of Default, and if such Default or Event of Default exists, the nature thereof, the period of time it has existed and the action then being taken to remedy the same. Any audits performed by Borrower (and any audited materials and other information provided to Lender, as required hereunder in order for Borrower to comply with the requirements of this subparagraph (b)) may be performed with respect to the Properties on a "combining basis" (so that a single audit of the Properties, rather than individual audits of each of the separate Properties, may be performed and provided).

(c) Borrower will furnish, or cause to be furnished, to Lender on or before sixty (60) days after the end of each fiscal quarter the following items, accompanied by an Officer's Certificate stating that such items fairly present the financial condition and results of the Operating Company, Mortgage Borrower, Senior Mezzanine Borrower, Borrower and the Properties, subject to normal year end adjustments, as applicable: (i) quarterly and year to date operating statements (including Capital Expenditures) noting such information as is necessary and sufficient to fairly represent the financial position and results of operation of the Properties during such quarter, and containing a comparison of budgeted income and expenses and the actual income and expenses together with a detailed explanation of any variances of ten percent (10%) or more between budgeted and actual amounts for such periods, all in form reasonably

satisfactory to Lender; and (ii) a calculation reflecting the Debt Service Coverage Ratio, gross revenues, gross hotel and casino revenues, EBITDAR and capital expenditures (allocated between maintenance and growth, in each case for the immediately preceding twelve (12) month period as of the last day of such quarter (it being acknowledged that Borrower's statement of EBITDAR pursuant to the above provisions of this sentence and the balance of this Section 5.1.11 shall not be binding on Lender and shall be subject to Lender's reasonable review). Borrower shall provide the statements and calculations required hereunder on both a "combined basis" for all Properties and on an Individual Property-by-Individual Property basis. In addition, such Officer's Certificate shall also state that the representations and warranties of Borrower set forth in Section 4.1.30 are true and correct as of the date of such certificate and that there are no trade payables outstanding for more than ninety (90) days. In addition, prior to a Securitization or Syndication, Borrower shall be obligated to provide the statements and calculations, as well as the Officer's Certificate, described in this subparagraph (c) to Lender on a monthly basis (such requirements to be modified as appropriate to reflect the fact that the information shall be required to be provided monthly (e.g., monthly rent rolls, monthly and year-to-date operating statements, a calculation reflecting the Debt Service Coverage Ratio for the immediately preceding twelve (12) month period as of the last day of such month), in each case within no more than thirty (30) days following the end of each calendar month.

(d) For the partial year period commencing on the date hereof, and for each Fiscal Year thereafter, Borrower shall submit to Lender for informational purposes only an Annual Budget not later than the commencement of such period or Fiscal Year in form reasonably satisfactory to Lender.

(e) Intentionally Omitted.

(f) If, at the time one or more Disclosure Documents are being prepared for a public Securitization, Lender expects that Borrower alone or Borrower and one or more Affiliates of Borrower collectively, or the Properties and Related Properties collectively, will be a "**Significant Obligor**", as that term is defined in Item 1101(k) of Regulation AB (as defined below), Borrower shall furnish to Lender upon request (i) the selected financial data or, if applicable, net operating income, required under Item 1112(b)(1) of Regulation AB, if Lender expects that the principal amount of the Loan together with any other loans made to an Affiliate of Borrower or secured by a Related Property, that is included in a Securitization with the Loan (each, a "**Related Loan**") as of the cut-off date for such Securitization may, or if the principal amount of the Loan together with any Related Loans as of the cut-off date for such Securitization and at any time during which the Loan and any Related Loans are included in a Securitization does, equal or exceed ten percent (10%) (but less than twenty percent (20%)) of the aggregate principal amount of all loans included or expected to be included, as applicable, in the Securitization or (ii) the financial statements required under Item 1112(b)(2) of Regulation AB, if Lender expects that the principal amount of the Loan together with any Related Loans as of the cut-off date for such Securitization may, or if the principal amount of the Loan together with any Related Loans as of the cut-off date for such Securitization and at any time during which the Loan and any Related Loans are included in a Securitization does, equal or exceed twenty percent (20%) of the aggregate principal amount of all loans included or expected to be included, as applicable, in the Securitization. Such financial data or financial statements shall be furnished to Lender (A) within ten (10) Business Days after written notice from Lender in connection with

the preparation of Disclosure Documents for the Securitization, (B) not later than thirty (30) days after the end of each fiscal quarter of Borrower and (C) not later than sixty (60) days after the end of each fiscal year of Borrower; provided, however, that Borrower shall not be obligated to furnish financial data or financial statements pursuant to clauses (B) or (C) of this sentence with respect to any period for which a filing pursuant to the Exchange Act in connection with or relating to the Securitization (an “**Exchange Act Filing**”) is not required. If requested by Lender, in writing, Borrower shall use commercially reasonable efforts to furnish to Lender financial data and/or financial statements for any tenant of any of the Properties (other than a tenant that is a reporting company under the Exchange Act) if, in connection with a Securitization, Lender expects there to be, with respect to such tenant or group of affiliated tenants, a concentration within all of the loans included or expected to be included, as applicable, in the Securitization such that such tenant or group of affiliated tenants would constitute a Significant Obligor. “**Related Property**” shall mean a parcel of real property, together with improvements thereon and personal property related thereto, that is “related”, within the meaning of the definition of Significant Obligor, to any of the Properties. “**Regulation AB**” shall mean Regulation AB under the Securities Act and the Exchange Act, as such Regulation may be amended from time to time.

(g) All financial data and financial statements provided by Borrower, Senior Mezzanine Borrower, Mortgage Borrower and Operating Company hereunder pursuant to Section 5.1.11(f), shall be prepared in accordance with GAAP, and all such financial statements shall meet the requirements of Regulation AB, Regulation S-X, Regulation S-K to the extent applicable and any other applicable legal requirements. All financial statements referred to in clause (ii) of Section 5.1.11(f) shall be audited by independent accountants of Borrower reasonably acceptable to Lender in accordance with Regulation AB, Regulation S-X, Regulation S-K to the extent applicable and all other applicable legal requirements, shall be accompanied by the manually executed report of the independent accountants thereon, which report shall meet the requirements of Regulation AB, Regulation S-X, Regulation S-K to the extent applicable and all other applicable legal requirements, and shall be further accompanied by a manually executed written consent of the independent accountants, in form and substance reasonably acceptable to Lender, to the inclusion of such financial statements in any Disclosure Document and any Exchange Act Filing and to the use of the name of such independent accountants and the reference to such independent accountants as “experts” in any Disclosure Document and Exchange Act Filing, all of which shall be provided at the same time as the related financial statements are required to be provided, in each case if applicable (i.e., in the case of a public securitization). All financial data and financial statements (audited or unaudited) provided by Borrower under this Section 5.1.11(g) shall be accompanied by an Officer’s Certificate which shall state that such financial statements meet the requirements set forth in the first sentence of this Section 5.1.11(g) to the extent applicable.

(h) If requested by Lender, Borrower shall provide Lender, promptly upon request, with any other or additional financial statements, or financial, statistical or operating information, as Lender shall reasonably determine to be required pursuant to Regulation AB, Regulation S-X, Regulation S-K or any amendment, modification or replacement thereto or other legal requirements in connection with any Disclosure Document or any Exchange Act Filing or as shall otherwise be reasonably requested by the Lender.

(i) In the event Lender reasonably determines, in connection with a Securitization, that the financial data and financial statements required in order to comply with Regulation AB, Regulation S-X, Regulation S-K or any amendment, modification or replacement thereto or other legal requirements are other than as provided herein, then notwithstanding the provisions of Sections 5.1.11(f) and (g), Lender may request, and Borrower shall promptly provide, such other financial statements as Lender determines to be necessary or appropriate for such compliance.

(j) Any reports, statements or other information required to be delivered under this Agreement shall be delivered (i) in paper form, and (ii) if requested by Lender and within the capabilities of Borrower's data systems without change or modification thereto, in electronic form and prepared using a Microsoft Word for Windows or WordPerfect for Windows files (which files may be prepared using a spreadsheet program and saved as word processing files). Borrower agrees that Lender may disclose information regarding any of the Properties, the Collateral, the Senior Mezzanine Collateral, Mortgage Borrower, Senior Mezzanine Borrower, Borrower and Operating Company that is provided to Lender pursuant to this Section in connection with the Securitization to such parties reasonably requesting such information in connection with such Securitization.

**5.1.12 Business and Operations.** Borrower will, and will cause Mortgage Borrower and Operating Company to, continue to engage in the businesses presently conducted by it as and to the extent the same are necessary for the ownership, maintenance, management and operation of the Properties. Borrower will and will cause Senior Mezzanine Borrower, Mortgage Borrower and Operating Company to qualify to do business and will remain in good standing under the laws of each jurisdiction as and to the extent the same are required for the ownership, maintenance, management and operation of the Properties.

**5.1.13 Title to the Properties.** Borrower will cause Mortgage Borrower to warrant and defend (a) the title to each Individual Property and every part thereof, subject only to Liens permitted hereunder (including Permitted Encumbrances) and (b) the validity and priority of the Liens of the Mortgages and the Assignments of Leases, subject only to Liens permitted hereunder (including Permitted Encumbrances), in each case against the claims of all Persons whomsoever. Borrower shall reimburse Lender for any actual out-of-pocket losses, costs, damages or expenses (including reasonable attorneys' fees and court costs) incurred by Lender if an interest in any Individual Property, other than as permitted hereunder, is claimed by another Person. Borrower will warrant and defend (a) the title to the Collateral and every part thereof, subject only to Liens permitted hereunder and (b) the validity and priority of the Liens of the Pledge Agreement, in each case against the claims of all Persons whomsoever. Borrower shall reimburse Lender for any actual out-of-pocket losses, costs, damages or expenses (including reasonable attorneys' fees and court costs) incurred by Lender if an interest in any part of the Collateral, other than as permitted hereunder, is claimed by another Person.

**5.1.14 Costs of Enforcement.** In the event (a) that any Mortgage encumbering any Individual Property or the Lien of the Pledge Agreement is foreclosed in whole or in part or that any such Mortgage or Pledge Agreement is put into the hands of an attorney for collection, suit, action or foreclosure, (b) of the foreclosure of any mortgage prior to or subsequent to any Mortgage or any Lien prior to or subsequent to the Lien of the Pledge Agreement in which

proceeding Mortgage Lender or Lender is made a party or exercises any or all of its rights or remedies under such Mortgage or the Pledge Agreement or any other Loan Documents as and when permitted thereby, or (c) of the bankruptcy, insolvency, rehabilitation or other similar proceeding in respect of Borrower, Senior Mezzanine Borrower, Mortgage Borrower or Operating Company or an assignment by Borrower, Senior Mezzanine Borrower, Mortgage Borrower or Operating Company for the benefit of its creditors, Borrower, its successors or assigns, shall be chargeable with and agrees to pay all reasonable out-of-pocket costs of collection and defense, including reasonable out-of-pocket attorneys' fees and costs, incurred by Lender, Mortgage Borrower, Senior Mezzanine Borrower or Borrower in connection therewith and in connection with any appellate proceeding or post-judgment action involved therein, together with all required service or use taxes.

**5.1.15 Estoppel Statement.** (a) After request by Lender, Borrower shall within ten (10) Business Days (but, provided there exists no Default or Event of Default, no more often than twice during the course of each fiscal year of Borrower) furnish Lender with a statement, duly acknowledged and certified, (i) with respect to the Loan, setting forth (A) the original principal amount of the Note, (B) the unpaid principal amount of the Loan, (C) the Interest Rate of the Loan, (D) the date installments of interest and/or principal were last paid, (E) any offsets or defenses to the payment of the Debt, if any, and (F) that the Note, this Agreement, the Pledge Agreement and the other Loan Documents are valid, legal and binding obligations and have not been modified or if modified, giving particulars of such modification, (ii) with respect to any Senior Mezzanine Loan, setting forth (A) the original principal amount of the applicable Senior Mezzanine Loan, (B) the unpaid principal amount of the Senior Mezzanine Loan, (C) the interest rate of the Senior Mezzanine Loan, (D) the date installments of interest and/or principal were last paid, (E) any offsets or defenses to the payment of the debt, if any, and (F) that the Senior Mezzanine Note, the Senior Mezzanine Loan Agreement and the other Senior Mezzanine Loan Documents are valid, legal and binding obligations and have not been modified or if modified, giving particulars of such modification and (iii) with respect to the Mortgage Loan, setting forth (A) the original principal amount of the Mortgage Loan, (B) the unpaid principal amount of the Mortgage Loan, (C) the interest rate of the Mortgage Loan, (D) the date installments of interest and/or principal were last paid, (E) any offsets or defenses to the payment of the debt, if any, and (F) that the Mortgage Note, the Mortgage Loan Agreement, the Security Instruments and the other Mortgage Loan Documents are valid, legal and binding obligations and have not been modified or if modified, giving particulars of such modification.

(b) Borrower shall exercise reasonable best efforts to deliver to Lender upon request, tenant estoppel certificates from each space tenant leasing space at the Properties, and shall exercise reasonable best efforts to deliver an estoppel certificate from each Ground Lessor, each in form and substance reasonably satisfactory to Lender provided that Borrower shall not be required to deliver such certificates more frequently than two (2) times in any calendar year.

(c) After request by Borrower, but not more than twice during the course of each year, Lender shall furnish Borrower with a statement setting forth (i) the original principal amount of the Loan, (ii) the unpaid principal amount of the Loan, (iii) the Interest Rate of the Loan, (iv) the date installments of interest and/or principal were last paid, and (v) that the Loan Documents have not been modified or if modified, giving particulars of such modification.

**5.1.16 Loan Proceeds.** Borrower shall use the proceeds of the Loan received by it on the Closing Date only for the purposes set forth in Section 2.1.4.

**5.1.17 Performance by Borrower.** Borrower shall in a timely manner observe, perform and fulfill each and every covenant, term and provision of each Loan Document executed and delivered by, or applicable to, Borrower, and shall not enter into or otherwise suffer or permit any amendment, waiver, supplement, termination or other modification of any Loan Document executed and delivered by, or applicable to, Borrower without the prior consent of Lender. Borrower shall cause Mortgage Borrower and Senior Mezzanine Borrower, in a timely manner, to observe, perform and fulfill each and every covenant, term and provision of each Mortgage Loan Document and Senior Mezzanine Loan Documents executed and delivered by, or applicable to, Mortgage Borrower and Senior Mezzanine Borrower, and shall not cause or permit Mortgage Borrower or Senior Mezzanine Borrower to enter into or otherwise suffer or permit any amendment, waiver, supplement, termination or other modification of any Mortgage Loan Document or Senior Mezzanine Loan Document executed and delivered by, or applicable to, Mortgage Borrower or Senior Mezzanine Borrower without the prior written consent of Lender.

**5.1.18 Confirmation of Representations.** Borrower shall deliver, in connection with any Securitization, (a) one or more Officer's Certificates certifying as to the accuracy of all representations made by Borrower in the Loan Documents as of the date of the closing of such Securitization in all relevant jurisdictions, and (b) certificates of the relevant Governmental Authorities in all relevant jurisdictions indicating the good standing and qualification of Mortgage Borrower, Senior Mezzanine Borrower, Borrower and Holdings as of the date of the Securitization.

**5.1.19 No Joint Assessment.** Borrower shall not, and shall not permit Mortgage Borrower to, suffer, permit or initiate the joint assessment of any Individual Property (a) with any other real property constituting a tax lot separate from such Individual Property, and (b) which constitutes real property with any portion of such Individual Property which may be deemed to constitute personal property, or any other procedure whereby the lien of any taxes which may be levied against such personal property shall be assessed or levied or charged to such real property portion of the Individual Property, except as required by Legal Requirements.

**5.1.20 Leasing Matters.** (a) Borrower shall not (and shall cause Mortgage Borrower and Guarantor (Operating Lease) not to), without the prior written consent of Lender (and, if a Securitization shall have occurred, Borrower shall have obtained and delivered to Lender a Rating Agency Confirmation) restate, materially modify, materially amend or materially supplement (or permit the restatement, material modification, amendment or supplement of) any Operating Lease or Operating Lease Guaranty (provided, that any modification, amendment or supplement affecting any of the economic terms of any Operating Lease or any of the terms of the Operating Lease Guaranty shall be deemed to be material for purposes hereof), terminate or accept the surrender (or permit the termination or surrender) of any Operating Lease or Operating Lease Guaranty, or release or materially waive (or permit the release or material waiver of) the Operating Company or Guarantor (Operating Lease) from the performance or observance of any obligation or condition under the Operating Leases or Operating Lease Guaranty. In connection with a material modification, Lender may request, and in such event, Borrower shall not effect such modification without, an Additional True Lease

Opinion in form and substance reasonably satisfactory to Lender issued by Borrower's counsel (at Borrower's expense). Borrower shall not permit (or cause or permit Mortgage Borrower to permit) the prepayment of any rents under the Operating Leases for more than one (1) month prior to the due date thereof. Notwithstanding the foregoing, Lender's consent shall not be required in connection with any modification, amendment or waiver of any provision of the Operating Lease as may be reasonably necessary to comply with the requirements of this Agreement or any other Loan Document or that makes the provisions of the Operating Lease consistent with the provisions of this Agreement or any other Loan Document. Notwithstanding anything contained in this Section 5.1.20(a), to the contrary, (x) Lender's consent to any amendment, modification or supplement of the Operating Lease (or any new Operating Lease) or the Operating Lease Guaranty may also be conditioned on the delivery by Borrower, upon the reasonable request of Lender, of an Additional Insolvency Opinion and/or an Additional True Lease Opinion acceptable to Lender (and, if a Securitization shall have occurred, acceptable to the Rating Agencies), and (y) Lender's consent to any assignment of any Operating Lease or Operating Lease Guaranty (or of any interest therein) or any material amendment, material modification or material supplement of any Operating Lease shall also be conditioned on the delivery by Borrower, upon the reasonable request of Lender, of an Additional Insolvency Opinion and an Additional True Lease Opinion acceptable to Lender (and, if a Securitization shall have occurred, acceptable to the Rating Agencies).

(b) Borrower shall not permit (or consent to) an assignment by any Operating Company of any such Operating Company's interest(s) under any Operating Lease or an assignment by any Mortgage Borrower of any such Mortgage Borrower's interest(s) under any Operating Lease Guaranty without, in each case, Lender's prior written consent (and, if a Securitization shall have occurred, at Lender's request, without Borrower providing to Lender a Rating Agency Confirmation and an Additional True Lease Opinion).

(c) All space Leases and all renewals of space Leases executed after the date hereof entered into by Operating Company shall (i) provide for rental rates, rent credits and free rent periods comparable to existing local market rates for comparable properties, (ii) be on commercially reasonable terms, (iii) provide that such Lease is subordinate to the Mortgage encumbering the Individual Property in question and that the lessee will attorn to Mortgage Lender and any purchaser at a foreclosure sale; (iv) not contain any terms which would materially adversely affect Lender's rights under the Loan Documents; (v) not grant to the Tenants thereunder any option or right to purchase the applicable Individual Property (or any portion thereof); and (v) in the case of Major Leases, have initial terms less than twenty (20) consecutive years, in each case (unless otherwise consented to by Lender pursuant to clause (d) below).

(d) (i) Any Major Lease entered into by Operating Company with respect to an Individual Property executed after the date hereof (and any renewal of any Major Lease with respect to an Individual Property), and any space Lease or space Lease renewal proposed to be entered into by Operating Company after the date hereof and that does not meet the criteria set forth in Sections 5.1.20(a) and subparagraph (c) above, shall be subject to the prior written approval of Lender, which approval shall not be unreasonably withheld, conditioned or delayed. Borrower shall not terminate or accept the surrender of (and shall not permit Operating Company

or Mortgage Borrower to terminate or accept the surrender of) a Major Lease (unless by reason of a tenant default) without the consent of Lender.

(ii) Every submission to Lender of any proposed Major Lease (or Major Lease renewal, amendment, modification or termination) for Lender's approval shall be forwarded to Lender together with a notice from Borrower (in bold typeface) that states "YOUR FAILURE TO RESPOND TO THIS NOTICE AND REQUEST FOR APPROVAL WITHIN TEN (10) BUSINESS DAYS OF YOUR RECEIPT OF THIS NOTICE SHALL CONSTITUTE YOUR DEEMED CONSENT TO THE MATTERS DESCRIBED IN OR THAT ARE THE SUBJECT OF THIS NOTICE". If Lender responds to Borrower's request by identifying missing documents or materials that are incomplete or inaccurate (and that are the subject of the request for approval), then Borrower shall re-submit such documents or materials to Lender for its approval together with a second notice from Borrower that complies with this section.

(iii) If Lender fails to approve or disapprove any such proposed request or submission attached to a first notice or request sent by Borrower (or the matters that are the subject of the re-submitted notice or request for approval) within ten (10) Business Days of receipt of same, Borrower shall re-submit such instruments or materials to Lender for Lender's approval and give Lender a second notice (in bold typeface) that states "SECOND NOTICE — YOUR FAILURE TO RESPOND TO THIS NOTICE AND REQUEST FOR APPROVAL WITHIN FIVE (5) BUSINESS DAYS OF YOUR RECEIPT OF THIS NOTICE SHALL CONSTITUTE YOUR DEEMED CONSENT TO THE MATTERS DESCRIBED IN OR THAT ARE THE SUBJECT OF THIS NOTICE". If Lender fails to respond to such second notice within five (5) Business Days of receipt of same, then Lender's consent to the proposed request or submission that is the subject of such notice shall be deemed granted.

(e) Borrower shall and shall cause Mortgage Borrower and Operating Company to (i) observe and perform the obligations imposed upon the lessor under the Leases in a commercially reasonable manner; (ii) enforce the terms, covenants and conditions contained in the Leases upon the part of the lessee thereunder to be observed or performed in a commercially reasonable manner and in a manner not to impair the value of the Individual Property involved; (iii) not collect any of the rents more than one (1) month in advance (other than security deposits); (iv) not execute any other assignment of lessor's interest in the Leases or the Rents (except as contemplated by the Loan Documents); (v) not alter, modify or change the terms of the Leases in a manner inconsistent with the provisions of the Loan Documents; and (vi) execute and deliver at the request of Lender all such further assurances, confirmations and assignments in connection with the Leases as Lender shall from time to time reasonably require.

(f) Upon request, Borrower shall furnish Lender with executed copies of all new Leases or Lease renewals or amendments.

(g) Notwithstanding anything to the contrary contained herein, Borrower shall not enter into (or permit Operating Company or Mortgage Borrower to enter into) a lease of all or substantially all of any Individual Property without Lender's prior consent.

**5.1.21 Alterations.** (a) Borrower shall cause all Alterations with respect to any portion of any of the Properties to be conducted and performed with due diligence in a good and

workmanlike manner, and all materials used and work done shall be in accordance with all applicable Legal Requirements. In addition, with respect to the Convention Center Project and the Tower Project, to the extent such projects are pursued, Borrower agrees to cause Mortgage Borrower to (i) diligently pursue each such project to completion in a timely manner, subject to delays arising from Force Majeure events, (ii) cause the work to be performed in connection with each such project in substantial conformance with the plans and specifications for such project, and otherwise in conformity with the Mortgage Loan Agreement, each Senior Mezzanine Loan Agreement and this Agreement, (iii) provide Lender with reasonably detailed monthly progress reports (and such information as Lender shall reasonably request from time to time) regarding the status of the Convention Center Project and the Tower Project, (iv) upon the substantial completion of each such project, provide Lender with evidence of the substantial completion of each such project, copies of final unconditional lien waivers from the general contractors, construction managers or subcontractors for such project (if requested by Lender) and evidence of the final payment of all amounts due in connection with each such project, and a title search for the affected Individual Property indicating that such Individual Property is free from all liens, claims and other encumbrances not previously approved by Lender, and (v) upon final completion of each such project, provide Lender with a final survey acceptable to Lender showing the “as-built” location of the completed Improvements and all easements appurtenant thereto, and “as-built” plans and specifications for Lender’s file and a certificate of occupancy to the extent issued by the relevant Governmental Authority.

(b) Borrower shall obtain Lender’s prior consent to (i) any Material Alterations (unless collateral or a completion guaranty is provided as set forth in subparagraph (c) below) or (ii) any Alterations to any of the Improvements (even if otherwise described in clause (i) above) that is reasonably likely to have an Individual Material Adverse Effect. Lender’s consent shall not be required for any Alterations other than the Alterations described in the preceding sentence. Notwithstanding any provision hereof to the contrary, without Lender’s consent, not to be unreasonably withheld or delayed, in no event shall Borrower close or shutter, or undertake or permit any Tenant or other Person to undertake, an Alteration that, alone or together with other work then being undertaken, closes or shutters, more than ten percent (10%) of the income-generating space in any Individual Property at any one time. Prior to undertaking any Alteration with respect to an Individual Property in excess of five percent (5%) of the sum of the Allocated Loan Amount for such Individual Property and the “Allocated Loan Amounts” under (and as defined in each of) the Mortgage Loan Agreement and the Other Mezzanine Loan Agreements for such Individual Property, to afford Lender a prior and reasonable opportunity to determine whether or not the proposed Alteration would have an Individual Material Adverse Effect, Borrower will deliver such plans, specifications, project schedules, logistical plans, construction budgets (including a statement of sources and uses) and such other information as Lender may reasonably request in respect of such Alteration for review by Lender (and its consultants). All reasonable out-of-pocket costs and expenses incurred by Lender in connection with reviewing said Alterations proposal, including, without limitation, reasonable counsel fees and disbursements and Lender’s consultants, shall be paid by Borrower. The above-referenced submission to Lender shall be delivered with a notice from Borrower (in bold typeface) that states **“YOUR FAILURE TO RESPOND TO THIS NOTICE AND REQUEST FOR APPROVAL WITHIN TEN (10) BUSINESS DAYS OF YOUR RECEIPT OF THIS NOTICE SHALL CONSTITUTE YOUR DEEMED CONSENT TO THE MATTERS DESCRIBED IN OR THAT ARE THE SUBJECT OF THIS NOTICE”**. If Lender responds to Borrower’s request

by identifying missing documents or materials that are incomplete or inaccurate (and that are the subject of the request for approval), then Borrower shall re-submit such documents or materials to Lender for its approval together with a second notice from Borrower that complies with this Section. If Lender fails to approve or disapprove any such proposed request or submission attached to a first notice or request sent by Borrower (or the matters that are the subject of the re-submitted notice or request for approval) within ten (10) Business Days of receipt of same, Borrower shall re-submit such instruments or materials to Lender for Lender's approval and give Lender a second notice (in bold typeface) that states "SECOND NOTICE — YOUR FAILURE TO RESPOND TO THIS NOTICE AND REQUEST FOR APPROVAL WITHIN TEN (10) BUSINESS DAYS OF YOUR RECEIPT OF THIS NOTICE SHALL CONSTITUTE YOUR DEEMED CONSENT TO THE MATTERS DESCRIBED IN OR THAT ARE THE SUBJECT OF THIS NOTICE". If Lender fails to respond to such second notice within ten (10) Business Days of receipt of same, then Lender's consent to the proposed request or submission that is the subject of such notice shall be deemed granted.

(c) With respect to any Material Alteration, unless otherwise consented to by Lender, Borrower shall promptly deliver to Mortgage Lender as security for the payment of such amounts and as additional security for Borrower's obligations under the Loan Documents any of the following: (A) cash, (B) U.S. Obligations, (C) other securities having a rating acceptable to Lender and that the applicable Rating Agencies have confirmed in writing will not, in and of itself, result in a downgrade, withdrawal or qualification of the initial, or, if higher, then current ratings assigned to any Securities or any class thereof in connection with any Securitization, (D) a completion and performance bond or an irrevocable letter of credit (payable on sight draft only) issued by an Eligible Institution, or (E) a completion guaranty from an Approved Guarantor in the form attached hereto as Exhibit A (with such changes as Lender shall approve), together with evidence reasonably satisfactory to Lender that the Approved Guarantor has reasonable liquidity taking into account the nature and amount of the guaranteed obligations under such completion guaranty (it being agreed that, if the Approved Guarantor in question is Holdings, then the amounts available for repayment of such obligations under any revolving credit facility in effect at such time in favor of Harrah's Operating Company, Inc. will be taken into account in determining whether Holdings has reasonable liquidity), and with, if required by applicable Rating Agency requirements, an Additional Insolvency Opinion. Such security, including the amount of the guaranteed obligations under any completion guaranty delivered as aforesaid, shall be in an amount equal to the sum of (i) the excess of the total unpaid amounts with respect to alterations to the Improvements on the applicable Individual Property (other than such amounts to be paid or reimbursed by tenants under the Leases) over the Threshold Amount and (ii) the costs of collection, and, upon the occurrence and during the continuance of an Event of Default, Lender may apply such security from time to time at the option of Lender to pay for such alterations.

**5.1.22 Operation of Properties.** (a) Borrower shall cause Mortgage Borrower to cause each of the Properties to be operated, in all material respects, in accordance with the Operating Leases and in accordance with all applicable Legal Requirements, including Gaming Laws, and all Gaming Licenses and other Operating Permits and in a manner consistent with their respective use as of the Closing Date. Borrower shall cause Operating Company to post all required bonds, if any, with any Gaming Authority as and in the amounts required under all

applicable Legal Requirements (and shall, if Lender makes a request therefor, promptly provide Lender with copies of all such bonds).

(b) Borrower shall not, without Lender's prior written consent, permit Operating Company to assign or transfer, and Operating Company shall not, without Lender's prior written consent, assign or transfer, or delegate any responsibilities with respect to, any Gaming License or Operating Permit.

(c) Borrower shall cause Operating Company to make all filings required under the Gaming Laws, or in connection with any Gaming Licenses or Operating Permits, including in connection with the origination of the Mortgage Loan and the Mezzanine Loans, and shall deliver copies of such filings as Lender shall reasonably request to Lender, promptly upon request. Borrower will timely pay all fees, investigative fees and costs required by the Gaming Authorities with respect to any such approvals and licenses. Borrower will and will cause Mortgage Borrower to diligently and comprehensively respond to any inquiries and requests from the Gaming Authorities and promptly file or cause to be filed any additional information required in connection with any required filings as soon as practicable after receipt of requests therefor.

(d) Upon request of Lender, Borrower shall deliver to Lender (or cause Operating Company to deliver to Lender) such evidence of compliance (by Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company and each Individual Property) with all Legal Requirements, including Gaming Laws as shall be reasonably requested by Lender. Borrower shall immediately deliver to Lender (and shall cause Operating Company and Mortgage Borrower to deliver to Lender) any notice of material non-compliance or material violation of any Legal Requirement, or of any material inquiry or investigation commenced by the Gaming Authorities in connection with any of the Properties. Borrower shall immediately notify Lender if it, Senior Mezzanine Borrower, Mortgage Borrower or Operating Company believe that any material license, including any Gaming License, is being or could be revoked or suspended, or that any action is pending, being considered or being, or could be, taken to revoke or suspend Borrower's, Senior Mezzanine Borrower's, Mortgage Borrower's or Operating Company's material licenses, including the Gaming Licenses, or to fine, penalize or impose remedies upon Borrower, Mortgage Borrower, Senior Mezzanine Borrower or Operating Company, or that any action is pending, being considered, or being, or could be, taken to discontinue, suspend, deny, decrease or recoup any payments due, made or coming due to Borrower, Senior Mezzanine Borrower, Mortgage Borrower or Operating Company, in each case if same might reasonably be expected to have an Individual Material Adverse Effect. Borrower shall immediately deliver to Lender any notice received by Borrower, Senior Mezzanine Borrower, Mortgage Borrower or Operating Company alleging or relating to the material non-compliance by Borrower, Senior Mezzanine Borrower, Mortgage Borrower or Operating Company with any Legal Requirements, including Gaming Laws.

(e) In the event that any of the Operating Leases expire or are terminated (without limiting any obligation of Borrower to obtain Lender's consent to any termination or modification of any of the Operating Leases in accordance with the terms and provisions of this Agreement), Borrower shall cause Mortgage Borrower to promptly enter into a replacement Operating Lease (in form and substance satisfactory to Lender) with Operating Company or

another operating company reasonably satisfactory to Lender, provided Borrower will obtain a Rating Agency Confirmation as a condition to the effectiveness of such replacement Operating Lease and that Borrower will cause Guarantor (Operating Lease) to execute and deliver an operating lease guaranty in the same form and substance as the Operating Lease Guaranty.

(f) Borrower shall cause Mortgage Borrower to: (i) promptly perform and/or observe, in all material respects, all of the covenants and agreements required to be performed and observed by it under the Operating Lease and do all things necessary to preserve and to keep unimpaired its material rights thereunder; (ii) promptly notify Lender of any material default under any Operating Lease or Operating Lease Guaranty of which it is aware; (iii) promptly deliver to Lender a copy of each financial statement, business plan, capital expenditures plan, notice, report and estimate received by it under each Operating Lease; and (iv) enforce the performance and observance of all of the material covenants and agreements required to be performed and/or observed by each Operating Company under each Operating Lease and by each Guarantor (Operating Lease) under each Operating Lease Guaranty, in a commercially reasonable manner.

(g) Borrower shall cause Mortgage Borrower to cause the Hotel Components to be at all times open for business as a hotel and the Casino Components to be open for business as a casino, except to the extent necessary to undertake any alterations or repairs (subject to the provisions of this Agreement with respect to the performance of any such alterations or repairs). Borrower shall cause each Individual Property to be at all times operated, managed and maintained, at all times and in the manner and accordance with the standards required pursuant to the Operating Leases and all applicable Legal Requirements in all material respects.

(h) If Mortgage Borrower shall be in material default under any Operating Lease, then, subject to the terms of such Operating Lease, Borrower shall cause Mortgage Borrower (subject to any applicable Legal Requirements) to grant Lender the right (but not the obligation), to cause the default or defaults under such Operating Lease to be remedied and otherwise exercise any and all rights of Mortgage Borrower under such Operating Lease, as may be necessary to prevent or cure any default provided such actions are necessary to protect Lender's interest under the Loan Documents, and Lender shall have the right to enter all or any portion of the affected Individual Property at such times and in such manner as Lender deems necessary, to prevent or to cure any such default. The actions or payments of Lender to cure any default by Mortgage Borrower under any Operating Lease shall not remove or waive, as between Borrower and Lender, any default that may occur or occurred under this Agreement by virtue of such default by Mortgage Borrower under such Operating Lease. All out-of-pocket sums reasonably expended by Lender to cure any such default shall be paid by Borrower to Lender, upon demand, with interest on such sum at the rate set forth in this Agreement from the date such sum is expended to and including the date the reimbursement payment is made to Lender. All such indebtedness shall be deemed to be secured by the Pledge Agreement and the Collateral.

(i) Borrower shall notify Lender promptly in writing of (i) the occurrence, to Borrower's knowledge, of any material default by any party to any Operating Lease or any Operating Lease Guaranty, (ii) the occurrence, to Borrower's knowledge, of any event that, with the passage of time or service of notice, or both, would constitute a material default by any party under any Operating Lease or any Operating Lease Guaranty, and (iii) the receipt by Borrower or

its Affiliate of any notice (written or otherwise) from any party under any Operating Lease or any Operating Lease Guaranty noting or claiming the occurrence of any material default by Borrower under such Operating Lease or such Operating Lease Guaranty.

(j) Borrower shall (subject to any applicable Legal Requirements) promptly cause Mortgage Borrower to execute, acknowledge and deliver to Lender such instruments as may reasonably be required to permit Lender to cure any material default under any Operating Lease or permit Lender to take such other action required to enable Lender to cure or remedy the matter in default and preserve the value of the security interest of Lender under the Loan Documents with respect to the Collateral. Upon the occurrence and during the continuance of an Event of Default, Borrower irrevocably appoints Lender as its true and lawful attorney-in-fact to do, in its name or otherwise, any and all acts and to execute any and all documents that are necessary to preserve any rights of Mortgage Borrower under or with respect to any Operating Lease, including, without limitation, the right to effectuate any extension or renewal of any Operating Lease, or to preserve any rights of Mortgage Borrower whatsoever in respect of any part of any Operating Lease (and the above powers granted to Lender are coupled with an interest and shall be irrevocable).

(k) With respect to any Operating Lease or any Operating Lease Guaranty, Borrower shall, from time to time, upon ten (10) Business Days' prior written request from Lender, execute, acknowledge and deliver to Lender, a statement containing the following: (A) a statement that such Operating Lease or such Operating Lease Guaranty is unmodified and in full force and effect or, if there have been modifications, that the Operating Lease or the Operating Lease Guaranty is in full force and effect as modified and setting forth such modifications, (B) a statement that Mortgage Borrower is not in default thereunder beyond any applicable grace, cure or notice period or, if any such default shall exist thereunder, a description of such default and the steps being taken to cure such default, (C) a statement that, to Borrower's knowledge, either the other party thereto is not in default thereunder beyond any applicable grace, cure or notice period or, if any such default shall exist thereunder, a description of such default and the steps being taken to cure such default and (D) such other information with respect to the Operating Lease or the Operating Lease Guaranty as Lender shall reasonably request.

(l) With respect to any Operating Lease, Borrower shall, from time to time, upon ten (10) Business Days of Lender's prior written request from Lender, provide Lender with a statement from each Operating Company containing the following: (A) a statement that such Operating Lease is unmodified and in full force and effect or, if there have been modifications, that the Operating Lease is in full force and effect as modified and setting forth such modifications, (B) a statement that Operating Company is not in default thereunder beyond any applicable grace, cure or notice period or, if any such default shall exist thereunder, a description of such default and the steps being taken to cure such default, (C) a statement that, to Operating Company's knowledge, the Mortgage Borrower is not in default thereunder beyond any applicable grace, cure or notice period or, if any such default shall exist thereunder, a description of such default and the steps being taken to cure such default and (D) such other information with respect to Operating Company, any Operating Lease and/or any Operating Lease Guaranty as Lender shall reasonably request.

(m) With respect to any Operating Lease Guaranty, Borrower shall, from time to time, upon ten (10) Business Days of Lender's prior written request from Lender, provide Lender with a statement from Guarantor (Operating Lease) containing the following: (A) a statement that such Operating Lease Guaranty is unmodified and in full force and effect or, if there have been modifications, that the Operating Lease Guaranty is in full force and effect as modified and setting forth such modifications; (B) a statement that Guarantor (Operating Lease) is not in default thereunder beyond any applicable grace, cure or notice period or, if any such default shall exist thereunder, a description of such default and the steps being taken to cure such default; and (C) such other information with respect to such Guarantor (Operating Lease) and/or Operating Lease Guaranty as Lender shall reasonably request

**5.1.23 Ground Lease Estoppel.** Borrower shall, on or prior to May 28, 2008, either (i) effect the substitution of the Properties commonly known as "Paris Las Vegas" and "Harrah's Laughlin" for the Individual Properties referred to as "Harrah's Lake Tahoe", "Harvey's Lake Tahoe", "Bill's Lake Tahoe" and "Showboat Atlantic City" as described in Section 2.5.2 of this Agreement or (ii) (x) cause the occurrence of the events set forth in paragraph 1, clause (ii) of the Ground Lease Side Letter and (y) in connection therewith, deliver to Lender updates to its UCC Title Insurance Policy and any endorsements to the Mortgage Borrower's owner's policies delivered to Lender in connection with the closing of the Loan, together with such other documents, instruments and new or updated opinions (including as to enforceability, non-consolidation and true lease matters) as Lender may reasonably request. The failure by Borrower to cause the occurrence of the event described in clause (i) or of the events described in clause (ii) above, on or prior to May 28, 2008 shall constitute a "Ground Lease Estoppel Trigger Event" hereunder, but shall not constitute a Default or an Event of Default hereunder.

**5.1.24 Mortgage Loan Reserve Funds.** Borrower shall cause Mortgage Borrower and Senior Mezzanine Borrower to deposit and maintain each of the Mortgage Loan Reserve Funds and Senior Mezzanine Loan Reserve Funds (if any) as more particularly set forth in Article VII of the Mortgage Loan Agreement and Senior Mezzanine Loan Agreement and to perform and comply with all the terms and provisions relating thereto. Borrower grants to Lender a first-priority perfected security interest in Borrower's interest in each of the Mortgage Loan Reserve Funds and Senior Mezzanine Loan Reserve Funds, if any, subject to the prior rights of Mortgage Lender and Senior Mezzanine Lender, and any and all monies now or hereafter deposited in each Mortgage Loan Reserve Fund and Senior Mezzanine Loan Reserve Funds as additional security for payment of the Debt to the extent Borrower has an interest in same. Subject to the qualifications regarding Mortgage Lender's and Senior Mezzanine Lender's interest in the Mortgage Loan Reserve Funds and Senior Mezzanine Loan Reserve Funds (as applicable), if any, until expended or applied in accordance with the Mortgage Loan Documents, Senior Mezzanine Loan Documents or the Loan Documents, Borrower's interest in the Mortgage Loan Reserve Funds and Senior Mezzanine Loan Reserve Funds shall constitute additional security for the Debt and upon the occurrence of an Event of Default, Lender may, in addition to any and all other remedies available to Lender, apply any sums then present in any or all of the Mortgage Loan Reserve Funds and Senior Mezzanine Loan Reserve Funds to the payment of the Debt in any order in its sole discretion and/or hold the same as Collateral for the Loan.

**5.1.25 Notices.** Borrower shall give notice, or cause notice to be given to Lender promptly upon the occurrence and during the continuance of an Event of Default and upon any of the following:

(a) any Mortgage Loan Event of Default or Senior Mezzanine Loan Event of Default;

(b) any default or event of default under any contractual obligation of Borrower, or, to the knowledge of Borrower, Senior Mezzanine Borrower, Mortgage Borrower, Operating Company, Principal or Guarantor that could reasonably be expected to have an Individual Material Adverse Affect or an Aggregate Material Adverse Affect;

(c) any litigation or proceeding affecting Borrower, or, to the knowledge of Borrower, affecting any of Mortgage Borrower, Senior Mezzanine Borrower, Operating Company, Principal or Guarantor, which could or could reasonably be expected to have an Individual Material Adverse Effect or an Aggregate Material Adverse Effect; or

(d) a change in the business, operations, property or financial or other condition or prospects of Borrower, or, to the knowledge of Borrower, Senior Mezzanine Borrower, Mortgage Borrower, Operating Company, Principal or Guarantor which could reasonably be expected to have an Individual Material Adverse Affect or an Aggregate Material Adverse Affect.

**5.1.26 Special Distributions.** On each date on which amounts are required to be paid to Lender under any of the Loan Documents (or required be disbursed to the Mezzanine Collection Account, if applicable) Borrower shall exercise its rights under the First Mezzanine Borrower Company Agreement to cause Senior Mezzanine Borrower to make to Borrower a distribution in an aggregate amount such that Lender shall receive the amount required to be disbursed to the Mezzanine Collection Account or otherwise paid to Lender on such date.

**5.1.27 Curing.** Lender shall have the right, but shall not have the obligation, to exercise Borrower's rights under the First Mezzanine Borrower Company Agreement (a) to cure a Mortgage Loan Default, or Senior Mezzanine Loan Default, (b) to cure a Mortgage Loan Event of Default, or Senior Mezzanine Loan Event of Default, (c) to satisfy any Liens, claims or judgments against the Properties (except for Liens permitted by the Mortgage Loan Documents or Senior Mezzanine Loan Documents), (d) to satisfy any Liens, claims or judgments against the Senior Mezzanine Collateral, in the case of either (a), (b) or (c), unless Borrower, Senior Mezzanine Borrower or Mortgage Borrower shall be diligently pursuing remedies to cure the Mortgage Loan Default, the Senior Mezzanine Loan Default, the Senior Mezzanine Loan Event of Default or Mortgage Loan Event of Default or to satisfy any such Liens, claims or judgments, in either case to Lender's sole satisfaction. Borrower shall reimburse Lender on demand for any and all costs incurred by Lender in connection with curing any such Mortgage Loan Default, Senior Mezzanine Loan Default, Mortgage Loan Event of Default or Senior Mezzanine Loan Event of Default or satisfying any Liens, claims or judgments against any of the Properties or the Senior Mezzanine Collateral.

**5.1.28 Senior Borrower Covenants.** Borrower shall cause Mortgage Borrower and Senior Mezzanine Borrower to comply with all obligations with which Mortgage Borrower and/or Senior Mezzanine Borrower have covenanted to comply under the Mortgage Loan Agreement, Senior Mezzanine Loan Agreement, all Senior Mezzanine Loan Documents and all other Mortgage Loan Documents, as applicable (including, without limitation, those certain affirmative and negative covenants set forth in Article V of the Mortgage Loan Agreement and Senior Mezzanine Loan Agreement), unless otherwise consented to in writing by Lender.

**Section 5.2. Negative Covenants.** From the date hereof until payment and performance in full of all obligations of Borrower under the Loan Documents or the earlier release of the Liens of the Collateral in accordance with the terms of this Agreement and the other Loan Documents, Borrower covenants and agrees with Lender that it will not do, directly or indirectly, any of the following (without, in each case, the prior written consent of Lender):

**5.2.1 Operation of Properties.** (a) Borrower shall not cause or permit Mortgage Borrower to, without Lender's prior consent: (i) surrender, terminate or cancel (or permit to be surrendered, terminated or canceled) any of the Operating Leases or any Operating Lease Guaranty; (ii) reduce or consent to the reduction of (or permit the reduction or the consent to the reduction) of the term of any of the Operating Leases; (iii) decrease or consent to any decrease (or permit to be decreased or the consent to the decrease) of the amount of any rent or other charges payable under any of the Operating Leases; (iv) Transfer, convey, assign, sell, mortgage, encumber, pledge, hypothecate, grant a security interest in, grant an option or options with respect to, or otherwise dispose of (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, whether or not for consideration) the Properties or any collateral for the Mortgage Loan (or permit Operating Company to do so), in each case without the prior written consent of Lender or except as expressly permitted in Section 5.2.10, or (v) otherwise modify, change, supplement, alter or amend, or waive or release (or permit to be modified, changed, supplemented, altered, amended, waived or released) any of the rights and remedies of Borrower, Mortgage Borrower or any Operating Company under any of the Operating Leases in any material respect or any Operating Lease Guaranty (provided that Lender shall not unreasonably withhold its consent to any modification, change, supplement, alteration, amendment, waiver or release of the Operating Lease as may be reasonably necessary to comply with the requirements of this Agreement or any other Loan Document).

(b) During the continuance of an Event of Default, Borrower shall not exercise (and shall not cause or permit Mortgage Borrower to exercise) any rights, make any decisions, grant any approvals or otherwise take any action under any Operating Lease, Operating Lease Guaranty or any management agreement without, in each instance, the prior written consent of Lender, which consent may be withheld in Lender's sole discretion.

**5.2.2 Liens.** (a) Borrower shall not create, incur, assume or suffer to exist any Lien on any of the Collateral, except Liens created by or permitted pursuant to the Loan Documents. Borrower shall not, and shall not cause or permit Mortgage Borrower or Senior Mezzanine Borrower to create, incur, assume or suffer to exist any Lien on any portion of any Individual Property or Senior Mezzanine Collateral or permit any such action to be taken, except:

(i) Permitted Encumbrances;

(ii) Liens created by or permitted pursuant to the Loan Documents, Senior Mezzanine Loan Documents or Mortgage Loan Documents; and

(iii) Liens for Taxes or Other Charges not yet due.

(b) Borrower shall not incur any Indebtedness other than the Loan, shall not permit Mortgage Borrower to incur any Indebtedness other than the Mortgage Loan and Permitted Indebtedness (as defined in the Mortgage Loan Agreement), and shall not permit Senior Mezzanine Borrower to incur any Indebtedness other than the Senior Mezzanine Loans. Borrower shall not permit any Operating Company to incur Indebtedness in excess or other than Permitted Indebtedness (Operating Company).

**5.2.3 Dissolution.** Borrower shall not, and shall not permit Mortgage Borrower, Senior Mezzanine Borrower or Operating Company to, (a) engage in any dissolution, liquidation or consolidation or merger with or into any other business entity, (b) engage in any business activity not related to (i) in the case of Borrower, the ownership of the Collateral, (ii) in the case of Senior Mezzanine Borrower, ownership of the Senior Mezzanine Collateral, (iii) in the case of Mortgage Borrower, the ownership and operation of the Properties and (iv) in the case of Operating Company, the leasing and operation of the Properties, (c) transfer, lease or sell, in one transaction or any combination of transactions, the assets or all or substantially all of the properties or assets of Borrower, Senior Mezzanine Borrower or Mortgage Borrower except to the extent permitted by the Loan Documents, (d) modify (in any material respect), amend (in any material respect), waive or terminate its organizational documents or its qualification and good standing in any jurisdiction or (e) cause Holdings to (i) dissolve, wind up or liquidate or take any action, or omit to take an action, as a result of which Holdings, Senior Mezzanine Borrower or Mortgage Borrower would be dissolved, wound up or liquidated in whole or in part, or (ii) amend (in any material respect), modify (in any material respect), waive or terminate the certificate of incorporation or bylaws of Holdings, Senior Mezzanine Borrower or Mortgage Borrower, in each case, without obtaining the prior consent of Lender.

**5.2.4 Change in Business.** Borrower shall not cause Mortgage Borrower to enter into any line of business other than the ownership and operation of any of the Properties and other activities reasonably ancillary thereto, or make any material change in the scope or nature of its business objectives, purposes or operations, or undertake or participate in activities other than the continuance of its present business. In addition, Borrower shall not permit or cause Mortgage Borrower to cancel or otherwise forgive or release any material claim or debt (other than termination of Leases in accordance herewith) owed to Mortgage Borrower by any Person, except for adequate consideration and in the ordinary cause of Mortgage Borrower's business. Borrower shall not enter into any line of business other than the ownership of the Collateral, or make any material change in the scope or nature of its business objectives, purposes or operations, or undertake or participate in activities other than the continuance of its present business. Borrower shall not allow Senior Mezzanine Borrower to enter into any line of business other than the direct or indirect ownership of the applicable Senior Mezzanine Collateral or make any material change in the scope or nature of its business objectives, purposes

or operations, or undertake or participate in activities other than the continuance of its present business.

**5.2.5 Debt Cancellation.** Borrower shall not, and shall not permit Mortgage Borrower, Senior Mezzanine Borrower or Operating Company to, cancel or otherwise forgive or release any claim or debt (other than termination of Leases in accordance herewith) owed to Mortgage Borrower, Borrower or Senior Mezzanine Borrower by any Person, except for adequate consideration and in the ordinary course of Mortgage Borrower's, Borrower's or Senior Mezzanine Borrower's business. In addition, Borrower shall not permit or cause itself, Senior Mezzanine Borrower, or Mortgage Borrower to cancel or otherwise forgive or release any material claim or debt (other than termination of Leases in accordance herewith) owed to Senior Mezzanine Borrower, Borrower or Mortgage Borrower by any Person, except for adequate consideration and in the ordinary course of Mortgage Borrower's, Borrower's or Senior Mezzanine Borrower's business.

**5.2.6 Zoning.** Borrower shall not, and shall not permit Mortgage Borrower or Operating Company to, initiate or consent to any zoning reclassification of any portion of any Individual Property or seek any variance under any existing zoning ordinance or use or permit the use of any portion of any Individual Property in any manner that could result in such use becoming a non-conforming use under any zoning ordinance or any other applicable land use law, rule or regulation, without the prior consent of Lender.

**5.2.7 Ground Lease.** Borrower shall not (or shall not cause or permit Mortgage Borrower or Ground Lease Subsidiary, as applicable, to) (a) fail to pay any rent, additional rent or other charge mentioned in or made payable under any Ground Lease as and when such rent or other charge is due (unless waived in writing by the ground lessor under such Ground Lease), (b) permit to occur any event of default (beyond any applicable notice, grace or cure periods) by any Mortgage Borrower or Ground Lease Subsidiary, as applicable, as tenant under the related Ground Lease, in the observance or performance of any term, covenant or condition of such Ground Lease on the part of such Mortgage Borrower or Ground Lease Subsidiary, as applicable, to be observed or performed (unless waived in writing by the ground lessor under such Ground Lease), (c) permit any one or more of the events referred to in any Ground Lease to occur which would cause such Ground Lease to terminate without notice or action by the ground lessor under such Ground Lease or which would entitle such ground lessor to terminate such Ground Lease and the term thereof by giving notice to the related Mortgage Borrower or Ground Lease Subsidiary, as applicable, as tenant thereunder (unless waived in writing by the ground lessor under such Ground Lease), (d) permit the leasehold estate created by any Ground Lease to be surrendered or any Ground Lease to be terminated or canceled for any reason or under any circumstances whatsoever or (e) permit any of the terms, covenants or conditions of any Ground Lease to be materially modified, materially changed, materially supplemented, materially altered, or materially amended without the consent of Lender except as otherwise may be permitted by this Agreement.

**5.2.8 Principal Place of Business and Organization.** Borrower shall not, nor shall Borrower permit Mortgage Borrower, Senior Mezzanine Borrower or Operating Company to, change the place of its organization as set forth in Section 4.1.28 without the consent of Lender, which consent shall not be unreasonably withheld. Upon Lender's request, Borrower

shall (and shall cause Mortgage Borrower, Senior Mezzanine Borrower or Operating Company to) execute and deliver additional financing statements, security agreements and other instruments which may be necessary to effectively evidence or perfect Mortgage Lender's security interest in any of the Properties, any Senior Mezzanine Lender's Security Interest in the related Senior Mezzanine Collateral or Lender's security interest in the Collateral as a result of such change of place of organization.

**5.2.9 ERISA.** (a) Borrower shall not engage in any transaction which would cause any obligation, or action taken or to be taken, hereunder (or the exercise by Lender of any of its rights under the Note, this Agreement or the other Loan Documents) to be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under ERISA.

(b) Borrower further covenants and agrees to deliver to Lender such certifications or other evidence from time to time throughout the term of the Loan, as requested by Lender in its sole discretion, that (i) Borrower is not an "employee benefit plan" as defined in Section 3(3) of ERISA, which is subject to Title I of ERISA, or a "governmental plan" within the meaning of Section 3(32) of ERISA; (ii) Borrower is not subject to any state statute regulating investments of, or fiduciary obligations with respect to, governmental plans; and (iii) one or more of the following circumstances is true:

(A) Equity interests in Borrower are publicly offered securities, within the meaning of 29 C.F.R. §2510.3-101(b)(2);

(B) Less than twenty-five percent (25%) of each outstanding class of equity interests in Borrower is held by "benefit plan investors" within the meaning of 29 C.F.R. §2510.3-101(f)(2); or

(C) Borrower qualifies as an "operating company" or a "real estate operating company" within the meaning of 29 C.F.R. §2510.3-101(c) or (e).

**5.2.10 Transfers.** (a) Without the prior consent of Lender and except to the extent otherwise set forth in this Section 5.2.10, Borrower shall not, and shall not permit any other Person holding any direct or indirect legal, economic, beneficial or other ownership interest in Borrower, the Collateral, the Senior Mezzanine Collateral or one or more of the Properties to, (1) Transfer all or any part of the Collateral, the Senior Mezzanine Collateral or one or more of the Properties, (2) permit any Transfer (directly or indirectly) of any direct or indirect interest in Borrower, or (3) permit any Transfer (directly or indirectly) of any direct or indirect interest in Operating Company or any transfer or assignment or subletting (of all or substantially of any Individual Property) by any Operating Company under any Operating Lease.

(b) A Transfer of (but not a mortgage, pledge, hypothecation, encumbrance or grant of a security interest in) an indirect beneficial interest in Borrower consisting of ownership interests in or at any level above the level of Ninth Mezzanine Borrower shall be permitted without Lender's consent (but subject to the last sentence of Section 5.2.10(d)), provided that (i) immediately prior to such Transfer, no Event of Default shall have occurred and be continuing, (ii) Borrower is at all times Controlled and at least fifty percent (50%) owned (directly or indirectly) by Qualified Transferees, (iii) subsequent to such Transfer, Borrower will continue to

be a Special Purpose Entity, (iv) if (1) such Transfer causes the Transferee to own, in the aggregate with the ownership interests of its Affiliates, more than a forty nine percent (49%) interest in Borrower (and the Transferee (together with the ownership interests of its Affiliates) did not, prior to such Transfer, own more than a forty-nine percent (49%) interest in Borrower), or (2) such Transfer, together with all other Transfers by Borrower, whether in a single Transfer or in a series of Transfers and whether or not effected simultaneously, results in a Transfer of more than forty-nine percent (49%) of the aggregate interests in Borrower, then, if required by applicable Rating Agency requirements, an acceptable non-consolidation opinion is delivered to the holder of the Loan and to each of the Rating Agencies concerning, as applicable, Borrower, the new Transferee and/or their respective owners, and (v) subsequent to such Transfer, the beneficial ownership of Borrower and Operating Company will be substantially identical. For purposes hereof, Control shall not be deemed absent solely because other parties have veto rights with respect to major decisions. Further, a Change in Control shall be deemed a Transfer hereunder and, unless clauses (ii) through (v) of this Section 5.2.10(b) shall be satisfied, the same shall be an Event of Default hereunder (and for the sake of clarity, nothing else contained in this Section 5.2.10 or this Agreement shall be deemed to limit or qualify the above terms of this sentence).

(c) A Transfer of (but not a mortgage, pledge, hypothecation, encumbrance or grant of a security interest in) a direct or indirect beneficial interest in Operating Company shall be permitted without Lender's consent (but subject to the last sentence of Section 5.2.10(d)), provided that (i) immediately prior to such Transfer, no Event of Default shall have occurred and be continuing, (ii) Operating Company is at all times Controlled and at least fifty percent (50%) owned (directly or indirectly) by Qualified Transferees, and (iii) subsequent to such Transfer, the beneficial ownership of Borrower and Operating Company will be substantially identical. For purposes hereof, Control shall not be deemed absent solely because other parties have veto rights with respect to major decisions.

(d) In the event that a permitted Transfer of more than a forty nine percent (49%) interest in Borrower is made pursuant to this Section 5.2.10, at Borrower's request, Lender shall release Guarantor from (i) the obligations and liabilities under any Guaranty for obligations and liabilities that occurred subsequent to such Transfer, provided that a replacement guarantor(s) reasonably satisfactory to Lender shall have executed and delivered to Lender replacement guarantees in form and substance substantially similar to the applicable Guaranty, pursuant to which such replacement guarantor(s) expressly assumes all of Guarantor's obligations under the applicable Guaranty for obligations and liabilities arising from and after the date of such Transfer, and (ii) the obligations and liabilities under any Guaranty for obligations and liabilities that occurred either prior or subsequent to such Transfer, provided that a replacement guarantor(s) reasonably satisfactory to Lender shall have executed and delivered to Lender replacement guarantees in form and substance substantially similar to the applicable Guaranty, pursuant to which such replacement guarantor(s) expressly assumes all of Guarantor's obligations under the applicable Guaranty, including those which occurred prior to the Transfer. Notwithstanding the foregoing or anything else that may be construed to the contrary, in no event may Borrower effect a Transfer, or permit or suffer any Transfer, that would result in any loss or impairment of any Gaming License or in any similar event that would have an Individual Property Material Adverse Effect or Aggregate Property Material Adverse Effect.

(e) Notwithstanding the foregoing or anything herein to the contrary, but subject to the final sentence of Section 5.2.10(d), nothing contained in this Agreement or the other Loan Documents shall in any way restrict or prohibit, nor shall any notice to Lender or consent of Lender or Rating Agency Confirmation be required in connection with the Transfer or issuance in the ordinary course of any securities in any Person whose securities are publicly traded on a national exchange (except to the extent that the same would cause a Change of Control) or with an initial public offering of securities issued by Holdings or of subsidiary of Holdings (other than the Borrower and any Mezzanine Borrower (provided that, in the case of an issuance by a subsidiary, such issuance would not cause a Change of Control)).

(f) Assumptions of the Loan shall be permitted, provided that the following conditions are satisfied and/or occur to Lender's satisfaction:

(i) such sale has been approved or deemed approved under the Mortgage Loan Documents and Senior Mezzanine Loan Documents and all conditions set forth in the Mortgage Loan Documents and Senior Mezzanine Loan Documents relating thereto have been satisfied;

(ii) an assumption of this Agreement, the Note, the Pledge Agreement and the other Loan Documents as so modified by the proposed transferee, subject to the provisions of Section 9.3 hereof;

(iii) payment of all of reasonable out-of-pocket costs and expenses incurred in connection with such Transfer including, without limitation, the cost of any legal fees and expenses, Rating Agency fees and expenses or required legal opinions;

(iv) the payment of a non-refundable assumption fee equal to Lender's Share of One Million and No/100 Dollars (\$1,000,000) per transaction (effecting an assumption of the Loan) or series of related transactions (effected to implement an assumption of the Loan);

(v) the delivery of an Additional Insolvency Opinion reflecting the proposed transfer satisfactory in form and substance to Lender; and the delivery of an Additional True-Lease Opinion in form and substance satisfactory to Lender;

(vi) the proposed Transferee being Controlled and at least 50% owned, directly or indirectly, by one or more Qualified Transferees;

(vii) the Operating Company being Controlled and at least 50% owned, directly or indirectly, by one or more Qualified Transferees, having sufficient experience (or having a manager that has sufficient experience) in the management of properties similar to the Properties, and such Operating Company or its manager not having materially less than the same level of experience in the operation of properties similar to the Properties as the current Operating Company under the Operating Lease and, in each case, Lender shall be provided with reasonable evidence thereof (and Lender reserves the right to approve the Transferee(s) without approving the substitution of the Operating Company) and the operating tenant shall be either the Operating Company or, if permitted by applicable Legal Requirements, a manager acceptable to Lender under a management

agreement acceptable to Lender; provided that so long as the Operating Lease is in force and effect and the current Operating Company shall continue to be the tenant thereunder and owned and Controlled by the same Person(s) that currently own and Control the Operating Company, the condition with respect to the Operating Company set forth in this subclause (vi) shall be deemed to have been met in all respects;

(viii) the delivery of evidence reasonably satisfactory to Lender that the single purpose nature and bankruptcy remoteness of Borrower, its shareholders, partners or members, as the case may be, following such transfers are in accordance with the then current standards of Lender and the Rating Agencies; and the Transferee(s)' continued compliance with the representations and covenants set forth in Section 4.1.30 and Section 5.2.9 hereof;

(ix) Borrower's delivery to Lender of evidence reasonably satisfactory to Lender of any required approval or consent of any Governmental Authority, including the Gaming Authorities, that has direct or indirect authority or oversight over Borrower, Mortgage Borrower, Senior Mezzanine Borrower, the Properties, Operating Company or the operations conducted at the Properties to the change in ownership and/or operator of the Properties (or any part thereof);

(x) prior to any release of the Guarantor, a substitute guarantor reasonably acceptable to Lender shall have assumed all of the obligations of the Guarantor under the Guaranty (FF&E), the Guaranty (Recourse Carveouts), the Operating Lease Guaranty, the Guaranty (Ground Lease Estoppel), any completion guaranty provided under Section 5.1.21 and the Environmental Indemnity or executed replacement guaranties and an environmental indemnity reasonably satisfactory to Lender;

(xi) receipt of evidence satisfactory to Lender that all of the entities which own interests in the transferee similar to the interests in Borrower owned by the Third Mezzanine Borrower (1) shall assume the Third Mezzanine Loan (if still outstanding) and all the agreements of Third Mezzanine Borrower under the Third Mezzanine Loan Documents (and without limiting the foregoing, all of the ownership interests in Borrower, all payments thereon and all proceeds thereof shall be pledged to Lender on terms no less favorable than the pledge of the Collateral under the applicable Pledge Agreement), (2) shall each be a bankruptcy-remote single purpose entity, and (3) shall otherwise have a legal, financial and ownership structure that is (a) substantially the same as the Third Mezzanine Borrower or (b) at least as favorable to the Third Mezzanine Lender, as determined by the Third Mezzanine Lender in its reasonable discretion, as the legal, financial and ownership structure of Third Mezzanine Borrower;

(xii) receipt of evidence satisfactory to Lender that all of the entities which own interests in the transferee similar to the interests in Third Mezzanine Borrower owned by the Fourth Mezzanine Borrower (1) shall assume the Fourth Mezzanine Loan (if still outstanding) and all the agreements of Fourth Mezzanine Borrower under the Fourth Mezzanine Loan Documents (and without limiting the foregoing, all of the ownership interests in Third Mezzanine Borrower, all payments thereon and all proceeds thereof shall be pledged to Lender on terms no less favorable than the pledge of the Collateral

under the applicable Pledge Agreement), (2) shall each be a bankruptcy-remote single purpose entity, and (3) shall otherwise have a legal, financial and ownership structure that is (a) substantially the same as the Fourth Mezzanine Borrower or (b) at least as favorable to the Fourth Mezzanine Lender, as determined by the Fourth Mezzanine Lender in its reasonable discretion, as the legal, financial and ownership structure of Fourth Mezzanine Borrower;

(xiii) receipt of evidence satisfactory to Lender that all of the entities which own interests in the transferee similar to the interests in Fourth Mezzanine Borrower owned by the Fifth Mezzanine Borrower (1) shall assume the Fifth Mezzanine Loan (if still outstanding) and all the agreements of Fifth Mezzanine Borrower under the Fifth Mezzanine Loan Documents (and without limiting the foregoing, all of the ownership interests in Fourth Mezzanine Borrower, all payments thereon and all proceeds thereof shall be pledged to Lender on terms no less favorable than the pledge of the Collateral under the applicable Pledge Agreement), (2) shall each be a bankruptcy remote single purpose entity, and (3) shall otherwise have a legal, financial and ownership structure that is (a) substantially the same as the Fifth Mezzanine Borrower or (b) at least as favorable to the Fifth Mezzanine Lender, as determined by the Fifth Mezzanine Lender in its reasonable discretion, as the legal, financial and ownership structure of Fifth Mezzanine Borrower;

(xiv) receipt of evidence satisfactory to Lender that all of the entities which own interests in the transferee similar to the interests in Fifth Mezzanine Borrower owned by the Sixth Mezzanine Borrower (1) shall assume the Sixth Mezzanine Loan (if still outstanding) and all the agreements of Sixth Mezzanine Borrower under the Sixth Mezzanine Loan Documents (and without limiting the foregoing, all of the ownership interests in Fifth Mezzanine Borrower, all payments thereon and all proceeds thereof shall be pledged to Lender on terms no less favorable than the pledge of the Collateral under the applicable Pledge Agreement), (2) shall each be a bankruptcy remote single purpose entity, and (3) shall otherwise have a legal, financial and ownership structure that is (a) substantially the same as the Sixth Mezzanine Borrower or (b) at least as favorable to the Sixth Mezzanine Lender, as determined by the Sixth Mezzanine Lender in its reasonable discretion, as the legal, financial and ownership structure of Sixth Mezzanine Borrower;

(xv) receipt of evidence satisfactory to Lender that all of the entities which own interests in the transferee similar to the interests in Sixth Mezzanine Borrower owned by the Seventh Mezzanine Borrower (1) shall assume the Seventh Mezzanine Loan (if still outstanding) and all the agreements of Seventh Mezzanine Borrower under the Seventh Mezzanine Loan Documents (and without limiting the foregoing, all of the ownership interests in Sixth Mezzanine Borrower, all payments thereon and all proceeds thereof shall be pledged to Lender on terms no less favorable than the pledge of the Collateral under the applicable Pledge Agreement), (2) shall each be a bankruptcy remote single purpose entity, and (3) shall otherwise have a legal, financial and ownership structure that is (a) substantially the same as the Seventh Mezzanine Borrower or (b) at least as favorable to the Seventh Mezzanine Lender, as determined by the Seventh Mezzanine

Lender in its reasonable discretion, as the legal, financial and ownership structure of Seventh Mezzanine Borrower;

(xvi) receipt of evidence satisfactory to Lender that all of the entities which own interests in the transferee similar to the interests in Seventh Mezzanine Borrower owned by the Eighth Mezzanine Borrower (1) shall assume the Eighth Mezzanine Loan (if still outstanding) and all the agreements of Eighth Mezzanine Borrower under the Eighth Mezzanine Loan Documents (and without limiting the foregoing, all of the ownership interests in Seventh Mezzanine Borrower, all payments thereon and all proceeds thereof shall be pledged to Lender on terms no less favorable than the pledge of the Collateral under the applicable Pledge Agreement), (2) shall each be a bankruptcy remote single purpose entity, and (3) shall otherwise have a legal, financial and ownership structure that is (a) substantially the same as the Eighth Mezzanine Borrower or (b) at least as favorable to the Eighth Mezzanine Lender, as determined by the Eighth Mezzanine Lender in its reasonable discretion, as the legal, financial and ownership structure of Eighth Mezzanine Borrower; and

(xvii) receipt of evidence satisfactory to Lender that all of the entities which own interests in the transferee similar to the interests in Eighth Mezzanine Borrower owned by the Ninth Mezzanine Borrower (1) shall assume the Ninth Mezzanine Loan (if still outstanding) and all the agreements of Ninth Mezzanine Borrower under the Ninth Mezzanine Loan Documents (and without limiting the foregoing, all of the ownership interests in Eighth Mezzanine Borrower, all payments thereon and all proceeds thereof shall be pledged to Lender on terms no less favorable than the pledge of the Collateral under the applicable Pledge Agreement), (2) shall each be a bankruptcy remote single purpose entity, and (3) shall otherwise have a legal, financial and ownership structure that is (a) substantially the same as the Ninth Mezzanine Borrower or (b) at least as favorable to the Ninth Mezzanine Lender, as determined by the Ninth Mezzanine Lender in its reasonable discretion, as the legal, financial and ownership structure of Ninth Mezzanine Borrower.

(xviii) a written consent to the transfer from the lender under each Mezzanine Loan (and, if any, a Permitted Mezzanine Loan) or receipt by Lender of other evidence satisfactory to Lender that all conditions imposed under the terms of each Mezzanine Loan and Permitted Mezzanine Loan shall have been complied with by the borrower thereunder or otherwise waived by the applicable lender;

(xix) subsequent to such assumption of the Loan, the beneficial ownership of Borrower and Operating Company will be substantially identical; and

(xx) the delivery of a new Owner's Title Policy, in an amount equal to the value of the Properties, together with an endorsement to Lender in form and substance reasonably satisfactory to Lender.

Lender agrees to provide a written consent to a transfer pursuant to this Section 5.2.10(f) upon satisfaction of all of the conditions set forth in this Section 5.2.10(f) other than the condition set forth in clause (xix) of this Section 5.2.10(f).

(g) Restrictions on Transfers set forth herein or in the Pledge Agreement shall not apply to (i) the pledge by Borrower of the ownership interests in Mortgage Borrower as security for the Loan pursuant to this Agreement, (ii) the pledge by Second Mezzanine Borrower of the ownership interests in Borrower as security for the Second Mezzanine Loan pursuant to the Second Mezzanine Loan Agreement, (iii) the pledge by Third Mezzanine Borrower of the ownership interests in Second Mezzanine Borrower as security for the Third Mezzanine Loan pursuant to the Third Mezzanine Loan Agreement, (iv) the pledge by Fourth Mezzanine Borrower of the ownership interests in Third Mezzanine Borrower as security for the Fourth Mezzanine Loan pursuant to the Fourth Mezzanine Loan Agreement, (v) the pledge by Fifth Mezzanine Borrower of the ownership interests in Fourth Mezzanine Borrower as security for the Fifth Mezzanine Loan pursuant to the Fifth Mezzanine Loan Agreement, (vi) the pledge by Sixth Mezzanine Borrower of the ownership interests in Fifth Mezzanine Borrower as security for the Sixth Mezzanine Loan pursuant to the Sixth Mezzanine Loan Agreement, (vii) the pledge by Seventh Mezzanine Borrower of the ownership interests in Sixth Mezzanine Borrower as security for the Seventh Mezzanine Loan pursuant to the Seventh Mezzanine Loan Agreement, (viii) the pledge by Eighth Mezzanine Borrower of the ownership interests in Seventh Mezzanine Borrower as security for the Eighth Mezzanine Loan pursuant to the Eighth Mezzanine Loan Agreement, (ix) the pledge by Ninth Mezzanine Borrower of the ownership interests in Eighth Mezzanine Borrower as security for the Ninth Mezzanine Loan pursuant to the Ninth Mezzanine Loan Agreement, (x) any pledge pursuant to a New Mezzanine Loan or (xi) the Transfer or pledge of any direct or indirect interest in Holdings, provided that no Change in Control shall occur.

(h) Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Debt immediately due and payable upon a Transfer without Lender's consent. This provision shall apply to every Transfer regardless of whether voluntary or not, or whether or not Lender has consented to any previous Transfer.

**5.2.11 Operating Lease Subsidiary.** Borrower shall not cause or permit Mortgage Borrower to Transfer any of its interests in Ground Lease Subsidiary without the prior written consent of Lender; Borrower shall not permit Mortgage Borrower to cause or permit Ground Lease Subsidiary to own any assets other than its interests in the Ground Lease or to incur any liabilities other than liabilities under the Ground Lease; Borrower shall not permit Mortgage Borrower to cause or permit Ground Lease Subsidiary to engage in any business other than that related to its ownership of interests in the Ground Lease.

**5.2.12 Limitations on Distributions.** Following the occurrence and during the continuance of an Event of Default, Borrower shall not make any distributions to its members. If any Distributions shall be received by Borrower or any Affiliate of Borrower after the occurrence and during the continuance of an Event of Default, Borrower shall hold, or shall cause the same to be held, in trust for the benefit of Lender.

**5.2.13 Other Limitations.** Prior to the payment in full of the Debt, neither Borrower nor any of its Affiliates shall, without the prior written consent of Lender (which may be furnished or withheld at its sole and absolute discretion), give its consent or approval to any of

the following actions or items: the distribution by Mortgage Borrower or Senior Mezzanine Borrower of property other than cash.

**5.2.14 Refinancing.** Borrower shall not consent to or permit a refinancing of the Mortgage Loan or Senior Mezzanine Loan unless it obtains the prior consent of Lender, unless the Loan shall be paid in full in connection with such refinancing in accordance with this Agreement. Borrower shall not consent to or permit a prepayment in full or in part of the Mortgage Loan or Senior Mezzanine Loan unless it obtains the prior consent of Lender, unless the Loan shall likewise be prepaid (in the same proportion, in the case of any partial prepayment) in accordance with this Agreement.

**Section 5.3. General.** For avoidance of doubt, all requirements contained in this Article V with respect to the Operating Company shall mean that it shall be a Default or Event of Default hereunder if Operating Company fails to perform in the specified manner, but Lender acknowledges that Operating Company is not a party to this Agreement and that Borrower does not control Operating Company.

## **VI. INSURANCE; CASUALTY; CONDEMNATION**

**Section 6.1. Insurance.** (a) Borrower shall cause Mortgage Borrower to maintain at all times during the term of the Loan the Policies required under Section 6.1 of the Mortgage Loan Agreement, including, without limitation, meeting all insurer requirements thereunder. In addition, Borrower shall cause Lender to be named “as their interest may appear”, under the Policies required under Sections 6.1(a)(i), (ii), (iii), (iv), (v), (vi), (vii), (viii), (ix), (x) and (xi) of the Mortgage Loan Agreement and as an “additional insured” with respect to liability coverages. Borrower shall also cause all insurance policies required under this Section 6.1 to provide for at least thirty (30) days’ prior notice to Lender in the event of policy cancellation or material changes. Borrower shall provide Lender with evidence of all such insurance required hereunder on or before the date on which Mortgage Borrower is required to provide such evidence to Mortgage Lender. For purposes of this Agreement, Lender shall have the same approval rights over the insurance referred to above and in the Mortgage Loan Agreement (including, without limitation, the insurers, deductibles and coverages thereunder, as well as the right to require other reasonable insurance pursuant to Section 6.1 of the Mortgage Loan Agreement) as are provided in favor of the Mortgage Lender in the Mortgage Loan Agreement.

(b) If at any time Lender is not in receipt of written evidence that all insurance required hereunder is in full force and effect, Lender shall have the right, without notice to Borrower, to take such action as Lender deems necessary to protect its interest in any of the Properties or the Collateral, including, without limitation, the obtaining of such insurance coverage as Lender in its sole discretion deems appropriate (but limited to the coverages and amounts required under the Mortgage Loan Agreement) and all premiums incurred by Lender in connection with such action or in obtaining such insurance and keeping it in effect shall be paid by Borrower to Lender upon demand and shall bear interest at the Default Rate.

**Section 6.2. Casualty.** If the Individual Property shall be materially damaged or destroyed, in whole or in part, by fire or other casualty (a “Casualty”), Borrower shall give prompt notice of such damage to Lender and shall cause Mortgage Borrower to promptly

commence and diligently prosecute the completion of the Restoration of the Individual Property as nearly as possible to the condition the Individual Property was in immediately prior to such Casualty, with such alterations as may be reasonably approved by Lender and otherwise in accordance with Section 6.4 of the Mortgage Loan Agreement. Borrower shall cause Mortgage Borrower to pay all costs of such Restoration whether or not such costs are covered by insurance. Lender may, but shall not be obligated to make proof of loss if not made promptly by Borrower or Mortgage Borrower. In addition, Lender may participate in any settlement discussions with any insurance companies with respect to any Casualty in which the Net Proceeds or the costs of completing the Restoration are equal to or greater than, in the case of each Casualty, an amount equal to five percent (5%) of the sum of the Allocated Loan Amount for the affected Individual Property and the "Allocated Loan Amounts" under (and as defined in each of) the Mortgage Loan Agreement and the Other Mezzanine Loan Agreements for the affected Individual Property, and Borrower shall deliver to Lender all instruments required by Lender to permit such participation.

**Section 6.3. Condemnation.** Borrower shall promptly give Lender notice of the actual or threatened commencement of any proceeding for the Condemnation of any Individual Property and shall cause Mortgage Borrower to deliver to Lender copies of any and all papers served in connection with such proceedings. Lender may participate in any such proceedings, and Borrower shall from time to time deliver to Lender all instruments requested by it to permit such participation. Borrower shall, at its expense, diligently prosecute any such proceedings, and shall consult with Lender, its attorneys and experts, and cooperate with them in the carrying on or defense of any such proceedings. Notwithstanding any taking by any public or quasi-public authority through Condemnation or otherwise (including, but not limited to, any transfer made in lieu of or in anticipation of the exercise of such taking), Borrower shall continue to pay the Debt at the time and in the manner provided for its payment in the Note and in this Agreement and the Debt shall not be reduced until any Award shall have been actually received and applied by Lender, after the deduction of expenses of collection, to the reduction or discharge of the Debt. Lender shall not be limited to the interest paid on the Award by the condemning authority but shall be entitled to receive out of the Award interest at the rate or rates provided herein or in the Note. If any Individual Property or any portion thereof is taken by a condemning authority, Borrower shall cause Mortgage Borrower to promptly commence and diligently prosecute the Restoration of the applicable Individual Property and otherwise comply with the provisions of Section 6.4 of the Mortgage Loan Agreement. If any Individual Property is sold, through foreclosure or otherwise, prior to the receipt by Lender of the Award, Lender shall have the right, whether or not a deficiency judgment on the Note shall have been sought, recovered or denied, to receive the Award, or a portion thereof sufficient to pay the Debt.

**Section 6.4. Restoration.** Borrower shall, or shall cause Mortgage Borrower to, deliver to Lender all reports, plans, specifications, documents and other materials that are delivered to Mortgage Lender under Section 6.4 of the Mortgage Loan Agreement in connection with the Restoration of any Individual Property after a Casualty or Condemnation.

## VII. RESERVE FUNDS

### Section 7.1. Intentionally Omitted.

**Section 7.2. Tax and Insurance Escrow Fund.** (a) If (and for so long as) a Trigger Event shall have occurred and shall not have been cured by a Trigger Event Cure, on each Payment Date during such period, Borrower shall pay to Lender (or Servicer, as directed by Lender) an amount equal to (i) one-twelfth of the Taxes that Lender estimates will be payable during the next ensuing twelve (12) months in order to accumulate with Lender sufficient funds to pay all such Taxes at least thirty (30) days prior to their respective due dates, and (ii) one-twelfth of the Insurance Premiums that Lender estimates will be payable for the renewal of the coverage afforded by the Policies upon the expiration thereof in order to accumulate with Lender sufficient funds to pay all such Insurance Premiums at least thirty (30) days prior to the expiration of the Policies (said amounts in (i) and (ii) above hereinafter called the “**Tax and Insurance Escrow Fund**”). Lender shall apply the Tax and Insurance Escrow Fund to payments of Taxes and Insurance Premiums required to be made by Borrower pursuant to Section 5.1.2 hereof and under the Mortgage Loan Agreement. In making any payment relating to the Tax and Insurance Escrow Fund, Lender may do so according to any bill, statement or estimate procured from the appropriate public office (with respect to Taxes) or insurer or agent (with respect to Insurance Premiums), without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof. If the amount of the Tax and Insurance Escrow Fund shall exceed the amounts due for Taxes and Insurance Premiums pursuant to Section 5.1.2 hereof, provided no Event of Default shall have occurred and be continuing, then Lender shall return any excess to Borrower (or to Operating Company, if so directed by Borrower). In allocating such excess, Lender may deal with the Person shown on the records of Lender to be the owner of the Properties. If at any time Lender reasonably determines that the Tax and Insurance Escrow Fund is not or will not be sufficient to pay Taxes and Insurance Premiums by the dates set forth in (i) and (ii) above, Lender shall notify Borrower of such determination and Borrower shall increase its monthly payments to Lender by the amount that Lender estimates is sufficient to make up the deficiency at least thirty (30) days prior to the due date of the Taxes and/or thirty (30) days prior to expiration of the Policies, as the case may be.

(b) Notwithstanding the foregoing, Borrower shall not be required to make any deposits into the Tax and Insurance Escrow Fund on account of Insurance Premiums if (and for so long as) Borrower shall maintain a blanket insurance policy in respect of the Properties that is in accordance with the provisions of Section 6.1(a) and otherwise satisfactory to Lender in all material respects.

(c) Any amount remaining in the Tax and Insurance Escrow Fund following the occurrence of a Trigger Event Cure shall be returned to Borrower (or Operating Company, as directed by Borrower).

**7.2.1 Waiver of Tax Escrow.** Borrower shall be relieved of its obligation to make deposits of Tax and Insurance Escrow Fund under Section 7.2 above, provided that (a) Mortgage Borrower or Senior Mezzanine Borrower is required to and does make monthly deposits to a tax escrow account under the Mortgage Loan or Senior Mezzanine Loan, and (b) Lender receives evidence acceptable to it of the making of such deposits and of the payment of all such Taxes.

**7.2.2 Tax and Insurance Escrow Funds After Debt Paid.** Any Tax and Insurance Escrow Funds remaining after the Debt has been paid in full shall be remitted (i) if the Third Mezzanine Loan is outstanding, then to the Third Mezzanine Lender or (ii) if the Third Mezzanine Loan is not then outstanding but the Fourth Mezzanine Loan is outstanding, then to the Fourth Mezzanine Lender in accordance with the Third Mezzanine Loan Agreement or (iii) if the Third Mezzanine Loan and the Fourth Mezzanine Loan are no longer outstanding, then to the Fifth Mezzanine Lender in accordance with the Fourth Mezzanine Loan Agreement or (iv) if the Third Mezzanine Loan, the Fourth Mezzanine Loan and the Fifth Mezzanine Loan are no longer outstanding, then to the Sixth Mezzanine Lender in accordance with the Fifth Mezzanine Loan Agreement or (v) if the Third Mezzanine Loan, the Fourth Mezzanine Loan, the Fifth Mezzanine Loan and the Sixth Mezzanine Loan are no longer outstanding, then to the Seventh Mezzanine Lender in accordance with the Sixth Mezzanine Loan Agreement or (vi) if the Third Mezzanine Loan, the Fourth Mezzanine Loan, the Fifth Mezzanine Loan, the Sixth Mezzanine Loan and the Seventh Mezzanine Loan are no longer outstanding, then to the Eighth Mezzanine Lender in accordance with the Seventh Mezzanine Loan Agreement or (vii) if the Third Mezzanine Loan, the Fourth Mezzanine Loan, the Fifth Mezzanine Loan, the Sixth Mezzanine Loan, the Seventh Mezzanine Loan and the Eighth Mezzanine Loan are no longer outstanding, then to the Ninth Mezzanine Lender in accordance with the Eighth Mezzanine Loan Agreement or (viii) if the Third Mezzanine Loan, the Fourth Mezzanine Loan, the Fifth Mezzanine Loan, the Sixth Mezzanine Loan, the Seventh Mezzanine Loan, the Eighth Mezzanine Loan and the Ninth Mezzanine Loan are no longer outstanding then to Borrower or, at Borrower's election, shall be credited against the Debt simultaneously with the satisfaction of the balance of the Loan.

**Section 7.3. FF&E Reserve Account.**

**7.3.1 FF&E Reserve Fund.** (a) Unless Borrower shall have delivered to Lender a Guaranty (FF&E), Borrower shall pay to Lender (or Servicer, as directed by Lender) on each Payment Date an amount equal to (i) one-twelfth of three percent (3%) of the amount of all Revenues for the full calendar year prior to the first (1st) day of the month in which such Payment Date occurs, less (ii) any amount spent during the previous calendar month by Borrower or Operating Company on behalf of Borrower in accordance with the Operating Lease on account of FF&E (other than from the FF&E Reserve Fund, it being understood that amounts expended on account of FF&E from the FF&E Reserve Fund shall not be included in any deductions required pursuant to the preceding subclause (i) and that any FF&E that is purchased through disbursements from the FF&E Reserve Fund may not be subsequently financed by Borrower or Operating Company). Notwithstanding anything to the contrary contained herein, in no event shall Borrower be required to maintain in the FF&E Reserve Account an amount in excess of the aggregate amount of all FF&E deposits required to be made in the preceding calendar year (as determined, for purposes of this sentence, utilizing the monthly formula set forth in the preceding sentence). In addition, notwithstanding anything to the contrary contained herein, for purposes of determining the amount of any required FF&E Reserve Fund deposits (and for purposes of calculating such amount, monthly, based on the formula set forth in the first sentence of this Section 7.3.1), Revenues shall include Revenue from the Hotel Component and the Casino Component but shall not include non-Hotel or Casino related Revenues (e.g., Rents from retail tenants).

(b) Amounts deposited by Borrower as described in this Section 7.3.1 shall hereinafter be referred to as the “**FF&E Reserve Fund**” and the account in which such amounts are held shall hereinafter be referred to as the “**FF&E Reserve Account**”.

**7.3.2 Disbursements from FF&E Reserve Account.** (a) All disbursements from the FF&E Reserve Account shall be made solely for the purpose of reimbursing Borrower (or Operating Company for FF&E bought on behalf and in the name of Borrower in accordance with the Operating Lease, as directed by Borrower) for its costs and expenses incurred, or for paying costs to be incurred, in connection with the repair, replacement and/or upgrade of FF&E at the Properties. Provided no Event of Default shall have occurred and be continuing, Lender shall, within ten (10) days following request by Borrower, make disbursements from the FF&E Reserve Fund no more frequently than once in any thirty (30) day period, in amounts no less than \$10,000 per disbursement (or a lesser amount if the total amount in the FF&E Reserve Account is less than \$10,000, in which case only one disbursement of the amount remaining in the account shall be made), and upon delivery by Borrower (or Operating Company) of Lender’s standard form of draw request accompanied by copies of invoices for the amounts requested and, if required by Lender for requests in excess of \$50,000 for a single item, receipts and releases from all parties furnishing materials and/or services in connection with the requested payment.

(b) Disbursements may be made from the FF&E Reserve Account, at Borrower’s election, directly to third parties (as directed by Borrower).

(c) In no event shall funds in the FF&E Reserve Account be utilized to pay (or reimburse any Person) for any Capital Expenditures or non-recurring work being performed at the Properties.

**7.3.3 Balance in the FF&E Reserve Account.** (a) The insufficiency of any balance in the FF&E Reserve Account shall not relieve Borrower from its obligation to fulfill all preservation and maintenance covenants in the Loan Documents.

**7.3.4 Waiver of FF&E Reserve.** Borrower shall be relieved of its obligation to make deposits of FF&E Reserve Fund under Section 7.3 above, provided that either (a)(i) Mortgage Borrower or Senior Mezzanine Borrower is required to and does make monthly deposits to a FF&E reserve account under the Mortgage Loan or Senior Mezzanine Loan, and (ii) Lender receives evidence acceptable to it of the making of such deposits or (b) an FF&E Guaranty is provided to Mortgage Lender.

**7.3.5 FF&E Reserve Funds After Debt Paid.** Any FF&E Reserve Funds remaining after the Debt has been paid in full shall be remitted (i) if the Third Mezzanine Loan is outstanding, to the Third Mezzanine Lender or (ii) if the Third Mezzanine Loan is not then outstanding, but the Fourth Mezzanine Loan is outstanding, then to the Fourth Mezzanine Lender in accordance with the Third Mezzanine Loan Agreement or (iii) if the Third Mezzanine Loan and the Fourth Mezzanine Loan are no longer outstanding, then to the Fifth Mezzanine Lender in accordance with the Fourth Mezzanine Loan Agreement or (iv) if the Third Mezzanine Loan, the Fourth Mezzanine Loan and the Fifth Mezzanine Loan are no longer outstanding, then to the Sixth Mezzanine Lender in accordance with the Fifth Mezzanine Loan Agreement or (v) if the Third Mezzanine Loan, the Fourth Mezzanine Loan, the Fifth Mezzanine Loan and the Sixth

Mezzanine Loan are no longer outstanding, then to the Seventh Mezzanine Lender in accordance with the Sixth Mezzanine Loan Agreement or (vi) if the Third Mezzanine Loan, the Fourth Mezzanine Loan, the Fifth Mezzanine Loan, the Sixth Mezzanine Loan and the Seventh Mezzanine Loan are no longer outstanding, then to the Eighth Mezzanine Lender in accordance with the Seventh Mezzanine Loan Agreement or (vii) if the Third Mezzanine Loan, the Fourth Mezzanine Loan, the Fifth Mezzanine Loan, the Sixth Mezzanine Loan, the Seventh Mezzanine Loan and the Eighth Mezzanine Loan are no longer outstanding, then to the Ninth Mezzanine Lender in accordance with the Eighth Mezzanine Loan Agreement or (viii) if the Third Mezzanine Loan, the Fourth Mezzanine Loan, the Fifth Mezzanine Loan, the Sixth Mezzanine Loan, the Seventh Mezzanine Loan, the Eighth Mezzanine Loan and the Ninth Mezzanine Loan are no longer outstanding then to Borrower.

#### **Section 7.4. Ground Rent Funds.**

**7.4.1 Deposits of Ground Rent Funds.** If (and for so long as) a Trigger Event shall have occurred and shall not have been cured by a Trigger Event Cure, Borrower shall deposit with Lender (or Servicer, as directed by Lender), at least ten (10) Business Days prior to each Payment Date during such period, an amount equal to the Ground Rent that will be payable under the Ground Lease for the month in which such Payment Date occurs. Amounts deposited by Borrower as described in this Section 7.4.1 shall hereinafter be referred to as the “**Ground Rent Reserve Fund**” and the account in which such amounts are held shall hereinafter be referred to as the “**Ground Rent Reserve Account**”. Such deposit may be increased by Lender in the amount Lender deems is necessary in its reasonable discretion based on any increases in the Ground Rent.

**7.4.2 Release of Ground Rent Funds.** Provided no Event of Default has occurred and is continuing, Lender shall apply the Ground Rent Reserve Funds to payments of Ground Rent. In making any payment relating to Ground Rent, Lender may do so according to any bill or statement given by the Ground Lessor without inquiry into the accuracy of such bill or statement or into the validity of any rent, additional rent or other charge thereof. If the amount of the Ground Rent Reserve Funds shall exceed the amounts due for Ground Rent, Lender shall return any excess to Borrower.

**7.4.3 Waiver of Ground Rent Reserve.** Borrower shall be relieved of its obligation to make deposits of Ground Rent Reserve Funds under Section 7.4 above, provided that (a) Mortgage Borrower or Senior Mezzanine Borrower is required to and does make monthly deposits to a ground rent reserve account under the Mortgage Loan or Senior Mezzanine Loan, and (b) Lender receives evidence acceptable to it of the making of such deposits and of the payment of all Ground Rent.

**7.4.4 Ground Rent Reserve Funds After Debt Paid.** Any Ground Rent Reserve Funds remaining after the Debt has been paid in full shall be remitted (i) first, if the Third Mezzanine Loan is outstanding, to the Third Mezzanine Lender or (ii) if the Third Mezzanine Loan is not then outstanding but the Fourth Mezzanine Loan is outstanding, then to the Fourth Mezzanine Lender in accordance with the Third Mezzanine Loan Agreement or (iii) if the Third Mezzanine Loan and the Fourth Mezzanine Loan are no longer outstanding, then to the Fifth Mezzanine Lender in accordance with the Fourth Mezzanine Loan Agreement or (iv) if the

Third Mezzanine Loan, the Fourth Mezzanine Loan and the Fifth Mezzanine Loan are no longer outstanding, then to the Sixth Mezzanine Lender in accordance with the Fifth Mezzanine Loan Agreement or (v) if the Third Mezzanine Loan, the Fourth Mezzanine Loan, the Fifth Mezzanine Loan and the Sixth Mezzanine Loan are no longer outstanding, then to the Seventh Mezzanine Lender in accordance with the Sixth Mezzanine Loan Agreement or (vi) if the Third Mezzanine Loan, the Fourth Mezzanine Loan, the Fifth Mezzanine Loan, the Sixth Mezzanine Loan and the Seventh Mezzanine Loan are no longer outstanding, then to the Eighth Mezzanine Lender in accordance with the Seventh Mezzanine Loan Agreement or (vii) if the Third Mezzanine Loan, the Fourth Mezzanine Loan, the Fifth Mezzanine Loan, the Sixth Mezzanine Loan, the Seventh Mezzanine Loan and the Eighth Mezzanine Loan are no longer outstanding, then to the Ninth Mezzanine Lender in accordance with the Eighth Mezzanine Loan Agreement or (viii) if the Third Mezzanine Loan, the Fourth Mezzanine Loan, the Fifth Mezzanine Loan, the Sixth Mezzanine Loan, the Seventh Mezzanine Loan, the Eighth Mezzanine Loan and the Ninth Mezzanine Loan are no longer outstanding then to Borrower.

**Section 7.5. Reserve Funds, Generally.** (a) Borrower grants to Lender a first-priority perfected security interest in each of the Reserve Funds and any and all monies now or hereafter deposited in each Reserve Fund as additional security for payment of the Debt. Until expended or applied in accordance herewith, the Reserve Funds shall constitute additional security for the Debt. Upon the occurrence and during the continuance of an Event of Default, Lender may, in addition to any and all other rights and remedies available to Lender, apply any sums then present in any or all of the Reserve Funds to the payment of the Debt in any order in its sole discretion. The Reserve Funds shall not constitute trust funds and may be commingled with other monies held by Lender.

(b) Borrower shall not, without obtaining the prior consent of Lender, further pledge, assign or grant any security interest in any Reserve Fund or the monies deposited therein or permit any lien or encumbrance to attach thereto, or any levy to be made thereon, or any UCC-1 Financing Statements, except those naming Lender as the secured party, to be filed with respect thereto.

(c) The Reserve Funds shall be held by Lender (or Servicer) and may be invested at Borrower's election and direction in Permitted Investments routinely offered by the Servicer of the Securitization for investment by Borrower. All interest or other earnings on a Reserve Fund shall be added to and become a part of such Reserve Fund for the benefit of Borrower and shall be disbursed in the same manner as other monies deposited in such Reserve Fund. Borrower shall have the right to direct Lender (or Servicer) to invest sums on deposit in the Eligible Account in Permitted Investments provided (a) such investments are permitted by applicable federal, state and local rules, regulations and laws, (b) the maturity date of the Permitted Investment is not later than the date on which the applicable Reserve Funds are required for payment of an obligation for which such Reserve Fund was created, and (c) no Event of Default shall have occurred and be continuing. Borrower shall be responsible for payment of any federal, state or local income or other tax applicable to the interest or income earned on the Reserve Funds. No other investments of the sums on deposit in the Reserve Funds shall be permitted except as set forth in this Section 7.5. Borrower shall bear all reasonable costs associated with the investment of the sums in the account in Permitted Investments. Such costs shall be deducted from the income or earnings on such investment, if any, and to the extent such

income or earnings shall not be sufficient to pay such costs, such costs shall be paid by Borrower promptly on demand by Lender. Lender shall have no liability for the rate of return earned or losses incurred on the investment of the sums in Permitted Investments.

(d) Borrower shall indemnify Lender and hold Lender harmless from and against any and all actions, suits, claims, demands, liabilities, losses, damages, obligations and costs and expenses (including litigation costs and reasonable attorneys fees and expenses) arising from or in any way connected with the Reserve Funds or the performance of the obligations for which the Reserve Funds were established. Borrower shall assign to Lender all rights and claims Borrower may have against all Persons supplying labor, materials or other services which are to be paid from or secured by the Reserve Funds; provided, however, that Lender may not pursue any such right or claim unless an Event of Default has occurred and remains uncured.

**Section 7.6. Transfer of Reserve Funds Under Mortgage Loan and Senior Mezzanine Loan.** If Mortgage Lender or Senior Mezzanine Lender waives any reserves or escrow accounts required in accordance with the terms of the Mortgage Loan Agreement or Senior Mezzanine Loan Agreement which reserves or escrow accounts are also required in accordance with the terms of this Article VII, or if the Mortgage Loan or Senior Mezzanine Loan is refinanced or paid off in full (without a prepayment of the Loan) and Reserve Funds that are required hereunder are not required under the new mortgage loan, if any, then Borrower shall cause any amounts that would have been deposited into any reserves or escrow accounts in accordance with the terms of the Mortgage Loan Agreement or Senior Mezzanine Loan Agreement to be paid to and deposited with Lender in accordance with the terms of this Article VII (and Borrower shall enter into lockbox and cash management agreements for the benefit of Lender in form and substance acceptable to Lender).

## **VIII. DEFAULTS**

**Section 8.1. Event of Default.** (a) Each of the following events shall constitute an event of default hereunder (an “**Event of Default**”):

(i) if (A) any portion of the Debt is not paid in full on the Maturity Date, (B) the Debt Service is not paid in full on or before the related Payment Date, or (C) any other portion of the Debt is not paid within five (5) days of when due;

(ii) if any of the Taxes or Other Charges are not paid (with respect to each Individual Property) prior to Delinquency;

(iii) if the Policies (with respect to each Individual Property) are not kept in full force and effect, or if certified copies of the Policies (for each Individual Property) are not delivered to Lender upon request (or certificates thereof, if a Policy shall be renewed and certified copies of the Policy are not immediately available upon such renewal (Borrower agreeing in such instance to provide copies of the Policies to Lender promptly thereafter));

(iv) if Borrower Transfers or otherwise encumbers any portion of the Properties, the Collateral or Senior Mezzanine Collateral, or there shall otherwise occur a

Transfer, without Lender's prior consent in violation of the provisions of this Agreement, the Pledge Agreement or any other Loan Document or any Transfer is made in violation of the provisions of Section 5.2.10;

(v) if any representation or warranty made by Borrower or any other Loan Party herein or in any other Loan Document, or in any report, certificate, financial statement or other instrument, agreement or document furnished to Lender shall have been false or misleading in any material respect as of the date the representation or warranty was made (and, with respect to any such breach which is not the subject of any other subsection of this Section 8.1 and which is capable of being cured, Borrower fails to remedy such condition within ten (10) days following notice to Borrower from Lender, in the case of any such breach which can be cured by the payment of a sum of money, or within thirty (30) days following notice from Lender in the case of any other such breach);

(vi) if Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Principal, Holdings, Operating Company or any Guarantor shall make an assignment for the benefit of creditors;

(vii) if a receiver, liquidator or trustee shall be appointed for Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Principal, Holdings, Operating Company or Guarantor, or if Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Principal, Holdings, Operating Company or Guarantor shall be adjudicated a bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to federal bankruptcy law, or any similar federal or state law, shall be filed by or against, consented to, or acquiesced in by, Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Principal, Holdings, Operating Company or Guarantor, or if any proceeding for the dissolution or liquidation of Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Principal, Holdings, Operating Company or Guarantor shall be instituted; provided, however, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Principal, Holdings, Operating Company or Guarantor, upon the same not being discharged, stayed or dismissed within ninety (90) days;

(viii) if Borrower attempts to assign its rights under this Agreement or any of the other Loan Documents or any interest herein or therein in contravention of the Loan Documents;

(ix) if Borrower breaches any of its respective negative covenants contained in Section 5.2 or any covenant contained in Section 4.1.30 or Section 5.1.11 hereof (and, with respect to any such breach of any covenant set forth in Section 5.1.11 which is not the subject of any other subsection of this Section 8.1, Borrower fails to remedy such condition within ten (10) days after notice to Borrower from Lender, in the case of any such Default under Section 5.1.11 which can be cured by the payment of a sum of money, or for thirty (30) days after notice from Lender in the case of any other such Default under Section 5.1.11);

(x) with respect to any term, covenant or provision set forth herein which specifically contains a notice requirement or grace period, if Borrower shall be in default under such term, covenant or condition after the giving of such notice or the expiration of such grace period;

(xi) if any of the assumptions contained in the Insolvency Opinion delivered to Lender in connection with the Loan, or in the Additional Insolvency Opinion delivered subsequent to the closing of the Loan, is or shall become untrue in any material respect; or if any of the assumptions contained in the True Lease Opinion delivered to Lender in connection with the Loan, or in the Additional True Lease Opinion delivered subsequent to the closing of the Loan, is or shall become untrue in any material respect;

(xii) if Mortgage Borrower, Operating Company or Guarantor (Operating Lease) is in default of any of its material obligations under the Operating Lease (or under another lease and/or management agreement in substitution for the Operating Lease in accordance herewith) or under the Operating Lease Guaranty (or under another operating lease guaranty in substitution for the Operating Lease Guaranty in accordance herewith) beyond any applicable notice and cure periods contained therein; or if any Operating Lease (or such other lease and/or management agreement) or any Operating Lease Guaranty (or such other operating lease guaranty) shall be surrendered or any Operating Lease or any Operating Lease Guaranty shall be terminated or canceled for any reason or under any circumstances whatsoever, except with the consent of Lender; or if any of the terms, covenants or conditions of the Operating Lease (or such other lease and/or management agreement) or the Operating Lease Guaranty (or such other operating lease guaranty) shall in any manner be modified, changed, supplemented, altered, restated or amended without the consent of Lender except as may otherwise expressly permitted in this Agreement;

(xiii) if any Affiliate of Borrower that is or becomes a party to the Windstorm Insurance Intercreditor Agreement is in default of any of its material obligations under the Windstorm Insurance Intercreditor Agreement beyond any applicable notice and cure periods contained therein; or if the Windstorm Insurance Intercreditor Agreement shall be surrendered, terminated or canceled for any reason or under any circumstances whatsoever, except with the consent of Lender; or if any of the terms, covenants or conditions of the Windstorm Insurance Intercreditor Agreement shall in any manner be modified, changed, supplemented, altered, restated or amended without the consent of Lender;

(xiv) if Borrower, Senior Mezzanine Borrower or Mortgage Borrower fails to comply with the covenants as to Prescribed Laws set forth in Section 5.1.1 hereof;

(xv) if (A) subject to any notice and cure periods contained in the applicable Ground Lease, Mortgage Borrower or Ground Lease Subsidiary, as applicable, shall fail in the payment of any rent, additional rent or other charge mentioned in or made payable by such Ground Lease as and when such rent or other charge is payable (unless waived by the landlord under such Ground Lease), (B) subject to any notice and cure periods contained in the applicable Ground Lease, there shall occur any default by Mortgage

Borrower or Ground Lease Subsidiary, as applicable, as tenant under such Ground Lease, in the observance or performance of any term, covenant or condition of the Ground Lease on the part of Mortgage Borrower or Ground Lease Subsidiary, as applicable, to be observed or performed (unless waived by the landlord under the Ground Lease) (other than any such default being contested by Borrower in good faith by appropriate proceedings, provided that (i) no Event of Default has occurred and remains uncured, (ii) such proceeding shall be conducted in accordance with all applicable statutes, laws and ordinances, (iii) in Lender's reasonable determination, the Ground Lease is not in imminent danger of being forfeited, terminated, cancelled or lost and the Operating Company's use and operation of the ground leased premises in connection with the operation of Harrah's Lake Tahoe", "Harvey's Lake Tahoe" or "Bill's Lake Tahoe" is not in imminent danger of being denied, forfeited, terminated, cancelled or lost and (iv) Borrower shall furnish such security as may be reasonably requested by Lender), (C) any one or more of the events referred to in any Ground Lease shall occur which would cause the Ground Lease to terminate without notice or action by the landlord under the Ground Lease or which would entitle the landlord to terminate the Ground Lease and the term thereof by giving notice to Mortgage Borrower or Ground Lease Subsidiary, as applicable, as tenant thereunder (unless waived by the landlord under the Ground Lease), (D) the leasehold estate created by any Ground Lease shall be surrendered or the Ground Lease shall be terminated or canceled for any reason or under any circumstances whatsoever unless Mortgage Borrower or Ground Lease Subsidiary, as applicable, acquires the fee interest and mortgages same to Lender (unless Mortgage Borrower or Ground Lease Subsidiary, as applicable, acquires the fee interest, with Lender's prior reasonable approval, and mortgages same to Mortgage Lender) or (E) if any of the terms, covenants or conditions of any Ground Lease shall in any manner be modified, changed, supplemented, altered, or amended without the consent of Lender except as otherwise permitted by this Agreement;

(xvi) any Gaming License shall be refused, suspended, revoked, modified in a materially adverse manner or canceled or allowed to lapse or any proceeding is commenced by any Governmental Authority for the purpose of suspending, revoking or canceling any Gaming License in any materially adverse respect, or any Governmental Authority shall have appointed a conservator, supervisor or trustee to or for any of the Casino Components and, in each case of the foregoing, such action could reasonably be expected to (A) have an Individual Material Adverse Effect, (B) materially and adversely effect the continued operation of the Casino Components in the usual course of business and in substantially the same manner and to at least the same standard as was maintained prior to such action, or (C) result in any material decrease in the then expected cash flow and revenues to be derived from the Casino Components;

(xvii) if Borrower shall continue to be in Default under any of the other terms, covenants or conditions of this Agreement not specified in subsections (i) to (xv) above, for ten (10) days after notice to Borrower from Lender, in the case of any Default which can be cured by the payment of a sum of money, or for thirty (30) days after notice from Lender in the case of any other Default; provided, however, that if such non-monetary Default is susceptible of cure but cannot reasonably be cured within such thirty (30) day period and provided further that Borrower shall have commenced to cure such Default

within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for such time as is reasonably necessary for Borrower in the exercise of due diligence to cure such Default, such additional period not to exceed one hundred twenty (120) days;

(xviii) if there shall be a default under any of the other Loan Documents beyond any applicable cure periods contained in such documents, whether as to Borrower, Mortgage Borrower, Senior Mezzanine Borrower, the Collateral or any Individual Property, or if any other such event shall occur or condition shall exist, if the effect of such event or condition is to accelerate the maturity of any portion of the Debt or to permit Lender to accelerate the maturity of all or any portion of the Debt;

(xix) if the Liens created pursuant to any Loan Document shall cease to be a fully protected enforceable first priority security interest in the Collateral, or any portion of the Collateral is Transferred without Lender's prior written consent except as permitted hereunder; or

(xx) if a Mortgage Loan Event of Default or Senior Mezzanine Loan Event of Default shall occur.

(b) Upon the occurrence of an Event of Default (other than an Event of Default described in clauses (vi) or (vii) above) and at any time thereafter, in addition to any other rights or remedies available to it pursuant to this Agreement and the other Loan Documents or at law or in equity, Lender may take such action, without notice or demand, that Lender deems advisable to protect and enforce its rights against Borrower and in and to all or any of the Collateral, including, without limitation, declaring the Debt to be immediately due and payable, and Lender may enforce or avail itself of any or all rights or remedies provided in the Loan Documents and may exercise all the rights and remedies of a secured party under the Uniform Commercial Code, as adopted and enacted by the State or States where any of the Collateral is located against Borrower and any or all of the Collateral, including, without limitation, all rights or remedies available at law or in equity; and upon any Event of Default described in clauses (vi) or (vii) above, the Debt and all other obligations of Borrower hereunder and under the other Loan Documents shall immediately and automatically become due and payable, without notice or demand, and Borrower hereby expressly waives any such notice or demand, anything contained herein or in any other Loan Document to the contrary notwithstanding.

**Section 8.2. Remedies.** (a) Upon the occurrence of an Event of Default, but in compliance with applicable Gaming Laws, all or any one or more of the rights, powers, privileges and other remedies available to Lender against Borrower under this Agreement or any of the other Loan Documents executed and delivered by, or applicable to, Borrower or at law or in equity may be exercised by Lender at any time and from time to time, whether or not all or any of the Debt shall be declared due and payable, and whether or not Lender shall have commenced any foreclosure proceeding or other action for the enforcement of its rights and remedies under any of the Loan Documents with respect to all or any of the Collateral. Any such actions taken by Lender shall be cumulative and concurrent and may be pursued independently, singularly, successively, together or otherwise, at such time and in such order as Lender may determine in its sole discretion, to the fullest extent permitted by law, without impairing or

otherwise affecting the other rights and remedies of Lender permitted by law, equity or contract or as set forth herein or in the other Loan Documents. Without limiting the generality of the foregoing, Borrower agrees that if an Event of Default is continuing (i) Lender is not subject to any “one action” or “election of remedies” law or rule, and (ii) all liens and other rights, remedies or privileges provided to Lender shall remain in full force and effect until Lender has exhausted all of its remedies against the Collateral and the Collateral has been foreclosed upon, sold and/or otherwise realized upon in satisfaction of the Debt or the Debt has been paid in full.

(b) With respect to Borrower and the Collateral, nothing contained herein or in any other Loan Document shall be construed as requiring Lender to resort to any portion of the Collateral for the satisfaction of any of the Debt in preference or priority to any other portion of the Collateral, and Lender may seek satisfaction out of all of the Collateral or any part thereof, in its absolute discretion in respect of the Debt. In addition, Lender shall have the right from time to time to partially foreclose upon the Collateral in any manner and for any amounts secured by the Pledge Agreement then due and payable as determined by Lender in its sole discretion including, without limitation, the following circumstances: (i) in the event Borrower defaults beyond any applicable grace period in the payment of one or more scheduled payments of principal and interest, Lender may foreclose upon the Collateral to recover such delinquent payments, or (ii) in the event Lender elects to accelerate less than the entire outstanding principal balance of the Loan, Lender may foreclose upon the Collateral to recover so much of the principal balance of the Loan as Lender may accelerate and such other sums secured by the Collateral as Lender may elect. Notwithstanding one or more partial foreclosures, the Collateral shall remain subject to the Pledge Agreement and the other Loan Documents to secure payment of sums secured by the Pledge Agreement and other Loan Documents and not previously recovered.

(c) Upon the occurrence and during the continuance of an Event of Default, Lender shall have the right from time to time to sever the Note and the other Loan Documents into one or more separate notes, pledges and other security documents (the “**Severed Loan Documents**”) in such denominations as Lender shall determine in its sole discretion for purposes of evidencing and enforcing its rights and remedies provided hereunder. Borrower shall execute and deliver to Lender from time to time, promptly after the request of Lender, a severance agreement and such other documents as Lender shall request in order to effect the severance described in the preceding sentence, all in form and substance reasonably satisfactory to Lender. Borrower hereby absolutely and irrevocably appoints Lender as its true and lawful attorney, coupled with an interest, in its name and stead to make and execute all documents necessary or desirable to effect the aforesaid severance, Borrower ratifying all that its said attorney shall do by virtue thereof; provided, however, Lender shall not make or execute any such documents under such power until three (3) days after notice has been given to Borrower by Lender of Lender’s intent to exercise its rights under such power. Borrower shall be obligated to pay any costs or expenses incurred in connection with the preparation, execution, recording or filing of the Severed Loan Documents. The Severed Loan Documents shall not contain any representations, warranties or covenants not contained in the Loan Documents and any such representations and warranties contained in the Severed Loan Documents will be given by Borrower only as of the Closing Date. The Severed Loan Documents shall (a) not increase the aggregate stated principal amount of the Loan, (b) provide that the weighted average spread of the Loan on the date of such severance shall equal the weighted average spread which was applicable to the Loan

immediately prior to such severance (Borrower acknowledging that such Severed Loan Document may, in connection with the application of principal to the amounts evidenced by such Severed Loan Documents, subsequently cause the weighted average spread of such new notes or modified notes to change), (c) not adversely affect the overall economics to Borrower of the Loan, taken as a whole, or (d) expose Borrower to any additional costs or increased risk of any liability (beyond that or greater than that existing in the Loan Documents in effect on the date hereof).

(d) The rights, powers and remedies of Lender under this Agreement shall be cumulative and not exclusive of any other right, power or remedy which Lender may have against Borrower pursuant to this Agreement or the other Loan Documents, or existing at law or in equity or otherwise. Lender's rights, powers and remedies may be pursued singularly, concurrently or otherwise, at such time and in such order as Lender may determine in Lender's sole discretion. No delay or omission to exercise any remedy, right or power accruing upon an Event of Default shall impair any such remedy, right or power or shall be construed as a waiver thereof, but any such remedy, right or power may be exercised from time to time and as often as may be deemed expedient. A waiver of one Default or Event of Default with respect to Borrower shall not be construed to be a waiver of any subsequent Default or Event of Default by Borrower or to impair any remedy, right or power consequent thereon.

(e) Any amounts recovered from the Collateral after an Event of Default may be applied by Lender toward the payment of any interest and/or principal of the Loan and/or any other amounts due under the Loan Documents in such order, priority and proportions as Lender in its sole discretion shall determine.

(f) Upon the occurrence and during the continuance of an Event of Default, Lender may, but without any obligation to do so and without notice to or demand on Borrower and without releasing Borrower from any obligation hereunder or being deemed to have cured any Event of Default hereunder, make, do or perform any obligation of Borrower hereunder in such manner and to such extent as Lender may deem necessary. Borrower shall cause Mortgage Borrower to permit Lender to enter upon any Individual Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in any Individual Property for such purposes, and the cost and expense thereof (including reasonable attorneys' fees to the extent permitted by law), with interest as provided in this Section 8.2, shall constitute a portion of the Debt and shall be due and payable to Lender upon demand. All such costs and expenses incurred by Lender in remedying such Event of Default or such failed payment or act or in appearing in, defending, or bringing any action or proceeding shall bear interest at the Default Rate, for the period after such cost or expense was incurred into the date of payment to Lender. All such costs and expenses incurred by Lender together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and be secured by the liens, claims and security interests provided to Lender under the Loan Documents and shall be immediately due and payable upon demand by Lender therefore. Upon the occurrence and during the continuance of a Senior Mezzanine Loan Event of Default, Lender may, but without any obligation to do so and without notice to or demand on Borrower or Senior Mezzanine Borrower and without releasing Senior Mezzanine Borrower from any obligation under the Senior Mezzanine Loan Documents or being deemed to have cured any Senior Mezzanine Loan Event of Default, make, do or perform any obligation of Senior Mezzanine Borrower under

Senior Mezzanine Loan Documents in such manner and to such extent as Lender may deem necessary. All such costs and expenses incurred by Lender in remedying such Senior Mezzanine Loan Event of Default or such failed payment or act shall bear interest at the Default Rate, for the period after such cost or expense was incurred into the date of payment to Lender. All such costs and expenses incurred by Lender together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and be secured by the liens, claims and security interests provided to Lender under the Loan Documents and shall be immediately due and payable upon demand by Lender therefor. Upon the occurrence and during the continuance of a Mortgage Loan Event of Default, Lender may, but without any obligation to do so and without notice to or demand on Borrower or Mortgage Borrower and without releasing Mortgage Borrower from any obligation under the Mortgage Loan Documents or being deemed to have cured any Mortgage Loan Event of Default, make, do or perform any obligation of Mortgage Borrower under Mortgage Loan Documents in such manner and to such extent as Lender may deem necessary. All such costs and expenses incurred by Lender in remedying such Mortgage Loan Event of Default or such failed payment or act shall bear interest at the Default Rate, for the period after such cost or expense was incurred into the date of payment to Lender. All such costs and expenses incurred by Lender together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and be secured by the liens, claims and security interests provided to Lender under the Loan Documents and shall be immediately due and payable upon demand by Lender therefor.

(g) For the purpose of carrying out the provisions and exercising the rights, powers and privileges granted in this Section 8.2, Borrower hereby irrevocably constitutes and appoints the Lender its true and lawful attorney-in-fact to execute, acknowledge and deliver any instruments and do and perform any acts such as are referred to in this subsection in the name and on behalf of Borrower upon the occurrence and during the continuance of an Event of Default. This power of attorney is a power coupled with an interest and cannot be revoked.

**Section 8.3. Intentionally Omitted.**

**Section 8.4. Costs of Collection.** In the event that after an Event of Default and during the continuance thereof: (a) the Note or any of the Loan Documents is placed in the hands of an attorney for collection or enforcement or is collected or enforced through any legal proceeding; (b) an attorney is retained to represent Lender in any bankruptcy, reorganization, receivership, or other proceedings affecting creditors' rights and involving a claim under the Note or any of the Loan Documents or (c) an attorney is retained to protect or enforce the lien or any of the terms of this Agreement, the Pledge Agreement or any of the Loan Documents, then, in any such instance, Borrower shall pay to Lender all reasonable attorneys' fees, costs and expenses actually incurred in connection therewith, including costs of appeal, together with interest on any judgment obtained by Lender at the Default Rate.

**IX. SPECIAL PROVISIONS**

**Section 9.1. Sale of Notes and Securitization.** Borrower acknowledges and agrees that the Lender may sell all or any portion of the Loan and the Loan Documents, or issue one or more participations therein, or consummate one or more private or public securitizations of rated single- or multi-class securities (the "**Securities**") secured by or evidencing ownership

interests in all or any portion of the Loan and the Loan Documents or a pool of assets that include the Loan and the Loan Documents (such sales, participations and/or securitizations, collectively, a “**Securitization**”). At the request of Lender, and to the extent not already required to be provided by Borrower under this Agreement, Borrower shall use reasonable efforts to provide information not in the possession of Lender or which may be reasonably required by Lender in order to satisfy the market standards to which Lender customarily adheres or which may be reasonably required by prospective investors and/or the Rating Agencies in connection with any such Securitization including, without limitation, to:

(a) provide or cause Mortgage Borrower and Senior Mezzanine Borrower to provide additional and/or updated Provided Information, together with appropriate verification and/or consents related to the Provided Information through letters of auditors or opinions of counsel of independent attorneys reasonably acceptable to Lender and the Rating Agencies;

(b) cooperate in good faith in the preparation of descriptive materials for presentations to any or all of the Rating Agencies, and work with, and if requested, supervise, third-party service providers engaged by Borrower, Holdings and their respective affiliates to obtain, collect, and deliver information requested or required by Lender or the Rating Agencies;

(c) deliver, if required or requested by any Rating Agency, (i) updated opinions of counsel as to non-consolidation, due execution and enforceability with respect to the Properties, Borrower, Mortgage Borrower, Senior Mezzanine Borrower, the Collateral, the Senior Mezzanine Collateral, Principal, Holdings and their respective Affiliates and the Loan Documents, and (ii) revised organizational documents for Borrower, which counsel opinions and organizational documents shall be reasonably satisfactory to Lender and the Rating Agencies;

(d) if required by any Rating Agency, use commercially reasonable efforts to deliver such additional tenant estoppel letters, subordination agreements or other agreements from parties to agreements that affect any of the Properties, which estoppel letters, subordination agreements or other agreements shall be reasonably satisfactory to Lender and the Rating Agencies;

(e) execute such amendments to the Loan Documents as may be requested by Lender or the Rating Agencies to effect the Securitization and/or deliver one or more new component notes to replace the original note or modify the original note to reflect multiple components of the Loan such that the pricing and marketability of the Securities and the size of each class of Securities and the rating assigned to each such class by the Rating Agencies shall provide the most favorable rating levels and achieve the optimum rating levels for the Loan, provided that, (i) the aggregate stated principal amount of the notes, following such amendments or deliver of new or component notes, shall equal the aggregate stated principal amount of the Loan immediately prior thereto, (ii) the weighted average spread of the Loan on the date of such amendment or delivery of new or component notes shall equal the weighted average spread which was applicable to the Loan immediately prior to such adjustment (Borrower acknowledging that such new notes or modified notes may, in connection with the application of principal to such new notes or modified note following the occurrence of an Event of Default, but not otherwise, subsequently cause the weighted average spread of such new notes or modified notes to change and (iii) the provisions of Section 2.1.5 otherwise shall apply to any

such amendments and delivery of new or component notes (such provisions being incorporated herein by this reference);

(f) if requested by Lender, review any information regarding any of the Properties, Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Principal, the Collateral, the Senior Mezzanine Collateral, Holdings, the Operating Company and the Loan which is contained in a preliminary or final private placement memorandum, prospectus, prospectus supplement (including any amendment or supplement to either thereof), or other disclosure document to be used by Lender or any affiliate thereof; and

(g) supply to Lender such documentation, financial statements and reports in form and substance required in order to comply with any applicable securities laws (to the extent in Borrower's possession, or in the possession of Borrower's advisors, agents or employees), including, without limitation, if applicable, information necessary to comply with any applicable reporting or information requirements under Regulation D under the Securities Act of 1933 or Regulation S under the Securities Act of 1933.

Lender and Borrower each shall pay their respective costs and expenses incurred in connection with the foregoing, including, without limitation, legal fees in connection with any of the foregoing matters; except that all costs and expenses of Lender and Borrower associated with any restructuring of the Loan requested by Lender, including under Sections 2.1.5, 2.1.6 and 2.1.7, shall be paid solely by Lender.

**Section 9.2. Securitization Indemnification.** (a) Borrower understands that certain of the Provided Information may be included in Disclosure Documents in connection with the Securitization and may also be included in filings with the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended (the "**Securities Act**"), or the Securities and Exchange Act of 1934, as amended (the "**Exchange Act**"), or provided or made available to investors or prospective investors in the Securities, the Rating Agencies, and service providers relating to the Securitization. In the event that the Disclosure Document is required to be revised prior to the sale of all Securities, Borrower will cooperate with the holder of the Note in updating the Disclosure Document by providing all current information necessary to keep the Disclosure Document accurate and complete in all material respects to the extent in Borrower's possession.

(b) Borrower agrees to provide, in connection with the Securitization, an indemnification agreement (i) certifying that (A) Borrower has carefully examined the Disclosure Documents, including, without limitation, the sections entitled "Risk Factors," "Special Considerations," "Description of the Collateral," "Description of the Mezzanine Loans," "The Operating Company," "The Borrower" and "Certain Legal Aspects of the Mezzanine Loans," and (B) such sections and such other information in the Disclosure Documents (to the extent such information relates to or includes any Provided Information or any information regarding the Properties, Borrower, Mortgage Borrower, the Collateral, the Senior Mezzanine Collateral and/or Operating Company) (collectively with the Provided Information, the "**Covered Disclosure Information**") do not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, (ii) indemnifying

Lender, each Noteholder, JPM (whether or not it is the Lender), any Affiliate of JPM or a Noteholder that has filed any registration statement relating to the Securitization or has acted as the sponsor or depositor in connection with the Securitization, any Affiliate of JPM or a Noteholder that acts as an underwriter, placement agent or initial purchaser of Securities issued in the Securitization, any other co-underwriters, co-placement agents or co-initial purchasers of Securities issued in the Securitization, and each of their respective officers, directors, partners, employees, representatives, agents and Affiliates and each Person or entity who controls any such Person within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act (collectively, the “**Indemnified Persons**”), for any losses, claims, damages, liabilities, costs or expenses (including, without limitation, legal fees and expenses for enforcement of these obligations (collectively, the “**Liabilities**”)) to which any such Indemnified Person may become subject insofar as the Liabilities arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in the Covered Disclosure Information or arise out of or are based upon the omission or alleged omission to state in the Covered Disclosure Information a material fact required to be stated therein or necessary in order to make the statements in the Covered Disclosure Information, in light of the circumstances under which they were made, not misleading and (iii) agreeing to reimburse each Indemnified Person for any legal or other expenses incurred by such Indemnified Person, as they are incurred, in connection with investigating or defending the Liabilities provided, however, that Borrower shall have liability with respect to Liabilities arising out of or based upon the Covered Disclosure Information only to the extent that such Liabilities arise out of or are based upon any such untrue statement or omission made in the Covered Disclosure Information in reliance upon and in conformity with information furnished to Lender or such Noteholder by or on behalf of Borrower in connection with the preparation of the Disclosure Documents or in connection with the underwriting or the closing of the Loan (including without limitation financial statements of Borrower and operating statements and rent rolls with respect to the Properties), and in no event shall Borrower be liable for Liabilities arising from information contained in a Disclosure Document that was not provided to Borrower for comment at least five (5) Business Days prior to its dissemination or on which Borrower provided comments to Lender in writing and Lender failed to incorporate such comments (assuming such comments were accurate). This indemnity agreement will be in addition to any liability which Borrower may otherwise have. Moreover, the indemnification provided for in clauses (ii) and (iii) above shall be effective whether or not an indemnification agreement described in clause (i) above is provided.

(c) In connection with filings under the Exchange Act (if any), Borrower agrees to indemnify (i) the Indemnified Persons for Liabilities to which any such Indemnified Person may become subject insofar as the Liabilities arise out of or are based upon any untrue statement or alleged untrue statement of any material fact in the Covered Disclosure Information, or the omission or alleged omission to state in the Covered Disclosure Information a material fact required to be stated therein or necessary in order to make the statements in the Covered Disclosure Information, in light of the circumstances under which they were made, not misleading and (ii) reimburse each Indemnified Person for any legal or other expenses incurred by such Indemnified Persons, as they are incurred, in connection with defending or investigating the Liabilities.

(d) Promptly after receipt by an Indemnified Person of notice of any claim or the commencement of any action, the Indemnified Person shall, if a claim in respect thereof is to

be made against Borrower, notify Borrower in writing of the claim or the commencement of that action; provided, however, that the failure to notify Borrower shall not relieve it from any liability which it may have under the indemnification provisions of this Section 9.2 except to the extent that it has been materially prejudiced by such failure and, provided, further, that the failure to notify Borrower shall not relieve it from any liability which it may have to an Indemnified Person otherwise than under the provisions of this Section 9.2. If any such claim or action shall be brought against an Indemnified Person, and it shall notify Borrower thereof, Borrower shall be entitled to participate therein and, to the extent that it wishes, assume the defense thereof with counsel reasonably satisfactory to the Indemnified Person. After notice from any Borrower to an Indemnified Person of its election to assume the defense of such claim or action, Borrower shall not be liable to the Indemnified Person for any legal or other expenses subsequently incurred by the Indemnified Person in connection with the defense thereof except as provided in the following sentence; provided, however, if the defendants in any such action include both Borrower, on the one hand, and one or more Indemnified Persons on the other hand, and an Indemnified Person shall have reasonably concluded that there are any legal defenses available to it and/or other Indemnified Persons that are different or in addition to those available to Borrower, the Indemnified Person or Persons shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on behalf of such Indemnified Person or Persons. The Indemnified Person shall instruct its counsel to maintain reasonably detailed billing records for fees and disbursements for which such Indemnified Person is seeking reimbursement hereunder and shall submit copies of such detailed billing records to substantiate that such counsel's fees and disbursements are solely related to the defense of a claim for which Borrower is required hereunder to indemnify such Indemnified Person. Borrower shall not be liable for the expenses of more than one (1) such separate counsel unless such Indemnified Person shall have reasonably concluded that there may be legal defenses available to it that are different from or additional to those available to another Indemnified Person.

(e) Without the prior consent of the Indemnified Person in question (which consent shall not be unreasonably withheld), Borrower shall not settle or compromise or consent to the entry of any judgment in any pending or threatened claim, action, suit or proceeding in respect of which indemnification may be sought hereunder (whether or not any Indemnified Person is an actual or potential party to such claim, action, suit or proceeding) unless Borrower shall have given such Indemnified Person reasonable prior notice thereof and shall have obtained an unconditional release of each Indemnified Person hereunder from all liability arising out of such claim, action, suit or proceedings. As long as Borrower has complied with its obligations to defend and indemnify hereunder, Borrower shall not be liable for any settlement made by any Indemnified Person without the consent of Borrower (which consent shall not be unreasonably withheld).

(f) Borrower agrees that if any indemnification or reimbursement sought pursuant to this Section 9.2 is finally judicially determined to be unavailable for any reason or is insufficient to hold any Indemnified Person harmless (with respect only to the Liabilities that are the subject of this Section 9.2), then Borrower, on the one hand, and such Indemnified Person, on the other hand, shall contribute to the Liabilities for which such indemnification or reimbursement is held unavailable or is insufficient: (x) in such proportion as is appropriate to reflect the relative benefits to Borrower, on the one hand, and such Indemnified Person, on the

other hand, from the transactions to which such indemnification or reimbursement relates; or (y) if the allocation provided by clause (x) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (x) but also the relative faults of Borrower, on the one hand, and all Indemnified Persons, on the other hand, as well as any other equitable considerations. Notwithstanding the provisions of this Section 9.2, (A) no party found liable for a fraudulent misrepresentation shall be entitled to contribution from any other party who is not also found liable for such fraudulent misrepresentation, and (B) Borrower agrees that in no event shall the amount to be contributed by the Indemnified Persons collectively pursuant to this paragraph exceed the amount of the fees (by underwriting discount or otherwise) actually received by the Indemnified Persons in connection with the closing of the Loan or the Securitization.

(g) Borrower agrees that the indemnification, contribution and reimbursement obligations set forth in this Section 9.2 shall apply whether or not any Indemnified Person is a formal party to any lawsuits, claims or other proceedings. Borrower further agrees that the Indemnified Persons are intended third party beneficiaries under this Section 9.2.

(h) The liabilities and obligations of the Indemnified Persons and Borrower under this Section 9.2 shall survive the termination of this Agreement and the satisfaction and discharge of the Debt.

(i) Notwithstanding anything to the contrary contained herein, Borrower shall have no obligation to act as depositor with respect to the Loan or an issuer or registrant with respect to the Securities issued in any Securitization.

**Section 9.3. Exculpation.** (a) Subject to the qualifications below, Lender shall not enforce the liability and obligation of Borrower to perform and observe the obligations contained in the Note, this Agreement, the Pledge Agreement or the other Loan Documents by any action or proceeding wherein a money judgment shall be sought against Borrower, except that Lender may bring a foreclosure action, an action for specific performance or any other appropriate action or proceeding to enable Lender and each Noteholder to enforce and realize upon its interest under the Note, this Agreement, the Pledge Agreement and the other Loan Documents, or in the Collateral, or any other collateral given to Lender pursuant to the Loan Documents; provided, however, that, except as specifically provided herein, any judgment in any such action or proceeding shall be enforceable against Borrower only to the extent of Borrower's interest in the Collateral and in any other collateral given to Lender, and Lender, by accepting the Note, this Agreement, the Pledge Agreement and the other Loan Documents, agrees that it shall not sue for, seek or demand any deficiency judgment against Borrower in any such action or proceeding under, or by reason of, or in connection with, the Note, this Agreement, the Pledge Agreement or the other Loan Documents. The provisions of this Section shall not, however, (a) constitute a waiver, release or impairment of any obligation evidenced or secured by any of the Loan Documents; (b) impair the right of Lender to name Borrower as a party defendant in any action or suit for foreclosure and sale under the Pledge Agreement; (c) affect the validity or enforceability of or any Guaranty made in connection with the Loan or any of the rights and remedies of Lender thereunder; (d) impair the right of Lender to obtain the appointment of a receiver; (e) intentionally omitted; (f) constitute a prohibition against Lender to seek a deficiency judgment against Borrower in order to fully realize the security granted by the Pledge Agreement

or to commence any other appropriate action or proceeding in order for Lender to exercise its remedies against all of the Collateral; or (g) constitute a waiver of the right of Lender to enforce the liability and obligation of Borrower, by money judgment or otherwise, to the extent of any actual loss, damage, cost, expense, liability, claim or other obligation incurred by Lender (including attorneys' fees and costs reasonably incurred) arising out of or in connection with the following:

(i) fraud or intentional misrepresentation by Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor in connection with the execution and delivery of the Loan Documents and/or the Loan;

(ii) the misappropriation, conversion or misapplication in contravention of the Loan Documents by Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor of any funds of Borrower, Senior Mezzanine Borrower, Mortgage Borrower or Operating Company, including, without limitation, (A) any Revenues, (B) any Net Liquidation Proceeds or Insurance Proceeds, (C) any Awards received in connection with a Condemnation, (D) any Rents or security deposits (or any item of Revenue, from whatever source) following an Event of Default, or (E) any distribution or other payments made in connection with any part of the Collateral or Senior Mezzanine Collateral;

(iii) the misappropriation, conversion or misapplication by Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor of any security deposits or Rents paid more than one (1) month in advance;

(iv) any act of actual intentional physical waste by Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor;

(v) the breach of any representation, warranty, covenant or indemnification provision in the Environmental Indemnity Agreement concerning environmental laws, hazardous substances and asbestos and any indemnification of Lender with respect thereto in either document;

(vi) if Borrower, Mortgage Borrower, Senior Mezzanine Borrower or Operating Company fails to obtain Lender's prior consent to any voluntary intentional Transfer as required by this Agreement, the Mortgage Loan Agreement or the Mortgages, as applicable;

(vii) any security deposits, advance deposits or any other deposits collected with respect to any of the Properties which are not delivered to Mortgage Lender upon a foreclosure of any of the Properties or action in lieu thereof, except to the extent any such security deposits were applied in accordance with the terms and conditions of any of the Leases prior to the occurrence of the Event of Default that gave rise to such foreclosure or action in lieu thereof;

(viii) in the event of: (A) Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor filing a voluntary petition under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (B) the

filing of an involuntary petition against Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law by any Person in which Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor or any of their respective Affiliates, agents or employees colludes with or such other Person, or Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor soliciting or causing to be solicited petitioning creditors for any involuntary petition against Borrower, Operating Company or any Guarantor from any Person; (C) Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor filing an answer consenting to or otherwise acquiescing in or joining in any involuntary petition filed against it by any other Person, other than Lender, under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (D) Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor consenting to or acquiescing in or joining in an application for the appointment of a custodian, receiver, trustee, or examiner for Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor or any of the Properties, the Collateral, the Senior Mezzanine Collateral or any portion thereof, other than at the request of Lender; or (E) Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor making an assignment for the benefit of creditors (other than Lender), or admitting, in writing or in any legal proceeding, its insolvency or inability to pay its debts as they become due;

(ix) if Borrower, Senior Mezzanine Borrower or Mortgage Borrower fails to maintain its status as a Special Purpose Entity or breaches any material representation or warranty set forth in Section 4.1.30 of this Agreement; and

(x) if Borrower, Mortgage Borrower, Senior Mezzanine Borrower or Operating Company fails to obtain Lender's prior consent to any voluntary Indebtedness (other than (x) with respect to Mortgage Borrower, Permitted Indebtedness and (y) with respect to Operating Company, Permitted Indebtedness (Operating Company), as applicable) or voluntary Lien (other than Permitted Encumbrances) encumbering any of the Properties, Senior Mezzanine Collateral or Collateral as required by this Agreement, the Senior Mezzanine Loan Agreement, the Mortgage Loan Agreement, the Pledge Agreement or the Mortgages.

Notwithstanding anything to the contrary under this Agreement, neither any present or future Affiliate of Borrower (other than Guarantor, to the extent provided under the Guaranty) nor any present or future shareholder, officer, director, employee, trustee, beneficiary, advisor, partner, member, principal, participant or agent of or in any Borrower or of or in any person or entity that is or becomes an Affiliate of any Borrower shall have any personal liability, directly or indirectly, under or in connection with the Loan Documents. Neither the negative capital account of any Affiliate of Borrower in Borrower, or in any other Affiliate of Borrower in any other Affiliate of Borrower, nor any obligation of any Affiliate of Borrower in any Borrower to restore a negative capital account or to contribute or loan capital to any Borrower or to any other Affiliate of Borrower shall at any time be deemed to be the property or an asset of any Borrower (or any other Affiliate of Borrower) and neither Lender nor its successors or assigns shall have

any right to collect, enforce or proceed against any such negative capital account or obligation to restore, contribute or loan capital.

(b) Notwithstanding anything to the contrary in this Agreement, the Note or any of the Loan Documents, Lender shall not be deemed to have waived any right which Lender may have under Section 506(a), 506(b), 1111(b) or any other provisions of the Bankruptcy Code to file a claim for the full amount of the Indebtedness or to require that all collateral shall continue to secure all of the Indebtedness owing to Lender in accordance with the Loan Documents.

**Section 9.4. Servicer.** (a) At the option of Lender, the Loan may be serviced by a servicer/trustee (the “**Servicer**”) selected by Lender and Lender may delegate all or any portion of its responsibilities under this Agreement and the other Loan Documents to the Servicer pursuant to a servicing agreement (the “**Servicing Agreement**”) between Lender and Servicer. Lender shall be responsible for any set-up fees or any other initial costs relating to or arising under the Servicing Agreement (arising in connection with the Securitization) and the payment of the monthly servicing fee due to Servicer under the Servicing Agreement, and, unless otherwise specifically set forth herein, Borrower shall be responsible for the payment of all fees and other reasonable out-of-pocket expenses incurred by Servicer resulting from any Borrower requests (for approvals or otherwise) to Servicer.

(b) In the event of a Securitization or syndication, the grant of participations in the Loan or any secondary marketing by Lender, Mortgage Borrower and the Mezzanine Borrowers, collectively may rely upon approvals or consents given by one (1) agent or representative in respect of the Mortgage Lender and the Mezzanine Lenders for the matter in question (which such parties shall designate, and pending further notice from Lender, such agent shall be JPM). Borrower shall only pay legal fees for the outside counsel of one Servicer.

**Section 9.5. Assignments and Participations.** (a) In addition to the rights Lender has under Section 9.1, Lender shall have the right, subject to this Section 9.5, to assign, sell, negotiate, pledge or hypothecate all or any portion of their rights and obligations hereunder (a “**Syndication**”). Except in connection with a Securitization, no Lender shall assign, sell, negotiate, pledge, hypothecate or otherwise transfer all or any portion of its rights in and to the Loan to any other Person (an “**Assignee**”) (a) other than in compliance with Section 9.9 hereof; and (b) unless such transaction shall be an assignment of a constant (and not varying), ratable percentage of such Lender’s interest in the Loan; provided, however, any Lender shall have the right at any time without the consent of or notice to any other Lender or other Person to grant a security interest in all or any portion of such Lender’s interest in the Loan to any Federal Reserve Bank or the central reserve bank or similar authority of any other country to secure any obligation of such Lender to such bank or similar authority (a “**Central Bank Pledge**”). Effective on any such assignment and assumption by the assignee and on compliance with Section 9.9 hereof, the assigning Lender shall have no further liability hereunder with respect to the interest of such Lender that was the subject of such transfer and such Assignee shall be a Lender with respect to such interest, and Borrower shall have the same rights as to such Assignee with respect to such interest from and after the date of such assignment as if such Lender were an original Lender hereunder. Except for a Central Bank Pledge or financing transaction under a repurchase agreement, a Lender making any such assignment shall notify Borrower of same,

specifying the Assignee thereof and the amount of the assignment and shall provide such other detail as Borrower may reasonably request to substantiate compliance with the foregoing.

**Section 9.6. Participation.** Lender may, without the consent of the Borrower, in compliance with applicable law, sell participations to one or more banks or other entities (a "**Participant**"), in all or a portion of Lender's rights and obligations under this Agreement (including all or a portion of the Loan owing to it); provided that (A) Lender's obligations under this Agreement shall remain unchanged, (B) Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) the Borrower shall continue to deal solely and directly with Lender in connection with Lender's rights and obligations under this Agreement. The Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.2.3 and 2.2.4 (subject to requirements and limitations therein) to the same extent as if it were a Noteholder and had acquired its interest by assignment pursuant to Section 9.5. Each Lender that sells a participation shall, acting solely for this purpose as an agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each participant's interest in the Loans or other obligations under this Agreement (the "**Participant Register**"). The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each person whose name is recorded in the Participant Register as the owner of such Loan or other obligation hereunder as the owner thereof for all purposes of this Agreement notwithstanding any notice to the contrary.

**Section 9.7. Borrower's Facilitation of Transfer.** In order to facilitate permitted assignments and other transfers to Assignees and sales to Participants, Borrower shall execute and deliver to Lender and shall cause Guarantor to execute and deliver to Lender such further documents, instruments or agreements as Lender may reasonably require, including, if required by Lender, supplemental notes in the principal amount of such Lender's pro rata share of the Loan substantially in the form of such Lender's Note against surrender of the prior notes, and such supplemental note shall (i) be payable to order of such Lender, (ii) be dated as of the date hereof, and (iii) mature on the Maturity Date. Such supplemental note shall provide that it evidences a portion of the existing indebtedness hereunder and under the Notes and not any new or additional indebtedness of Borrower. The term "Note" as used in this Agreement and in all the other Loan Documents shall include all such supplemental notes but exclude any Note it replaces. Notwithstanding the foregoing, such documents, instruments or agreements shall not (a) increase the obligations or liabilities of any such Person hereunder or under the other Loan Documents in excess of the obligations or liabilities intended to be provided herein or in the other Loan Documents or (b) decrease such Person's rights hereunder or under the other Loan Documents to less than what they were prior to the execution of such documents, instruments or agreements. In addition, Borrower agrees to reasonably cooperate with Lender, including providing such information and documentation regarding Borrower, Senior Mezzanine Borrower, Mortgage Borrower, Holdings, the Operating Company and any other Person as Lender or any potential Assignee or Participant may reasonably request and to meet with potential Assignees and Participants upon reasonable notice. Lender and Borrower each shall pay their respective costs and expenses incurred in connection with the foregoing, including, without limitation, legal fees in connection with any of the foregoing matters, except that all costs and expenses of Lender and Borrower associated with any restructuring of the Loan requested by Lender, including under Section 2.1.5, 2.1.6 and 2.1.7, shall be paid solely by Lender.

**Section 9.8. Notice; Registration Requirement.** No Syndication of any part of Lender's interest in and to the Loan shall be effective or permitted under Section 9.5 until (a) an assignment and acceptance agreement in a form reasonably acceptable to Lender (an "**Assignment and Acceptance**") with respect to such Syndication shall have been delivered to Lender, (b) Lender shall have registered such Assignee's name and address in the Register which Lender maintains for the recordation of the names, addresses and interests of Noteholders, and (c) if such Assignee is not already a Lender hereunder, such Assignee shall deliver any tax forms required hereunder. The entries in the Register shall be conclusive, absent manifest error. This Section 9.8 shall not apply to any Central Bank Pledge.

**Section 9.9. Registry.** Borrower hereby designates Lender to serve as Borrower's agent, solely for purposes of this Section 9.9, to maintain at one of its offices a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the names and addresses of each Assignee, and the principal amount of the Loan (or portions thereof) owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). Failure to make any such recordation, or any error in such recordation shall not affect Borrower's obligations in respect of the Loan. With respect to any Lender, the transfer of the rights to the principal of, and interest on, its interest in the Loan shall not be effective until such transfer is recorded on the Register maintained by Lender with respect to ownership of such Loan and prior to such recordation all amounts owing to the transferor with respect to such Note shall remain owing to the transferor. The registration of a transfer of all or part of the Loan shall be recorded by Lender on the Register only upon the acceptance by Lender of a properly executed and delivered Assignment and Acceptance by the assignor and assignee. At the assigning Lender's option, concurrently with the delivery of an Assignment and Acceptance pursuant to which an interest of such Lender in the Loan was assigned to such Assignee, the assigning Lender shall surrender to Borrower its Note, if any, evidencing the portion of the Loan corresponding to the interest so transferred and Borrower shall deliver to Lender one or more new promissory notes in the same aggregate principal amount issued to the assigning Lender and/or the Assignee.

**Section 9.10. Cooperation in Syndication.** Borrower agrees to assist the Lender in completing a Syndication satisfactory to the Lender. Such assistance shall include (i) direct contact between senior management and advisors of Borrower and the proposed Assignees and/or Participants, (ii) assistance in the preparation of a confidential information memorandum and other marketing materials to be used in connection with the Syndication, (iii) the hosting, with the Lender, of one or more meetings of prospective Assignees and/or Participants, (iv) the delivery of appraisals satisfactory to the Lender if required. To assist the Lender in its Syndication efforts, Borrower agrees promptly to prepare and provide to the Lender all information with respect to Borrower, Senior Mezzanine Borrower, Mortgage Borrower, Holdings, the Operating Company, Guarantor, the Collateral, the Senior Mezzanine Collateral and the Properties contemplated hereby, including all financial information and projections (the "**Projections**"), as the Lender may reasonably request in connection with the Syndication of the Loan. If required in connection with the Syndication, Borrower hereby agrees to:

- (a) deliver updated financial and operating statements and other information reasonably required by the Lender to facilitate the Syndication;

(b) use reasonable efforts to deliver reliance letters reasonably satisfactory to the Lender with respect to the environmental assessments and reports delivered to the Lender prior to the Closing Date, which will run to the Lender and its successors and assigns;

(c) execute modifications to the Loan Documents required by the Lender, provided that such modification will not (except as set forth in (d)) change any material or economic terms of the Loan Documents, or otherwise increase the obligations or decrease the rights of Borrower pursuant to the Loan Documents (except to a de minimis extent); and

(d) if the Lender elects, in its sole discretion, prior to or upon a Syndication, to exercise its rights under Section 2.1.5, Borrower agrees to cooperate with the Lender in connection with the foregoing and to execute the required modifications and amendments to the Notes, this Agreement and the Loan Documents and to use reasonable efforts to provide opinions necessary to effectuate the same. Such Notes or components may be assigned different interest rates, so long as the weighted average of such interest rates does not exceed the Applicable Interest Rate, except in connection with the application of principal to such Notes or components following the occurrence of an Event of Default.

Lender and Borrower each shall pay their respective costs and expenses incurred in connection with the foregoing, including, without limitation, legal fees in connection with any of the foregoing matters, except that all costs and expenses of Lender and Borrower associated with any restructuring of the Loan requested by Lender, including under Sections 2.1.5, 2.1.6 and 2.1.7, shall be paid solely by Lender.

## **X. MISCELLANEOUS**

**Section 10.1. Survival.** This Agreement and all covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the making by Lender of the Loan and the execution and delivery to Lender of the Note, and shall continue in full force and effect so long as all or any of the Debt is outstanding and unpaid unless a longer period is expressly set forth herein or in the other Loan Documents. Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the legal representatives, successors and assigns of such party. All covenants, promises and agreements in this Agreement, by or on behalf of Borrower, shall inure to the benefit of the legal representatives, successors and assigns of Lender.

**Section 10.2. Lender's Discretion.** Whenever pursuant to this Agreement, Lender exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Lender, the decision of Lender to approve or disapprove or to decide whether arrangements or terms are satisfactory or not satisfactory shall (except as is otherwise specifically herein provided) be in the sole discretion of Lender and shall be final and conclusive. Whenever this Agreement expressly provides that Lender may not withhold or shall be reasonable in granting its consent or its approval of an arrangement or term, such provisions shall also be deemed to prohibit Lender from delaying or conditioning such consent or approval.

**Section 10.3. Governing Law.** (a) **THIS AGREEMENT WAS NEGOTIATED IN THE STATE OF NEW YORK, THE LOAN WAS MADE BY**

LENDER AND ACCEPTED BY BORROWER IN THE STATE OF NEW YORK, AND THE PROCEEDS OF THE LOAN DELIVERED PURSUANT HERETO WERE DISBURSED FROM THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS AND THE OBLIGATIONS ARISING HEREUNDER AND THEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA. TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER AND LENDER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVE ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS, AND THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER OR BORROWER ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS MAY AT LENDER'S OPTION BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW AND BORROWER WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND BORROWER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. BORROWER DOES HEREBY DESIGNATE AND APPOINT:

Corporation Service Company  
2711 Centerville Road, Suite 400  
Wilmington, DE 19808

AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON ITS BEHALF SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY FEDERAL OR STATE COURT IN NEW YORK, NEW YORK, AND AGREES THAT SERVICE OF PROCESS UPON SAID AGENT AT SAID ADDRESS AND NOTICE OF SAID SERVICE MAILED OR DELIVERED TO BORROWER IN THE MANNER PROVIDED HEREIN SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON BORROWER IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE STATE OF NEW YORK. BORROWER (I) SHALL GIVE PROMPT NOTICE TO LENDER OF

**ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER, (II) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN NEW YORK, NEW YORK (WHICH SUBSTITUTE AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS), AND (III) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE IF ITS AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN NEW YORK, NEW YORK OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR.**

**Section 10.4. Modification, Waiver in Writing.** No modification, amendment, extension, discharge, termination or waiver of any provision of this Agreement, or of the Note, or of any other Loan Document, nor consent to any departure by Borrower therefrom, shall in any event be effective unless the same shall be in a writing signed by the party against whom enforcement is sought, and then such waiver or consent shall be effective only in the specific instance, and for the purpose, for which given. Except as otherwise expressly provided herein, no notice to, or demand on Borrower, shall entitle Borrower to any other or future notice or demand in the same, similar or other circumstances. To the extent required by any Gaming Law, Borrower shall notify all relevant Gaming Authorities of any amendment to this Agreement or any Loan Document.

**Section 10.5. Delay Not a Waiver.** Except as expressly set forth herein, neither any failure nor any delay on the part of Lender in insisting upon strict performance of any term, condition, covenant or agreement, or exercising any right, power, remedy or privilege hereunder, or under the Note or under any other Loan Document, or any other instrument given as security therefor, shall operate as or constitute a waiver thereof, nor shall a single or partial exercise thereof preclude any other future exercise, or the exercise of any other right, power, remedy or privilege. In particular, and not by way of limitation, by accepting payment after the due date of any amount payable under this Agreement, the Note or any other Loan Document, Lender shall not be deemed to have waived any right either to require prompt payment when due of all other amounts due under this Agreement, the Note or the other Loan Documents, or to declare a default for failure to effect prompt payment of any such other amount.

**Section 10.6. Notices.** All notices, consents, approvals and requests required or permitted hereunder or under any other Loan Document shall be given in writing and shall be effective for all purposes if hand delivered or sent by (a) certified or registered United States mail, postage prepaid, return receipt requested or (b) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery, and by telecopier (with answer back acknowledged), addressed as follows (or at such other address and Person as shall be designated from time to time by any party hereto, as the case may be, in a notice to the other parties hereto in the manner provided for in this Section 10.6):

If to Lender: JPMorgan Chase Bank, N.A.  
270 Park Avenue, 10th Floor  
New York, New York 10017  
Attention: Michael Mesard  
Facsimile No.: (212) 834-6592

with a copy to: Sullivan & Cromwell LLP  
125 Broad Street  
New York, New York 10004  
Attention: Arthur S. Adler  
Facsimile No.: 212-558-3588

Cadwalader, Wickersham & Taft LLP  
One World Financial Center  
New York, New York 10281  
Attention: Fredric L. Altschuler  
Facsimile No.: (212) 504-6666

If to Borrower: One Caesars Palace Drive  
Las Vegas, Nevada 89109  
Attention: Chief Financial Officer  
Facsimile No.: (702) 407-6081

With a copy to: One Caesars Palace Drive  
Las Vegas, Nevada 89109  
Attention: General Counsel  
Facsimile No.: (702) 407-6418

and

Cleary Gottlieb Steen & Hamilton LLP  
One Liberty Plaza  
New York, New York 10006  
Attention: Michael Weinberger  
Facsimile No.: (212) 225-3999

and

Pircher, Nichols & Meeks  
1925 Century Park East, Seventeenth Floor  
Los Angeles, California 90067  
Attention: David Packer  
Facsimile No.: (310) 201-8922

A notice shall be deemed to have been given: in the case of hand delivery, at the time of delivery; in the case of registered or certified mail, when delivered or the first attempted delivery on a Business Day; or in the case of expedited prepaid delivery and telecopy, upon the first attempted delivery on a Business Day; or in the case of telecopy, upon sender's receipt of a machine-generated confirmation of successful transmission after advice by telephone to recipient that a telecopy notice is forthcoming. Each Borrower hereby designates Tahoe Mezz 2, LLC, a Delaware limited liability company ("**Borrower Agent**"), as the party to give and receive notices on behalf of Borrower hereunder, and any notice received by Lender by a Borrower other than Borrower Agent shall not constitute effective notice to, or be binding upon Lender hereunder.

Notwithstanding the foregoing, any notice by Lender to one or more Borrowers other than Borrower Agent shall be deemed to constitute effective notice to all of the Borrowers.

**Section 10.7. Trial by Jury.** BORROWER AND LENDER HEREBY AGREE NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVE ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY BORROWER AND LENDER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. BORROWER AND LENDER ARE HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER.

**Section 10.8. Headings.** The Article and/or Section headings and the Table of Contents in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

**Section 10.9. Severability.** Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

**Section 10.10. Preferences.** Lender shall have the continuing and exclusive right to apply or reverse and reapply any and all payments by Borrower to any portion of the obligations of Borrower hereunder (except that, unless there exists an Event of Default, payments of principal shall be applied to components of the Note on a pro-rata basis). To the extent Borrower makes a payment or payments to Lender, which payment or proceeds or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable cause, then, to the extent of such payment or proceeds received, the obligations hereunder or part thereof intended to be satisfied shall be revived and continue in full force and effect, as if such payment or proceeds had not been received by Lender.

**Section 10.11. Waiver of Notice.** Borrower hereby expressly waives, and shall not be entitled to, any notices of any nature whatsoever from Lender except with respect to matters for which this Agreement or the other Loan Documents specifically and expressly provide for the giving of notice by Lender to Borrower and except with respect to matters for which Borrower is not, pursuant to applicable Legal Requirements, permitted to waive the giving of notice.

**Section 10.12. Remedies of Borrower.** In the event that a claim or adjudication is made that Lender or its agents have acted unreasonably or unreasonably delayed

acting in any case where by law or under this Agreement or the other Loan Documents, Lender or such agent, as the case may be, has an obligation to act reasonably or promptly, Borrower agrees that neither Lender nor its agents shall be liable for any monetary damages, and Borrower's sole remedies shall be limited to commencing an action seeking injunctive relief or declaratory judgment (except in cases of bad faith, gross negligence or willful misconduct). The parties hereto agree that any action or proceeding to determine whether Lender has acted reasonably shall be determined by an action seeking declaratory judgment.

**Section 10.13. Expenses; Indemnity.** (a) Borrower covenants and agrees to pay or, if Borrower fails to pay, to reimburse, Lender and each Noteholder upon receipt of notice from such Person for all reasonable out-of-pocket costs and expenses (including reasonable attorneys' fees and disbursements) incurred by such Person in connection with (i) the preparation, negotiation, execution and delivery of this Agreement and the other Loan Documents and the consummation of the transactions contemplated hereby and thereby and all the costs of furnishing all opinions by counsel for Borrower (including, without limitation, any opinions requested by such Person as to any legal matters arising under this Agreement or the other Loan Documents with respect to the Properties); (ii) Borrower's ongoing performance of and compliance with Borrower's respective agreements and covenants contained in this Agreement and the other Loan Documents on its part to be performed or complied with after the Closing Date, including, without limitation, confirming compliance with environmental, gaming and insurance requirements if necessary or advisable due to reasonably suspected non-compliance; (iii) the negotiation, preparation, execution, delivery and administration of any consents, amendments, waivers or other modifications to this Agreement and the other Loan Documents and any other documents or matters requested by Borrower; (iv) securing Borrower's compliance with any requests made pursuant to the provisions of this Agreement, if Borrower defaults in its obligations hereunder; (v) the filing and recording fees and expenses, title insurance and reasonable fees and expenses of counsel for providing to Lender or any Noteholder all required legal opinions, and other similar expenses incurred in creating and perfecting the Liens in favor of Lender (or, as applicable, any Noteholder) pursuant to this Agreement and the other Loan Documents; (vi) enforcing or preserving any rights, either in response to third party claims or in prosecuting or defending any action or proceeding or other litigation, in each case against, under or affecting Borrower, Senior Mezzanine Borrower, Mortgage Borrower, Operating Company, this Agreement, the other Loan Documents, the Properties, the Collateral or any other security given for the Loan; and (vii) enforcing any obligations of or collecting any payments due from Borrower under this Agreement, the other Loan Documents or with respect to the Properties, Operating Company or in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a "work-out" or of any insolvency or bankruptcy proceedings; provided, however, that Borrower shall not be liable for the payment of any such costs and expenses to any Person to the extent the same arise by reason of the gross negligence, illegal acts, fraud or willful misconduct of such Person. Any cost and expenses due and payable to Lender or any Noteholder may be paid from any amounts in the Mezzanine Collection Account upon the occurrence and during the continuance of an Event of Default.

(b) Borrower shall indemnify, defend and hold harmless Lender from and against any and all other actual liabilities, obligations, losses, damages (excluding, however, any punitive and consequential damages), penalties, actions, judgments, suits, claims, costs, expenses

and disbursements of any kind or nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel for Lender in connection with any investigative, administrative or judicial proceeding commenced or threatened, whether or not Lender shall be designated a party thereto), that may be imposed on, incurred by, or asserted against Lender in any manner relating to or arising out of (i) any breach by Borrower of its obligations under, or any material misrepresentation by Borrower contained in, this Agreement or the other Loan Documents, (ii) the use or intended use of the proceeds of the Loan, (iii) the Leases or any of the duties, responsibilities or obligations of Borrower or any Operating Company thereunder, (iv) the transactions contemplated in the Collection Account Agreements or (v) any third-party claims alleging that the Loan, the Senior Mezzanine Loan, the Mortgage Loan, the Operating Lease, the Operating Lease Guaranty or any of the Loan Documents violates any agreements or Legal Requirements binding on the Borrower or its Affiliates or their respective properties (collectively, the “**Indemnified Liabilities**”); provided, however, that Borrower shall not have any obligation to Lender hereunder to the extent that such Indemnified Liabilities arise from the gross negligence, illegal acts, fraud or willful misconduct of Lender. To the extent that the undertaking to indemnify, defend and hold harmless set forth in the preceding sentence may be unenforceable because it violates any law or public policy, Borrower shall pay the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by Lender.

(c) Borrower covenants and agrees to pay for or, if Borrower fails to pay, to reimburse Lender for, any fees and expenses incurred by any Rating Agency in connection with any request by Borrower that required Rating Agency Confirmation pursuant to the terms hereof.

**Section 10.14. Schedules Incorporated.** The Schedules annexed hereto are hereby incorporated herein as a part of this Agreement with the same effect as if set forth in the body hereof.

**Section 10.15. Offsets, Counterclaims and Defenses.** Any assignee of Lender’s interest in and to this Agreement, the Note and the other Loan Documents shall take the same free and clear of all offsets, counterclaims or defenses which are unrelated to such documents which Borrower may otherwise have against any assignor of such documents, and no such unrelated counterclaim or defense shall be interposed or asserted by Borrower in any action or proceeding brought by any such assignee upon such documents and any such right to interpose or assert any such unrelated offset, counterclaim or defense in any such action or proceeding is hereby expressly waived by Borrower.

**Section 10.16. No Joint Venture or Partnership; No Third Party Beneficiaries.** (a) Borrower and Lender intend that the relationships created hereunder and under the other Loan Documents be solely that of borrower and lender. Nothing herein or therein is intended to create a joint venture, partnership, tenancy-in-common, or joint tenancy relationship between Borrower and Lender nor to grant Lender any interest in the Properties other than that of mortgagee, beneficiary or lender.

(b) Except as expressly provided herein, this Agreement and the other Loan Documents are solely for the benefit of Lender and Borrower and nothing contained in this Agreement or the other Loan Documents shall be deemed to confer upon anyone other than

Lender and Borrower any right to insist upon or to enforce the performance or observance of any of the obligations contained herein or therein. Lender and Borrower acknowledge and agree that the Noteholders are intended third party beneficiaries of all rights and remedies of the Lender hereunder. All conditions to the obligations of Lender to make the Loan hereunder are imposed solely and exclusively for the benefit of Lender and no other Person shall have standing to require satisfaction of such conditions in accordance with their terms or be entitled to assume that Lender will refuse to make the Loan in the absence of strict compliance with any or all thereof and no other Person shall under any circumstances be deemed to be a beneficiary of such conditions, any or all of which may be freely waived in whole or in part by Lender if, in Lender's sole discretion, Lender deems it advisable or desirable to do so.

**Section 10.17. Intentionally Omitted.**

**Section 10.18. Waiver of Marshalling of Assets.** To the fullest extent permitted by law, Borrower, for itself and its successors and assigns, waives all rights to a marshalling of the assets of Borrower, Borrower's partners and others with interests in Borrower, and of the Properties, or to a sale in inverse order of alienation in the event of foreclosure of all or any of the Mortgages, and agrees not to assert any right under any laws pertaining to the marshalling of assets, the sale in inverse order of alienation, homestead exemption, the administration of estates of decedents, or any other matters whatsoever to defeat, reduce or affect the right of Lender under the Loan Documents to a sale of the Properties for the collection of the Debt without any prior or different resort for collection or of the right of Lender to the payment of the Debt out of the net proceeds of the Properties in preference to every other claimant whatsoever. In addition, Borrower, for itself and its successors and assigns, waives in the event of foreclosure of any or all of the Collateral, any equitable right otherwise available to Borrower which would require the separate sale of the Collateral with respect to each Mortgage Borrower or require Lender to exhaust its remedies against any Collateral with respect to each Mortgage Borrower or any combination of such Collateral before proceeding against any other Collateral with respect to one or more Mortgage Borrowers; and further in the event of such foreclosure Borrower does hereby expressly consent to and authorize, at the option of Lender, the foreclosure and sale either separately or together of any combination of the Collateral.

**Section 10.19. Waiver of Counterclaim.** Borrower hereby waives the right to assert a counterclaim, other than a compulsory counterclaim, in any action or proceeding brought against it by Lender or its agents.

**Section 10.20. Conflict; Construction of Documents; Reliance.** In the event of any conflict between the provisions of this Loan Agreement and any of the other Loan Documents, the provisions of this Loan Agreement shall control. The parties hereto acknowledge that they were represented by competent counsel in connection with the negotiation, drafting and execution of the Loan Documents and that such Loan Documents shall not be subject to the principle of construing their meaning against the party which drafted same. Borrower acknowledges that, with respect to the Loan, Borrower shall rely solely on its own judgment and advisors in entering into the Loan without relying in any manner on any statements, representations or recommendations of Lender or any parent, subsidiary or Affiliate of Lender. Lender shall not be subject to any limitation whatsoever in the exercise of any rights or remedies available to it under any of the Loan Documents or any other agreements or

instruments which govern the Loan by virtue of the ownership by it or any parent, subsidiary or Affiliate of Lender of any equity interest any of them may acquire in Borrower, and Borrower hereby irrevocably waives the right to raise any defense or take any action on the basis of the foregoing with respect to Lender's exercise of any such rights or remedies. Borrower acknowledges that Lender engages in the business of real estate financings and other real estate transactions and investments which may be viewed as adverse to or competitive with the business of Borrower or its Affiliates.

**Section 10.21. Brokers and Financial Advisors.** Borrower hereby represents that it has dealt with no financial advisors, brokers, underwriters, placement agents, agents or finders in connection with the transactions contemplated by this Agreement (other than those the fees and other claims of which shall be paid by Borrower). Borrower hereby agrees to indemnify, defend and hold Lender and each Noteholder harmless from and against any and all claims, liabilities, costs and expenses of any kind (including Lender's attorneys' fees and expenses) in any way relating to or arising from a claim by any Person that such Person acted on behalf of Borrower or Lender in connection with the transactions contemplated herein. Each of Lender and (by its acceptance of its respective Note) the Noteholders hereby represents that it has dealt with no financial advisors, brokers, underwriters, placement agents, agents or finders in connection with the transactions contemplated by this Agreement. The provisions of this Section 10.21 shall survive the expiration and termination of this Agreement and the payment of the Debt.

**Section 10.22. Prior Agreements.** This Agreement and the other Loan Documents contain the entire agreement of the parties hereto and thereto in respect of the transactions contemplated hereby and thereby, and all prior agreements among or between such parties, whether oral or written, including, without limitation, the Commitment Letter dated December 19, 2006 between Affiliates of Borrower and Lender are superseded by the terms of this Agreement and the other Loan Documents.

**Section 10.23. Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which counterparts together shall constitute one agreement with the same effect as if the parties had signed the same signature page.

**Section 10.24. Intentionally Omitted.**

**Section 10.25. Gaming Laws.** All rights, remedies and powers in or under this Agreement may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of the Gaming Laws.

**Section 10.26. Certain Additional Rights of Lender (VCOC).** Notwithstanding anything to the contrary contained in this Agreement, Lender shall have:

(a) the right to routinely consult with and advise Borrower's management regarding the significant business activities and business and financial developments of Borrower, Senior Mezzanine Borrower and Mortgage Borrower, provided that any such advice or consultation shall be completely nonbinding on Borrower, and; provided, however, that such

consultations shall not include discussions of environmental compliance programs or disposal of hazardous substances;

(b) the right, in accordance with the terms of this Agreement, to examine the books and records of Borrower, Senior Mezzanine Borrower and Mortgage Borrower at any reasonable times upon reasonable notice;

(c) the right, in accordance with the terms of this Agreement, including, without limitation, Section 5.1.11 hereof, to receive monthly, quarterly and year end financial reports, including balance sheets, statements of income, shareholder's equity and cash flow, a management report and schedules of outstanding indebtedness, in each case to the extent explicitly set forth herein; and

(d) the right, without restricting any other rights of Lender under this Agreement (including any similar right), to reasonably approve any acquisition by Borrower, Senior Mezzanine Borrower or Mortgage Borrower of any other significant real property.

The rights described above in this Section 10.26 may be exercised by any entity which owns and controls, directly or indirectly, substantially all of the interests in Lender.

#### **XI. JOINT AND SEVERAL LIABILITY; WAIVERS**

**Section 11.1. Joint and Several Liability; Primary Obligors.** Each entity comprising Borrower (each, a "**Borrower Entity**") shall be a primary obligor with respect to payment of the Debt and performance of Borrower's obligations under the Loan Documents and all such Borrower Entities shall be jointly and severally liable for payment of the Debt and performance of such other obligations. As used in this Article, references to "**Other Borrowers**" shall mean all Borrower Entities other than the particular Borrower Entity referred to.

**Section 11.2. Waivers.** Without limiting the primary liability of each Borrower Entity as set forth above, to the extent any such Borrower Entity is determined to be secondarily liable with respect to any portion of the Debt or any other obligation hereunder, the following shall apply:

**11.2.1 No Duty To Pursue Others.** It shall not be necessary for Lender (and each Borrower Entity hereby waives any rights which such Borrower Entity may have to require Lender), in order to enforce the obligations of such Borrower Entity hereunder, first to (a) institute suit or exhaust its remedies against any Other Borrower or others liable on the Debt or any other person, (b) enforce Lender's rights against any collateral mortgaged, pledged or granted by any Other Borrower which shall ever have been given to secure the Debt ("**Other Borrower Collateral**"), (c) enforce Lender's rights against any other guarantors of the Debt, (d) join Borrower or any others liable on the Debt in any action against any Other Borrower seeking to enforce the Loan Documents, (e) exhaust any remedies available to Lender against any collateral which shall ever have been given to secure the Debt, or (f) resort to any other means of obtaining payment of the Loan by any Other Borrower. Lender shall not be required to

mitigate damages or take any other action pertaining to any Other Borrower or any Other Borrower Collateral to reduce, collect or enforce the Debt from any Other Borrower.

**11.2.2 Waivers.** Such Borrower Entity agrees to the provisions of the Loan Documents, and hereby waives notice of (a) any loans or advances made by Lender to any Other Borrower, (b) acceptance of the Loan Documents, (c) any amendment or extension of the Note, the Loan Agreement or of any other Loan Documents entered into by any Other Borrower, (d) the execution and delivery by any Other Borrower and Lender of any other loan or credit agreement or of any Other Borrower's execution and delivery of any promissory notes or other documents arising under the Loan Documents or in connection with the Other Borrower Collateral, (e) the occurrence of any breach by any Other Borrower or an Event of Default with respect to any Other Borrower or Other Borrower Collateral, (f) Lender's transfer or disposition of the Debt, or any part thereof, (g) sale or foreclosure (or posting or advertising for sale or foreclosure) of any Other Borrower Collateral, (h) protest, proof of non-payment or default by any Other Borrower and (i) any other action at any time taken or omitted by Lender, and, generally, all demands and notices to any Other Borrower of every kind in connection with the Loan Documents, any documents or agreements evidencing, securing or relating to any of the Debt.

**11.2.3 Waiver of Subrogation, Reimbursement and Contribution.** Notwithstanding anything to the contrary contained in the Loan Documents, each Borrower hereby unconditionally and irrevocably waives, releases and abrogates, prior to the payment in full of the Loan and for a period of ninety-one (91) days thereafter any and all rights it may now or hereafter have under any agreement, at law or in equity (including any law subrogating such Borrower Entity to the rights of Lender), to assert any claim against or seek contribution, indemnification or any other form of reimbursement (other than pursuant to the express provisions of the Contribution Agreement) from any Other Borrower or any other party liable for payment of any or all of the Debt for any payment made by such Borrower Entity under or in connection with the Loan Documents or otherwise.

**11.2.4 Events And Circumstances Not Reducing Or Discharging Guarantor's Obligations.** Each Borrower Entity hereby consents and agrees to each of the following, and agrees that such Borrower Entity's obligations under the Loan Documents shall not be released, diminished, impaired, reduced or adversely affected by any of the following, and waives any common law, equitable, statutory or other rights (including rights to notice) which such Borrower Entity might otherwise have as a result of or in connection with any of the following:

(a) Modifications. Any renewal, extension, increase, modification, alteration, restatement or rearrangement entered into by any Other Borrower of all or any part of the Debt, the Note, the Loan Agreement, the other Loan Documents, or any other document, instrument, contract or understanding between any Other Borrower and Lender, or any other parties, pertaining to the Debt or any failure of Lender to notify Borrower Entity of any such action.

(b) Adjustment. Any adjustment, indulgence, forbearance or compromise that might be granted or given by Lender to any Other Borrower.

(c) Condition of Borrower or Borrower Entity. The insolvency, bankruptcy, arrangement, adjustment, composition, liquidation, disability, dissolution or lack of power of any Other Borrower or any other party at any time liable for the payment of all or part of the Debt; or any dissolution of any Other Borrower, or any sale, lease or transfer of any or all of the assets of Borrower or of any Other Borrower, or any changes in the shareholders, partners or members of any Other Borrower; or any reorganization of any Other Borrower.

(d) Invalidity of Debt. The invalidity, illegality or unenforceability of all or any part of the Debt, or any document or agreement executed in connection with the Debt, for any reason whatsoever, including the fact that (a) the Debt, or any part thereof, exceeds the amount permitted by law, (b) the act of creating the Debt or any part thereof is ultra vires, (c) the officers or representatives executing the Note, the Loan Agreement or the other Loan Documents or otherwise creating the Debt acted in excess of their authority, (d) the Debt violate applicable usury laws, (e) any Other Borrower has valid defenses, claims or offsets (whether at law, in equity or by agreement) which render the Debt wholly or partially uncollectible from such Other Borrower, (f) the creation, performance or repayment of the Debt (or the execution, delivery and performance of any document or instrument by any Other Borrower representing part of the Debt or executed in connection with the Debt, or given to secure the repayment of the Debt) is illegal, uncollectible or unenforceable, or (g) the Note, the Loan Agreement or any of the other Loan Documents have been forged or otherwise are irregular or not genuine or authentic, it being agreed that such Borrower Entity shall remain liable hereon regardless of whether any Other Borrower or any other Person be found not liable on the Debt or any part thereof for any reason.

(e) Release of Obligors. Any full or partial release of the liability of any Other Borrower on the Debt, or any part thereof, or of any guarantor(s) thereof, or any other person or entity now or hereafter liable, whether directly or indirectly, jointly, severally, or jointly and severally, to pay, perform, guarantee or assure the payment of the Debt, or any part thereof, it being recognized, acknowledged and agreed by such Borrower Entity that such Borrower Entity may be required to pay the Debt in full without assistance or support of any other party, and such Borrower Entity has not been induced to enter into the Loan Documents on the basis of a contemplation, belief, understanding or agreement that other Persons will be liable to pay or perform the Debt, or that Lender will look to other Persons to pay or perform the Debt.

(f) Other Collateral. The taking or accepting of any other security, collateral or guaranty, or other assurance of payment, for all or any part of the Debt.

(g) Release of Collateral. Any release, surrender, exchange, subordination, deterioration, waste, loss or impairment (including negligent, willful, unreasonable or unjustifiable impairment) of any collateral, property or security at any time existing in connection with, or assuring or securing payment of, all or any part of the Debt.

(h) Care and Diligence. The failure of Lender or any other party to exercise diligence or reasonable care in the preservation, protection, enforcement, sale or other handling or treatment of Other Borrower Collateral, all or any part of such collateral, property or security, including any neglect, delay, omission, failure or refusal of Lender (a) to take or prosecute any action for the collection of any of the Debt or (b) to foreclose, or initiate any action to foreclose, or, once commenced, prosecute to completion any action to foreclose upon Other Borrower

Collateral, or (c) to take or prosecute any action in connection with any instrument or agreement evidencing or securing all or any part of the Debt.

(i) Unenforceability. The fact that any collateral, security, security interest or lien contemplated or intended to be given, created or granted as security for the repayment of the Debt, or any part thereof, shall not be properly perfected or created, or shall prove to be unenforceable or subordinate to any other security interest or lien, it being recognized and agreed by such Borrower Entity that such Borrower Entity is not entering into the Loan Documents in reliance on, or in contemplation of the benefits of, the validity, enforceability, collectibility or value of any of the collateral for the Debt.

(j) Offset. Any existing or future right of offset, claim or defense of Borrower against Lender, or any other Person, or against payment of the Debt by any Other Borrower, whether such right of offset, claim or defense arises in connection with the Debt (or the transactions creating the Debt) or otherwise.

(k) Merger. The reorganization, merger or consolidation of any Other Borrower into or with any other corporation or entity.

(l) Preference. Any payment by Borrower to Lender is held to constitute a preference under bankruptcy laws, or for any reason Lender is required to refund such payment or pay such amount to Borrower or someone else.

**Section 11.3. Other Actions Taken or Omitted.** Any other action taken or omitted to be taken with respect to the Loan Documents, the Debt, or Other Borrower Collateral, whether or not such action or omission prejudices such Borrower Entity or increases the likelihood that such Borrower Entity will be required to pay the Debt pursuant to the terms hereof, it is the unambiguous and unequivocal intention of such Borrower Entity that such Borrower Entity shall be obligated to pay the Debt when due, notwithstanding any occurrence, circumstance, event, action, or omission whatsoever pertaining to any Other Borrower or any Other Borrower Collateral, whether contemplated or not, and whether or not otherwise or particularly described herein, which obligation shall be deemed satisfied only upon the full and final payment and satisfaction of the Debt.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed by their duly authorized representatives, all as of the day and year first above written.

**BORROWER:**

**HARRAH'S LAS VEGAS MEZZ 2, LLC,**  
a Delaware limited liability company

By: /s/ Jonathan S. Halkyard \_\_\_\_\_

Name: Jonathan S. Halkyard

Title: President and Treasurer

**HARRAH'S ATLANTIC CITY MEZZ 2, LLC,**  
a Delaware limited liability company

By: /s/ Jonathan S. Halkyard \_\_\_\_\_

Name: Jonathan S. Halkyard

Title: President and Treasurer

**TAHOE MEZZ 2, LLC,** a Delaware limited liability company

By: /s/ Jonathan S. Halkyard \_\_\_\_\_

Name: Jonathan S. Halkyard

Title: President and Treasurer

**RIO MEZZ 2, LLC,**  
a Delaware limited liability company

By: /s/ Jonathan S. Halkyard \_\_\_\_\_

Name: Jonathan S. Halkyard

Title: President and Treasurer

**FLAMINGO LAS VEGAS MEZZ 2, LLC,**  
a Delaware limited liability company

By: /s/ Jonathan S. Halkyard  
Name: Jonathan S. Halkyard  
Title: President and Treasurer

**SHOWBOAT ATLANTIC CITY MEZZ 2,  
LLC,** a Delaware limited liability company

By: /s/ Jonathan S. Halkyard  
Name: Jonathan S. Halkyard  
Title: President and Treasurer

**LENDER:**

**JPMORGAN CHASE BANK, N.A.**

By: /s/ Jennifer A. Loughrey  
Name: Jennifer A. Loughrey  
Title: Vice President

**THIRD MEZZANINE LOAN AGREEMENT**

Dated as of January 28, 2008

Between

**THE ENTITIES IDENTIFIED ON THE SIGNATURE PAGES  
HEREOF AS BORROWER,**  
collectively, as Borrower

and

**JPMORGAN CHASE BANK N.A.,**  
as Lender

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### THIRD MEZZANINE LOAN AGREEMENT

THIS **THIRD MEZZANINE LOAN AGREEMENT**, dated as of January 28, 2008 (as amended, restated, replaced, supplemented or otherwise modified from time to time, this “**Agreement**”), between **JPMORGAN CHASE BANK, N.A.**, a banking association chartered under the laws of the United States of America, having an address at 270 Park Avenue, New York, New York 10017 (“**Lender**”), and **THE ENTITIES IDENTIFIED ON THE SIGNATURE PAGES HEREOF AS BORROWER**, each a Delaware limited liability company having its principal place of business at the addresses set forth on Schedule I attached hereto (collectively, “**Borrower**”).

#### WITNESSETH:

**WHEREAS**, JPMorgan Chase Bank, N.A., having an address at 270 Park Avenue, New York, New York 10017, as mortgage lender (“**Mortgage Lender**”), is making a loan in the principal amount of Four Billion and No/100 Dollars (\$4,000,000,000) (the “**Mortgage Loan**”) to Mortgage Borrower (as hereinafter defined) pursuant to that certain Loan Agreement, dated as of the date hereof (as the same may be amended, supplemented, replaced or otherwise modified from time to time, the “**Mortgage Loan Agreement**”), which Mortgage Loan is evidenced by the Mortgage Note (as hereinafter defined) made by Mortgage Borrower to Mortgage Lender and secured by, among other things, the Mortgage (as hereinafter defined) given by Mortgage Borrower in favor of Mortgage Lender pursuant to which Mortgage Borrower has granted Mortgage Lender a first priority mortgage on, among other things, the Properties and other collateral as more fully described in the Mortgage;

**WHEREAS**, JPMorgan Chase Bank, N.A., having an address at 270 Park Avenue, New York, New York 10017, as first mezzanine lender (“**First Mezzanine Lender**”), is making a loan in the principal amount of Three Hundred Million and No/100 Dollars (\$300,000,000) (the “**First Mezzanine Loan**”) to First Mezzanine Borrower (as hereinafter defined) pursuant to that certain First Mezzanine Loan Agreement, dated as of the date hereof (as the same may be amended, supplemented, replaced or otherwise modified from time to time, the “**First Mezzanine Loan Agreement**”), which First Mezzanine Loan is evidenced by the First Mezzanine Note (as hereinafter defined) made by First Mezzanine Borrower to First Mezzanine Lender and secured by, among other things, the First Mezzanine Pledge Agreement (as hereinafter defined) given by First Mezzanine Borrower in favor of First Mezzanine Lender pursuant to which First Mezzanine Borrower has granted First Mezzanine Lender a first priority security interest on, among other things, the Collateral (as defined in the First Mezzanine Pledge Agreement);

**WHEREAS**, JPMorgan Chase Bank, N.A., having an address at 270 Park Avenue, New York, New York 10017, as second mezzanine lender (“**Second Mezzanine Lender**”), is making a loan in the principal amount of Two Hundred Seventy Five Million and No/100 Dollars (\$275,000,000) (the “**Second Mezzanine Loan**”) to Second Mezzanine Borrower (as hereinafter defined) pursuant to that certain Second Mezzanine Loan Agreement, dated as of the date hereof (as the same may be amended, supplemented, replaced or otherwise

modified from time to time, the “**Second Mezzanine Loan Agreement**”), which Second Mezzanine Loan is evidenced by the Second Mezzanine Note (as hereinafter defined) made by Second Mezzanine Borrower to Second Mezzanine Lender and secured by, among other things, the Second Mezzanine Pledge Agreement (as hereinafter defined) given by Second Mezzanine Borrower in favor of Second Mezzanine Lender pursuant to which Second Mezzanine Borrower has granted Second Mezzanine Lender a first priority security interest on, among other things, the Collateral (as defined in the Second Mezzanine Pledge Agreement);

**WHEREAS**, First Mezzanine Borrower is the legal and beneficial owner of all of the interests in Mortgage Borrower;

**WHEREAS**, Second Mezzanine Borrower is the legal and beneficial owner of all of the interests in First Mezzanine Borrower;

**WHEREAS**, Borrower is the legal and beneficial owner of all of the interests in Second Mezzanine Borrower;

**WHEREAS**, Borrower desires to obtain the Loan (as hereinafter defined) from Lender;

**WHEREAS**, as a condition precedent to the obligation of Lender to make the Loan to Borrower, Borrower has entered into that certain Pledge and Security Agreement (Third Mezzanine Loan), dated as of the date hereof, in favor of Lender (as amended, supplemented or otherwise modified from time to time, the “**Pledge Agreement**”), pursuant to which Borrower has granted to Lender a first priority security interest in the Collateral (as defined in the Pledge Agreement) as collateral security for the Debt (as hereinafter defined); and

**WHEREAS**, Lender is willing to make the Loan to Borrower, subject to and in accordance with the terms of this Agreement and the other Loan Documents (as hereinafter defined).

**NOW THEREFORE**, in consideration of the making of the Loan by Lender and the covenants, agreements, representations and warranties set forth in this Agreement, the parties hereto hereby covenant, agree, represent and warrant as follows:

## **I. DEFINITIONS; PRINCIPLES OF CONSTRUCTION**

**Section 1.1. Definitions.** For all purposes of this Agreement, except as otherwise expressly required or unless the context clearly indicates a contrary intent:

“**Acceptable Counterparty**” shall mean any counterparty to the Interest Rate Cap Agreement that has and shall maintain, until the expiration of the applicable Interest Rate Cap Agreement, a long-term unsecured debt rating of at least “A+” by S&P and “Aa3” from Moody’s, which rating shall not include a “t” or otherwise reflect a termination risk and is otherwise reasonably acceptable to Lender.

“**Additional Insolvency Opinion**” shall have the meaning set forth in Section 4.1.30(c) hereof.

“**Additional True Lease Opinion**” shall have the meaning set forth in Section 4.1.30(d) hereof.

“**Affiliate**” shall mean, as to any Person, any other Person that, directly or indirectly, is in Control of, is Controlled by or is under common Control with such Person or is a director or officer of such Person or of an Affiliate of such Person.

“**Aggregate Debt Service**” shall mean, with respect to any particular period of time, the sum of (a) the Debt Service, (b) the Mortgage Debt Service and (c) the Other Mezzanine Debt Service.

“**Aggregate Material Adverse Effect**” shall mean any event or condition that, either singly or in the aggregate, could reasonably be expected to have or result in a material adverse effect upon (a) the business, operations, economic performance, prospects, assets or condition (financial or otherwise) of (i) Mortgage Borrower, Senior Mezzanine Borrower or Borrower (taken as a whole), (ii) Guarantor, (iii) Operating Company (taken as a whole), (iv) the Operating Lease or the Operating Lease Guaranty (taken as a whole) or (v) the Properties (taken as a whole), the Collateral, the Senior Mezzanine Collateral, the Hotel Components (taken as a whole) or the Casino Components (taken as a whole); (b) the ability of Mortgage Borrower (taken as a whole), Senior Mezzanine Borrower (taken as a whole), Borrower (taken as a whole) or Guarantor to perform, in all material respects, its obligations under the Loan Documents, Senior Mezzanine Loan Documents or Mortgage Loan Documents (taken as a whole) to which such entity is a party; (c) the ability of Operating Company (taken as a whole) to perform, in all material respects, the obligations under the Operating Leases (taken as a whole); or the ability of Guarantor (Operating Lease) (taken as a whole) to perform, in all material respects, the obligations under the Operating Lease Guaranty (taken as a whole); (d) the enforceability or validity of (i) the Operating Lease (taken as a whole) or the Operating Lease Guaranty (taken as a whole), (ii) the Loan Documents, Senior Mezzanine Loan Documents or Mortgage Loan Documents (taken as a whole) or the perfection or priority of the Liens created under the Loan Documents, Senior Mezzanine Loan Documents or Mortgage Loan Documents (taken as a whole); (e) the value of, or cash flow from, the Properties or the operations thereof (taken as a whole) or the Collateral; or (f) the material rights, interests and remedies of Lender under the Loan Documents (taken as a whole).

“**Allocated Loan Amount**” shall mean, for an Individual Property, the amount set forth on Schedule II attached hereto.

“**ALTA**” shall mean American Land Title Association, or any successor thereto.

“**Alteration**” shall mean, with respect to any Individual Property, any alteration, improvement, demolition, construction or removal of all or any portion of the Improvements at such Individual Property.

“**Annual Budget**” shall mean, individually and collectively as the context requires, (a) the Borrower Annual Budget and (b) the Operating Company Annual Budget.

“**Applicable Interest Rate**” shall mean the rate or rates at which the outstanding principal amount of the Loan bears interest from time to time in accordance with the provisions of Section 2.2.3 hereof.

“**Approved Guarantor**” means (x) Holdings, for so long Holdings meets the Minimum Value Test, or (y) any other guarantor that meets the Minimum Value Test and is otherwise reasonably satisfactory to Lender.

“**Assignee**” shall have the meaning set forth in Section 9.5 hereof.

“**Assignment and Acceptance**” shall have the meaning set forth in Section 9.8 hereof.

“**Award**” shall mean any compensation paid by any Governmental Authority in connection with a Condemnation with respect to all or any part of any Individual Property.

“**Bankruptcy Action**” shall mean with respect to any Person (a) such Person filing a voluntary petition under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (b) the filing of an involuntary petition against such Person under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law, or soliciting or causing to be solicited petitioning creditors for any involuntary petition against such Person; (c) such Person filing an answer consenting to or otherwise acquiescing in or joining in any involuntary petition filed against it, by any other Person under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law, or soliciting or causing to be solicited petitioning creditors for any involuntary petition from any Person; (d) such Person consenting to or acquiescing in or joining in an application for the appointment of a custodian, receiver, trustee, or examiner for such Person or any portion of its property; or (e) such Person making an assignment for the benefit of creditors, or admitting, in writing or in any legal proceeding, its insolvency or inability to pay its debts as they become due.

“**Bankruptcy Code**” shall mean Title 11 of the United States Code, 11 U.S.C. §101, et seq., as the same may be amended from time to time, and any successor statute or statutes and all rules and regulations from time to time promulgated thereunder, and any comparable foreign laws relating to bankruptcy, insolvency or creditors’ rights or any other Federal or state bankruptcy or insolvency law.

“**Basic Carrying Costs**” shall mean, for any period, with respect to each Individual Property, the sum of the following costs associated with such Individual Property for such period: (a) Taxes, (b) Insurance Premiums and (c) Ground Rent.

“**Bill’s Lake Tahoe Casino**” shall mean that certain property identified on Schedule II as “Bill’s Lake Tahoe” having a street address of 15 Highway 50, Stateline, Nevada.

“**Borrower**” shall have the meaning set forth in the introductory paragraph hereto, together with its successors and permitted assigns. As used herein, the term “Borrower” shall mean one of the Borrowers individually, or the Borrowers collectively, as the context shall require.

“**Borrower Agent**” shall have the meaning set forth in Section 10.6 hereof.

“**Borrower Annual Budget**” shall mean the operating budget of Mortgage Borrower, prepared by Mortgage Borrower for the applicable Fiscal Year or other period.

“**Borrower Entity**” shall have the meaning set forth in Section 11.1 hereof.

“**Business Day**” shall mean any day other than a Saturday, Sunday or any other day on which national banks in New York, New York are not open for business.

“**Capital Expenditures**” shall mean, for any period, the amount expended for items capitalized under GAAP (including expenditures for building improvements or major repairs, leasing commissions, tenant improvements and Fixtures).

“**Capitalized Software Expenditures**” shall mean, for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities) by a Person during such period in respect of licensed or purchased software or internally developed software and software enhancements that, in accordance with GAAP, are or are required to be reflected as capitalized costs on the consolidated balance sheet of such Person.

“**Cash Management Account**” shall have the meaning set forth in the Mortgage Loan Agreement.

“**Casino Components**” shall mean, collectively, those portions of each Individual Property devoted to the operation of casino gaming operations, including (without limitation) those areas devoted to the conduct of games of chance, facilities associated directly with gaming operations including, without limitation, casino support areas such as surveillance and security areas, cash cages, counting and accounting areas and gaming back-of-the-house areas in each case, to the extent the operation thereof requires a Gaming License under applicable Gaming Laws. The Casino Components are more particularly described and set forth in each Operating Lease, as appropriate.

“**Casualty**” shall have the meaning set forth in Section 6.2 hereof.

“**Change in Control**” shall mean (1) a “Change in Control” as defined in the Credit Agreement, dated the date hereof, among Hamlet Merger Inc., a Delaware corporation, Harrah’s Operating Company, Inc., a Delaware corporation, the Lenders party thereto from time to time, Bank of America, N.A., as administrative agent and collateral agent for the Lenders, and certain other parties thereto, or (2) a Change in Control as defined in clause (b) of said definition except that references therein to Borrower shall be deemed to refer to Holdings.

“**Closing Date**” shall mean the date of the funding of the Loan.

“**Code**” shall mean the Internal Revenue Code of 1986, as amended, as it may be further amended from time to time, and any successor statutes thereto, and applicable U.S. Department of Treasury regulations issued pursuant thereto in temporary or final form.

“**Collateral**” shall have the meaning set forth in the Pledge Agreement.

**“Collateral Assignment of Interest Rate Cap Agreement”** shall mean that certain Collateral Assignment of Interest Rate Cap Agreement, dated as of the date hereof, executed by Borrower in connection with the Loan for the benefit of the Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

**“Collection Account”** shall have the meaning set forth in the Mortgage Loan Agreement.

**“Collection Banks”** shall mean (a) any Eligible Institution, (b) after the date hereof, any successor Eligible Institution(s) designated by Mortgage Borrower as Collection Bank and reasonably approved by Lender from time to time in accordance with the terms hereof, or (b) any other financial institution otherwise reasonably approved by Lender and, if a Securitization has occurred, with respect to which a Rating Agency Confirmation has been obtained.

**“Condemnation”** shall mean a temporary or permanent taking by any Governmental Authority as the result or in lieu or in anticipation of the exercise of the right of condemnation or eminent domain, of all or any part of any Individual Property, or any interest therein or right accruing thereto, including any right of access thereto or any change of grade affecting such Individual Property or any part thereof.

**“Consolidated Net Income”** shall mean, with respect to any Person for any period, the aggregate of the Net Income of such Person for such period, on a consolidated basis; provided, however, that, without duplication,

(i) any net after-tax extraordinary, nonrecurring or unusual gains or losses or income or expense or charge (less all fees and expenses relating thereto), including, without limitation, any severance, relocation or other restructuring expenses, any expenses related to any reconstruction, decommissioning, recommissioning or reconfiguration of fixed assets for alternative uses, fees, expenses or charges relating to new product lines, curtailments or modifications to pension and post-retirement employee benefit plans, excess pension charges, acquisition integration costs, facilities opening costs, project start-up costs, business optimization costs, signing, retention or completion bonuses, shall be excluded,

(ii) any net after tax income or loss from disposed, abandoned, transferred, closed or discontinued operations and any net after tax gain or loss on disposal of disposed, abandoned, transferred, closed or discontinued operations shall be excluded,

(iii) any net after tax gain or loss (less all fees and expenses or charges relating thereto) attributable to business dispositions or asset dispositions other than in the ordinary course of business (as determined in good faith by the management of the Borrower) shall be excluded,

(iv) Consolidated Net Income for such period shall not include the cumulative effect of a change in accounting principles during such period,

(v) effects of purchase accounting adjustments (including the effects of such adjustments pushed down to such Person) in component amounts required or permitted by GAAP, resulting from the application of purchase accounting in relation to any consummated acquisition or the amortization or write-off of any amounts thereof, net of taxes, shall be excluded,

(vi) any impairment charges or asset write-offs, in each case pursuant to GAAP, and the amortization of intangibles arising pursuant to GAAP, shall be excluded,

(vii) any non cash compensation charge or expenses realized or resulting from stock option plans, employee benefit plans or post-employment benefit plans, or grants or sales of stock, stock appreciation or similar rights, stock options, restricted stock, preferred stock or other rights shall be excluded,

(viii) accruals and reserves that are established or adjusted within twelve months after the Closing Date and that are so required to be established or adjusted in accordance with GAAP or as a result of adoption or modification of accounting policies shall be excluded,

(ix) non-cash gains, losses, income and expenses resulting from fair value accounting required by the applicable standard under GAAP and related interpretations shall be excluded,

(x) (i) the non-cash portion of "straight-line" rent expense shall be excluded and (ii) the cash portion of "straight-line" rent expense which exceeds the amount expensed in respect of such rent expense shall be included,

(xi) to the extent covered by insurance and actually reimbursed, or, so long as such Person has made a determination that there exists reasonable evidence that such amount will in fact be reimbursed by the insurer and only to the extent that such amount is (i) not denied by the applicable carrier in writing within 180 days and (ii) in fact reimbursed within 365 days of the date of such evidence (with a deduction for any amount so added back to the extent not so reimbursed within 365 days), expenses with respect to liability or casualty events or business interruption shall be excluded, and

(xii) non-cash charges for deferred tax asset valuation allowances shall be excluded.

**"Contribution Agreement"** shall mean that certain Contribution Agreement, dated as of the date hereof, between Borrower and Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

**"Control"** shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management, policies or activities of a Person, whether through ownership of voting securities, by contract or otherwise. **"Controlled"** and **"Controlling"** shall have correlative meanings.

“**Convention Center Parcel**” shall mean the parcel shown on Schedule XXII and comprising a part of the Harrah’s Atlantic City Property.

“**Convention Center Project**” shall mean that certain conference center currently contemplated to be constructed on the Convention Center Parcel by the Mortgage Borrower and/or the Operating Company owning the Harrah’s Atlantic City Property, and more fully described in the schematic designs for the Convention Center Project provided by Mortgage Borrower to Mortgage Lender. The Convention Center Project will not be funded with the proceeds of the Loan (but will be funded by Mortgage Borrower, including with capital contributions).

“**Counterparty**” shall mean, with respect to the Interest Rate Cap Agreement and any Replacement Interest Rate Cap Agreement, any Acceptable Counterparty.

“**Covered Disclosure Information**” shall have the meaning set forth in Section 9.2(b) hereof.

“**Debt**” shall mean the outstanding principal amount set forth in, and evidenced by, this Agreement and the Notes together with all interest accrued and unpaid thereon (including any interest that would accrue on the outstanding principal amount of the Loan through and including the end of any applicable Interest Period, even if such Interest Period extends beyond any applicable Payment Date, prepayment date or the Maturity Date) and all other sums due to Lender in respect of the Loan under the Notes, this Agreement, the Pledge Agreement and the other Loan Documents.

“**Debt Service**” shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under this Agreement and the Notes.

“**Debt Service Coverage Ratio**” shall mean a ratio for the applicable period in which:

(a) the numerator is EBITDAR of the Operating Company for the four (4) quarter period preceding the date of determination, as set forth in the financial statements required hereunder; and

(b) the denominator is the sum of (i) the aggregate amount of Mortgage Debt Service which was due and payable for such preceding four (4) quarter period calculated, for these purposes, assuming that (A) the spread on the Mortgage Loan is the Spread (as defined in the Mortgage Loan Agreement) and (B) LIBOR is equal to the lesser of (y) LIBOR on the date of determination, or (z) the applicable Strike Price, (ii) the aggregate amount of Mezzanine Debt Service (including the Debt Service) which was due and payable for such preceding four (4) quarter period calculated, for these purposes, assuming that (A) the spread on the Mezzanine Loans is the “Spread” as defined in each Mezzanine Loan Agreement and (B) LIBOR is equal to the lesser of (y) LIBOR on the date of determination, or (z) the applicable Strike Price (as defined in the Mortgage Loan Agreement), and (iii) the aggregate amount of the Permitted Mezzanine Debt Service which was due and payable for such preceding four (4) quarter period (or the annualized amount, if the Permitted Mezzanine Loan were outstanding for less than 12 calendar

months) calculated, for these purposes, assuming that (A) the spread on the Permitted Mezzanine Loan is the “Spread” (as defined in the documents evidencing the Permitted Mezzanine Loan Documents and (B) LIBOR is equal to the lesser of (y) LIBOR on the date of determination, or (z) the strike price under the related interest rate cap purchased in connection with the Permitted Mezzanine Loan);

provided, however, that, solely for the purpose of Section 2.5, the Debt Service Coverage Ratio shall be determined as described in Section 2.5.1(c).

“**Default**” shall mean the occurrence of any event hereunder or under any other Loan Document which, but for the giving of notice or passage of time, or both, would be an Event of Default.

“**Default Rate**” shall mean a rate per annum equal to the lesser of (a) the Maximum Legal Rate and (b) two percent (2%) above the Applicable Interest Rate.

“**Delinquency**” shall mean, with respect to each Individual Property, the latest date on which Taxes or Other Charges may be paid (with respect to such Individual Property) without the payment of a premium, penalty or interest.

“**Determination Date**” shall mean, with respect to any Interest Period, the date that is two (2) London Business Days prior to the fifteenth (15<sup>th</sup>) day of the calendar month in which such Interest Period commences.

“**Disclosure Document**” shall mean a prospectus, prospectus supplement, private placement memorandum, offering memorandum, offering circular, term sheet, road show presentation materials or other offering documents or marketing materials, in each case in preliminary or final form, used to offer Securities in connection with a Securitization.

“**EBITDAR**” shall mean, with respect to any Person for any period, the Consolidated Net Income of such Person plus the sum of (in each case without duplication and to the extent the respective amounts described in subclauses (i) through (vi) below reduced such Consolidated Net Income (and were not excluded therefrom) for the respective period for which EBITDAR is being determined):

(i) provision for Taxes based on income, profits or capital for such period, including, without limitation, state, franchise and similar taxes and foreign withholding taxes (including penalties and interest related to taxes or arising from tax examinations);

(ii) Interest Expense for such period (net of interest income for such period);

(iii) depreciation and amortization expenses for such period including, but not exclusively, the amortization of intangible assets, deferred financing fees and Capitalized Software Expenditures and amortization of unrecognized prior service costs and actuarial gains and losses related to pensions and other post-employment benefits;

(iv) any expenses or charges (other than depreciation or amortization expense as described in the preceding clause (iii)) related to any acquisition, disposition,

recapitalization or the incurrence, modification or repayment of Indebtedness permitted to be incurred by this Agreement (including a refinancing thereof) (whether or not successful), including (y) any amendment or other modification of such Indebtedness, and (z) commissions, discounts, yield and other fees and charges (including any interest expense) related to any such Indebtedness;

(v) restructuring charges or reserves (which, for the avoidance of doubt, shall include, without limitation, the effect of inventory optimization programs, retention, severance, systems establishment costs, contract termination costs, future lease commitments and excess pension charges), to the extent that such expenses, charges or reserves are considered to be extraordinary expenses under GAAP;

(vi) any costs or expense incurred pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement or any stock subscription or shareholder agreement, to the extent that such cost or expenses are funded with cash proceeds contributed to the capital of such Person;

(vii) with respect to the Operating Company, the Fixed Rent payable under the Operating Lease; and

(viii) if the Captive Insurance Company shall be utilized to provide terrorism coverage hereunder, the amount of the premiums expended by Mortgage Borrower to obtain such terrorism coverage to the extent such amount exceeds the Terrorism Premium Limit and such excess is retained by the Captive Insurance Company;

provided that EBITDAR shall be reduced by the sum of the following for the respective period for which EBITDAR is being determined:

(A) management fees equal to the greater of (x) 3 percent per annum of gross revenues at the Properties and (y) the actual management fees payable under any management agreement (provided the foregoing shall not be construed as Lender's approval of any management agreement except in accordance with the terms hereof), without double counting actual amounts incurred and otherwise reflected in the calculation of EBITDAR, and

(B) FF&E reserves equal to 3 percent per annum of gross hotel and casino revenues at the Properties without double counting actual amounts incurred and otherwise reflected in the calculation of EBITDAR.

**"EBITDAR (Closing Date)"** shall mean EBITDAR for calendar year 2007, as agreed upon between Borrower and Lender.

**"Eighth Mezzanine Borrower"** shall mean, collectively, the entities set forth on Schedule XX hereto, each a Delaware limited liability company, together with their respective successors and permitted assigns. As used herein, the term "Eighth Mezzanine Borrower" shall mean one of the Eighth Mezzanine Borrowers individually, or the Eighth Mezzanine Borrowers collectively, as the context shall require.

**“Eighth Mezzanine Debt Service”** shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Eighth Mezzanine Notes.

**“Eighth Mezzanine Lender”** shall mean JPMorgan Chase Bank, N.A., in its capacity as the holder of the Eighth Mezzanine Loan, together with its successors and assigns.

**“Eighth Mezzanine Loan”** shall mean that certain loan in the original principal amount of Two Hundred Seventy Five Million and No/100 Dollars (\$275,000,000) of even date herewith made by Eighth Mezzanine Lender to Eighth Mezzanine Borrower.

**“Eighth Mezzanine Loan Agreement”** shall mean that certain Eighth Mezzanine Loan Agreement, dated as of the date hereof, between Eighth Mezzanine Borrower and Eighth Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**“Eighth Mezzanine Loan Documents”** shall mean the Eighth Mezzanine Loan Agreement, the Eighth Mezzanine Notes and all other documents and instruments executed and delivered in connection with the Eighth Mezzanine Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

**“Eighth Mezzanine Notes”** shall mean the “Notes” as defined in the Eighth Mezzanine Loan Agreement.

**“Eligibility Requirements”** means, with respect to any Person, that such Person (a) has total assets (in name or under management) in excess of \$4,000,000,000 and (except with respect to a pension advisory firm or similar fiduciary) capital/statutory surplus or shareholder’s equity of \$1,000,000,000 and (b) is regularly engaged in the business of owning and operating commercial real estate properties, (c) is not currently, and its principals are not currently, subject to a Bankruptcy Action and for the immediately preceding 10 years, neither it nor any material subsidiary has been subject to a Bankruptcy Action, and (d) has not been, and its principals have not been, convicted and is not under current indictment for a felony or crime involving moral turpitude, has not been found by a court of competent jurisdiction to have violated federal or state securities laws, and is not an organized crime figure.

**“Eligible Account”** shall mean a separate and identifiable account from all other funds held by the holding institution that is either (a) an account or accounts maintained with a federal or state-chartered depository institution or trust company which complies with the definition of Eligible Institution or (b) a segregated trust account or accounts maintained with a federal or state chartered depository institution or trust company acting in its fiduciary capacity which, in the case of a state chartered depository institution or trust company, is subject to regulations substantially similar to 12 C.F.R. § 9.10(b), having in either case a combined capital and surplus of at least \$50,000,000 and subject to supervision or examination by federal and state authority. An Eligible Account will not be evidenced by a certificate of deposit, passbook or other instrument.

**“Eligible Institution”** shall mean a depository institution or trust company, the short term unsecured debt obligations or commercial paper of which are rated at least “A-1” by

S&P, “P-1” by Moody’s and “F-1” by Fitch in the case of accounts in which funds are held for thirty (30) days or less (or, in the case of accounts in which funds are held for more than thirty (30) days, the long term unsecured debt obligations of which are rated at least “A” by Fitch and S&P and “A2” by Moody’s). After a Securitization of all or any portion of the Loan, only the ratings of those Rating Agencies rating the Securities shall be taken into account in determining whether institutions or trust companies constitute Eligible Institutions.

“**Embargoed Person**” shall have the meaning set forth in Section 4.1.35 hereof.

“**Environmental Indemnity**” shall mean that certain Environmental Indemnity Agreement, dated as of the date hereof, executed by Borrower and Guarantor in connection with the Loan for the benefit of Lender and the Noteholders, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Equipment**” shall mean, with respect to each Individual Property, any equipment now owned or hereafter acquired by Mortgage Borrower or Operating Company, which is used at or in connection with the Improvements or such Individual Property or is located thereon or therein, including (without limitation) all Gaming Equipment, all machinery, equipment, furnishings, and electronic data-processing and other office equipment now owned or hereafter acquired by or on behalf of Mortgage Borrower or Operating Company and any and all additions, substitutions and replacements of any of the foregoing), together with all attachments, components, parts, equipment and accessories installed thereon or affixed thereto.

“**ERISA**” shall mean the Employee Retirement Income Security Act of 1974, as amended.

“**Event of Default**” shall have the meaning set forth in Section 8.1(a) hereof.

“**Exchange Act**” shall have the meaning set forth in Section 9.2(a) hereof.

“**Exchange Act Filing**” shall have the meaning set forth in Section 5.1.11(f) hereof.

“**FF&E**” shall mean, with respect to each Individual Property, collectively, furnishings, fixtures (other than Fixtures) and Equipment located in the guest rooms, hallways, lobbies, restaurants, lounges, meeting and banquet rooms, parking facilities, public areas or otherwise in any portion of such Individual Property, including (without limitation) all fixed asset supplies (including, but not limited to, linen, china, glassware, tableware, uniforms, other hotel inventory and similar items, whether used in connection with public space or guest rooms), beds, chairs, bookcases, tables, carpeting, drapes, couches, luggage carts, luggage racks, bars, bar fixtures, radios, television sets, intercom and paging equipment, electric and electronic equipment, heating, lighting and plumbing fixtures, fire prevention and extinguishing apparatus, cooling and air-conditioning systems, elevators, escalators, stoves, ranges, refrigerators, laundry machines, tools, machinery, boilers, incinerators, switchboards, conduits, compressors, vacuum cleaning systems, floor cleaning, waxing and polishing equipment, cabinets, lockers, shelving, dishwashers, garbage disposals, washer and dryers, gaming equipment and other casino equipment and all other customary hotel and casino resort equipment and other tangible property owned by Mortgage Borrower or Operating Company, or in which Mortgage Borrower or

Operating Company has or shall have an interest, now or hereafter located at such Individual Property and useable in connection with the present or future operation and occupancy of such Individual Property; provided, however, that FF&E shall not include items owned by tenants under space Leases (other than the Operating Lease) or by third party operators (other than Operating Company).

“**FF&E Reserve Account**” shall have the meaning set forth in Section 7.3 hereof.

“**FF&E Reserve Fund**” shall have the meaning set forth in Section 7.3 hereof.

“**Fifth Mezzanine Borrower**” shall mean, collectively, the entities set forth on Schedule XVII hereto, each a Delaware limited liability company, together with their respective successors and permitted assigns. As used herein, the term “Fifth Mezzanine Borrower” shall mean one of the Fifth Mezzanine Borrowers individually, or the Fifth Mezzanine Borrowers collectively, as the context shall require.

“**Fifth Mezzanine Debt Service**” shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Fifth Mezzanine Notes.

“**Fifth Mezzanine Lender**” shall mean JPMorgan Chase Bank, N.A., in its capacity as the holder of the Fifth Mezzanine Loan, together with its successors and assigns.

“**Fifth Mezzanine Loan**” shall mean that certain loan in the original principal amount of Two Hundred Seventy Five Million and No/100 Dollars (\$275,000,000) of even date herewith made by Fifth Mezzanine Lender to Fifth Mezzanine Borrower.

“**Fifth Mezzanine Loan Agreement**” shall mean that certain Fifth Mezzanine Loan Agreement, dated as of the date hereof, between Fifth Mezzanine Borrower and Fifth Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Fifth Mezzanine Loan Documents**” shall mean the Fifth Mezzanine Loan Agreement, the Fifth Mezzanine Notes and all other documents and instruments executed and delivered in connection with the Fifth Mezzanine Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

“**Fifth Mezzanine Notes**” shall mean the “Notes” as defined in the Fifth Mezzanine Loan Agreement.

“**First Mezzanine Borrower**” shall mean, collectively, the entities set forth on Schedule XIV hereto, each a Delaware limited liability company, together with their respective successors and permitted assigns. As used herein, the term “First Mezzanine Borrower” shall mean one of the First Mezzanine Borrowers individually, or the First Mezzanine Borrowers collectively, as the context shall require.

**“First Mezzanine Borrower Company Agreements”** shall mean, collectively, the Limited Liability Company Agreements of First Mezzanine Borrower, by each Borrower, as sole member, dated as of the date hereof.

**“First Mezzanine Debt Service”** shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the First Mezzanine Note.

**“First Mezzanine Lender”** shall have the meaning set forth in the Recitals.

**“First Mezzanine Loan”** shall have the meaning set forth in the Recitals.

**“First Mezzanine Loan Agreement”** shall have the meaning set forth in the Recitals.

**“First Mezzanine Loan Documents”** shall mean the First Mezzanine Loan Agreement, the First Mezzanine Notes, and all other documents and instruments executed and delivered in connection with the First Mezzanine Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

**“First Mezzanine Notes”** shall mean the “Notes” as defined in the First Mezzanine Loan Agreement.

**“First Mezzanine Pledge Agreement”** shall mean that certain Pledge and Security Agreement (First Mezzanine Loan), dated as of the date hereof, between First Mezzanine Borrower and First Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**“Fiscal Year”** shall mean each twelve (12) month period commencing on January 1 and ending on December 31 during each year of the term of the Loan.

**“Fitch”** shall mean Fitch, Inc.

**“Fixed Rent”** shall mean the Base Rent (as defined in the Operating Lease) payable under the Operating Lease.

**“Fixtures”** shall mean, with respect to each Individual Property, all Equipment now owned, or the ownership of which is hereafter acquired, by Mortgage Borrower which is so related to the Land and the Improvements forming part of the Individual Property in question that it is deemed fixtures or real property under applicable Legal Requirements, including, without limitation, all building or construction materials intended for construction, reconstruction, alteration, decoration or repair of or installation on the applicable Individual Property, construction equipment, appliances, machinery, plant equipment, fittings, apparatuses, fixtures and other items now or hereafter attached to, installed in or used in connection with (temporarily or permanently) any of the Improvements or the Land, including, but not limited to, engines, devices for the operation of pumps, pipes, plumbing, call and sprinkler systems, fire extinguishing apparatuses and equipment, heating, ventilating, incinerating, electrical, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances and equipment, pollution control equipment, security systems, disposals, dishwashers,

refrigerators and ranges, recreational equipment and facilities of all kinds, and water, electrical, storm and sanitary sewer facilities, utility lines and equipment (whether owned individually or jointly with others, and, if owned jointly, to the extent of Mortgage Borrower's interest therein) and all other utilities whether or not situated in easements, all water tanks, water supply, water power sites, fuel stations, fuel tanks, fuel supply, and all other structures, together with all accessions, appurtenances, additions, replacements, betterments and substitutions or any of the foregoing and the proceeds thereof.

**"Flamingo Las Vegas"** shall mean that certain Individual Property identified on Schedule II as the "Flamingo Las Vegas" and having a street address of 3555 Las Vegas Boulevard South, Las Vegas, Nevada.

**"Force Majeure"** shall mean any delay caused by reason of strike, lock-out or other labor trouble, casualty, governmental preemption of priorities or other controls in connection with a national or other public emergency or shortages of fuel, supplies or labor resulting therefrom or other causes beyond Borrower's reasonable control.

**"Foreign Taxes"** shall have the meaning set forth in Section 2.2.3(e) hereof.

**"Fourth Mezzanine Borrower"** shall mean, collectively, the entities set forth on Schedule XVI hereto, each a Delaware limited liability company, together with their respective successors and permitted assigns. As used herein, the term "Fourth Mezzanine Borrower" shall mean one of the Fourth Mezzanine Borrowers individually, or the Fourth Mezzanine Borrowers collectively, as the context shall require.

**"Fourth Mezzanine Debt Service"** shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Fourth Mezzanine Notes.

**"Fourth Mezzanine Lender"** shall mean JPMorgan Chase Bank, N.A., in its capacity as the holder of the Fourth Mezzanine Loan, together with its successors and assigns.

**"Fourth Mezzanine Loan"** shall mean that certain loan in the original principal amount of Two Hundred Seventy Five Million and No/100 Dollars (\$275,000,000) of even date herewith made by Fourth Mezzanine Lender to Fourth Mezzanine Borrower.

**"Fourth Mezzanine Loan Agreement"** shall mean that certain Fourth Mezzanine Loan Agreement, dated as of the date hereof, between Fourth Mezzanine Borrower and Fourth Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**"Fourth Mezzanine Loan Documents"** shall mean the Fourth Mezzanine Loan Agreement, the Fourth Mezzanine Notes and all other documents and instruments executed and delivered in connection with the Fourth Mezzanine Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

**"Fourth Mezzanine Notes"** shall mean the "Notes" as defined in the Fourth Mezzanine Loan Agreement.

“GAAP” shall mean generally accepted accounting principles in the United States of America as of the date of the applicable financial report.

“Gaming Authorities” shall mean, in any jurisdiction in which Borrower, Senior Mezzanine Borrower, Mortgage Borrower, Operating Company or any of their respective subsidiaries manages or conducts any casino, gaming business or activities, the applicable gaming board, commission, or other governmental gaming regulatory authority, body or agency which (a) has, or may at any time after the Closing Date have, jurisdiction over the gaming activities at any of the Properties or any successor to such authority or (b) is, or may at any time after the Closing Date be, responsible for interpreting, administering and enforcing the Gaming Laws.

“Gaming Equipment” shall mean any and all gaming devices, gaming device parts inventory and other related gaming equipment and supplies used in connection with the operation of a casino, including (without limitation), slot machines, gaming tables, cards, dice, chips, tokens, player tracking systems, cashless wagering systems, electronic betting systems, mobile gaming systems and associated equipment which are located at the Casino Components, owned or leased by Operating Company or Mortgage Borrower and used or useable exclusively in the present or future operation of slot machines and live games at the Casino Component, together with all improvements and/or additions thereto.

“Gaming Laws” or “Gaming Regulations” shall mean all applicable constitutions, treaties, laws, statutes and municipal ordinances pursuant to which any Gaming Authority possesses regulatory, licensing or permitting authority over gaming, gambling or casino or casino-related activities and all rules, rulings, orders, ordinances and regulations of any Gaming Authority applicable to the gambling, casino, gaming businesses or casino or casino-related activities of Borrower, Senior Mezzanine Borrower, Mortgage Borrower or the Operating Companies or any of their respective subsidiaries in any jurisdiction, as in effect from time to time, including the policies, interpretations and administration thereof by the Gaming Authorities.

“Gaming License” shall mean, in any jurisdiction in which Borrower, Senior Mezzanine Borrower, Mortgage Borrower, Operating Company or any of their respective subsidiaries conducts any casino and gaming business or activities, any license, qualification, franchise, accreditation, approval, registration, permit, finding of suitability or other authorization relating to gaming, the gaming business or the operation of a casino under the Gaming Laws or required by the Gaming Authorities or otherwise necessary for the operation of gaming, the gaming business or a resort casino.

“Gaming Liquidity Requirement” shall mean the minimum bankroll requirements for cash and cash equivalents required to be maintained by each Operating Company pursuant to Gaming Laws in an amount no greater than is mandated by applicable law, which requirements may be subject to (a) adjustment in an amount equal to any incremental increase or decrease in the amount of the Gaming Liquidity Requirement that is required to be maintained by Operating Company under applicable Gaming Laws as a result of any increase or decrease in gaming business at the applicable Casino Component, or (b) subject to increase or decrease due to any change in the applicable requirements under Gaming Laws generally.

**“Gaming Operating Reserve”** shall mean, with respect to the Casino Component, such cash funds and reserves that are held and maintained on-site at each Individual Property by Operating Company, in its capacity as the duly licensed operator of the Casino Component, including (without limitation) casino chips, tokens, checks and markers; provided, however, that all such Gaming Operating Reserves (a) are established and maintained in compliance with all applicable Gaming Liquidity Requirements, (b) are solely for use in the day-to-day operation and management of each Casino Component in the ordinary course of business, and (c) in the case of each Individual Property, are in amounts customary and generally comparable for casinos comparable to the Individual Property in question.

**“Governmental Authority”** shall mean any court, board, agency, commission, office or other authority of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence, including, without limitation, all Gaming Authorities having jurisdiction over the Properties (and any operations conducted thereat), Mortgage Borrower, Borrower and Operating Company. For the avoidance of doubt, the term “Governmental Authority” shall include, and be deemed to include, all Gaming Authorities.

**“Ground Lease”** shall mean, individually and collectively, as the context requires, those certain ground leases listed in Schedule IV, as the same may be amended, supplemented, replaced or otherwise modified from time to time in accordance with the provisions hereof.

**“Ground Lease Estoppel Reserve Amount”** shall have the meaning set forth in the Ground Lease Side Letter.

**“Ground Lease Estoppel Trigger Event”** shall have the meaning set forth in Section 5.1.23 hereof.

**“Ground Lease Estoppel Trigger Spread”** shall have the meaning set forth in the Ground Lease Side Letter.

**“Ground Lease Side Letter”** shall have the meaning assigned to such term in the Mortgage Loan Agreement.

**“Ground Lease Subsidiary”** shall have the meaning assigned to such term in the Mortgage Loan Agreement.

**“Ground Rent”** shall mean any rent, additional rent or other charge payable by the tenant under the Ground Lease.

**“Ground Rent Reserve Account”** shall have the meaning set forth in Section 7.4 hereof.

**“Ground Rent Reserve Funds”** shall have the meaning set forth in Section 7.4.

“**Guarantor**” shall mean, collectively, Guarantor (FF&E), Guarantor (Recourse Carveouts), Guarantor (Operating Lease), Guarantor (Ground Lease Estoppel) and any guarantor under any completion guaranty provided under Section 5.1.21.

“**Guarantor (FF&E)**” shall mean any Approved Guarantor. Initially, Guarantor (FF&E) shall mean Holdings, and its successors. If Holdings fails to meet the Minimum Value Test, then Borrower shall replace Holdings, as the guarantor under the Guaranty (FF&E), with an Approved Guarantor.

“**Guarantor (Ground Lease Estoppel)**” shall mean Holdings, and its successors.

“**Guarantor (Operating Lease)**” shall mean Holdings, and its successors.

“**Guarantor (Recourse Carveouts)**” shall mean Holdings, and its successors.

“**Guaranty**” shall mean, collectively, the Guaranty (FF&E), the Guaranty (Recourse Carveouts), the Guaranty (Ground Lease Estoppel), the Operating Lease Guaranty and any completion guaranty provided under Section 5.1.21.

“**Guaranty (FF&E)**” shall mean that certain Guaranty (FF&E) (Third Mezzanine Loan), dated as of the date hereof, from Guarantor (FF&E) to Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Guaranty (Ground Lease Estoppel)**” shall mean that certain Guaranty (Harvey’s - Payment) (Third Mezzanine), dated as of the date hereof, from Guarantor (Ground Lease Estoppel) to Lender, as the same may be amended, restated, supplemented or modified from time to time.

“**Guaranty (Recourse Carveouts)**” shall mean that certain Guaranty (Recourse Carveouts) (Third Mezzanine Loan), dated as of the date hereof, from Guarantor (Recourse Carveouts) to Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Harrah’s Atlantic City Property**” shall mean that certain Individual Property identified on Schedule II as “Harrah’s Atlantic City” and having a street address of 777 Harrah’s Boulevard, Atlantic City, New Jersey.

“**Holdings**” shall mean Harrah’s Entertainment, Inc., and its successors.

“**Hotel Components**” shall mean, collectively, those portions of each Individual Property devoted to the operation of a hotel and related facilities, excluding the Casino Component, but including (without limitation) (a) all guest rooms and suites, hotel amenities, restaurants, conference centers, meeting, banquet and other public rooms, spa, parking spaces and other facilities of the hotel portion of such Individual Property, and (b) any theaters or performing arts spaces in the Individual Property in question. The Hotel Components are more particularly described and set forth in each Operating Lease, as applicable.

**“Improvements”** shall have the meaning set forth in the granting clause of the related Mortgage with respect to each Individual Property.

**“Indebtedness”** of a Person, at a particular date, means the sum (without duplication) at such date of (a) all indebtedness of such Person (including, without limitation, amounts for borrowed money and indebtedness in the form of mezzanine debt and preferred equity); (b) obligations evidenced by bonds, debentures, notes, or other similar instruments; (c) obligations for the deferred purchase price of property or services (including trade obligations); (d) obligations under letters of credit; (e) obligations under acceptance facilities; (f) all guaranties, endorsements (other than for collection or deposit in the ordinary course of business) and other contingent obligations to purchase, to provide funds for payment, to supply funds, to invest in any Person or entity, or otherwise to assure a creditor against loss; and (g) obligations secured by any Liens, whether or not the obligations have been assumed.

**“Indemnified Liabilities”** shall have the meaning set forth in Section 10.13 hereof.

**“Indemnified Person”** shall have the meaning set forth in Section 9.2(b) hereof.

**“Independent Director”** or **“Independent Manager”** shall mean a natural person who is not and will not be while serving and has not been during the five years preceding his or her initial appointment to such position any of the following: (a) a stockholder (other than a stockholder who owns a *de minimis* amount of shares and receive *de minimis* income therefrom, or who indirectly owns stock through its interest in one or more mutual funds), member (other than as a Special Member or Springing Member of Borrower), director, manager (except in his or her capacity as an Independent Manager on the Board of Managers of Borrower), officer, employee, partner, attorney, trustee or counsel of Borrower or any Affiliate of Borrower or any direct or indirect parent of either of them, including Holdings, (b) a creditor, customer (other than a retail customer of an Individual Property), supplier or other Person who derives any of its purchases or revenues from its activities with Borrower or any Affiliate of Borrower, including Holdings, (c) a Person or other entity controlling or under common control with any such stockholder, partner, member, director, manager or officer, customer, supplier or other Person excluded from serving as Independent Director or Independent Manager described in the foregoing subclause (a) or subclause (b), or (d) a member of the immediate family by blood or marriage of any such stockholder, member, manager, director, officer, employee, partner, attorney, customer, supplier or other Person excluded from serving as Independent Director or Independent Manager in subclause (a) or subclause (b). A natural person who satisfies the foregoing definition other than subclause (b) above shall not be disqualified from serving as an Independent Manager, if such individual is an independent director provided by a nationally recognized company that provides professional independent directors and managers, it being hereby acknowledged and agreed that Corporation Service Company satisfies such criteria. Further, a natural person who otherwise satisfies the foregoing definition except for subclause (a) by reason of being the independent director of a “special purpose entity” affiliated with the Borrower shall not be disqualified from serving as an Independent Director of the Borrower if such individual is either (i) a Professional Independent Director or (ii) the fees and other income that such individual earns from serving as independent director of affiliates of the Borrower in any given year constitute in the aggregate less than five percent (5%) of such individual’s annual

income for that year. Notwithstanding the immediately preceding sentence, an Independent Director may not simultaneously serve as Independent Director of the Borrower and independent director of a special purpose entity that owns a direct or indirect equity interest in the Borrower or a direct or indirect interest in any co-borrower with the Borrower. For purposes of this paragraph, a “special purpose entity” is an entity, whose organizational documents contain restrictions on its activities and impose requirements intended to preserve such entity’s separateness that are substantially similar to the “special purpose entity” provisions of this Agreement. Notwithstanding anything herein to the contrary, an Independent Director may not simultaneously serve as Independent Director of a Borrower and an independent director of a special purpose entity that owns a direct or indirect equity interest in any Borrower; provided, however, that one Independent Director of Borrower (but not both Independent Directors simultaneously) may serve as an independent director of each Other Mezzanine Borrower.

“**Individual Material Adverse Effect**” shall mean any event or condition that, either singly or in the aggregate, could reasonably be expected to have or result in a material adverse effect upon (a) the business, operations, economic performance, prospects, assets or condition (financial or otherwise) of (i) any Borrower, any Senior Mezzanine Borrower or any Mortgage Borrower, (ii) Guarantor, (iii) any Operating Company, (iv) any Operating Lease or Operating Lease Guaranty or (v) the Collateral, the Senior Mezzanine Collateral or any Individual Property or any Hotel Component or Casino Component thereon; (b) the ability of any Borrower, any Senior Mezzanine Borrower, any Mortgage Borrower or Guarantor to perform, in all material respects, its obligations under each of the Loan Documents, Senior Mezzanine Loan Documents or Mortgage Loan Documents to which it is a party; (c) the ability of any Operating Company to perform, in all material respects, its obligations under its Lease; (d) the enforceability or validity of (i) any Operating Lease or Operating Lease Guaranty, or (ii) any Loan Document, Senior Mezzanine Loan Document, Mortgage Loan Document or the perfection or priority of any Lien created under any Loan Document, Senior Mezzanine Loan Document or Mortgage Loan Document; (e) the value of, or cash flow from, any Individual Property, the Collateral, the Senior Mezzanine Collateral or the operations thereof; or (f) the material rights, interests and remedies of Lender under any of the Loan Documents.

“**Individual Property**” shall mean, individually, any one of the properties identified on Schedule II (it being the Improvements thereon and all Fixtures and all Equipment, FF&E and personal property owned by Mortgage Borrower and encumbered by a Mortgage, together with all rights pertaining to such property and Improvements, as more particularly described in the Granting Clauses of each Mortgage and referred to therein as the “Property”). For all purposes herein and in the other Loan Documents and to the extent not prohibited by the Ground Lease, the premises leased by Ground Lease Subsidiary or Borrower, as applicable, under the Ground Lease shall constitute a part of the Individual Property known as “Harvey’s Lake Tahoe”, “Harrah’s Lake Tahoe” and “Bill’s Lake Tahoe”, except that such ground leased premises shall not be subject to a lien of a Mortgage or an Operating Lease unless and until required pursuant hereto, the Mortgage Loan Agreement or pursuant to the Ground Lease Side Letter.

“**Insolvency Opinion**” shall mean that certain non-consolidation opinion letter dated the date hereof delivered by Cleary Gottlieb Steen & Hamilton LLP in connection with the Loan.

**“Institutional Lender”** shall mean any Person reasonably acceptable to Lender in all respects that is either (a) a real estate investment trust, bank, saving and loan association, investment bank, insurance company, trust company, commercial credit corporation, pension plan, pension fund or pension advisory firm, mutual fund, government entity or plan, provided that any such Person referred to in this clause (a) satisfies the Eligibility Requirements; (b) an investment company, money management firm or “qualified institutional buyer” within the meaning of Rule 144A under the Securities Act of 1933, as amended, or an institutional “accredited investor” within the meaning of Regulation D under the Securities Act of 1933, as amended, provided that any such Person referred to in this clause (b) satisfies the Eligibility Requirements; (c) an institution substantially similar to any of the foregoing entities described in clauses (a) or (b) that satisfies the Eligibility Requirements; (d) any entity controlled by any of the entities described in clauses (a) or (c) above; or (e) an investment fund, limited liability company, limited partnership or general partnership where a Permitted Fund Manager or an entity that is otherwise an Institutional Lender under clauses (a), (b), (c) or (d) of this definition acts as the general partner, managing member or fund manager and at least fifty percent (50%) of the equity interests in such investment fund are owned, directly or indirectly, by one or more entities that are otherwise Institutional Lenders under clauses (a), (b), (c) or (d) of this definition.

**“Insurance Premiums”** shall have the meaning set forth in the Mortgage Loan Agreement.

**“Insurance Proceeds”** shall have the meaning set forth in the Mortgage Loan Agreement.

**“Interest Expense”** shall mean, with respect to any Person for any period, the sum of (a) gross interest expense of such Person for such period on a consolidated basis, including (i) the amortization of debt discounts, (ii) the amortization of all fees payable in connection with the incurrence of Indebtedness to the extent included in interest expense and (iii) the portion of any payments or accruals with respect to equipment financing and equipment leases allocable to interest expense, (b) capitalized interest of such Person, and (c) commissions, discounts, yield and other fees and charges incurred in connection with any indebtedness which are payable to any Person other than Borrower. For purposes of the foregoing, interest on equipment financing or equipment leases shall be deemed to accrue at an interest rate reasonably determined by the Borrower to be the rate of interest implicit in such equipment financing or equipment lease in accordance with GAAP.

**“Interest Period”** shall mean (a) for the first interest period hereunder, (i) if the Closing Date occurs on or before the fourteenth (14<sup>th</sup>) day of a calendar month, the period commencing on the Closing Date and ending on (and including) the fourteenth (14<sup>th</sup>) day of the calendar month in which the Closing Date occurs, and (ii) if the Closing Date occurs on or after the fifteenth (15<sup>th</sup>) day of a calendar month, the period commencing on the Closing Date and ending on (and including) the fourteenth (14<sup>th</sup>) day of the following calendar month and (b) for each interest period thereafter commencing February 15, 2008, the period commencing on the fifteenth (15<sup>th</sup>) day of each calendar month and ending on (and including) the fourteenth (14<sup>th</sup>) day of the following calendar month. Each Interest Period as set forth in clause (b) above shall be a full month and shall not be shortened by reason of any payment of the Loan prior to the expiration of such Interest Period. Notwithstanding the foregoing, Lender shall have the right, in

connection with a Securitization, to change the Interest Period and Payment Date, provided that in doing so, Lender shall not increase Borrower's costs hereunder (other than the direct costs of implementing such change, such as legal fees, which Borrower hereby agrees to pay).

**"Interest Rate Cap Agreement"** shall mean, as applicable, an Interest Rate Cap Agreement (together with the confirmation and schedules relating thereto) in form and substance reasonably satisfactory to Lender between Borrower and an Acceptable Counterparty or a Replacement Interest Rate Cap Agreement.

**"JPM"** shall mean JPMorgan Chase Bank, N.A. and its successors in interest.

**"Lease"** shall mean any lease (including the Operating Lease), sublease or subsublease, letting, license, concession or other agreement (whether written or oral and whether now or hereafter in effect) pursuant to which any Person is granted a possessory interest in, or right to use or occupy all or any portion of any space in any Individual Property (other than short term arrangements with transient hotel guests entered into in the usual course of business), and (a) every modification, amendment or other agreement relating to such lease, sublease, subsublease, or other agreement entered into in connection with such lease, sublease, subsublease, or other agreement and (b) every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto (including the Operating Lease Guaranty).

**"Legal Requirements"** shall mean, with respect to each Individual Property and the Collateral, all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions of Governmental Authorities affecting such Individual Property, the Senior Mezzanine Collateral, the Collateral or any part thereof (including, without limitation, all Gaming Laws), or affecting the construction, use, alteration or operation thereof, or any part thereof, whether now or hereafter enacted and in force, and all permits, licenses and authorizations and regulations relating thereto (including, without limitation, all Gaming Licenses and Operating Permits), and all covenants, agreements, restrictions and encumbrances contained in any instruments, either of record or known to Borrower, Mortgage Borrower or Operating Company, at any time in force affecting such Individual Property or any part thereof, including, without limitation, any which may (a) require repairs, modifications or alterations in or to such Individual Property or any part thereof, or (b) in any way limit the use and enjoyment thereof. Legal Requirements shall include any (x) judicial, administrative or other governmental or quasi governmental order, injunction, writ, judgment, decree, ruling, interpretation, finding or other directive, whether domestic or foreign; (y) arbitrator's, mediator's or referee's decision, finding, award or recommendation; or (z) charter, rule, regulation or other organizational or governance document of any self-regulatory or governing body or organization. For the avoidance of doubt, the term "Legal Requirements" shall include, and be deemed to include, all applicable Gaming Laws and Gaming Regulations.

**"Lender"** shall have the meaning set forth in the introductory paragraph hereto, together with its successors and assigns.

“**Lender’s Share**” shall mean a fraction, the numerator of which is the outstanding principal amount of the Loan and the denominator of which is the sum of the outstanding principal amounts of the Mortgage Loan, the Loan and the Other Mezzanine Loans (in each case, as of the date of determination).

“**Liabilities**” shall have the meaning set forth in Section 9.2(b) hereof.

“**LIBOR**” shall mean, with respect to each Interest Period, the rate (expressed as a percentage per annum and rounded to the next nearest 1/100 of 1%) for deposits in U.S. dollars, for a one-month period, that appears on Reuters Screen LIBOR01 Page (or the successor thereto) as of 11:00 a.m., London time, on the related Determination Date. If such rate does not appear on Reuters Screen LIBOR01 Page as of 11:00 a.m., London time, on such Determination Date, LIBOR shall be the arithmetic mean of the offered rates (expressed as a percentage per annum) for deposits in U.S. dollars for a one-month period that appear on the Reuters Screen Libor Page as of 11:00 a.m., London time, on such Determination Date, if at least two such offered rates so appear. If fewer than two such offered rates appear on the Reuters Screen Libor Page as of 11:00 a.m., London time, on such Determination Date, Lender shall request the principal London office of any four major reference banks in the London interbank market selected by Lender to provide such bank’s offered quotation (expressed as a percentage per annum) to prime banks in the London interbank market for deposits in U.S. dollars for a one-month period as of 11:00 a.m., London time, on such Determination Date for the amounts of not less than U.S. \$1,000,000. If at least two such offered quotations are so provided, LIBOR shall be the arithmetic mean of such quotations. If fewer than two such quotations are so provided, Lender shall request any three major banks in New York City selected by Lender to provide such bank’s rate (expressed as a percentage per annum) for loans in U.S. dollars to leading European banks for a one-month period as of approximately 11:00 a.m., New York City time on the applicable Determination Date for amounts of not less than U.S. \$1,000,000. If at least two such rates are so provided, LIBOR shall be the arithmetic mean of such rates. LIBOR shall be determined conclusively by Lender or its agent. Notwithstanding the foregoing, for the Interest Period ending February 14, 2008, LIBOR is 3.31%.

“**LIBOR Loan**” shall mean the Loan at such time as interest thereon accrues at a rate of interest based upon LIBOR.

“**Lien**” shall mean, with respect to each Individual Property, the Senior Mezzanine Collateral and the Collateral, any mortgage, deed of trust, lien, pledge, hypothecation, assignment, security interest, or any other encumbrance, charge or restriction on transfer of, on or affecting Borrower, Senior Mezzanine Borrower, Mortgage Borrower, any Individual Property, the Senior Mezzanine Collateral or the Collateral, any portion of either or any interest therein, including, without limitation, any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, the filing of any financing statement, and mechanic’s, materialmen’s and other similar liens and encumbrances, in each case whether arising by contract, operation of law, or otherwise.

“**Liquidation Event**” shall have the meaning set forth in Section 2.4.2 hereof.

“**Loan**” shall mean the loan made by Lender to Borrower pursuant to this Agreement.

“**Loan Adjustment**” shall have the meaning set forth in Section 2.1.6 hereof.

“**Loan Amount**” shall mean, as determined from time to time, the outstanding principal amount of the Loan.

“**Loan Documents**” shall mean, collectively, this Agreement, the Note, the Pledge Agreement, the Environmental Indemnity, the O&M Agreement, the Guaranty (Recourse Carveouts), the Guaranty (FF&E), the Guaranty (Ground Lease Estoppel), the Collateral Assignment of Interest Rate Cap Agreement, the Contribution Agreement and all other documents executed and/or delivered in connection with the Loan.

“**Loan Party**” shall mean, collectively, Mortgage Borrower, Borrower, Senior Mezzanine Borrower, Principal and Guarantor.

“**London Business Day**” shall mean any day other than a Saturday, Sunday or any other day on which commercial banks in London, England are not open for business.

“**Major Lease**” shall mean any of the following: (a) with respect to any Individual Property, any Lease (i) covering in excess of forty thousand (40,000) net rentable square feet at such Individual Property or (ii) made with a Tenant that is a Tenant under another Lease at such Individual Property (or with a Tenant that is an Affiliate of a Tenant under another Lease at such Individual Property) if any such Leases, together, cover in excess of forty thousand (40,000) net rentable square feet or more at such Individual Property, (b) any Lease of space at any Individual Property with an Affiliate of Mortgage Borrower, or (c) any Lease that is not the result of arm’s length negotiations; provided, however, that the Operating Lease shall not constitute a Major Lease for purposes of this Agreement.

“**Material Alteration**” shall mean any Alteration with respect to all or a portion of any Individual Property that (i) when aggregated with all other Alterations at such Individual Property then being conducted involve an estimated total cost in excess of an amount equal to ten percent (10%) of the sum of the Allocated Loan Amount for such Individual Property and the “Allocated Loan Amounts” under (and as defined in each of) the Mortgage Loan Agreement and the Other Mezzanine Loan Agreements for such Individual Property or (ii) when aggregated with all other Alterations at the Properties, including such Individual Property, then being conducted, involve an estimated total cost in excess of an amount equal to five percent (5%) of the sum of the Loan Amount, the Mortgage Loan Amount and the Other Mezzanine Loan Amount (and, as used herein, “**Threshold Amount**” shall mean whichever of said 5% or 10% amount shall have been exceeded, provided that if both shall have been exceeded, then the lower of such two amounts shall be the “Threshold Amount”); provided, that, in determining whether one or more Alterations comprise a Material Alteration, there shall not be included (a) merely decorative work such as painting, wall papering, carpeting and replacement of FF&E to the extent the same are of a routine and recurring nature, performed in the ordinary course of business; (b) tenant improvement work performed by a tenant pursuant to the terms of any Lease (other than the Operating Lease) entered into in accordance with the terms hereof, so long as such work does not

adversely affect any structural component of any Improvements, any utility or HVAC system contained in any Improvements or the exterior of any building constituting a part of any Improvements, (c) any Alterations which are performed in connection with the Restoration of any portion of any Individual Property after the occurrence of a Casualty or Condemnation in accordance with the terms and provisions of this Agreement, or (d) the Tower Project or the Convention Center Project.

“**Maturity Date**” shall mean the Scheduled Maturity Date or such other date on which the final payment of principal of the Notes becomes due and payable as therein or herein provided, whether at such Scheduled Maturity, by declaration of acceleration, or otherwise.

“**Maximum Legal Rate**” shall mean the maximum nonusurious interest rate, if any, that at any time or from time to time may be contracted for, taken, reserved, charged or received on the indebtedness evidenced by the Note and as provided for herein or the other Loan Documents, under the laws of such state or states whose laws are held by any court of competent jurisdiction to govern the interest rate provisions of the Loan.

“**Mezzanine Borrowers**” shall mean, collectively, the Borrower, the First Mezzanine Borrower, the Second Mezzanine Borrower, the Fourth Mezzanine Borrower, the Fifth Mezzanine Borrower, the Sixth Mezzanine Borrower, the Seventh Mezzanine Borrower, the Eighth Mezzanine Borrower, the Ninth Mezzanine Borrower and any New Mezzanine Borrower.

“**Mezzanine Collection Account**” shall have the meaning set forth in Section 2.6.4 hereof.

“**Mezzanine Debt Service**” shall mean, with respect to any particular period of time, the sum of (a) the Debt Service, (b) the First Mezzanine Debt Service, (c) the Second Mezzanine Debt Service, (d) the Fourth Mezzanine Debt Service, (e) the Fifth Mezzanine Debt Service, (f) the Sixth Mezzanine Debt Service, (g) the Seventh Mezzanine Debt Service, (h) the Eighth Mezzanine Debt Service, (i) the Ninth Mezzanine Debt Service, and (j) debt service on any New Mezzanine Loan.

“**Mezzanine Lenders**” shall mean, collectively, Lender, the First Mezzanine Lender, the Second Mezzanine Lender, the Fourth Mezzanine Lender, the Fifth Mezzanine Lender, the Sixth Mezzanine Lender, the Seventh Mezzanine Lender, the Eighth Mezzanine Lender, the Ninth Mezzanine Lender and Lender, as lender under any New Mezzanine Loan.

“**Mezzanine Loan Agreements**” shall mean, collectively, this Agreement, the First Mezzanine Loan Agreement, the Second Mezzanine Loan Agreement, the Fourth Mezzanine Loan Agreement, the Fifth Mezzanine Loan Agreement, the Sixth Mezzanine Loan Agreement, the Seventh Mezzanine Loan Agreement, the Eighth Mezzanine Loan Agreement, the Ninth Mezzanine Loan Agreement and any New Mezzanine Loan Agreement.

“**Mezzanine Loan Amount**” shall mean, as determined from time to time, the outstanding principal amount of the Mezzanine Loans.

**“Mezzanine Loan Documents”** shall mean, collectively, the Loan Documents, the First Mezzanine Loan Documents, the Second Mezzanine Loan Documents, the Fourth Mezzanine Loan Documents, the Fifth Mezzanine Loan Documents, the Sixth Mezzanine Loan Documents, the Seventh Mezzanine Loan Documents, the Eighth Mezzanine Loan Documents, the Ninth Mezzanine Loan Documents and any loan documents entered into in connection with any New Mezzanine Loan.

**“Mezzanine Loans”** shall mean, collectively, this Loan, the First Mezzanine Loan, the Second Mezzanine Loan, the Fourth Mezzanine Loan, the Fifth Mezzanine Loan, the Sixth Mezzanine Loan, the Seventh Mezzanine Loan, the Eighth Mezzanine Loan, the Ninth Mezzanine Loan and any New Mezzanine Loan.

**“Minimum Value Test”** shall mean, with respect to any Person, that the greater of the book value or the fair market value of the assets of such Person (excluding, for purposes of making such determination, the value of the Properties) exceeds Five Billion and No/100 Dollars (\$5,000,000,000.00) in the aggregate, as certified to Lender in an Officer’s Certificate prepared in good faith based on the most recent financial statements of such Person.

**“Monthly Disbursements”** shall have the meaning provided in Section 2.6.2.

**“Monthly FF&E Reserve Amount”** means the monthly deposit for FF&E required pursuant to Section 7.3 of this Agreement.

**“Monthly Ground Rent Reserve Amount”** means the monthly deposit for Ground Rent required pursuant to Section 7.4 of this Agreement.

**“Monthly Tax and Insurance Amount”** means the monthly deposit for Taxes and Insurance required pursuant to Section 7.2 of this Agreement.

**“Moody’s”** shall mean Moody’s Investors Service, Inc.

**“Mortgage”** shall mean, with respect to each Individual Property, that certain first priority Mortgage (or Deed of Trust or Deed to Secure Debt) and Security Agreement, dated the date hereof, executed and delivered by Mortgage Borrower as security for the Mortgage Loan and encumbering such Individual Property and any first priority Mortgage (Deed of Trust or Deed to Secure Debt) and Security Agreement delivered pursuant to the Ground Lease Side Letter, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

**“Mortgage Borrower”** shall mean, collectively, the entities set forth on Schedule XIII hereto, each a Delaware limited liability company, together with their respective successors and permitted designs. As used herein the term “Mortgage Borrower” shall mean one of the Mortgage Borrowers individually or the Mortgage Borrowers collectively, as the context shall require.

**“Mortgage Debt Service”** shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Mortgage Note and the Mortgage Loan Agreement.

**“Mortgage Lender”** shall have the meaning set forth in the Recitals.

**“Mortgage Loan”** shall have the meaning set forth in the Recitals.

**“Mortgage Loan Agreement”** shall have the meaning set forth in the Recitals.

**“Mortgage Loan Amount”** shall mean, as determined from time to time, the outstanding principal amount of the Mortgage Loan.

**“Mortgage Loan Default”** shall mean a “Default” as defined in the Mortgage Loan Agreement.

**“Mortgage Loan Documents”** shall mean the Mortgage Loan Agreement, the Mortgage Note, the Mortgage and all other documents and instruments executed and delivered in connection with the Mortgage Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

**“Mortgage Loan Event of Default”** shall mean an “Event of Default” as defined in the Mortgage Loan Agreement.

**“Mortgage Loan Reserve Funds”** shall mean the “Reserve Funds” as defined in the Mortgage Loan Agreement.

**“Mortgage Note”** shall mean the “Note” as defined in the Mortgage Loan Agreement.

**“Net Income”** shall mean, with respect to any Person, the net income (loss) of such Person, determined in accordance with GAAP and before any reduction in respect of preferred stock dividends.

**“Net Liquidation Proceeds After Debt Service”** shall mean, with respect to any Liquidation Event, all amounts paid to or received by or on behalf of Borrower, Senior Mezzanine Borrower or Mortgage Borrower in connection with such Liquidation Event, including, without limitation, proceeds of any sale, refinancing or other disposition or liquidation, less (a) Lender’s, Senior Mezzanine Lender’s and/or Mortgage Lender’s reasonable costs incurred in connection with the recovery thereof, (b) amounts required or permitted to be deducted therefrom and amounts paid pursuant to the Mortgage Loan Documents and Senior Mezzanine Loan Documents to Mortgage Lender and/or Senior Mezzanine Lender (as applicable), (c) in the case of a foreclosure sale, disposition or Transfer of the Property in connection with realization thereon following a Mortgage Loan Event of Default, such reasonable and customary costs and expenses of sale or other disposition (including attorneys’ fees and brokerage commissions), (d) in the case of a foreclosure sale, disposition or Transfer of any Senior Mezzanine Collateral in connection with realization thereon following a Senior Mezzanine Loan Default under any Senior Mezzanine Loan Documents, such reasonable and customary costs and expenses of sale or other disposition (including attorneys’ fees and brokerage commissions), (e) in the case of a foreclosure sale, such costs and expenses incurred by Mortgage Lender under the Mortgage Loan Documents as Mortgage Lender shall be entitled to receive reimbursement for under the terms of the Mortgage Loan Documents, (f) in the case of

a foreclosure sale, such costs and expenses incurred by Senior Mezzanine Lender under the Senior Mezzanine Loan Documents as Senior Mezzanine Lender shall be entitled to receive reimbursement for under the terms of the Senior Mezzanine Loan Documents, (g) in the case of a refinancing of the Mortgage Loan and/or Senior Mezzanine Loan, such costs and expenses (including attorneys' fees) of such refinancing as shall be reasonably approved by Mortgage Lender and/or Senior Mezzanine Lender, as the case may be, and (h) the amount of any prepayments required pursuant to the Mortgage Loan Documents, Senior Mezzanine Loan Documents, and/or the Loan Documents, in connection with any such Liquidation Event.

“**Net Proceeds**” shall have the meaning set forth in Section 6.4 hereof.

“**New Mezzanine Borrower**” shall have the meaning set forth in Section 2.1.7.

“**New Mezzanine Loan**” shall have the meaning set forth in Section 2.1.7.

“**Ninth Mezzanine Borrower**” shall mean, collectively, the entities set forth on Schedule XXI hereto, each a Delaware limited liability company, together with their respective successors and permitted assigns. As used herein, the term “Ninth Mezzanine Borrower” shall mean one of the Ninth Mezzanine Borrowers individually, or the Ninth Mezzanine Borrowers collectively, as the context shall require.

“**Ninth Mezzanine Debt Service**” shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Ninth Mezzanine Note.

“**Ninth Mezzanine Lender**” shall mean JPMorgan Chase Bank, N.A., in its capacity as the holder of the Ninth Mezzanine Loan, together with its successors and assigns.

“**Ninth Mezzanine Loan**” shall mean that certain loan in the original principal amount of Two Hundred Seventy Five Million and No/100 Dollars (\$275,000,000) of even date herewith made by Ninth Mezzanine Lender to Ninth Mezzanine Borrower.

“**Ninth Mezzanine Loan Agreement**” shall mean that certain Ninth Mezzanine Loan Agreement, dated as of the date hereof, between Ninth Mezzanine Borrower and Ninth Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Ninth Mezzanine Loan Documents**” shall mean the Ninth Mezzanine Loan Agreement, the Ninth Mezzanine Note and all other documents and instruments executed and delivered in connection with the Ninth Mezzanine Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

“**Ninth Mezzanine Notes**” shall mean the “Notes” as defined in the Ninth Mezzanine Loan Agreement.

“**Note**” or “**Notes**” shall mean, collectively, Note A-1, Note A-2, Note A-3, Note A-4, Note A-5, Note A-6, Note A-7, Note A-8 and Note A-9.

**“Note A-1”** shall mean that certain Promissory Note A-1 (Third Mezzanine Loan), dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of Forty One Million Two Hundred Fifty Four Thousand Five Hundred Eighty Three and 33/100 Dollars (\$41,254,583.33), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**“Note A-2”** shall mean that certain Promissory Note A-2 (Third Mezzanine Loan), dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of Forty One Million Two Hundred Fifty Four Thousand Five Hundred Eighty Three and 33/100 Dollars (\$41,254,583.33), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**“Note A-3”** shall mean that certain Promissory Note A-3 (Third Mezzanine Loan), dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of Forty One Million Two Hundred Fifty Four Thousand Five Hundred Eighty Three and 34/100 Dollars (\$41,254,583.34), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**“Note A-4”** shall mean that certain Promissory Note A-4 (Third Mezzanine Loan), dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of Forty One Million Two Hundred Fifty Four Thousand Five Hundred Eighty Three and 34/100 Dollars (\$41,254,583.34), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**“Note A-5”** shall mean that certain Promissory Note A-5 (Third Mezzanine Loan), dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of Forty One Million Two Hundred Fifty Four Thousand Five Hundred Eighty Three and 33/100 Dollars (\$41,254,583.33), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**“Note A-6”** shall mean that certain Promissory Note A-6 (Third Mezzanine Loan), dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of Forty One Million Two Hundred Fifty Four Thousand Five Hundred Eighty Three and 33/100 Dollars (\$41,254,583.33), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**“Note A-7”** shall mean that certain Promissory Note A-7 (Third Mezzanine Loan), dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of Nine Million One Hundred Fifty Seven Thousand Five Hundred and No/100 Dollars (\$9,157,500.00), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**“Note A-8”** shall mean that certain Promissory Note A-8 (Third Mezzanine Loan), dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of Nine Million One Hundred Fifty Seven Thousand Five Hundred and No/100 Dollars (\$9,157,500.00), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Note A-9**” shall mean that certain Promissory Note A-9 (Third Mezzanine Loan), dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of Nine Million One Hundred Fifty Seven Thousand Five Hundred and No/100 Dollars (\$9,157,500.00), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Noteholders**” shall mean, collectively, the holders of the Notes from time to time and a “**Noteholder**” shall mean any holder of a Note from time to time (provided that the transfer of a Note shall not result in any prior Noteholder’s loss of any indemnification provided for hereunder to a Noteholder).

“**OC Accounts**” shall have the meaning set forth in Section 2.6.1(c).

“**O&M Agreement**” shall mean, with respect to each Individual Property (to the extent required by the environmental reports referenced in Section 3.1.3(e) hereof, that certain Operations and Maintenance Agreement (Third Mezzanine Loan), dated as of the date hereof, between Borrower and Lender given in connection with the Loan, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Officer’s Certificate**” shall mean a certificate delivered to Lender by Borrower which is signed by an authorized senior officer of Borrower or the general partner or managing member of Borrower, as applicable.

“**Off-Shore Accounts**” shall mean the accounts more particularly described on Schedule V.

“**Operating Company**” shall mean, collectively, the tenants under the Operating Leases, and their successors and permitted assigns.

“**Operating Company Annual Budget**” shall mean, individually and collectively as the context requires, with respect to each Operating Company, the operating budget of such Operating Company, including all planned Capital Expenditures, prepared by such Operating Company for the applicable Fiscal Year or other period.

“**Operating Lease**” shall mean, collectively, those certain Lease Agreements listed on Schedule VI, dated as of the date hereof, having a term of fifteen (15) years commencing on the Closing Date, and any similar Lease Agreement executed and delivered pursuant to the Ground Lease Side Letter, as the same may be amended, supplemented, replaced or otherwise modified from time to time in accordance with the provisions hereof.

“**Operating Lease Guaranty**” shall mean, collectively, those certain Lease Guaranty Agreements listed on Schedule VIA, executed and delivered by Guarantor (Operating Lease), dated as of the date hereof, unconditionally guaranteeing the payment and performance by the Operating Company of all of its obligations under the Operating Lease, and any similar Lease Guaranty Agreement executed and delivered pursuant to the Ground Lease Side Letter, as such Lease Guaranty Agreements may be amended, supplemented, replaced or otherwise modified from time to time in accordance with the provisions hereof.

“**Operating Permits**” shall have the meaning set forth in Section 4.1.22 hereof.

“**O’Shea’s**” shall have the meaning ascribed to such term in the Mortgage Loan Agreement.

“**Other Borrower Collateral**” shall have the meaning set forth in Section 11.2.1 hereof.

“**Other Borrowers**” shall have the meaning set forth in Section 11.1 hereof.

“**Other Charges**” shall mean all ground rents, maintenance charges, impositions other than Taxes, and any other charges, including, without limitation, vault charges and license fees for the use of vaults, chutes and similar areas adjoining any Individual Property, now or hereafter levied or assessed or imposed against such Individual Property or any part thereof.

“**Other Mezzanine Borrowers**” shall mean, individually or collectively as the context may require, all of the Mezzanine Borrowers other than Borrower.

“**Other Mezzanine Debt Service**” shall mean, individually or collectively as the context may require, all of the Mezzanine Debt Service other than the Debt Service.

“**Other Mezzanine Lenders**” shall mean, individually or collectively as the context may require, all of the Mezzanine Lenders other than Lender.

“**Other Mezzanine Loans**” shall mean, individually or collectively as the context may require, all of the Mezzanine Loans other than the Loan.

“**Other Mezzanine Loan Agreements**” shall mean, individually or collectively as the context may require, all of the Mezzanine Loan Agreements other than this Agreement.

“**Other Mezzanine Loan Amounts**” shall mean, as determined from time to time, the outstanding principal amounts of all of the Mezzanine Loans other than the Loan.

“**Owner’s Title Policy**” shall mean those certain ALTA extended coverage owner’s policies of title insurance issued in connection with the closing of the Mortgage Loan insuring the Mortgage Borrower as the owner of the Property.

“**Participant**” shall have the meaning set forth in Section 9.6 hereof.

“**Participant Register**” shall have the meaning set forth in Section 9.6 hereof.

“**Payment Date**” shall mean the ninth (9<sup>th</sup>) calendar day of each calendar month during the term of the Loan, and if such day is not a Business Day, then the Business Day immediately preceding such day, commencing on March 9, 2008 and continuing to and including the Maturity Date. Notwithstanding the foregoing, the Payment Date in the final Interest Period shall be the Maturity Date (i.e., the second to last Business Day in such Interest Period rather than the ninth calendar day of such month).

**“Permitted Encumbrances”** shall mean, with respect to an Individual Property, collectively (a) the Liens and security interests created by the Mortgage Loan Documents; (b) all Liens, encumbrances and other matters disclosed in the Title Insurance Policies relating to such Individual Property or any part thereof; (c) Liens, if any, for Taxes and Other Charges imposed by any Governmental Authority not yet due or delinquent; (d) the Operating Lease; (e) such other title and survey exceptions as Lender has approved or may approve in writing in Lender’s reasonable discretion; (f) any Lien being contested by Borrower in good faith by appropriate proceedings, provided that (i) no Default or Event of Default has occurred and remains uncured, (ii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any applicable material instrument to which Mortgage Borrower is subject and shall not constitute a default thereunder and such proceeding shall be conducted in accordance with all applicable statutes, laws and ordinances, (iii) no Individual Property nor any part thereof or interest therein will be in imminent danger of being sold, forfeited, terminated, cancelled or lost, (iv) such proceeding shall suspend the enforcement of the contested Lien against Mortgage Borrower and any Individual Property, and (v) Borrower shall furnish such security as may be required by GAAP or as may be reasonably requested by Lender; (g) statutory Liens for amounts not yet due and payable, provided that no Individual Property nor any part thereof or interest therein will be in imminent danger of being sold, forfeited, terminated, cancelled or lost; (h) Liens incurred in the ordinary course of business in connection with workers’ compensation, unemployment insurance and other types of social security; (i) any Lien securing the financing of FF&E (including equipment leases) entered into by Mortgage Borrower or Operating Company in the ordinary course of business, subject to the limitations specified in the definitions of “Permitted Indebtedness” and “Permitted Indebtedness (Operating Company)”, as applicable; (j) rights of tenants under Leases, as tenants only; (k) rights of hotel guests at the Hotel Components of the Properties; (l) zoning restrictions, easements, rights-of-way, restrictions on use of real property and other similar encumbrances incurred or entered into in the ordinary course of business which do not, in each case, have an Individual Material Adverse Effect; and (m) liens granted by Operating Company securing equipment financing leases and/or equipment acquisition financings permitted hereunder as “Permitted Indebtedness (Operating Company),” subject to the final sentence of said definition, or as “Permitted Indebtedness”.

**“Permitted Fund Manager”** means any Person that on the date of determination (a) is one of the entities listed on Schedule VII or any other nationally-recognized manager of investment funds investing in debt or equity interests relating to commercial real estate, (b) is investing through a fund with committed capital of at least \$1,000,000,000, (c) is not subject to a Bankruptcy Action, (d) has not been, and none of its material subsidiaries has been, subject to a Bankruptcy Action for the preceding 5 years, (e) has not been convicted and is not under current indictment for a felony or crime involving moral turpitude, (f) has not been found by a court of competent jurisdiction to have violated federal or state securities laws, and (g) is not an organized crime figure (as determined by Lender in its reasonable discretion).

**“Permitted Indebtedness”** shall have the meaning assigned to such term in the Mortgage Loan Agreement.

**“Permitted Indebtedness (Operating Company)”** shall mean, collectively, (a) trade and operational debt (including equipment financing leases, such as leases with providers of Gaming Equipment) relating to the operation of the Properties and the routine

administration of Operating Company incurred in the ordinary course of business with trade creditors and in amounts as are normal and reasonable under the circumstances, are not evidenced by a note, are required to be paid within ninety (90) days after same are incurred (except in the case of operating leases) and are paid when due, (b) accrued and unpaid payroll, benefits and payroll taxes with respect to employees of Operating Company or its Affiliates engaged with respect to the Properties incurred in the ordinary course of business and paid when due, (c) debt owed to affiliates, provided such debt is made subject to an intercreditor and standstill agreement in favor of Lender in form and substance reasonably satisfactory to Lender, and (d) such other Indebtedness specifically permitted pursuant to the Operating Lease (including the Gaming Equipment Facility Agreements (as defined in the Mortgage Loan Agreement)). In no event shall the Permitted Indebtedness (Operating Company) and Permitted Indebtedness of each Operating Company and Mortgage Borrower on an aggregate basis, excluding for purposes of this sentence the Indebtedness described in subclause (b) of the preceding sentence, exceed five percent (5%) of the sum of the Loan Amount, the Mortgage Loan Amount and the Other Mezzanine Loan Amounts in the aggregate (each as determined from time to time).

“**Permitted Investments**” shall have the meaning set forth in the Mortgage Loan Agreement.

“**Permitted Mezzanine Debt Loan-to-Value Ratio**” shall mean the ratio, as of a particular date, in which (a) the numerator is equal to the sum of (i) the outstanding principal amount of the Mortgage Loan, (ii) the outstanding principal amount of the Mezzanine Loans, and any New Mezzanine Loan, plus (iii) the amount of the Permitted Mezzanine Loan, and (b) the denominator is equal to the appraised value of the Properties subject to the Lien of the Mortgage as determined by Lender based on Appraisals obtained by Lender (at Borrower’s sole cost and expense) and satisfactory to Lender and dated no earlier than ninety (90) days prior to the date of determination or such other Appraisals as are approved by Lender in its sole discretion.

“**Permitted Mezzanine Debt Service**” shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Permitted Mezzanine Loan Documents.

“**Permitted Mezzanine DSCR**” shall mean, for the applicable period, the ratio of (a) EBITDAR for such period from the Properties to (b) the sum of (i) the Mortgage Debt Service and Mezzanine Debt Service for such period, plus (ii) principal and/or interest due and payable (or, for purposes of the calculation to be made pursuant to Section 2.8(d), that would have been due and payable had the Permitted Mezzanine Loan then been in place) for such period on the Permitted Mezzanine Loan at the interest rate set forth in the Permitted Mezzanine Loan Documents or, if the Permitted Mezzanine Loan is a floating rate loan, assuming that (A) the spread on the Permitted Mezzanine Loan is the “Spread” as defined in the documents evidencing the Permitted Mezzanine Loan and (B) LIBOR is equal to the lesser of (y) LIBOR on the date of determination, or (z) the strike price under the related interest rate cap purchased in connection with the Permitted Mezzanine Loan.

“**Permitted Mezzanine Loan**” shall have the meaning set forth in Section 2.8 hereof.

“**Permitted Mezzanine Loan Documents**” shall have the meaning set forth in Section 2.8(g) hereof.

“**Permitted Mezzanine Loan Election**” shall have the meaning set forth in Section 2.8 hereof.

“**Permitted Mezzanine Loan Lender**” shall have the meaning set forth in Section 2.8 hereof.

“**Person**” shall mean any individual, corporation, partnership, joint venture, limited liability company, estate, trust, unincorporated association, any federal, state, county or municipal government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

“**Physical Conditions Report**” shall mean, with respect to each Individual Property, a report prepared by a company satisfactory to Lender regarding the physical condition of such Individual Property, satisfactory in form and substance to Lender in its sole discretion.

“**Pledge Agreement**” shall mean that certain Pledge and Security Agreement (Loan), dated as of the date hereof, between Borrower and Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Pledged Company Interests**” shall have the meaning set forth in the Pledge Agreement.

“**Policies**” shall have the meaning specified in Section 6.1(b) hereof.

“**Prepayment Date**” shall have the meaning specified in Section 2.4.1 hereof.

“**Prescribed Laws**” shall mean, collectively, (a) the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56) (The USA PATRIOT Act), as amended, (b) Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, and relating to Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, (c) the International Emergency Economic Power Act, 50 U.S.C. §1701 *et seq.* and (d) all other Legal Requirements relating to money laundering or terrorism.

“**Prime Rate**” shall mean the annual rate of interest publicly announced by Citibank, N.A. in New York, New York, as its base rate, as such rate shall change from time to time. If Citibank, N.A. ceases to announce a base rate, Prime Rate shall mean the rate of interest published in The Wall Street Journal from time to time as the “Prime Rate.” If more than one “Prime Rate” is published in The Wall Street Journal for a day, the average of such “Prime Rates” shall be used, and such average shall be rounded up to the nearest one-eighth of one percent (0.125%). If The Wall Street Journal ceases to publish the “Prime Rate,” Lender shall select an equivalent publication that publishes such “Prime Rate,” and if such “Prime Rates” are no longer generally published or are limited, regulated or administered by a governmental or quasi-governmental body, then Lender shall select a comparable interest rate index.

“**Prime Rate Loan**” shall mean the Loan at such time as interest thereon accrues at a rate of interest based upon the Prime Rate.

“**Prime Rate Spread**” shall mean the difference (expressed as the number of basis points) between (a) LIBOR plus the Spread on the date LIBOR was last applicable to the Loan and (b) the Prime Rate on the date that LIBOR was last applicable to the Loan; provided, however, in no event shall such difference be a negative number.

“**Principal**” shall mean Fourth Mezzanine Borrower.

“**Projections**” shall have the meaning set forth in Section 9.10 hereof.

“**Properties**” shall mean, collectively, each and every Individual Property which is subject to the terms of this Agreement.

“**Provided Information**” shall mean any and all financial and other information provided at any time by, or on behalf of, Borrower, Senior Mezzanine Borrower, or Mortgage Borrower with respect to the Properties, Borrower, any Affiliates of Borrower, including Holdings, Guarantor and/or Operating Company.

“**Qualified Transferee**” means (a) any of the Mezzanine Lenders, (b) Apollo Management, L.P., TPG Capital, L.P. f/k/a Texas Pacific Group, their respective Affiliates and senior or executive principals of Apollo Management, L.P. or TPG Capital, L.P. who are the holders from time to time of voting interests in Holdings, and investment funds Controlled by either of them (but excluding for purposes of this clause (b) “portfolio companies” of the foregoing), or (c) one or more of the following:

- (i) a real estate investment trust, bank, saving and loan association, investment bank, insurance company, trust company, commercial credit corporation, pension plan, pension fund or pension advisory firm, mutual fund, government entity or plan, provided that any such Person referred to in this clause (i) satisfies the Eligibility Requirements;
- (ii) an investment company, money management firm or “qualified institutional buyer” within the meaning of Rule 144A under the Securities Act of 1933, as amended, or an institutional “accredited investor” within the meaning of Regulation D under the Securities Act of 1933, as amended, provided that any such Person referred to in this clause (ii) satisfies the Eligibility Requirements;
- (iii) an institution substantially similar to any of the foregoing entities described in clauses (c)(i) or (c)(ii) that satisfies the Eligibility Requirements;
- (iv) any entity Controlled by any of the entities described in clause (a) or clauses (c)(i) or (c)(iii) above, or Holdings or any entity Controlled by Holdings (provided in each case there shall have occurred no Change in Control);
- (v) a Qualified Trustee in connection with a securitization of, the creation of collateralized debt obligations (“**CDO**”) secured by or financing through an “owner trust”

of, any Mezzanine Loan (collectively, “**Securitization Vehicles**”), so long as (A) the special servicer or manager of such Securitization Vehicle has the Required Special Servicer Rating and (B) the entire “controlling class” of such Securitization Vehicle, other than with respect to a CDO Securitization Vehicle, is held by one or more entities that are otherwise Qualified Transferees under clauses (c)(i), (ii), (iii) or (iv) of this definition; provided that the operative documents of the related Securitization Vehicle require that (1) in the case of a CDO Securitization Vehicle, the “equity interest” in such Securitization Vehicle is owned by one or more entities that are Qualified Transferees under clauses (c)(i), (ii), (iii) or (iv) of this definition and (2) if any of the relevant trustee, special servicer, manager fails to meet the requirements of this clause (v), such Person must be replaced by a Person meeting the requirements of this clause (v) within thirty (30) days; or

(vi) an investment fund, limited liability company, limited partnership or general partnership where a Permitted Fund Manager or an entity that is otherwise a Qualified Transferee under clauses (c)(i), (ii), (iii) or (iv) of this definition acts as the general partner, managing member or fund manager and at least 50% of the equity interests in such investment vehicle are owned, directly or indirectly, by one or more entities that are otherwise Qualified Transferees under clauses (c)(i), (ii), (iii) or (iv) of this definition;

provided, however, that no Transferee shall be a Qualified Transferee if (and for so long as) such Transferee is, or is Controlled by, an Embargoed Person or a Person that has been found “unsuitable,” for any reason, by a Gaming Authority.

“**Qualified Trustee**” means (a) a corporation, national bank, national banking association or a trust company, organized and doing business under the laws of any state or the United States of America, authorized under such laws to exercise corporate trust powers and to accept the trust conferred, having a combined capital and surplus of at least \$100,000,000 and subject to supervision or examination by federal or state authority, (b) an institution insured by the Federal Deposit Insurance Corporation or (c) an institution whose long-term senior unsecured debt is rated either of the then in effect top two rating categories of each of the Rating Agencies.

“**Rating Agencies**” shall mean each of S&P, Moody’s and Fitch, or any other nationally recognized statistical rating agency which has been approved by Lender and that rates a Securitization of the Loan (or any component thereof).

“**Rating Agency Confirmation**” means, collectively, a written affirmation from each of the Rating Agencies that the credit rating of the Securities given by such Rating Agency of such Securities immediately prior to the occurrence of the event with respect to which such Rating Agency Confirmation is sought will not be qualified, downgraded or withdrawn as a result of the occurrence of such event, which affirmation may be granted or withheld in such Rating Agency’s sole and absolute discretion. In the event that, at any given time, no such Securities shall have been issued and are then outstanding, then the term Rating Agency Confirmation shall be deemed instead to require the written approval of Lender based on its good faith determination of whether the Rating Agencies would issue a Rating Agency Confirmation if any such Securities were outstanding.

“**Regulation AB**” shall have the meaning set forth in Section 5.1.11(f) hereof.

“**Regulation S-K**” shall mean Regulation S-K under the Securities Act of 1933 and the Securities Exchange Act of 1934, as amended.

“**Regulation S-X**” shall mean Regulation S-X under the Securities Act of 1933 and the Securities Exchange Act of 1934, as amended.

“**Related Loan**” shall have the meaning set forth in Section 5.1.11(f) hereof.

“**Related Property**” shall have the meaning set forth in Section 5.1.11(f) hereof.

“**Release**” shall have the meaning set forth in Section 2.5.1 hereof.

“**Release Borrower**” shall have the meaning set forth in Section 2.5.1 hereof.

“**Release Price**” shall mean, in connection with a release of an Individual Property from the Lien of a Mortgage as provided in Section 2.5, an amount equal to one hundred ten percent (110%) of the applicable Allocated Loan Amount for the first and second Individual Properties released, 115% of the applicable Allocated Loan Amount for the third and fourth Individual Properties released and (110%) of the applicable Allocated Loan Amount for any Individual Property thereafter released; provided if the Paris Las Vegas property becomes an Individual Property as contemplated by the last paragraph of Section 2.5.2, then such Individual Property shall have a Release Price of 120% of its Allocated Loan Amount and each other Individual Property shall have a Release Price of 110% of its Allocated Loan Amount.

“**Rents**” shall mean, with respect to each Individual Property, and without duplication, all rents, rent equivalents, moneys payable as damages or in lieu of rent or rent equivalents, royalties (including, without limitation, all oil and gas-or other mineral royalties and bonuses), income, receivables, receipts, revenues, deposits (including, without limitation, security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, and other consideration of whatever form or nature received by or paid to or for the account of or benefit of Mortgage Borrower or the Operating Company (or employees of Mortgage Borrower or the Operating Company) from any and all sources arising from or attributable to such Individual Property, and proceeds, if any, from business interruption or other loss of income or insurance, including, without limitation, all hotel receipts, revenues and credit card receipts collected from guest rooms, restaurants, bars, meeting rooms, banquet rooms and recreational facilities, all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of property or rendering of services by Mortgage Borrower or any operator or manager of the Hotel Components or the commercial spaces located in the Improvements or acquired from others (including, without limitation, from the rental of any office space, retail space, guest rooms or other space, halls, stores and offices, and deposits securing reservations of such space), license, lease, sublease and concession fees and rentals, health club membership fees, food and beverage wholesale and retail sales, service charges, vending machine sales and proceeds, if any, from business interruption or other loss of income insurance.

**“Replacement Interest Rate Cap Agreement”** means an interest rate cap agreement from an Acceptable Counterparty with terms identical to the Interest Rate Cap Agreement except that the same shall be effective in connection with replacement of the Interest Rate Cap Agreement following a downgrade, withdrawal or qualification of the long-term unsecured debt rating of the Counterparty; provided that to the extent any such interest rate cap agreement does not meet the foregoing requirements, a “Replacement Interest Rate Cap Agreement” shall be such interest rate cap agreement approved in writing by each of the Rating Agencies and Lender with respect thereto.

**“Reserve Account”** shall mean any one of the Tax and Insurance Escrow Account, the FF&E Reserve Account, the Ground Rent Reserve Account and any other escrow fund or reserve account established pursuant to the Loan Documents.

**“Reserve Funds”** shall mean, collectively, the Tax and Insurance Escrow Fund, the FF&E Reserve Fund, the Ground Rent Reserve Fund, the Ground Lease Estoppel Reserve Amount and any other escrow fund established pursuant to the Loan Documents.

**“Restoration”** shall mean the repair and restoration of an Individual Property after a Casualty or Condemnation as nearly as possible to the condition the Individual Property was in immediately prior to such Casualty or Condemnation, with such alterations as may be reasonably approved by Lender.

**“Revenue”** shall mean all Rents and items of income or revenue (of any kind) collected by Mortgage Borrower or Operating Company.

**“S&P”** shall mean Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc.

**“Sale or Pledge”** shall mean a voluntary or involuntary sale, conveyance, assignment, transfer, encumbrance or pledge of a legal or beneficial interest.

**“Scheduled Maturity Date”** shall mean February 13, 2013.

**“Second Mezzanine Borrower”** shall mean, collectively, the entities set forth on Schedule XIV hereto, each a Delaware limited liability company, together with their respective successors and permitted assigns. As used herein, the term “Second Mezzanine Borrower” shall mean one of the Second Mezzanine Borrowers individually, or the Second Mezzanine Borrowers collectively, as the context shall require.

**“Second Mezzanine Debt Service”** shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Second Mezzanine Note.

**“Second Mezzanine Lender”** shall mean JPMorgan Chase Bank, N.A., in its capacity as the holder of the Second Mezzanine Loan, together with its successors and assigns.

“**Second Mezzanine Loan**” shall mean that certain loan in the original principal amount of Two Hundred Seventy Five Million and No/100 Dollars (\$275,000,000) of even date herewith made by Second Mezzanine Lender to Second Mezzanine Borrower.

“**Second Mezzanine Loan Agreement**” shall mean that certain Second Mezzanine Loan Agreement, dated as of the date hereof, between Second Mezzanine Borrower and Second Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Second Mezzanine Loan Documents**” shall mean the Second Mezzanine Loan Agreement, the Second Mezzanine Notes and all other documents and instruments executed and delivered in connection with the Second Mezzanine Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

“**Second Mezzanine Notes**” shall mean the “Notes” as defined in the Second Mezzanine Loan Agreement.

“**Second Mezzanine Pledge Agreement**” shall mean that certain Pledge and Security Agreement (Second Mezzanine Loan), dated as of the date hereof, between Second Mezzanine Borrower and Second Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Securities**” shall have the meaning set forth in Section 9.1 hereof.

“**Securities Act**” shall have the meaning set forth in Section 9.2(a) hereof.

“**Securitization**” shall have the meaning set forth in Section 9.1 hereof.

“**Senior Mezzanine Borrower**” shall mean, collectively, First Mezzanine Borrower and Second Mezzanine Borrower.

“**Senior Mezzanine Collateral**” shall mean, collectively, the “Collateral” as defined in each Senior Mezzanine Loan Agreement.

“**Senior Mezzanine Lender**” shall mean First Mezzanine Lender and Second Mezzanine Lender.

“**Senior Mezzanine Loan**” shall mean the First Mezzanine Loan and the Second Mezzanine Loan.

“**Senior Mezzanine Loan Agreement**” shall mean the First Mezzanine Loan Agreement and the Second Mezzanine Loan Agreement.

“**Senior Mezzanine Loan Default**” shall mean, collectively, a “Default” under any of the Senior Mezzanine Loan Documents.

“**Senior Mezzanine Loan Documents**” shall mean, collectively, the First Mezzanine Loan Documents and the Second Mezzanine Loan Documents.

“**Senior Mezzanine Loan Event of Default**” shall mean, collectively, an “Event of Default” under any of the Senior Mezzanine Loan Documents.

“**Senior Mezzanine Loan Reserve Funds**” shall mean, collectively, the “Reserve Funds” as defined in the Senior Mezzanine Loan Agreement.

“**Servicer**” shall have the meaning set forth in Section 9.4 hereof.

“**Servicing Agreement**” shall have the meaning set forth in Section 9.4 hereof.

“**Seventh Mezzanine Borrower**” shall mean, collectively, the entities set forth on Schedule XIX hereto, each a Delaware limited liability company, together with their respective successors and permitted assigns. As used herein, the term “Seventh Mezzanine Borrower” shall mean one of the Seventh Mezzanine Borrowers individually, or the Seventh Mezzanine Borrowers collectively, as the context shall require.

“**Seventh Mezzanine Debt Service**” shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Seventh Mezzanine Note.

“**Seventh Mezzanine Lender**” shall mean JPMorgan Chase Bank, N.A., in its capacity as the holder of the Seventh Mezzanine Loan, together with its successors and assigns.

“**Seventh Mezzanine Loan**” shall mean that certain loan in the original principal amount of Two Hundred Seventy Five Million and No/100 Dollars (\$275,000,000) of even date herewith made by Seventh Mezzanine Lender to Seventh Mezzanine Borrower.

“**Seventh Mezzanine Loan Agreement**” shall mean that certain Seventh Mezzanine Loan Agreement, dated as of the date hereof, between Seventh Mezzanine Borrower and Seventh Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Seventh Mezzanine Loan Documents**” shall mean the Seventh Mezzanine Loan Agreement, the Seventh Mezzanine Note and all other documents and instruments executed and delivered in connection with the Seventh Mezzanine Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

“**Seventh Mezzanine Notes**” shall mean the “Notes” as defined in the Seventh Mezzanine Loan Agreement.

“**Severed Loan Documents**” shall have the meaning set forth in Section 8.2(c) hereof.

“**Significant Obligor**” shall have the meaning set forth in Section 5.1.11(f) hereof.

“**Sixth Mezzanine Borrower**” shall mean, collectively, the entities set forth on Schedule XVIII hereto, each a Delaware limited liability company, together with their respective

successors and permitted assigns. As used herein, the term “Sixth Mezzanine Borrower” shall mean one of the Sixth Mezzanine Borrowers individually, or the Sixth Mezzanine Borrowers collectively, as the context shall require.

“**Sixth Mezzanine Debt Service**” shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Sixth Mezzanine Notes.

“**Sixth Mezzanine Lender**” shall mean JPMorgan Chase Bank, N.A., in its capacity as the holder of the Sixth Mezzanine Loan, together with its successors and assigns.

“**Sixth Mezzanine Loan**” shall mean that certain loan in the original principal amount of Two Hundred Seventy Five Million and No/100 Dollars (\$275,000,000) of even date herewith made by Sixth Mezzanine Lender to Sixth Mezzanine Borrower.

“**Sixth Mezzanine Loan Agreement**” shall mean that certain Sixth Mezzanine Loan Agreement, dated as of the date hereof, between Sixth Mezzanine Borrower and Sixth Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Sixth Mezzanine Loan Documents**” shall mean the Sixth Mezzanine Loan Agreement, the Sixth Mezzanine Notes and all other documents and instruments executed and delivered in connection with the Sixth Mezzanine Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

“**Sixth Mezzanine Notes**” shall mean the “Notes” as defined in the Sixth Mezzanine Loan Agreement.

“**Special Member**” shall mean a Springing Member in a given Delaware limited liability company who has become a member in such limited liability company to the extent so provided in such limited liability company’s operating agreement.

“**Special Purpose Entity**” shall mean a corporation, limited partnership or limited liability company which at all times on and after the date hereof:

(a) is organized solely for the purpose of (i) owning, holding, selling, transferring, exchanging, managing and operating the Collateral, entering into this Agreement with the Lender, refinancing the Collateral in connection with a permitted repayment of the Loan, and transacting lawful business that is incident, necessary and appropriate to accomplish the foregoing; or (ii) acting as a general partner of the limited partnership that owns the Collateral or member of the limited liability company that owns the Collateral;

(b) is not engaged and will not engage in any business unrelated to (i) the ownership of the Collateral, (ii) acting as general partner of the limited partnership that owns the Collateral or (iii) acting as a member of the limited liability company that owns the Collateral, as applicable;

(c) does not have and will not have any assets other than those related to the Collateral or its partnership interest in the limited partnership or the member interest in the limited liability company that owns the Collateral or acts as the general partner or managing member thereof, as applicable;

(d) has not engaged, sought or consented to and will not engage in, seek or consent to any dissolution, winding up, liquidation, consolidation, merger, sale of all or substantially all of its assets, transfer of partnership or membership interests (if such entity is a general partner in a limited partnership or a member in a limited liability company) or amendment of its limited partnership agreement, articles of incorporation, articles of organization, certificate of formation or operating agreement (as applicable) with respect to the matters set forth in this definition;

(e) if such entity is a limited partnership, has, as its only general partners, Special Purpose Entities that are corporations, limited partnerships or limited liability companies;

(f) if such entity is a corporation, has at least two (2) Independent Directors, and has not caused or allowed and will not cause or allow the board of directors of such entity to take any action requiring the unanimous affirmative vote of one hundred percent (100%) of the members of its board of directors unless two (2) Independent Directors shall have participated in such vote;

(g) if such entity is a limited liability company with more than one member, has at least one member that is a Special Purpose Entity that is a Delaware corporation or limited liability company that has at least two (2) Independent Directors;

(h) if such entity is a limited liability company with only one member, is a limited liability company organized in the State of Delaware that has (i) as its only member a non-managing member, (ii) at least two (2) Independent Managers and has not caused or allowed and will not cause or allow the board of managers of such entity to take any action requiring the unanimous affirmative vote of one hundred percent (100%) of the managers unless two (2) Independent Managers shall have participated in such vote and (iii) at least one springing member that will become the non-managing member of such entity upon the dissolution of the existing non-managing member;

(i) if such entity is (i) a limited liability company, has articles of organization, a certificate of formation and/or an operating agreement, as applicable, (ii) a limited partnership, has a limited partnership agreement, or (iii) a corporation, has a certificate of incorporation or articles that, in each case, provide that such entity will not, while any obligations remain outstanding under the Loan Documents: (A) dissolve, merge, liquidate, consolidate; (B) sell all or substantially all of its assets or the assets of the Borrower (as applicable), except as permitted in connection with the release of an Individual Property as provided in Section 2.5.1; (C) engage in any other business activity, or amend its organizational documents with respect to the matters set forth in this definition without the consent of the Lender; or (D) without the affirmative vote of two (2) Independent Directors and of all other directors of the corporation (that is such

entity or the general partner or managing or co-managing member of such entity), file a bankruptcy or insolvency petition or otherwise institute insolvency proceedings with respect to itself or to any other entity in which it has a direct or indirect legal or beneficial ownership interest;

(j) is and will remain solvent and pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from and to the extent of its assets as the same shall become due, and is maintaining and will maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations; provided, however, that the foregoing shall not require the Member to make additional capital contributions to the company;

(k) has not failed and will not fail to correct any known misunderstanding regarding the separate identity of such entity;

(l) has maintained and will maintain its bank accounts, books and records separate from any other Person and will file its own tax returns separate from those of any other Person, except to the extent the company is treated as a "disregarded entity" for tax purposes and is not required to file tax returns under applicable law;

(m) has maintained and will maintain its own records, books, resolutions and agreements;

(n) has not commingled and will not commingle its funds or assets with assets of any other Person;

(o) has held and will hold its assets in its own name;

(p) has conducted and will conduct its business in its own name;

(q) has maintained and will maintain its financial statements, accounting records and other entity documents separate and apart from any other Person and will have its assets listed on the financial statement of any other Person; provided, however, that the company's assets may be included in a consolidated financial statement of its Affiliate, provided, that, (i) appropriate notation shall be made on such consolidated financial statements to indicate the separateness of the company from such Affiliate and to indicate the company's assets and credit are not available to satisfy the debts and other obligations of such Affiliate or any other Person and (ii) such assets shall also be listed on the company's own separate balance sheet;

(r) has paid and will pay its own liabilities and expenses, including the salaries of its own employees (if any), out of its own funds and assets, and has maintained and will maintain a sufficient number of employees (if any) in light of its contemplated business operations;

(s) has observed and will observe all partnership, corporate or limited liability company formalities necessary to maintain its separate existence;

(t) has and will not incur, create, or assume any Indebtedness other than (i) the Loan and (ii) certain Indebtedness to Affiliates that was incurred in connection with the formation of Borrower and Operating Company and the transfer of the Properties to Mortgage Borrower and was satisfied and/or released in full prior to the funding of the Loan hereunder;

(u) has not and will not assume or guarantee or become obligated for the debts of any other Person or hold out its credit as being available to satisfy the obligations of any other Person except as co-borrowers of the Loan;

(v) has not and will not acquire obligations or securities of its partners, members or shareholders or any Affiliate (other than Mortgage Borrower);

(w) has allocated and will allocate fairly and reasonably any overhead expenses that are shared with any Affiliate, including, but not limited to, paying for shared office space and services performed by any employee of an Affiliate;

(x) maintains and uses and will maintain and use separate stationery, invoices and checks, if any, bearing its name. The stationery, invoices, and checks, if any, utilized by the Special Purpose Entity or utilized to collect its funds or pay its expenses shall bear its own name and shall not bear the name of any other entity unless such entity is clearly designated as being the Special Purpose Entity's agent;

(y) has not pledged and will not pledge its assets for the benefit of any Person except as co-borrowers of the Loan;

(z) has held itself out and identified itself and will hold itself out to the public and all other Persons and identify itself as a separate and distinct entity under its own name or in a name franchised or licensed to it by an entity other than an Affiliate of Borrower and not as a division or part of any other Person;

(aa) has maintained and will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;

(bb) has not made and will not make loans to any Person or hold evidence of indebtedness issued by any other Person or entity (other than cash and investment-grade securities issued by an entity that is not an Affiliate of or subject to common ownership with such entity);

(cc) correct any known misunderstanding regarding its separate identity and has not identified and will not identify its partners, members or shareholders, or any Affiliate of any of them, as a division or part of it, and has not identified itself and shall not identify itself as a division of any other Person;

(dd) except for capital contributions or capital distributions permitted under the terms and conditions of this Agreement and properly reflected on the books and records of this company, has not entered into or been a party to, and will not enter into or be a

party to, any transaction with its partners, members, shareholders or Affiliates except in the ordinary course of its business and on terms which are commercially reasonable and are no less favorable to it than would be obtained in a comparable arm's-length transaction with an unrelated third party (including an appropriate shared services agreement with Affiliates);

(ee) has not and will not have any obligation to, and will not, indemnify its partners, officers, directors or members, as the case may be, unless such an obligation is fully subordinated to the Debt and will not constitute a claim against it in the event that cash flow in excess of the amount required to pay the Debt is insufficient to pay such obligation;

(ff) if such entity is a corporation, it shall consider the interests of its creditors in connection with all corporate actions;

(gg) does not and will not have any of its obligations guaranteed by any Affiliate (except each Borrower as a co-borrower under the Loan);

(hh) has complied and will comply with all of the terms and provisions contained in its organizational documents. The statement of facts contained in its organizational documents are true and correct and will remain true and correct; and

(ii) form, acquire, or hold any subsidiary (whether corporate, partnership, limited liability company, or other) or own any equity interest in any other entity (other than, with respect to Borrower, its interest in Third Mezzanine Borrower, and with respect to Principal, its interest in Borrower).

**"SPE Party"** shall mean Borrower and any other Person that is required to be a "Special Purpose Entity" under applicable Rating Agency criteria so as to make Borrower a Special Purpose Entity.

**"Spread"** shall mean (i) unless and until a Ground Lease Estoppel Trigger Event exists, 3.00% and (ii) upon the occurrence of a Ground Lease Estoppel Trigger Event, the Ground Lease Estoppel Trigger Spread.

**"Spread Maintenance Outside Date"** shall mean February 10, 2009.

**"Spread Maintenance Premium"** shall mean, in connection with any repayment of any of the outstanding principal amount of the Loan prior to and including the Spread Maintenance Outside Date (whether a voluntary or mandatory prepayment), an amount equal to the product of (a) the principal amount of such prepayment, (b) the Spread and (c) a fraction, the numerator of which shall be the actual number of days from (but excluding) the date of such prepayment (or, if later, the last date of the Interest Period during which interest on the amount of such payment shall have been paid by Borrower, as required in this Agreement) through (and including) the Spread Maintenance Outside Date and the denominator of which is three hundred sixty (360).

“**Springing Member**” shall mean a Person who has signed the limited liability company agreement of a given Delaware limited liability company, which agreement provides that, upon the withdrawal, dissolution or disassociation of the last remaining member of such limited liability company (subject to applicable Gaming Laws), such Person shall become a member of such limited liability company having no economic interest therein.

“**State**” shall mean, with respect to an Individual Property, the State or Commonwealth in which such Individual Property or any part thereof is located.

“**Survey**” shall mean a survey of the Individual Property in question prepared pursuant to the requirements contained in Section 3.1.3(c) hereof.

“**Syndication**” shall have the meaning set forth in Section 9.5 hereof.

“**Tax and Insurance Escrow Fund**” shall have the meaning set forth in Section 7.2 hereof.

“**Taxes**” shall mean all real estate and personal property taxes, assessments, water rates or sewer rents, now or hereafter levied or assessed or imposed against any Individual Property or part thereof.

“**Threshold Amount**” shall have the meaning set forth in the definition of Material Alteration.

“**Title Insurance Policies**” shall mean, with respect to each Individual Property, an ALTA mortgagee title insurance policy in a form acceptable to Lender (or, if an Individual Property is in a State which does not permit the issuance of such ALTA policy, such form as shall be permitted in such State and acceptable to Lender) issued with respect to such Individual Property and insuring the lien of the Mortgage encumbering such Individual Property.

“**Tower Project**” shall mean that certain “New Atlantic City Tower Project” more fully described in (a) the Site, Design and Floor Plans, dated October 5, 2005, and prepared by Paul Steelman Design Group, and (b) Harrah’s Hotel/Podium/Garage Expansion: Summary of Project Costs, each delivered to Lender. The Tower Project will include a podium (of approximately 175,000 square feet) connecting the current Bayview Tower to a new approximately nine hundred (900) room tower to be built. The Tower Project will not be funded with the proceeds of the Loan (but will be funded by Mortgage Borrower or Operating Company, including with capital contributions).

“**Transfer**” shall mean to, directly or indirectly, sell, assign, convey, mortgage, transfer, pledge, hypothecate, encumber, grant a security interest in, exchange or otherwise dispose of any beneficial interest or grant any option or warrant with respect to, or where used as a noun, a direct or indirect sale, assignment, conveyance, transfer, pledge or other disposition of any beneficial interest by any means whatsoever whether voluntary, involuntary, by operation of law or otherwise. A Transfer shall include, but not be limited to, (a) an installment sales agreement wherein Mortgage Borrower agrees to sell an Individual Property or any part thereof or Borrower agrees to sell the Collateral, in each case, for a price to be paid in installments; (b) an agreement by Mortgage Borrower leasing all or a substantial part of an Individual

Property for other than actual occupancy by a space tenant thereunder or a sale, assignment or other transfer of, or the grant of a security interest in, Mortgage Borrower's right, title and interest in and to any Leases or any Rents; (c) if a Person restricted or affected by the provisions of this Agreement is a corporation, any merger, consolidation or sale or pledge of such corporation's stock or the creation or issuance of new stock; (d) if a Person restricted or affected by the provisions of this Agreement is a limited or general partnership or joint venture, any merger or consolidation or the change, removal, resignation or addition of a general partner or the sale or pledge of the partnership interest of any general partner or any profits or proceeds relating to such partnership interest, or the sale or pledge of limited partnership interests or any profits or proceeds relating to such limited partnership interest or the creation or issuance of new limited partnership interests; (e) if a Person restricted or affected by the provisions of this Agreement is a limited liability company, any merger or consolidation or the change, removal, resignation or addition of a managing member or non-member manager (or if no managing member, any member) or the sale or pledge of the membership interest of a managing member (or if no managing member, any member) or any profits or proceeds relating to such membership interest, or the sale or pledge of non-managing membership interests or the creation or issuance of new non-managing membership interests; (f) if a Person restricted or affected by the provisions of this Agreement is a trust or nominee trust, any merger, consolidation or the sale or pledge of the legal or beneficial interest in such Person or the creation or issuance of new legal or beneficial interests; or (g) any direct or indirect sale, assignment, conveyance, transfer, pledge or other disposition (by any means whatsoever whether voluntary, involuntary, by operation of law or otherwise) of the Collateral, the Senior Mezzanine Collateral or any part thereof or any legal or beneficial interest therein.

“**Transferee**” shall mean the Person to whom a Transfer is being effected.

“**Trigger Event**” shall mean, as of the end of any calendar quarter, any period of time during which EBITDAR from the Properties, calculated for the trailing twelve (12) month period immediately prior to the applicable calculation date, is less than eighty-five percent (85%) of the EBITDAR (Closing Date), as determined by Lender.

“**Trigger Event Cure**” shall mean that EBITDAR (excluding, in making such calculation, any capital contributions made to or for the benefit of Borrower, Mortgage Borrower or Operating Company, or payments made on the account of Borrower, Mortgage Borrower or Operating Company by any Affiliate of Borrower, Mortgage Borrower or Operating Company) from the Properties, calculated for the trailing twelve (12) month period immediately prior to the applicable calculation date, is equal to or greater than eighty-five percent (85%) of the EBITDAR (Closing Date) for two (2) consecutive calendar quarters.

“**True-Lease Opinion**” shall mean that certain true lease opinion letter dated the date hereof delivered by Cleary Gottlieb Steen & Hamilton LLP in connection with the Loan.

“**UCC**” or “**Uniform Commercial Code**” shall mean the Uniform Commercial Code as in effect in the applicable State in which an Individual Property is located.

“**UCC Title Insurance Policy**” shall have the meaning set forth in Section 3.13(b) hereof.

**“U.S. Obligations”** shall mean non-redeemable securities evidencing an obligation to timely pay principal and/or interest in a full and timely manner that are direct obligations of the United States of America for the payment of which its full faith and credit is pledged or other “government securities” within the meaning of Section 2(a)(16) of the Investment Company Act of 1940, as amended.

**“Windstorm Insurance Intercreditor Agreement”** means that certain Windstorm Insurance Intercreditor Agreement, dated as of the date hereof, by and among Lender, the Mortgage Lender, the Other Mezzanine Lenders, each of the “Other Owners” named therein and made a party thereto, Holdings, Bank of America, N.A., and the “Other Secured Parties” named therein and made a party thereto, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**Section 1.2. Principles of Construction.** All references to sections and schedules are to sections and schedules in or to this Agreement unless otherwise specified. All uses of the word “including” shall mean “including, without limitation” unless the context shall indicate otherwise. Unless otherwise specified, the words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. Unless otherwise specified, all meanings attributed to defined terms herein shall be equally applicable to both the singular and plural forms of the terms so defined. With respect to cross-references contained herein to the Mortgage Loan Documents or to the Other Mezzanine Loan Documents (including with respect to any cross-references to defined terms therein), unless otherwise specifically provided herein, such cross-references shall be with respect to the Mortgage Loan Documents or the Other Mezzanine Loan Documents as the case may be, in existence as of the date hereof, and no modification or amendment to such cross-referenced sections of the Mortgage Loan Documents or the Other Mezzanine Loan Documents shall be binding upon Lender unless Lender shall have expressly agreed in writing to be bound by such modification or amendment. Terms used herein and not otherwise defined herein (but defined in the Mortgage Loan Agreement) shall have the meaning set forth in the Mortgage Loan Agreement as of the Closing Date, notwithstanding any subsequent amendment of the Mortgage Loan Agreement to such defined terms unless Lender shall have consented to such amendment. The words “Borrower shall cause Mortgage Borrower to”, “Borrower shall not permit Mortgage Borrower to”, “Borrower shall cause Senior Mezzanine Borrower to”, “Borrower shall not permit Senior Mezzanine Borrower to”, “Borrower shall cause Operating Company to” or “Borrower shall not permit Operating Company to” (or words of similar meaning) shall mean Borrower shall cause Mortgage Borrower, Senior Mezzanine Borrower or Operating Company (subject to the provisions of Section 5.3), as applicable, to so act or not to so act, as applicable.

**Section 1.3. Direction of Mortgage Borrower or with Respect to the Properties.** Borrower and Lender hereby acknowledge and agree that, as to any clauses or provisions contained in this Agreement or any of the other Loan Documents to the effect that (i) Borrower shall cause Mortgage Borrower and/or Senior Mezzanine Borrower to act or to refrain from acting in any manner or (ii) Borrower shall cause to occur or not to occur, or otherwise be obligated in any manner with respect to, any matters pertaining to Mortgage Borrower, Senior Mezzanine Borrower or any of the Properties, such clause or provision, in each case, is intended to mean, and shall be construed as meaning, that Borrower has undertaken to

act and is obligated to act only in Borrower's capacity as the sole member of Senior Mezzanine Borrower but not directly with respect to Senior Mezzanine Borrower, Mortgage Borrower or any of the Properties or in any other manner which would violate any of the covenants contained in Section 4.1.30 (Special Purpose Entity) hereof or other similar covenants contained in Borrower's organizational documents.

## II. GENERAL TERMS

### Section 2.1. Loan Commitment; Disbursement to Borrower.

**2.1.1 Agreement to Lend and Borrow.** Subject to and upon the terms and conditions set forth herein, Lender hereby agrees to make and Borrower hereby agrees to accept the Loan on the Closing Date.

**2.1.2 Single Disbursement to Borrower.** Borrower may request and receive only one borrowing hereunder in respect of the Loan and any amount borrowed and repaid hereunder in respect of the Loan may not be reborrowed.

**2.1.3 The Note, the Pledge Agreement and Loan Documents.** The Loan shall be evidenced by the Note (in the aggregate principal amount of Two Hundred Seventy Five Million and No/100 Dollars (\$275,000,000)) and secured by the Pledge Agreement and the other Loan Documents.

**2.1.4 Use of Proceeds.** Borrower shall use the proceeds of the Loan solely to (a) make an equity contribution to Mortgage Borrower (through each Senior Mezzanine Borrower) in order to cause Mortgage Borrower to use such amounts for any use permitted pursuant to Section 2.1.4 of the Mortgage Loan Agreement, (b) pay costs and expenses incurred in connection with the closing of the Loan, as approved by Lender, and (c) distribute the balance, if any, to Borrower.

**2.1.5 Component Notes.** Lender shall have the right at any time to modify the Loan in order to create an additional note or additional notes, adjust the interest rate spread on the Notes or notes, reduce the number of notes, reallocate the principal balances of the Notes or notes or eliminate the component note structure of the Loan provided that (a) the aggregate stated principal amount of the Loan on the date of each such adjustment shall equal the aggregate stated principal amount of the Loan immediately prior to such adjustment, and (b) the weighted average spread of the Loan on the date of such adjustment shall equal the weighted average spread which was applicable to the Loan immediately prior to such adjustment (Borrower acknowledging that such new notes or modified notes may, in connection with the application of principal to such new notes or modified note following the occurrence of an Event of Default, but not otherwise, subsequently cause the weighted average spread of such new notes or modified notes to change). In connection with any such modification of the Note and notes, or the creation of additional note(s), (i) Borrower shall cooperate with all reasonable requests of Lender and shall execute and deliver such documents as shall reasonably be requested by Lender in connection therewith, all in form and substance reasonably satisfactory to Lender and, to the extent applicable, the Rating Agencies, including, without limitation, (y) revised title insurance policies and Interest Rate Protection Agreements, and (z) such amendments to the Loan

Documents as are reasonably requested; (ii) Lender shall have received opinions of legal counsel with respect to due execution, authority and enforceability of the amended Loan Documents, and additional or updated nonconsolidation opinions for the Loan, each in form reasonably acceptable to Lender and prospective investors and in form acceptable to the Rating Agencies; and (iii) Lender shall pay the actual, reasonable out-of-pocket costs and expenses incurred by Borrower in connection with the foregoing, including, without limitation, the actual, reasonable out-of-pocket legal fees incurred by Borrower in connection with any of the foregoing matters. For the avoidance of doubt, and notwithstanding anything to the contrary contained herein, such modifications and any modifications under Sections 2.1.6 and 2.1.7 below shall not, absent an Event of Default, adversely affect the overall economics to Borrower of the Loan, taken as a whole, or expose Borrower to any additional costs (other than as set forth above) or increased risk of any liability (beyond that or greater than that existing in the Loan Documents in effect on the date hereof), and Borrower shall not be required to execute any document or agreement which would materially decrease its rights or materially increase its obligations relative to those set forth herein and in the other Loan Documents.

**2.1.6 Adjustment of Mortgage Loan and Mezzanine Loans.** Lender shall have the right at any time to adjust the respective principal amounts of the Mortgage Loan and the Mezzanine Loans (or either one of them) and/or to adjust the interest rate spread on the Mortgage Loan and the Mezzanine Loans (or either one of them) (such adjustment, a “**Loan Adjustment**”), provided that (a) the aggregate stated principal amount of the Mortgage Loan and the Mezzanine Loans on the date of each such Loan Adjustment shall equal the aggregate stated principal amount of the Mortgage Loan and the Mezzanine Loans immediately prior to such Loan Adjustment, and (b) Lender shall have the right to adjust the interest rate spread on the Mortgage Loan and the Mezzanine Loans, provided that the weighted average spread of the Mortgage Loan and the Mezzanine Loans on the date of each such Loan Adjustment shall equal the weighted average spread which was applicable to the Mortgage Loan and the Mezzanine Loans immediately prior to such Loan Adjustment (it being acknowledged that the weighted average spread will remain constant except in connection with the application of principal to such new notes or modified notes following the occurrence of an Event of Default). In connection with any Loan Adjustment, (i) Mortgage Borrower and Mezzanine Borrowers shall cooperate with all reasonable requests of Lender and shall execute and deliver such documents as shall reasonably be requested by Lender in connection therewith, all in form and substance reasonably satisfactory to Lender and, to the extent applicable, the Rating Agencies, including, without limitation, (y) revised title insurance policies, mezzanine endorsements, UCC policies and Interest Rate Protection Agreements, and (z) such amendments to the Mortgage Loan Documents and the Mezzanine Loan Documents as are reasonably requested in connection with the Loan Adjustment (provided that such amendments do not or would not (i) materially decrease the rights of the Mortgage Borrower or Mezzanine Borrowers, or, absent an Event of Default, materially increase the obligations of the Mortgage Borrower or the Mezzanine Borrowers, as the case may be, under the Mortgage Loan Documents or the Mezzanine Loan Documents (as applicable) or (ii) absent an Event of Default, expose the Mortgage Borrower or any of the Mezzanine Borrowers to additional costs or increased risk of any liability under the Mortgage Loan Documents or the Mezzanine Loan Documents (as applicable) (beyond that or greater than that existing in the Mortgage Loan Documents, or the Mezzanine Loan Documents, as applicable, on the date hereof); (ii) Lender shall have received opinions of legal counsel with respect to due execution, authority and enforceability of the amended Mortgage Loan Documents

or Mezzanine Loan Documents, as appropriate, and additional or updated nonconsolidation opinions for the Mortgage Loan and the Mezzanine Loans, each in form reasonably acceptable to Lender and prospective investors and in form acceptable to the Rating Agencies; and (iii) Lender shall pay the actual, reasonable out-of-pocket costs and expenses incurred by Borrower in connection with the foregoing, including, without limitation, the actual, reasonable out-of-pocket legal fees incurred by Borrower in connection with any of the foregoing matters.

**2.1.7 Creation of New Mezzanine Loans.** Lender shall at all times have the right to create one or more additional mezzanine loans (each, a “**New Mezzanine Loan**”), adjust the respective principal amounts of the Mortgage Loan and the Mezzanine Loans (or any one of them) upon the creation of the New Mezzanine Loan and/or to adjust the interest rate spread on the Mortgage Loan and the Mezzanine Loans (or any one of them) upon the creation of the New Mezzanine Loan, and to reallocate the principal balance and the interest rate spreads of the Mortgage Loan, the Mezzanine Loans and any New Mezzanine Loan amongst each other (or any one of them), provided that (a) the aggregate stated principal amount of the Mortgage Loan, the Mezzanine Loans and the New Mezzanine Loans on the date of such adjustment (and the creation of the New Mezzanine Loan) shall equal the aggregate stated principal amount of the Mortgage Loan, the Mezzanine Loans and the New Mezzanine Loan(s) immediately prior to such adjustment, (b) Lender shall have the right to adjust the interest rate spread on the Mortgage Loan, the Mezzanine Loans and the New Mezzanine Loan(s), provided that the weighted average spread of the Mortgage Loan, the Mezzanine Loans and the New Mezzanine Loan(s) on the date of such adjustment shall equal the weighted average spread which was applicable to the Mortgage Loan and the Mezzanine Loans (and the New Mezzanine Loans, if applicable) immediately prior to such adjustment (it being acknowledged that the weighted average spread will remain constant except in connection with the application of principal to such new notes or modified notes following the occurrence of an Event of Default), and (c) the terms and provisions of each of the Mortgage Loan and the Mezzanine Loans (and the New Mezzanine Loans, if applicable) shall otherwise remain unchanged. In connection with any New Mezzanine Loan, (i) Borrower shall cause the formation of one or more special purpose, bankruptcy remote entities as required by Lender in order to serve as the borrower under any New Mezzanine Loan (each, a “**New Mezzanine Borrower**”) and the applicable organizational documents of Mortgage Borrower and each Mezzanine Borrower (and of each previously created New Mezzanine Borrower, if applicable) shall be amended and modified as necessary or required in the formation of any New Mezzanine Borrower; (ii) Mortgage Borrower and Mezzanine Borrowers (and each previously created New Mezzanine Borrower, if applicable) shall cooperate with all reasonable requests of Lender and shall execute and deliver such documents as shall reasonably be requested by Lender in connection therewith, all in form and substance reasonably satisfactory to Lender and, to the extent applicable, the Rating Agencies, including, without limitation, (x) revised title insurance policies, mezzanine endorsements, UCC policies and Interest Rate Protection Agreements, (y) in connection with the creation of any New Mezzanine Loan, a promissory note and loan documents necessary to evidence such New Mezzanine Loan, and (z) such amendments to the Mortgage Loan Documents and the Mezzanine Loan Documents (and the loan documents of any previously created New Mezzanine Borrower, if applicable) as are reasonably necessary in connection with the creation of such New Mezzanine Loan (provided that such amendments do not or would not (i) materially decrease the rights of the Mortgage Borrower or Mezzanine Borrowers (and any previously created New Mezzanine Borrowers, if applicable), or, absent an Event of Default, materially increase the obligations of the Mortgage

Borrower or the Mezzanine Borrowers (and any previously created New Mezzanine Borrowers, if applicable), as the case may be, under such borrower's applicable loan documents, or (ii) absent an Event of Default, expose the Mortgage Borrower or any of the Mezzanine Borrowers (or any previously created New Mezzanine Borrowers, if applicable) to additional costs or increased risk of any liability under such borrower's applicable loan documents (beyond that or greater than that existing in the existing loan documents on the date hereof); (iii) Lender shall have received opinions of legal counsel with respect to due execution, authority and enforceability of the amended Mortgage Loan Documents, the amended Mezzanine Loan Documents and the loan documents for the New Mezzanine Loan, as appropriate, and additional or updated nonconsolidation opinions for the Mortgage Loan, the Mezzanine Loans and each such New Mezzanine Loan, as appropriate, each in form reasonably acceptable to Lender and prospective investors and in form acceptable to the Rating Agencies; and (iv) Lender shall pay the actual, reasonable out-of-pocket costs and expenses incurred by Borrower in connection with the foregoing, including, without limitation, the actual, reasonable out-of-pocket legal fees incurred by Borrower in connection with any of the foregoing matters.

**Section 2.2. Interest Rate.**

**2.2.1 Interest Generally.** Except as herein provided with respect to interest accruing at the Default Rate, interest on the principal balance of the Loan outstanding from time to time shall accrue from the Closing Date up to and including the Maturity Date (including, without limitation, all interest that would accrue on the outstanding principal balance of the Loan through the end of the Interest Period during which the Maturity Date occurs (even if such period extends beyond the Maturity Date)) at the Applicable Interest Rate. Interest on the outstanding principal balance of the Loan existing on the commencement of an Interest Period shall accrue for the entire Interest Period and shall be owed by Borrower for the entire Interest Period regardless of whether any principal portion of the Loan is repaid prior to the expiration of such Interest Period.

**2.2.2 Interest Calculation.** Interest on the outstanding principal balance of the Loan shall be calculated by multiplying (a) the actual number of days elapsed in the period for which the calculation is being made by (b) a daily rate based on a three hundred sixty (360) day year (that is, the Applicable Interest Rate or the Default Rate, as then applicable, expressed as an annual rate divided by 360) by (c) the outstanding principal balance.

**2.2.3 Determination of Interest Rate.** (a) The Applicable Interest Rate with respect to the Loan shall be: (i) LIBOR plus the Spread with respect to the applicable Interest Period for a LIBOR Loan or (ii) the Prime Rate plus the Prime Rate Spread for a Prime Rate Loan if the Loan is converted to a Prime Rate Loan pursuant to the provisions of [Section 2.2.3\(c\)](#) or [Section 2.2.3\(f\)](#).

(b) Subject to the terms and conditions of this [Section 2.2.3](#), the Loan shall be a LIBOR Loan and Borrower shall pay interest on the outstanding principal amount of the Loan at LIBOR plus the Spread for the applicable Interest Period. Any change in the rate of interest hereunder due to a change in the Applicable Interest Rate shall become effective as of the opening of business on the first day on which such change in the Applicable Interest Rate shall

become effective. Each determination by Lender of the Applicable Interest Rate shall be conclusive and binding for all purposes, absent manifest error.

(c) In the event that Lender shall have determined (which determination shall be conclusive and binding upon Borrower absent manifest error) that by reason of circumstances affecting the interbank eurodollar market, adequate and reasonable means do not exist for ascertaining LIBOR, then Lender shall forthwith give notice by telephone of such determination, confirmed in writing, to Borrower at least one (1) Business Day prior to the last day of the related Interest Period. If such notice is given, the related outstanding LIBOR Loan shall be converted, on the last day of the then current Interest Period, to a Prime Rate Loan.

(d) If, pursuant to the terms of this Agreement, any portion of the Loan has been converted to a Prime Rate Loan and Lender shall determine (which determination shall be conclusive and binding upon Borrower absent manifest error) that the event(s) or circumstance(s) which resulted in such conversion shall no longer be applicable, Lender shall give notice by telephone of such determination, confirmed in writing, to Borrower at least one (1) Business Day prior to the last day of the related Interest Period. If such notice is given, the related outstanding Prime Rate Loan shall be converted to a LIBOR Loan on the last day of the then current Interest Period.

(e) With respect to a LIBOR Loan, all payments made by Borrower hereunder shall be made free and clear of, and without reduction for or on account of, income, stamp or other taxes, levies, imposts, duties, charges, fees, deductions, reserves or withholdings imposed, levied, collected, withheld or assessed by any Governmental Authority and imposed on any non-U.S. Lender due to a change in U.S. law after the date such non-U.S. Lender acquired its interest in the Loan (such non-excluded taxes, levies, imposts, duties, charges, fees, deductions, reserves or withholdings being referred to collectively as "**Foreign Taxes**"), excluding (i) income and franchise taxes, (ii) any Taxes imposed by reason of any connection between the non-U.S. Lender and the taxing jurisdiction other than entering into this Agreement and receiving payments hereunder, and (iii) any Taxes imposed by reason of the non-U.S. Lender's failure to complete and deliver to the Borrower, prior to the date on which the first payment to such Lender is due hereunder and (so long as it remains eligible to do so) from time to time thereafter, (x) (i) an Internal Revenue Service Form W-9 (or successor form) establishing that the Lender is not subject to U.S. backup withholding tax, (ii) an Internal Revenue Service Form W-8BEN (or successor form) certifying that such Lender is entitled to benefits under an income tax treaty to which the United States is a party that reduces the rate of withholding tax on payments of interest to zero, or (iii) an Internal Revenue Service Form W-8ECI certifying that the income receivable pursuant to this Agreement is effectively connected with the conduct of a trade or business in the United States, as appropriate; and (y) any successor or additional form required by the Internal Revenue Service or any taxing authority reasonably requested by the Borrower in order to secure an exemption from, or reduction in the rate of, Foreign Taxes. If any Foreign Taxes are required to be withheld from any amounts payable to Lender hereunder, the amounts so payable to Lender shall be increased to the extent necessary to yield to Lender (after payment of all Foreign Taxes) interest or any such other amounts payable hereunder at the rate or in the amounts specified hereunder. Whenever any Foreign Tax is payable pursuant to applicable law by Borrower, as promptly as possible thereafter, Borrower shall send to Lender an original official receipt, if available, or certified copy thereof showing payment of such Foreign Tax. Borrower hereby

indemnifies Lender for any incremental Foreign Taxes, interest or penalties that may become payable by Lender which may result from any failure by Borrower to pay any such Foreign Tax when due to the appropriate taxing authority or any failure by Borrower to remit to Lender the required receipts or other required documentary evidence thereof (provided such documents are reasonably available to the Borrower).

(f) If any requirement of law or any change therein or in the interpretation or application thereof, shall hereafter make it unlawful for Lender to make or maintain a LIBOR Loan as contemplated hereunder and the events giving rise thereto affect similarly situated banks or financial institutions generally, (i) the obligation of Lender hereunder to make a LIBOR Loan or to convert a Prime Rate Loan to a LIBOR Loan shall be canceled forthwith and (ii) any outstanding LIBOR Loan shall be converted automatically to a Prime Rate Loan on the next succeeding Payment Date or within such earlier period as required by law.

(g) In the event that any change in any requirement of law or in the interpretation or application thereof, or compliance by Lender with any request or directive (whether or not having the force of law) hereafter issued from any central bank or other Governmental Authority and the events giving rise thereto affect similarly situated banks or financial institutions generally:

(i) shall hereafter impose, modify or hold applicable any reserve, special deposit, compulsory loan or similar requirement against assets held by, or deposits or other liabilities in or for the account of, advances or loans by, or other credit extended by, or any other acquisition of funds by, the office of Lender that holds the Loan which is not otherwise included in the determination of LIBOR hereunder;

(ii) shall hereafter require the Lender to hold additional capital against the Loan in excess of that currently required by Governmental Authorities to be held against loans similar in nature to the Loan; or

(iii) shall hereafter impose on Lender any other condition affecting loans to borrowers subject to LIBOR-based interest rates and Lender determines that, by reason thereof, the cost to Lender of making or maintaining the Loan to Borrower is increased, or any amount received by Lender hereunder in respect of any portion of the Loan is reduced, in each case by an amount deemed by Lender in good faith to be material;

then, in any such case, Borrower shall promptly pay Lender, upon demand, any additional amounts necessary to compensate Lender for such additional cost or reduced amount receivable which Lender deems to be material as determined in good faith by Lender. If Lender becomes entitled to claim any additional amounts pursuant to this Section 2.2.3(g), Lender shall provide Borrower with not less than ninety (90) days notice specifying in reasonable detail the event by reason of which it has become so entitled and the additional amount required to fully compensate Lender for such additional cost or reduced amount. A certificate as to any additional costs or amounts payable pursuant to the foregoing sentence submitted by Lender to Borrower shall be conclusive in the absence of manifest error. This provision shall survive payment of the Note and the satisfaction of all other obligations of Borrower under this Agreement and the Loan Documents.

(h) Lender shall not be entitled to claim compensation pursuant to this Section 2.2.3 for any Foreign Taxes or other amounts incurred or which accrued more than ninety (90) days before the date Lender notified Borrower of the change in law or other circumstance on which such claim of compensation is based and delivered to Borrower a written statement setting forth in reasonable detail the basis for calculating the additional amounts owed to Lender under this Section 2.2.3, which statement shall be conclusive and binding upon all parties hereto absent manifest error.

(i) For purposes of this Section 2.2.3, the term "Lender" shall be deemed to include each Noteholder and Lender's (as well as each Noteholder's) present and future participants in the Loan to the extent of Foreign Taxes imposed by reason of such Noteholder or participant's interest in the Loan and each such Noteholder's or participant's increased costs or reduction in amount received or receivable hereunder or any reduced rate of return, in each case payable by Borrower under this Section 2.2.3.

**2.2.4 Additional Costs.** Lender will use reasonable efforts (consistent with legal and regulatory restrictions) to maintain the availability of the LIBOR Loan and to avoid or reduce any increased or additional costs payable by Borrower under Section 2.2.3, including, if requested by Borrower, a transfer or assignment of the Loan to a branch, office or Affiliate of Lender in another jurisdiction, or a redesignation of its lending office with respect to the Loan, in order to maintain the availability of the LIBOR Loan or to avoid or reduce such increased or additional costs, provided that the transfer or assignment or redesignation (a) would not result in any material additional costs, expenses or risk to Lender that are not reimbursed by Borrower and (b) would not be disadvantageous in any other material respect to Lender as determined by Lender in its sole, but reasonable discretion.

**2.2.5 Default Rate.** In the event that, and for so long as, any Event of Default shall have occurred and be continuing, the outstanding principal balance of the Loan and, to the extent permitted by law, all accrued and unpaid interest in respect of the Loan and any other amounts due pursuant to the Loan Documents, shall accrue interest at the Default Rate, calculated from the date such payment was due without regard to any grace or cure periods contained herein.

**2.2.6 Usury Savings.** This Agreement, the Note and the other Loan Documents are subject to the express condition that at no time shall Borrower be obligated or required to pay interest on the principal balance of the Loan at a rate which could subject Lender to either civil or criminal liability as a result of being in excess of the Maximum Legal Rate. If, by the terms of this Agreement or the other Loan Documents, Borrower is at any time required or obligated to pay interest on the principal balance due hereunder at a rate in excess of the Maximum Legal Rate, the Applicable Interest Rate or the Default Rate, as the case may be, shall be deemed to be immediately reduced to the Maximum Legal Rate and all previous payments in excess of the Maximum Legal Rate shall be deemed to have been payments in reduction of principal and not on account of the interest due hereunder. All sums paid or agreed to be paid to Lender for the use, forbearance, or detention of the sums due under the Loan, shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Loan until payment in full so that the rate or amount of interest on account of the Loan does

not exceed the Maximum Legal Rate of interest from time to time in effect and applicable to the Loan for so long as the Loan is outstanding.

**2.2.7 Interest Rate Cap Agreement.** (a) On or prior to 5:00 p.m. (New York time) on the Closing Date, Borrower shall enter into an Interest Rate Cap Agreement with a LIBOR strike price equal to the required Strike Price. The Interest Rate Cap Agreement (i) shall be in a form and substance reasonably acceptable to Lender, (ii) shall be with an Acceptable Counterparty, (iii) shall direct such Acceptable Counterparty to deposit directly with Lender (or into an account or otherwise as directed by Lender) any amounts due Borrower under such Interest Rate Cap Agreement unless and until otherwise instructed by Lender (it being agreed as between Lender and Borrower that Lender will so instruct the Counterparty at such time as the Debt shall not longer exist, provided that the Debt shall be deemed to exist if the Collateral is transferred by secured party sale or otherwise), (iv) shall be for a period equal to the initial term of the Loan and (v) shall have an initial notional amount equal to the principal balance of the Loan. Borrower shall collaterally assign to Lender, pursuant to the Collateral Assignment of Interest Rate Cap Agreement, all of its right, title and interest to receive any and all payments under the Interest Rate Cap Agreement, and shall deliver to Lender an executed counterpart of such Interest Rate Cap Agreement (which shall, by its terms, authorize the assignment to Lender and require that payments be paid directly into an account pledged to Lender as provided above in this Section 2.2.7). Provided no Event of Default has occurred and is continuing, amounts contained in the foregoing pledged account shall be released to Borrower on a monthly basis to the extent not applied toward debt service on the Loan.

(b) Borrower shall comply with all of its obligations under the terms and provisions of the Interest Rate Cap Agreement. All amounts paid by the Counterparty under the Interest Rate Cap Agreement to Borrower or Lender shall be paid to Lender (or into an account or otherwise as directed by Lender). Borrower shall take all actions reasonably requested by Lender to enforce Lender's rights under the Interest Rate Cap Agreement in the event of a default by the Counterparty and shall not waive, amend or otherwise modify any of its rights thereunder.

(c) In the event of any downgrade, withdrawal or qualification of the rating of the Counterparty by S&P or Moody's to below the ratings set forth in the definition of "Acceptable Counterparty", Borrower (i) shall replace the Interest Rate Cap Agreement with a Replacement Interest Rate Cap Agreement (or cause the Counterparty or an Affiliate thereof to post collateral acceptable to Lender and the Rating Agencies) not more than fifteen (15) Business Days following receipt of notice of such downgrade, withdrawal or qualification (and meeting the requirements set forth in this Section 2.2.7) from an Acceptable Counterparty, (ii) if a new cap is provided to Lender, then if requested by Lender shall provide to Lender an opinion of counsel to such Acceptable Counterparty in the form and containing the substance of the form of opinion set forth in Exhibit A to the Mortgage Loan Agreement (which such changes as shall be reasonably approved by Lender), and (iii) shall collaterally assign to Lender, pursuant to an assignment in the form of the Collateral Assignment of Interest Rate Cap Agreement, all of its right, title and interest to receive any and all payments under the Replacement Interest Rate Cap Agreement.

(d) In the event that Borrower fails to purchase and deliver to Lender the Interest Rate Cap Agreement or fails to maintain the Interest Rate Cap Agreement in accordance with the terms and provisions of this Agreement, Lender may purchase the Interest Rate Cap Agreement and the cost incurred by Lender in purchasing such Interest Rate Cap Agreement shall be paid by Borrower to Lender with interest thereon at the Default Rate from the date such cost was incurred by Lender until such cost is reimbursed by Borrower to Lender.

(e) In connection with any Interest Rate Cap Agreement provided to Lender as herein required, if requested by Lender, Borrower shall obtain and deliver to Lender an opinion from counsel (which counsel may be in-house counsel for the Counterparty) for the Counterparty (upon which Lender and its successors and assigns may rely) in the form and containing the substance of the form of opinion set forth in Exhibit A of the Mortgage Loan Agreement (which such changes as shall be reasonably approved by Lender).

(f) In connection with any prepayment of the Loan, provided no Event of Default shall have occurred and be continuing, Borrower may reduce the amount of any Interest Rate Cap Agreement (so that the same shall be in an initial notional amount equal to the principal balance of the Loan following such prepayment), provided that such reduction shall not affect any of the other terms of the Interest Rate Cap Agreement or the Collateral Assignment of Interest Rate Cap Agreement (or Lender's rights in respect thereof).

**Section 2.3. Loan Payment.**

**2.3.1 Payments Generally.** Borrower shall make a payment to Lender of interest only on the Closing Date for the initial Interest Period. On the date hereof, Borrower shall make a payment to Lender of interest accruing hereunder during the period from the Closing Date up to and including the initial Interest Period, calculated in the manner set forth herein, and on the Payment Date occurring in March 2008 and on each Payment Date thereafter to and including the Maturity Date, Borrower shall make a payment to Lender of interest accruing hereunder during the entire Interest Period in which such Payment Date occurs, calculated in the manner set forth herein. All amounts due pursuant to this Agreement and the other Loan Documents shall be payable without setoff, counterclaim, defense or any other deduction whatsoever. Each payment shall be applied *pro rata* and *pari passu* (a) first to accrued and unpaid interest on all of the Notes and (b) the balance shall be applied to principal of all the Notes.

**2.3.2 Payment on Maturity Date.** Borrower shall pay to Lender on the Maturity Date the outstanding principal balance of the Loan, all accrued and unpaid interest and all other amounts due hereunder and under the Note, the Pledge Agreement and the other Loan Documents, including, without limitation, all interest that would accrue on the outstanding principal balance of the Loan through and including the end of the Interest Period in which the Maturity Date occurs (even if such Interest Period extends beyond the Maturity Date).

**2.3.3 Late Payment Charge.** If any principal, interest or any other sums due under the Loan Documents, other than the payment of principal due on the Maturity Date, is not paid by Borrower by the date on which it is due, Borrower shall pay to Lender upon demand an amount equal to the lesser of one percent (1%) of such unpaid sum or the maximum amount

permitted by applicable law in order to defray the expense incurred by Lender in handling and processing such delinquent payment and to compensate Lender for the loss of the use of such delinquent payment; provided, however, that, except with respect to the payment of any monthly Debt Service payments with respect to which no notice or demand shall be required, no such late payment charge shall be due unless such payment of principal, interest or other sum shall be delinquent for more than five (5) Business Days following the date of demand therefor. Any such amount shall be secured by the Pledge Agreement and the other Loan Documents to the extent permitted by applicable law.

**2.3.4 Method and Place of Payment.** Except as otherwise specifically provided herein, all payments and prepayments under this Agreement and the Note shall be made to Lender not later than 3:00 p.m., New York City time, on the date when due and shall be made in lawful money of the United States of America in immediately available funds at Lender's office or as otherwise directed by Lender, and any funds received by Lender after such time shall, for all purposes hereof, be deemed to have been paid on the next succeeding Business Day.

**Section 2.4. Prepayments.**

**2.4.1 Voluntary Prepayments.** Borrower may, at its option, prepay the Debt in whole or in part, provided, the following conditions are satisfied:

(a) No Event of Default shall have occurred and be continuing (unless, in the case of a prepayment upon the release of an Individual Property, the Event of Default relates solely to such Individual Property and therefore would be fully cured by the release of such Individual Property);

(b) Borrower shall provide prior written notice to Lender specifying the date upon which the prepayment is to be made (the "**Prepayment Date**"), which notice shall be delivered to Lender not less than ten (10) days prior to such Prepayment Date, and which notice shall be irrevocable (or such shorter period of time as may be permitted by Lender in its sole discretion) (Lender hereby agreeing that Borrower may revoke any notice of prepayment up until the date that is one (1) Business Day prior to the proposed Prepayment Date (provided that Borrower shall be required to pay Lender, promptly upon demand, any actual, out-of-pocket expenses incurred by Lender resulting from any such revocation));

(c) each such prepayment, in the case of partial prepayments, shall be in an amount not less than Five Million and No/100 Dollars (\$5,000,000.00), unless the outstanding principal balance of the Loan (prior to such prepayment) shall be less than Five Million and No/100 Dollars (\$5,000,000.00), in which event the amount of the prepayment shall be in such amount as shall prepay the Debt and all other amounts due in connection therewith in full, as more fully provided herein;

(d) if such prepayment is made on or prior to the Payment Date occurring in the Interest Period in which such prepayment was made, then, in connection with such prepayment Borrower shall pay to Lender, simultaneously with such prepayment, all interest on the principal balance of the Note then being prepaid which would have accrued through the end

of the Interest Period then in effect notwithstanding that such Interest Period extends beyond the Prepayment Date;

(e) if such prepayment is made after a Payment Date occurring in the Interest Period in which such prepayment was made, but prior to the last two (2) Business Days in such Interest Period, Borrower shall make such prepayment without paying any interest thereon (Borrower having already paid interest on such amount on the Payment Date occurring in such Interest Period);

(f) if such prepayment is made on either of the last two (2) Business Days in an Interest Period, Borrower will pay to Lender, simultaneously with such prepayment, interest on the principal amount of the Loan prepaid through the last day of the Interest Period immediately following the Interest Period in which such prepayment occurs, calculated at the Applicable Interest Rate;

(g) if such prepayment is a prepayment of the Loan in full, Lender shall have received a written consent to the repayment from the lender under each Other Mezzanine Loan (and, if any, a Permitted Mezzanine Loan) or receipt by Lender of other evidence satisfactory to Lender that all conditions imposed under the terms of each Other Mezzanine Loan and Permitted Mezzanine Loan shall have been complied with by the borrower thereunder or otherwise waived by the applicable lender, including the simultaneous pro rata prepayment of each Other Mezzanine Loan and Permitted Mezzanine Loan if required thereunder; and

(h) if such prepayment is made on or prior to the Spread Maintenance Outside Date, then in connection with any such prepayment, Borrower shall pay to Lender, simultaneously with such prepayment, the Spread Maintenance Premium in respect of such prepayment.

Any prepayment received by Lender on other than a Payment Date (but not any amount received between a Payment Date and the second to last Business Day in an Interest Period) shall be held by Lender in an interest-bearing account as collateral security for the Loan and shall be applied to the Debt on the next occurring Payment Date (with all interest and other income earned on such amount being for the account of Borrower and being remitted by Lender to Borrower promptly following such next Payment Date). Any prepayment made pursuant to this Section 2.4.1 shall be applied *pro rata* and *pari passu* (a) first to accrued and unpaid interest on all of the Notes and (b) the balance shall be applied to principal of all the Notes. Lender agrees that it shall provide a written consent to the repayment of the Loan upon satisfaction of the conditions set forth in clauses (a) through (f) and clause (h) of this Section 2.4.1.

**2.4.2 Mandatory Prepayments from Net Proceeds.** (a) On the next occurring Payment Date following the date on which Lender actually receives any Net Proceeds, if Lender is not obligated to make such Net Proceeds available to Borrower for the Restoration of any Individual Property, Borrower shall prepay, or authorize Lender to apply Net Proceeds as a prepayment of, the outstanding principal balance of the Note in an amount equal to, (x) if no Event of Default shall have occurred and be continuing, the product of (i) a fraction, the numerator of which is outstanding principal amount of the Loan and the denominator is the outstanding principal amount of the Mortgage Loan, the Loan and the Other Mezzanine Loans

times (ii) the Net Proceeds, together with interest accruing on such amount calculated through and including the end of the Interest Period in which such Payment Date occurs (with the balance of the Net Proceeds to be paid over to the Fourth Mezzanine Lender, for application in accordance with the Fourth Mezzanine Loan Agreement), and (y) if an Event of Default shall have occurred and be continuing, 100% of the Net Proceeds. No Spread Maintenance Premium shall be due in connection with any prepayment made pursuant to this Section 2.4.2(a). Any prepayment received by Lender pursuant to this Section 2.4.2(a) on a date other than a Payment Date shall be held by Lender as collateral security for the Loan in an interest bearing account, with such interest accruing to the benefit of Borrower, and shall be applied by Lender on the next Payment Date. Following the prepayment made as described in this Section 2.4.2(a), the Allocated Loan Amount for the affected Individual Property, as set forth in this Agreement, shall be reduced in an amount equal to such prepayment. Any prepayment of the Notes made pursuant to this Section 2.4.2(a) shall be applied *pro rata* and *pari passu* (a) first to accrued and unpaid interest on all of the Notes and (b) the balance shall be applied to principal of all the Notes.

(b) In the event of (i) a Transfer of any Individual Property or any Senior Mezzanine Collateral in connection with the realization thereon following a Mortgage Loan Default or a Senior Mezzanine Loan Default, as applicable, (ii) any refinancing of any Individual Property, any Senior Mezzanine Collateral, any Senior Mezzanine Loan or the Mortgage Loan, or (iii) the receipt by Mortgage Borrower of any excess proceeds realized under its owner's title insurance policy after application of such proceeds by Mortgage Borrower to cure any title defect (each, a "**Liquidation Event**"), Borrower shall cause the related Net Liquidation Proceeds After Debt Service to be remitted directly to Lender (or as directed by Lender). On each date on which Lender actually receives a distribution of Net Liquidation Proceeds After Debt Service, Borrower shall prepay the outstanding principal balance of the Note in an amount equal to one hundred percent (100%) of such Net Liquidation Proceeds After Debt Service, together with interest accruing on such amount calculated through and including the end of the Interest Period in which such payment occurs. Any amounts of Net Liquidation Proceeds After Debt Service in excess of the Debt shall be remitted to Fourth Mezzanine Lender (or to an account designated by Fourth Mezzanine Lender). Any prepayment received by Lender pursuant to this Section 2.4.2(b) on a date other than a Payment Date shall be held by Lender as collateral security for the Loan in an interest bearing account, with such interest accruing to the benefit of Borrower, and shall be applied by Lender on the next Payment Date. A Spread Maintenance Premium or fee may be due in connection with any prepayment made pursuant to this Section 2.4.2(b) if made prior to the Spread Maintenance Outside Date. Following the prepayment made as described in this Section 2.4.2(b), the Allocated Loan Amount for the affected Individual Property, as set forth in this Agreement, shall be reduced in an amount equal to such prepayment. Any prepayment of the Notes made pursuant to this Section 2.4.2(b) shall be applied *pro rata* and *pari passu* (a) first to accrued and unpaid interest on all of the Notes and (b) the balance shall be applied to principal of all the Notes.

(c) Borrower shall immediately notify Lender of any Liquidation Event once Borrower has knowledge of such event. Borrower shall be deemed to have knowledge of (i) a sale (other than a foreclosure sale) of any Individual Property on the date on which a contract of sale for such sale is entered into, and a foreclosure sale, on the date notice of such foreclosure sale is given, and (ii) a refinancing of any Individual Property, on the date on which a

commitment for such refinancing has been entered into. The provisions of this Section 2.4.2(c) shall not be construed to contravene in any manner the restrictions and other provisions regarding refinancing of the Mortgage Loan or Transfer of any Individual Property set forth in this Agreement, the other Loan Documents and the Mortgage Loan Documents.

**2.4.3 Prepayments After Default.** If, following the occurrence and during the continuance of an Event of Default, payment of all or any part of the Debt is tendered by Borrower or any other Person and accepted by Lender or otherwise recovered by Lender (including through application of any Reserve Funds), Borrower shall pay to Lender, in addition to the outstanding principal balance, (a) all accrued and unpaid interest at the Default Rate (including, without limitation, (i) in the event that such prepayment is received on a Payment Date or on any date in any Interest Period prior to a Payment Date, interest accruing (at the Default Rate) on such amount calculated through and including the end of the Interest Period in which such payment occurs, or (ii) in the event that such prepayment is received on a date after a Payment Date up to (and including) the last day of the Interest Period in which such Payment Date occurs, interest accruing (at the Default Rate) on such amount calculated through and including the end of the Interest Period in which the next Payment Date occurs, (b) the Spread Maintenance Premium, if such prepayment is made prior to the Spread Maintenance Outside Date, and (c) any and all other amounts payable under the Loan Documents. Any payment under this Section 2.4.3 shall be applied in such order, priority and proportions as Lender may direct in its sole and absolute discretion.

**Section 2.5. Release of Collateral.** Except as set forth in this Section 2.5, no repayment or prepayment of all or any portion of the Note shall cause, give rise to a right to require, or otherwise result in, the release or assignment of any Lien of the Pledge Agreement on the Collateral.

**2.5.1 Release of Individual Property.** Concurrently with the release of an Individual Property from the Lien of the Mortgage (and related Mortgage Loan Documents) pursuant to Section 2.5.1 of the Mortgage Loan Agreement (a “**Release**” and such Individual Property, a “**Release Property**”), Borrower may obtain the release of the related Individual Borrower with an indirect ownership interest in such Individual Property (a “**Release Borrower**”) and such Release Borrower’s obligations under the Loan Documents with respect to the Release Property (other than those expressly stated to survive), upon the satisfaction of each of the following conditions:

(a) No Event of Default shall have occurred and be continuing (unless, in the case of a prepayment upon the release of an Individual Property, the Event of Default relates solely to such Individual Property and therefore would be fully cured by the release of such Individual Property);

(b) Borrower shall submit to Lender, not less than ten (10) Business Days prior to the date of such release, a release of Lien of the Pledge Agreement (and related Loan Documents), only with respect to such Release Borrower, for execution by Lender. Such release shall contain standard provisions, if any, protecting the rights of the releasing lender;

(c) After giving effect to such release, the Debt Service Coverage Ratio for the Properties then remaining subject to the Liens of the Mortgages (including giving pro forma effect to the payment of the Release Price and any additional prepayment(s) made by Borrower in connection with such release) shall be equal to or greater than the greatest of (i) the Debt Service Coverage Ratio for the twelve (12) full calendar months immediately preceding the release of the Individual Property (assuming the contemplated release had not occurred, *i.e.*, for all Properties subject to the Liens of the Mortgage prior to the proposed release), (ii) 90% of the Debt Service Coverage Ratio as of the Closing Date, and (iii) 1.0;

(d) (i) The Individual Property to be released shall be conveyed to a Person other than a Mortgage Borrower or Mezzanine Borrower, and other than to an Affiliate of Mortgage Borrower unless, in the latter case, such Affiliate is refinancing the Loan with a construction or development loan (or repaying the Loan with equity contributions to such Affiliate) and (ii) it is such Affiliate's immediate intention to materially redevelop such Individual Property, which loan (or equity contribution) and intention shall be described in reasonable detail and represented to in an Officer's Certificate submitted to Lender concurrently with (or prior to) the materials described in clause (b) of this Section 2.5.1;

(e) Lender shall have received a wire transfer of immediately available federal funds in an amount equal to the Release Price for the applicable Individual Property, together with (i) all accrued and unpaid interest calculated at the Applicable Interest Rate on the amount of principal being prepaid as provided in Section 2.4.1(d) or (e), as applicable, (ii) the Spread Maintenance Premium, if applicable and (iii) all other sums due under this Agreement, the Note or the other Loan Documents in connection with a partial prepayment;

(f) Lender shall have received a written consent to the transfer from the lender under the Mortgage Loan and each of the Other Mezzanine Loans (and, if any, a Permitted Mezzanine Loan) or receipt by Lender of other evidence satisfactory to Lender that all conditions imposed under the terms of the Mortgage Loan, and each of the Other Mezzanine Loans and Permitted Mezzanine Loan shall have been complied with by the borrower thereunder or otherwise waived by the applicable lender, including the simultaneous pro rata prepayment of each Mortgage Loan, the Other Mezzanine Loans and Permitted Mezzanine Loan if required thereunder; and

(g) Lender shall have received payment of all Lender's reasonable out-of-pocket costs and expenses, including reasonable counsel fees and disbursements incurred in connection with the release of the Individual Property and or Release Borrower from the lien of the Pledge Agreement and the review and approval of the documents and information required to be delivered in connection therewith. Lender acknowledges that it shall not charge any fee (other than costs and expenses, as provided in the preceding sentence) in connection with the release of an Individual Property or Release Borrower.

Lender agrees that it shall provide a written consent to the transfer upon satisfaction of the conditions set forth in clauses (a) through (e), and clause (g) of this Section 2.5.1.

**2.5.2 Release of Convention Center Parcel; Property Swap.** At any time after the date hereof, Mortgage Borrower may obtain the release of the Convention Center Parcel

pursuant to the Mortgage Loan Agreement, without the payment of a Release Price and upon the satisfaction by Borrower of each of the following conditions:

(a) No Event of Default shall have occurred and be continuing (unless, in the case of a release of the Convention Center Parcel, the Event of Default relates solely to such parcel and therefore would be fully cured by the release of the Convention Center Parcel);

(b) The Convention Center Parcel shall be conveyed to a Person other than a Mortgage Borrower or any Mezzanine Borrower;

(c) Mortgage Borrower will enter into a restrictive covenant agreement, restricting the use of the Convention Center Parcel to the development of a Convention Center and ancillary uses which agreement shall be in form and substance reasonably satisfactory to Lender;

(d) Prior to the transfer and release of the Convention Center Parcel, each applicable municipal authority exercising jurisdiction over the Convention Center Parcel shall have approved, a lot-split ordinance or other applicable action under local law dividing the Convention Center Parcel from the remainder of the Harrah's Atlantic City Property, and a separate tax identification number has been issued for the Convention Center Parcel (with the result that, upon the transfer and release of the Convention Center Parcel, no part of the remaining Harrah's Atlantic City Property shall be part of a tax lot which includes any portion of the Convention Center Parcel);

(e) All requirements under all laws, statutes, rules and regulations (including, without limitation, all zoning and subdivision laws, setback requirements, sideline requirements, parking ratio requirements, use requirements, building and fire code requirements, environmental requirements and wetlands requirements) applicable to the Harrah's Atlantic City Property necessary to accomplish the lot split shall have been fulfilled, and all necessary variances, if any, shall have been obtained, and Borrower shall have delivered to Lender either (1) letters or other evidence from the appropriate municipal authorities confirming such compliance with laws, or (2) a zoning report or legal opinion confirming such compliance with laws, in each case in substance reasonably satisfactory to Lender;

(f) As a result of the lot split, the remaining Harrah's Atlantic City Property with all easements appurtenant and other Permitted Encumbrances thereto will not be in violation of any then applicable law, statute, rule or regulation (including, without limitation, all zoning and subdivision laws, setback requirements, sideline requirements, parking ratio requirements, use requirements, building and fire code requirements, environmental requirements and wetland requirements) and all necessary variances, if any, shall have been obtained and evidence thereof has been delivered to Lender which in form and substance is appropriate for the jurisdiction in which the Harrah's Atlantic City Property is located;

(g) If reasonably necessary, appropriate reciprocal easement agreements for the benefit and burden of the remaining Harrah's Atlantic City Property and the Convention Center Parcel requiring no cost or expense to Mortgage Borrower regarding the use of common facilities of such parcels, including, but not limited to, roadways, parking areas, utilities and

community facilities, in a form and substance that would be reasonably acceptable to an ordinary prudent lender and which easements will not materially adversely affect the remaining Harrah's Atlantic City Property, shall be declared and recorded, and the remaining Harrah's Atlantic City Property and the Convention Center Parcel shall be in compliance with all applicable covenants under all easements and property agreements contained in the Permitted Encumbrances for the Harrah's Atlantic City Property;

(h) Borrower has delivered an Officer's Certificate to the effect that, to such officer's knowledge after diligent inquiry, the conditions in subsection (a)-(g) hereof have occurred or shall occur concurrently with the transfer and release of the Convention Center Parcel;

(i) Borrower shall execute such documents and instruments and obtain such opinions of counsel as are typical for similar transactions;

(j) Lender shall have received payment of all Lender's reasonable out-of-pocket costs and expenses, including reasonable counsel fees and disbursements incurred in connection with the review and approval of the documents and information required to be delivered in connection with the release of the Convention Center Parcel from the Lien of the related Mortgage. Lender acknowledges that it shall not charge any fee (other than costs and expenses, as provided in the preceding sentence) in connection with the release of the Convention Center Parcel;

(k) Lender shall have received evidence reasonably satisfactory to it that Mortgage Borrower and each Other Mezzanine Borrower shall have satisfied all of the conditions to the proposed Release set forth in the Mortgage Loan Agreement and each Other Mezzanine Loan Agreement, as applicable; and

(l) There shall be no release of any portion of the Lien of the Pledge Agreement in connection with this Section 2.5.2.

Borrower agrees that it shall promptly use all reasonable best efforts to substitute, and Lender agrees (subject to the terms set forth below in this paragraph) that it shall accept the substitution of, the properties commonly known as "Paris Las Vegas" and "Harrah's Laughlin" for the Individual Properties referred to as "Harrah's Lake Tahoe", "Harvey's Lake Tahoe", "Bill's Lake Tahoe" and "Showboat Atlantic City" and the portion of the Flamingo Las Vegas Property known as O'Shea's in a reasonably satisfactory manner, provided that Lender's obligation to accept such substitution shall be conditioned on the following:

(i) that no Event of Default shall exist, either before or after giving effect to such substitution (unless such Event of Default would be fully cured by the substitution);

(ii) the satisfaction, with respect to both "Paris Las Vegas" and "Harrah's Laughlin", of the closing conditions set forth in Article III hereof and of the Mortgage Loan Agreement, except that references therein to the Closing Date shall be to the date of such substitution;

(iii) delivery of such agreements, instruments, title insurance policies, surveys, resolutions, certificates and opinions (including, without limitation, substitute notes, amendments to the Loan Documents (including amendments to adjust the Allocated Loan Amounts, the EBITDAR (Closing Date) and any other items that need to be adjusted to reflect the substitution), the Operating Lease, the Operating Lease Guaranty and the Windstorm Insurance Intercreditor Agreement, an appropriate subdivision and a reciprocal easement agreement in respect of "O'Shea's", written assurances that the substitution will have no negative effects on the existing Title Policies, updated "tie-in" endorsements for the Title Policies, an Additional True Lease Opinion and an Additional Insolvency Opinion), in each case as are reasonably required by Lender in connection with such substitution;

(iv) with respect to the release of O'Shea's, delivery of evidence reasonably satisfactory to Lender that such release will not have either an Individual Material Adverse Effect on the remainder of the Flamingo Las Vegas Property or an Aggregate Material Adverse Effect (it being understood that, for purposes of such determinations, O'Shea's shall be deemed to have closed as of the Closing Date and to have no value) and that the remainder of the Flamingo Las Vegas Property satisfies the conditions set forth in Sections 3.1.3(b), (c) and (f) of the Mortgage Loan Agreement and the representations and warranties set forth in Sections 4.1.4, 4.1.16, 4.1.22, 4.1.39 and 4.1.40 of the Mortgage Loan Agreement shall continue to be true and complete with respect to the remainder of the Flamingo Las Vegas Property, and satisfaction of conditions similar to those set forth in clauses (c), (d), (e), (f), (g) and (h) of Section 3.1.3 hereof, as applicable, with respect to O'Shea's;

(v) the satisfaction, with respect to "Harrah's Lake Tahoe", "Harvey's Lake Tahoe", "Bill's Lake Tahoe", "Showboat Atlantic City" and O'Shea's, of the conditions set forth above in Section 2.5.1(b) and (f) with respect to released Individual Properties to the extent applicable,

(vi) the conveyance of "Harrah's Lake Tahoe", "Harvey's Lake Tahoe", "Bill's Lake Tahoe", "Showboat Atlantic City" and O'Shea's to a Person other than a Mortgage Borrower or Mezzanine Borrower,

(vii) unless otherwise extended by Lender, the substitution shall be completed on or prior to May 28, 2008,

(viii) the payment by Borrower of all Lender's reasonable out-of-pocket costs and expenses in connection with the substitution contemplated by this paragraph, including reasonable counsel fees and disbursements, up to an aggregate amount of \$300,000, it being acknowledged that costs incurred to obtain title insurance and surveys in respect of the substituted properties shall be paid by Borrower directly and shall not be taken into account for purposes of the foregoing limitation on the reimbursement of Lender's expenses.

Lender acknowledges that it shall not charge any fee (other than costs and expenses, as provided in the preceding sentence) in connection with the release of an Individual Property in accordance

with this paragraph. In addition, if all of “Harrah’s Lake Tahoe”, “Harvey’s Lake Tahoe”, “Bill’s Lake Tahoe” and “Showboat Atlantic City” can be transferred from Mortgage Borrower as contemplated above, but O’Shea’s cannot (including by reason of an inability to get a separate gaming license for O’Shea’s independent of the “Flamingo Las Vegas”), then Borrower shall cause Mortgage Borrower to nevertheless proceed to consummate the swap without transferring O’Shea’s (subject to Borrower’s ongoing right to obtain the release of O’Shea’s from the Lien of the Mortgage in accordance with the following sentence). Upon the satisfaction of such conditions set forth above in this paragraph (including clauses (i) through (viii) hereof), Borrower will have the right to choose between an immediate release of O’Shea’s from the Lien of the Mortgage on the date of the swap or a free release subsequent to the date of the swap without conditions (in either case, subject to the conditions set forth above in this Section 2.5.2, except that the limitation on Borrower’s payment of Lender’s costs and expenses set forth in clause (viii) above shall not apply to any such costs and expenses incurred by Lender in connection with such release) and, pending such release, EBITDAR shall be computed without regard to O’Shea’s; provided further, the Operating Company in respect of the “Flamingo Las Vegas” Individual Property, both before and after such release, shall be permitted to provide management and other similar services for O’Shea’s and shall be reimbursed for the allocable share of expenses attributable to O’Shea’s.

**2.5.3 Release on Payment in Full.** Lender shall, upon the written request and at the expense of Borrower, upon payment in full of all principal and interest due on the Loan and all other amounts due and payable under the Loan Documents in accordance with the terms and provisions of the Note and this Agreement, release the Lien of the Pledge Agreement on the Collateral.

**Section 2.6. Cash Management.**

**2.6.1 Establishment of Collection Accounts.**

(a) In accordance with the provisions of the Operating Lease, (i) Operating Company will establish within thirty (30) days after the Closing Date) and will maintain for the benefit of Mortgage Borrower, as lessor under the Operating Lease, the Collection Accounts with Collection Banks throughout the term of the Mortgage Loan and (ii) the rights of Mortgage Borrower (as landlord) under the Operating Lease will be collaterally assigned to Mortgage Lender within such 30-day period. All Revenues, other than amounts retained on-site by each Operating Company as a Gaming Operating Reserve and amounts collected and maintained in Off-Shore Accounts, will be deposited in the Collection Accounts.

(b) Borrower hereby represents and warrants as follows: when established, the Collection Accounts will be the only accounts maintained by Operating Company in any jurisdiction that include funds arising out of, or are otherwise attributable to, the Properties or relate to the operation and management of any of the Properties other than accounts (collectively, the “OC Accounts”) that contain amounts theretofore released from Collection Accounts in accordance herewith, and other than Off-Shore Accounts, which shall not be subject to this Agreement; and neither Borrower nor Mortgage Borrower maintains any accounts that include funds arising out of, or are otherwise attributable to, any of the Properties or relate to the operation and management of any of the Properties or otherwise (except for accounts containing

funds released from the Collection Accounts as herein provided and the Off-Shore Accounts). None of Mortgage Borrower, Senior Mezzanine Borrower, Borrower or Operating Company may (and Borrower shall not permit Mortgage Borrower, Senior Mezzanine Borrower or Operating Company to), without the prior consent of Lender (not to be unreasonably withheld, conditioned or delayed), open any accounts or new accounts or in any way alter the flow of funds and payment into such Collection Accounts, including, without limitation, changing the source, type or currency of any payments currently deposited and maintained in any such account (it being understood that the foregoing restriction shall not preclude Operating Company, Mortgage Borrower, Senior Mezzanine Borrower or Borrower from accepting and depositing in any Collection Accounts any capital contributions, or any disbursements from any Collection Accounts in accordance with the provisions of the Mortgage Loan Agreement, this Agreement and the Senior Mezzanine Loan Agreements. None of Mortgage Borrower, Senior Mezzanine Borrower, Borrower or Operating Company may (and Borrower shall not permit Mortgage Borrower, Senior Mezzanine Borrower, or Operating Company to), without the prior consent of Lender (not to be unreasonably withheld, conditioned or delayed), establish and maintain any accounts with financial institutions outside of the United States of America, other than the Off-Shore Accounts.

(c) Borrower shall cause Mortgage Borrower, Senior Mezzanine Borrower and Operating Company to comply with Section 2.6.1 of the Mortgage Loan Agreement and Senior Mezzanine Loan Agreement (as applicable) in all respects.

(d) Borrower hereby agrees that in the event that (i) the Mortgage Loan Documents require Mortgage Borrower and/or Operating Company to maintain the Collection Accounts, but (due to repayment of the Mortgage Loan, waiver of the requirement by Mortgage Lender, or otherwise) the Collection Accounts are not being maintained and (ii) the Collection Accounts are not being maintained under Section 2.6.1(d) of the Senior Mezzanine Loan Agreement, Borrower shall establish or cause the Operating Company to establish or cause the Operating Company to establish collection accounts substantially the same as that required under the Mortgage Loan Documents (and shall otherwise comply with the provisions of Section 2.6.1 of the Mortgage Loan Documents, and grant to Lender security interests in such accounts for the benefit of Lender, as if such provisions were incorporated herein for the benefit of Lender). In addition, if Borrower is required to deposit amounts with Lender pursuant to Article VII hereof but (due to repayment of the Mortgage Loan, waiver of the requirement by Mortgage Lender, or otherwise) the Collection Accounts and Cash Management Account are not being maintained, Borrower shall establish collection accounts and a cash management account and system with Lender substantially the same as that required under the Mortgage Loan Documents (and shall otherwise comply with the provisions of Sections 2.6.1 and 2.6.2 of the Mortgage Loan Documents, and grant to Lender security interests in such accounts for the benefit of Lender, as if such provisions were incorporated herein for the benefit of Lender). In addition, if Mortgage Borrower is required to provide security or other collateral to the Mortgage Lender pursuant to the terms of the Mortgage Loan Agreement (excluding any mortgage lien on the Properties or assignment of leases and rents with respect to the Properties) but (due to repayment of the Mortgage Loan, waiver of the requirement by Mortgage Lender, or otherwise) such security or other collateral was not provided to Mortgage Lender, Borrower shall provide such security or other collateral to Lender in substantially the same form and amount as that required under the Mortgage Loan Documents.

**2.6.2 Disbursements from, Security Interest in, Collection Accounts.** The Operating Lease provides, among other things, that all Revenues shall be collaterally assigned by Operating Company to Mortgage Borrower as additional security for Operating Company's obligations under the Operating Lease and that Mortgage Borrower shall have the right to collaterally assign and pledge such Revenues to Lender as additional security for the Loan. In furtherance thereof, Lender and Borrower agree as follows:

(a) Except as otherwise provided in subparagraphs (b) and (c) hereof, all amounts collected in the Collection Accounts shall be transferred on each Business Day to (or as directed by) Operating Company for use or distribution by the Operating Company in its discretion free of any rights or encumbrances of Lender.

(b) Upon the occurrence and during the continuance of an Event of Default hereunder, under the Mortgage Loan Documents or under any of the Other Mezzanine Loan Documents, and provided no Event of Default (as such term is defined in the Operating Lease) shall have occurred and be continuing under any Operating Lease, Borrower shall cause Mortgage Borrower to direct and cause Collection Bank to deposit directly into the Cash Management Account, all Rent payable under the Operating Lease for the next thirty (30) days (it being the intent and agreement that, during the continuance of an Event of Default, the Cash Management Account shall at all times contain such amounts sufficient to cover the ensuing 30-day period), including the Monthly Tax and Insurance Amount, the Monthly Ground Rent Amount and Monthly FF&E Reserve Amount (the amounts described in the preceding sentence, collectively, the "**Monthly Disbursements**"); provided that, notwithstanding the foregoing, Lender may not apply such Monthly Disbursements to the payment of amounts due hereunder in an amount in excess of the amounts owed by the Operating Company under the Operating Lease. In the event Borrower shall have failed to cause Mortgage Borrower to so instruct Collection Bank, Lender shall have the right to so direct the Collection Bank on behalf of Mortgage Borrower. Any amounts not required to be so deposited into the Cash Management Account shall be transferred on each Business Day thereafter to (or as directed by) Operating Company for use or distribution by the Operating Company in its discretion free of any rights or encumbrances of Lender. If no Event of Default has occurred and is continuing hereunder, to the extent Monthly Disbursements are not applied to the payment of amounts due hereunder, such excess shall be remitted to Fourth Mezzanine Lender (or to an account designated by Fourth Mezzanine Lender); provided that, notwithstanding the foregoing, Lender shall not remit any such amounts in excess of the amounts owed by the Operating Company under the Operating Lease. If an Event of Default has occurred and is continuing hereunder, to the extent Monthly Disbursements are not applied to the payment of amounts due hereunder, Lender shall have the right to retain the amount so remitted to the Collection Account as collateral for the Loan and/or apply such amount to the payment of the Debt.

(c) Upon the occurrence and during the continuance of an Event of Default (as such term is defined in the Operating Lease) under any Operating Lease, Borrower shall cause Mortgage Borrower to notify Collection Bank to transfer to the Cash Management Account on each Business Day in immediately available funds by federal wire transfer all amounts on deposit in each Collection Account and, in the event Mortgage Borrower shall have failed to do so, Mortgage Lender (or Lender in the event of Mortgage Lender's failure to so instruct) shall have the right to so direct the Collection Bank on behalf of Mortgage Borrower.

Lender shall have the right to retain all amounts to be paid into the Cash Management Account in accordance with the first sentence of this Section 2.6.2(c) as collateral for the Loan and/or apply such amount to the payment of the Debt.

(d) Borrower and its Affiliates shall (and Borrower shall cause Operating Company to) execute and deliver such documents, instruments, certificates, assignments and other writings, and do such other acts necessary or desirable, to evidence, preserve and/or protect, maintain and perfect Lender's security interest in the Collection Accounts, if any.

**2.6.3 Cash Management Account.** (a) During the term of the Loan, Borrower shall cause Mortgage Borrower and Senior Mezzanine Borrower to comply with Section 2.6.3 of the Mortgage Loan Agreement and Senior Mezzanine Loan Agreement (as applicable) which may require the establishment of the Cash Management Account to be held by and in trust for the benefit of Mortgage Lender. All costs and expenses for establishing and maintaining the Cash Management Account shall be paid by Mortgage Borrower.

(b) Borrower shall not cause or permit Mortgage Borrower or Operating Company to further pledge, assign or grant any security interest in the Cash Management Account or the monies deposited therein or permit any lien or encumbrance to attach thereto, or any levy to be made thereon, or any UCC-1 Financing Statements, except those naming Mortgage Lender as the secured party, to be filed with respect thereto.

(c) Borrower hereby agrees that in the event that (i) the Mortgage Loan Documents require Mortgage Borrower and/or Operating Company to maintain the Cash Management Account, but (due to repayment of the Mortgage Loan, waiver of the requirement by Mortgage Lender, or otherwise) the Cash Management Account is not being maintained and (ii) the Cash Management Account is not being maintained under Section 2.6.3 of the Senior Mezzanine Loan Agreement, Borrower shall establish a cash management account and system with Lender substantially the same as that required under the Mortgage Loan Documents. If Borrower is required to deposit amounts with Lender pursuant to Article VII hereof, Borrower shall establish a cash management account and system with Lender substantially the same as that required under the Mortgage Loan Documents (and shall otherwise comply with the provisions of Section 2.6.2 of the Mortgage Loan Documents, and grant to Lender security interests in such accounts for the benefit of Lender, as if such provisions were incorporated herein for the benefit of Lender).

**2.6.4 Mezzanine Collection Account.** (a) Lender or Servicer may establish and maintain, to collect all amounts distributed to Lender under Section 2.6.3 of the Mortgage Loan Agreement, a segregated Eligible Account (the "**Mezzanine Collection Account**") to be held by Servicer in trust for the benefit of Lender, which Mezzanine Collection Account shall be under the sole dominion and control of Lender (which may be exercised through Servicer). Lender (and its agents, including Servicer) shall have the sole right to make withdrawals from the Mezzanine Collection Account in accordance with the terms and conditions of this Agreement and the other Loan Documents, except as otherwise expressly provided in this Agreement or the other Loan Documents. Borrower shall cause Senior Mezzanine Borrower to comply with Section 2.6.4 of the Senior Mezzanine Loan Agreements.

(b) Borrower hereby grants to Lender a first priority security interest in the Mezzanine Collection Account and all deposits at any time contained therein and the proceeds thereof and will take all actions necessary to maintain in favor of Lender a perfected first priority security interest in the Mezzanine Collection Account, including, without limitation, executing and filing UCC 1 Financing Statements and continuations thereof upon Lender's request therefor. All costs and expenses for establishing and maintaining the Mezzanine Collection Account (and any sub account thereof) shall be at Borrower's sole cost and expense.

(c) Borrower shall be responsible for payment of any federal, state or local income or other tax applicable to the interest or income earned on the Mezzanine Collection Account and any sub-account thereof. The Mezzanine Collection Account and any sub-account thereof shall be assigned the federal tax identification numbers of each Borrower set forth on Schedule I attached hereto. Borrower shall provide Lender, at any time upon request of Lender, with a Form W-8 or W-9 to evidence that Borrower is not subject to any back-up withholding under the Code.

(d) Upon the occurrence and during the continuance of an Event of Default, all funds on deposit in the Mezzanine Collection Account shall be applied by Lender in such order and priority as Lender shall determine.

(e) The insufficiency of funds on deposit in the Mezzanine Collection Account shall not relieve Borrower from the obligation to make any payments, as and when due pursuant to this Agreement and the other Loan Documents, and such obligations shall be separate and independent, and not conditioned on any event or circumstance whatsoever.

**Section 2.7. Intentionally Omitted.**

**Section 2.8. Permitted Mezzanine Loan.** Borrower shall have the one-time right, upon thirty (30) days prior written notice to Lender (the "**Permitted Mezzanine Loan Election**"), to obtain a loan ("**Permitted Mezzanine Loan**") secured by a pledge of the ownership interests in the indirect owners of Borrower (above the level of the Ninth Mezzanine Borrower) provided that the following conditions precedent are satisfied:

(a) no Default or Event of Default shall have occurred and remains uncured;

(b) as of the date the Permitted Mezzanine Loan is advanced, the Permitted Mezzanine Debt Loan-to-Value Ratio for the Properties subject to the Lien of the Mortgage is equal to or less than eighty percent (80%);

(c) as of the date the Permitted Mezzanine Loan is advanced, Permitted Mezzanine DSCR for the four-quarter period preceding such date for the Properties then subject to the Lien of the Mortgage(s) is equal to or greater than 1.2 to 1.0;

(d) the Permitted Mezzanine Loan shall be evidenced by one (1) Loan, that may be advanced in multiple draws provided that Borrower complies with the requirements set forth in this Section 2.8 with respect to each draw;

(e) the Permitted Mezzanine Loan shall be issued by one (1) lender (the “**Permitted Mezzanine Loan Lender**”) which shall be an Institutional Lender; provided, however, that such single Lender that is an Institutional Lender may grant participations in such Permitted Mezzanine Loan or syndicate the Permitted Mezzanine Loan to multiple lenders so long as at least fifty-one percent (51%) of such participants and syndicate lenders are Institutional Lenders and, in addition, so long a single lender serves as agent with respect to all approvals, consents and other matters relating to the Permitted Mezzanine Loan;

(f) the Permitted Mezzanine Loan shall have the same maturity date as the Maturity Date under the Loan, or a maturity date extending beyond the Maturity Date under the Loan;

(g) the Permitted Mezzanine Loan (including all of the terms, provisions and conditions of the Permitted Mezzanine Loan, including, without limitation, the loan documents evidencing and securing the Permitted Mezzanine Loan (“**Permitted Mezzanine Loan Documents**”)) shall be acceptable to Lender in its reasonable discretion (it being agreed that with respect (only) to Lender’s approval of the form of loan documents that loan documents in substantially the same form as the Ninth Mezzanine Loan Documents, appropriately modified to reflect subordination to the Mezzanine Loans still outstanding, shall be deemed to be acceptable);

(h) the Permitted Mezzanine Loan Lender shall enter into a co-lender or intercreditor agreement substantially on the standard CMSA form (or the form entered into by Lender, Other Mezzanine Lenders and Mortgage Lender in connection with the closing of the Loan) or in form and substance reasonably acceptable to Lender, acknowledging the subordination of the Permitted Mezzanine Loan in all respects to each of the Mezzanine Loans and the Mortgage Loan (and Lender agrees to enter into such co-lender or intercreditor agreement upon request);

(i) the Permitted Mezzanine Loan shall be a fixed rate loan, or a floating rate loan containing an interest rate that is capped at an amount that satisfies the debt service coverage ratio requirement set forth in subparagraph (c) above, with interest due and payable monthly (*i.e.*, interest does not accrue) and such interest rate shall not be subject to adjustment except after an event of default (Borrower agreeing to cause the purchase of an interest rate cap to reflect the foregoing);

(j) if requested by Lender, Borrower shall execute amendments to the Loan Documents reasonably requested by Lender, to reflect the existence of such Permitted Mezzanine Loan, provided that any such amendments or agreements will not alter the payment terms of the Loan set forth in this Agreement or the other Loan Documents or materially and adversely affect Borrower or impose additional material obligations or liabilities upon Borrower;

(k) if required by Lender, Borrower shall deliver (i) Additional Insolvency Opinions and, if the Loan Documents are amended pursuant to Section 2.8(k), opinions regarding due execution and enforceability with respect to the Properties, Mortgage Borrower, Mezzanine Borrowers, Holdings, Guarantor and their respective Affiliates and the Loan Documents, and such related matters as Lender shall reasonably require, and (ii) revised

organizational documents for Borrower, which opinions and organizational documents shall be reasonably satisfactory to Lender;

(l) all necessary or appropriate governmental or other third party consents (including any approvals, notices, filings or other actions under or pursuant to the Gaming Laws or other Legal Requirements) required to be obtained or taken by Borrower, Mortgage Borrower, any Mezzanine Borrower or the Permitted Mezzanine Borrower for the execution, delivery and performance by the Permitted Mezzanine Borrower of the Permitted Mezzanine Loan shall have been obtained or taken; and

(m) all reasonable out-of-pocket costs and expenses (including reasonable attorneys' fees and expenses) incurred by Lender in connection with this Section 2.8 shall be paid by Borrower (but no approval or consent fees shall be payable in connection therewith).

### III. CONDITIONS PRECEDENT

**Section 3.1. Conditions Precedent to Closing.** The obligation of Lender to make the Loan hereunder is subject to the fulfillment by Borrower or waiver by Lender of the following conditions precedent no later than the Closing Date:

**3.1.1 Representations and Warranties; Compliance with Conditions.** The representations and warranties of Borrower contained in this Agreement and the other Loan Documents shall be true and correct in all material respects on and as of the Closing Date with the same effect as if made on and as of such date, and no Default or an Event of Default shall have occurred and be continuing; and Borrower shall be in compliance in all material respects with all terms and conditions set forth in this Agreement and in each other Loan Document on its part to be observed or performed.

**3.1.2 Loan Agreement and Note.** Lender shall have received a copy of this Agreement and the Note, in each case, duly executed and delivered on behalf of Borrower.

#### **3.1.3 Delivery of Loan Documents; Title Insurance; Reports; Leases.**

(a) **Pledge Agreement.** Lender shall have received from Borrower fully executed and acknowledged counterparts of the Pledge Agreement and delivery of the Pledged Company Interests, the UCC Financing Statements, and such other documents required pursuant to the Pledge Agreement, in the reasonable judgment of Lender, so as to effectively create valid and enforceable Liens upon the Collateral, of the requisite priority, in favor of Lender, subject only to the Permitted Encumbrances and such other Liens as are permitted pursuant to the Loan Documents. Lender shall have also received from Borrower fully executed counterparts of the other Loan Documents.

(b) **Title Insurance.** Lender shall have received a UCC Title Insurance Policy (the "**UCC Title Insurance Policy**") issued by a title company acceptable to Lender and dated as of the Closing Date, with reinsurance and direct access agreements acceptable to Lender. Such UCC Title Insurance Policy shall (i) provide coverage in amounts reasonably satisfactory to Lender, (ii) insure Lender that the Pledge Agreement and the documents executed

and delivered in connection therewith create a valid lien on the Collateral of the requisite priority, free and clear of all exceptions from coverage other than Permitted Encumbrances and standard exceptions and exclusions from coverage (as modified by the terms of any endorsements), (iii) contain such endorsements and affirmative coverages as Lender may reasonably request, and (iv) name Lender as the insured. The UCC Title Insurance Policy shall be assignable. Lender also shall have received evidence that all premiums in respect of such UCC Title Insurance Policy have been paid. Lender shall have received each Owner's Title Policy in an amount equal to the value of the Property, together with an endorsement in favor of Lender and in form and substance reasonably satisfactory to Lender.

(c) **Survey.** Lender shall have received a current Survey for each Individual Property, certified to the title company and Lender and their successors and assigns, in form and content reasonably satisfactory to Lender and prepared by a professional and properly licensed land surveyor satisfactory to Lender in accordance with the Accuracy Standards for ALTA/ACSM Land Title Surveys as adopted by ALTA, American Congress on Surveying & Mapping and National Society of Professional Surveyors in 2005. Each such Survey shall reflect the same legal description contained in the Title Insurance Policies relating to such Individual Property and shall include, among other things, a metes and bounds description (or other description reasonably satisfactory to Lender) of the real property comprising part of such Individual Property reasonably satisfactory to Lender. The surveyor's seal shall be affixed to each Survey and the surveyor shall provide a certification for each Survey in form and substance reasonably acceptable to Lender.

(d) **Insurance.** Lender shall have received valid certificates of insurance for the Policies required hereunder, satisfactory to Lender in its reasonable discretion. Lender shall be included as an "additional insured" under such Policies and Lender shall have received evidence of the payment of all Insurance Premiums payable for the existing policy period.

(e) **Environmental Reports.** Lender shall have received a Phase I environmental report (and, if recommended by the Phase I environmental report, a Phase II environmental report) in respect of each Individual Property, in each case satisfactory in form and substance to Lender, Lender acknowledges that the foregoing condition has been satisfied, provided that the underground storage tank at Harrah's Las Vegas shall be registered if and to the extent the same is required under Legal Requirements and Lender shall have received and reasonably approved the O&M Plans contemplated pursuant to the above-referenced environmental reports in respect of Flamingo Las Vegas and Harrah's Las Vegas.

(f) **Zoning.** With respect to each Individual Property, Lender shall have received, at Lender's option, either (i) (A) letters or other evidence with respect to each Individual Property from the appropriate municipal authorities (or other Persons) concerning applicable zoning and building laws, and (B) an ALTA 3.1 zoning endorsement for the applicable Title Insurance Policy or (ii) a zoning report, in each case in substance reasonably satisfactory to Lender.

(g) **Encumbrances.** Borrower shall have taken or caused to be taken such actions in such a manner so that Lender has a valid and perfected first priority Lien as of the

Closing Date on the Collateral and with respect to the Pledge Agreement and Lender shall have received satisfactory evidence thereof.

(h) **Senior Loan Documents.** The Mortgage Loan Documents and Senior Mezzanine Loan Documents shall have been duly authorized, executed and delivered by all parties thereto, the Mortgage Loan and Senior Mezzanine Loan shall have been contemporaneously funded and Lender shall have received and approved certified copies thereof. All of the conditions precedent set forth in Article III of the Mortgage Loan Agreement and Senior Mezzanine Loan Agreements shall have been satisfied and the Mortgage Loan and Senior Mezzanine Loans shall have closed and been fully advanced in accordance therewith.

**3.1.4 Related Documents.** Each additional document not specifically referenced herein, but relating to the transactions contemplated herein, shall be in form and substance reasonably satisfactory to Lender, and shall have been duly authorized, executed and delivered by all parties thereto and Lender shall have received and approved certified copies thereof.

**3.1.5 Delivery of Organizational Documents.** Borrower shall deliver or cause to be delivered to Lender copies certified by Borrower of all organizational documentation related to Borrower and each Loan Party and/or the formation, structure, existence, good standing and/or qualification to do business, as Lender may request in its sole discretion, including, without limitation, good standing certificates, qualifications to do business in the appropriate jurisdictions, resolutions authorizing the entering into of the Loan and incumbency certificates as may be requested by Lender.

**3.1.6 Opinions of Borrower's Counsel.** Lender shall have received opinions from Borrower's counsel with respect to non-consolidation and the due execution, authority, enforceability of the Loan Documents and such other matters as Lender may require, including True-Lease Opinions, an opinion with respect to the priority and perfection of the Collateral and all such opinions shall be in form, scope and substance satisfactory to Lender and Lender's counsel in their reasonable discretion.

**3.1.7 Budgets.** Borrower shall have delivered, and Lender shall have approved in its reasonable discretion, the Annual Budget for the current Fiscal Year.

**3.1.8 Basic Carrying Costs.** Borrower shall have caused Mortgage Borrower to have paid all Basic Carrying Costs relating to the Properties which are in arrears, including, without limitation, (a) accrued but unpaid Insurance Premiums, (b) currently due Taxes (including any in arrears) and (c) currently due Other Charges, which amounts shall be funded with proceeds of the Loan.

**3.1.9 Completion of Proceedings.** All corporate and other proceedings taken or to be taken in connection with the transactions contemplated by this Agreement and other Loan Documents and all documents incidental thereto shall be satisfactory in form and substance to Lender, and Lender shall have received all such counterpart originals or certified copies of such documents as Lender may reasonably request.

**3.1.10 Payments.** All payments, deposits or escrows required to be made or established by Borrower under this Agreement, the Note and the other Loan Documents on or before the Closing Date shall have been paid.

**3.1.11 Windstorm Insurance Intercreditor Agreement.** The Windstorm Insurance Intercreditor Agreement shall have been executed by all parties thereto and delivered to Lender.

**3.1.12 Transaction Costs.** Borrower shall have paid or reimbursed Lender for all UCC Title Insurance Policy premiums, all Owner's Title Policy premiums, costs of obtaining recording and filing fees, costs of environmental reports, Physical Conditions Reports, appraisals and other reports, the reasonable fees and costs of Lender's counsel and all other third party out-of-pocket expenses reasonably incurred in connection with the origination of the Loan to the extent such costs and expenses relating to third party costs have not already been paid or reimbursed by Mortgage Borrower to Mortgage Lender.

**3.1.13 Material Adverse Change.** There shall have been no material adverse change in the financial condition or business condition of Borrower, any Loan Party, the Collateral, the Senior Mezzanine Collateral or the Properties since the date of the most recent financial statements delivered to Lender. The income and expenses of the Properties, the occupancy thereof, and all other features of the transaction shall be as represented to Lender without material adverse change. None of Borrower, any Loan Party, or any of their respective constituent Persons shall be the subject of any bankruptcy, reorganization, or insolvency proceeding.

**3.1.14 Leases and Rent Roll.** Lender shall have received copies of all Leases and certified copies of any Leases as requested by Lender. Lender shall have received a current certified rent roll of the Properties, reasonably satisfactory in form and substance to Lender.

**3.1.15 Tax Lot.** Lender shall have received evidence that each Individual Property constitutes one (1) or more separate tax lots, which evidence shall be reasonably satisfactory in form and substance to Lender.

**3.1.16 Physical Conditions Reports.** Lender shall have received Physical Conditions Reports with respect to each Individual Property, which reports shall be reasonably satisfactory in form and substance to Lender. Lender acknowledges that the foregoing condition has been satisfied.

**3.1.17 Operating Leases; Operating Lease Guaranty.** Lender shall have received copies of the Operating Leases, each Operating Lease Guaranty and the Gaming Equipment Facility Agreements, which shall be reasonably satisfactory in form and substance to Lender.

**3.1.18 Appraisal.** Lender shall have received an appraisal of each Individual Property, which shall be reasonably satisfactory in form and substance to Lender.

**3.1.19 Financial Statements.** Lender shall have received a balance sheet with respect to each Individual Property for the two most recent Fiscal Years and statements of

income and statements of cash flows with respect to each Individual Property for the three most recent Fiscal Years, each in form and substance reasonably satisfactory to Lender.

**3.1.20 Further Documents.** Lender or its counsel shall have received a fully executed Interest Rate Cap Agreement and a Collateral Assignment of Interest Rate Cap Agreement, together with an opinion of counsel in form and substance satisfactory to it, or shall have received reasonably satisfactory evidence that same will be delivered promptly following the Closing Date.

**3.1.21 Gaming Authority Approvals.** Mortgage Borrower and Operating Company shall have obtained all Operating Permits from Gaming Authorities that are required in order to permit the closing of the Mortgage Loan and the Mezzanine Loans (if required), or in connection with the Operating Lease or the Operating Lease Guaranty (if required), or to permit the conveyances of any of the Properties to Mortgage Borrower (effected immediately prior hereto) and the operation of the Properties as currently conducted.

#### IV. REPRESENTATIONS AND WARRANTIES

**Section 4.1. Borrower Representations.** Borrower represents and warrants as of the date hereof and as of the Closing Date, except as disclosed in Schedule XXIII, that:

**4.1.1 Organization.** (a) Borrower has been duly organized and is validly existing and in good standing with requisite power and authority to own the Individual Properties and to transact the businesses in which it is (or each of them is) now engaged. Borrower is duly qualified to do business and is in good standing in each jurisdiction where it is required to be so qualified in connection with its properties, businesses and operations. Borrower possesses all rights, licenses, permits and authorizations (governmental or otherwise) necessary to entitle it to own its properties and to transact the businesses in which it is now engaged and the failure to possess which would reasonably be expected to have an Individual Material Adverse Effect. The sole business of Borrower is the ownership of Senior Mezzanine Borrower. The ownership interests of Borrower are as set forth on the organizational chart attached hereto as Schedule VIII.

(b) Each Operating Company has been duly organized and is validly existing and in good standing with requisite power and authority to own its properties or assets, including the Gaming Equipment, and to transact the businesses in which it is now engaged. Each Operating Company is duly qualified to do business and is in good standing in each jurisdiction where it is required to be so qualified in connection with its properties, businesses and operations, including the operation of the Casino Components at each Individual Property. Each Operating Company possesses all rights, licenses, permits and authorizations (governmental or otherwise) necessary to entitle it to operate the Properties currently operated by each such Operating Company and to transact the businesses in which it is now engaged and the failure to possess which would reasonably be expected to have an Individual Material Adverse Effect. The sole business of each Operating Company is the management and operation of the Individual Property or Properties currently operated by each such Operating Company. The ownership interests of each Operating Company are as set forth on the organizational chart attached hereto as Schedule VIII.

(c) Borrower has the power and authority and the requisite ownership interests in Senior Mezzanine Borrower and Mortgage Borrower to control the actions of Senior Mezzanine Borrower and Mortgage Borrower, and upon the realization of the Collateral under the Pledge Agreement, Lender or any other party succeeding to the Borrower's interest in the Collateral described in the Pledge Agreement would have such control. Without limiting the foregoing, Borrower has sufficient control over Senior Mezzanine Borrower and Mortgage Borrower to cause Senior Mezzanine Borrower and Mortgage Borrower to (i) take any action on Senior Mezzanine Borrower's or Mortgage Borrower's part required by the Loan Documents and (ii) refrain from taking any action prohibited by the Loan Documents.

**4.1.2 Proceedings.** Borrower and Operating Company have taken all necessary action to authorize the execution, delivery and performance of this Agreement and the other Loan Documents. This Agreement and such other Loan Documents have been duly executed and delivered by or on behalf of Borrower and Operating Company and constitute legal, valid and binding obligations of Borrower and Operating Company enforceable against Borrower and Operating Company (as applicable) in accordance with their respective terms, subject only to applicable bankruptcy, insolvency and similar laws affecting rights of creditors generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

**4.1.3 No Conflicts; Approvals.** (a) The execution, delivery and performance of this Agreement and the other Loan Documents by Borrower and Operating Company will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance (other than pursuant to the Loan Documents) upon any of the property or assets of Borrower or Operating Company pursuant to the terms of any indenture, mortgage, deed of trust, loan agreement, partnership agreement, management agreement, material lease or other material agreement or instrument to which Borrower or Operating Company (as applicable) is a party or by which any of Borrower's or Operating Company's property or assets is or are subject, nor will such action result in any violation of the provisions of any statute or any order, rule or regulation of any Governmental Authority having jurisdiction over Borrower or Operating Company any of Borrower's or Operating Company's properties or assets, and any consent, approval, authorization, order, registration or qualification of or with any such Governmental Authority required for the execution, delivery and performance by Borrower and Operating Company of this Agreement or any other Loan Documents (and the execution by Lender of the remedies provided in the Loan Documents, subject to the limitations thereon pursuant to applicable Gaming Laws) has been obtained and is in full force and effect.

(b) Borrower, Senior Mezzanine Borrower, Mortgage Borrower and Operating Company have obtained all consents and approvals, including all approvals of Governmental Authorities including Gaming Authorities, if required, in connection with the execution, delivery and performance of the Loan Documents (including by Mortgage Lender and each Mezzanine Lender), the Operating Lease, the Operating Lease Guaranty and the operation of the business currently conducted at any of the Properties, and shall promptly execute any and all such instruments and documents, deliver any certificates and do all such other acts or things required by the Gaming Authorities to maintain or keep current such approvals.

**4.1.4 Litigation.** There are no actions, suits or proceedings at law or in equity by or before any Governmental Authority or other agency now pending or, to Borrower's knowledge, threatened against or affecting any Loan Party, any Affiliates of Borrower, including Holdings, Operating Company or any Individual Property, or any prior owner or other holder of any interest in any Individual Property, which actions, suits or proceedings, if determined against any Loan Party, Holdings, Operating Company, any other Affiliate or any Individual Property (taking into account the reasonably estimated damages payable in connection therewith), is reasonably likely to materially adversely affect the condition (financial or otherwise) or business of any Loan Party, any Affiliate of Borrower that is a direct or indirect owner of Mortgage Borrower, including Holdings and Operating Company, or the condition or ownership of any Individual Property, or any of the material rights, interests and remedies of Lender under the Loan Documents (taken as a whole). None of the actions described on Schedule XXIV, if determined adversely to Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company and/or any of their respective Affiliates, as applicable, would result in the payment by Borrower, Mortgage Borrower, Operating Company or such Affiliate of an amount in excess of Ten Million and no/100 Dollars (\$10,000,000.00), except to the extent covered by insurance.

**4.1.5 Agreements.** None of Borrower, Senior Mezzanine Borrower, Mortgage Borrower or Operating Company is in default, in any material respect, in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any material agreement or instrument to which it is a party or by which Borrower, Senior Mezzanine Borrower, Mortgage Borrower, Operating Company, the Collateral, the Senior Mezzanine Collateral or any of the Properties are bound. None of Borrower, Senior Mezzanine Borrower, Mortgage Borrower or Operating Company has any material financial obligation under any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which Borrower, Senior Mezzanine Borrower, Mortgage Borrower or Operating Company is a party or by which Borrower, Senior Mezzanine Borrower, Mortgage Borrower, Operating Company, the Collateral, the Senior Mezzanine Collateral or the Properties is otherwise bound, other than (a) with respect to Mortgage Borrower, obligations incurred in the ordinary course of the operation of the Properties as permitted pursuant to clause (t) of the definition of "Special Purpose Entity" set forth in Section 1.1 of the Mortgage Loan Agreement, (b) with respect to Borrower, obligations under the Loan Documents, (c) with respect to Senior Mezzanine Borrower, obligations under the Senior Mezzanine Loan Documents, and (d) with respect to Operating Company, the Operating Lease and Permitted Indebtedness (Operating Company).

**4.1.6 Title.** (a) The Borrower (as pledgor under the Pledge Agreement) is the record and beneficial owner of, and Borrower has good and marketable title to the Collateral, free and clear of all Liens whatsoever except the Liens created by the Loan Documents. The Permitted Encumbrances in the aggregate do not materially and adversely affect the value, operation or use of any of the Properties (as currently used) or Borrower's ability to repay the Loan. The Pledge Agreement, together with the delivery of the certificates evidencing ownership of the Pledged Company Interests and the endorsement in blank, as being delivered concurrently herewith, will create a valid perfected, first priority lien on, and security interest in and to, the Collateral, all in accordance with the terms thereof. There are no claims for payment for work, labor or materials affecting any of the Properties which are or may become a Lien prior to, or of equal priority with, the Liens created by the Mortgage Loan Documents.

(b) Each Operating Company has good, marketable title to the Gaming Equipment, free and clear of all Liens whatsoever (except equipment financing and leasing arrangements entered into by Operating Company in the ordinary course of its business (subject to the limitations set forth in the definition of “Permitted Indebtedness (Operating Company)”).

**4.1.7 Solvency.** Borrower has (a) not entered into the transaction or executed the Note, this Agreement or any other Loan Documents with the actual intent to hinder, delay or defraud any creditor and (b) received reasonably equivalent value in exchange for its obligations under such Loan Documents. The fair saleable value of Borrower’s assets exceeds and will, immediately following the making of the Loan, exceed Borrower’s total liabilities, including, without limitation, subordinated, unliquidated, disputed and contingent liabilities. The fair saleable value of Borrower’s assets is and will, immediately following the making of the Loan, be greater than Borrower’s probable liabilities, including the maximum amount of its contingent liabilities on its debts as such debts become absolute and matured. Borrower’s assets do not and, immediately following the making of the Loan will not, constitute unreasonably small capital to carry out its business as conducted or as proposed to be conducted. Borrower does not intend to, and does not believe that it will, incur debt and liabilities (including contingent liabilities and other commitments) beyond its ability to pay such debt and liabilities as they mature (taking into account the timing and amounts of cash to be received by Borrower and the amounts to be payable on or in respect of obligations of Borrower). No petition in bankruptcy has been filed against Borrower, Operating Company, any Loan Party or any constituent Person, and none of Borrower, Operating Company, any Loan Party or any constituent Person has ever made an assignment for the benefit of creditors or taken advantage of any insolvency act for the benefit of debtors. None of Borrower, Operating Company, any Loan Party or any of their respective constituent Persons are contemplating either the filing of a petition by it under any state or federal bankruptcy or insolvency laws or the liquidation of all or a major portion of Borrower’s, Operating Company’s, or any Loan Party’s assets or properties, and Borrower has no knowledge of any Person contemplating the filing of any such petition against it, Operating Company, any Loan Party or such constituent Persons.

**4.1.8 Full and Accurate Disclosure.** No statement of fact made by Borrower in this Agreement or in any of the other Loan Documents contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained herein or therein not misleading. There is no material fact presently known to Borrower which has not been disclosed to Lender which has, nor as far as Borrower can foresee, might reasonably be expected to have an Individual Material Adverse Effect or an Aggregate Material Adverse Effect.

**4.1.9 No Plan Assets.** Borrower is not an “employee benefit plan,” as defined in Section 3(3) of ERISA, subject to Title I of ERISA, and none of the assets of Borrower constitutes or will constitute “plan assets” of one or more such plans within the meaning of 29 C.F.R. Section 2510.3-101. In addition, (a) Borrower is not a “governmental plan” within the meaning of Section 3(32) of ERISA and (b) transactions by or with Borrower are not subject to any state statute regulating investments of, or fiduciary obligations with respect to, governmental plans similar to the provisions of Section 406 of ERISA or Section 4975 of the Code currently in effect, which prohibit or otherwise restrict the transactions contemplated by this Loan Agreement.

**4.1.10 Compliance.** Except as disclosed in the zoning reports obtained by Lender in connection with the origination of the Loan, Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company and each Individual Property (including the use thereof) comply in all material respects with all applicable Legal Requirements, including, without limitation, building and zoning ordinances and codes and Prescribed Laws. Borrower, Mortgage Borrower, Senior Mezzanine Borrower and Operating Company are not in default or violation of (i) any material order, writ, injunction, decree or demand of any Gaming Authority or (ii) any material order, writ, injunction, decree or demand of any other Governmental Authority. There has not been committed by Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any other Person in occupancy of or involved with the operation or use of the Properties any act or omission affording the federal government or any other Governmental Authority the right of forfeiture as against any Individual Property or any part thereof or any monies paid in performance of Borrower's obligations under any of the Loan Documents.

**4.1.11 Financial Information.** All financial data, including, without limitation, the statements of cash flow and income and operating expense, that have been delivered to Lender in connection with the Loan, the Collateral, the Senior Mezzanine Collateral, the Properties and each Loan Party (i) are true, complete and correct in all material respects, (ii) accurately represent in all material respects the financial condition of the Properties as of the date of such reports, and (iii) to the extent prepared or audited by an independent certified public accounting firm, have been prepared in accordance with GAAP throughout the periods covered, except as disclosed therein. Except for Permitted Encumbrances, Borrower does not have any contingent liabilities, liabilities for taxes, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments that are known to Borrower and reasonably likely to have a materially adverse effect on the Collateral, the Senior Mezzanine Collateral, Borrower, any Loan Party, any Individual Property or the operation thereof as mixed-use hotel and casino properties, except as referred to or reflected in said financial statements. Borrower has no Indebtedness other than the Loan. Except for Permitted Indebtedness (Operating Company), Operating Company does not have any Indebtedness or contingent liabilities, or due and unpaid liabilities for taxes, that are known to Borrower, Mortgage Borrower, Senior Mezzanine Borrower or Operating Company and reasonably likely to have a materially adverse effect on the Collateral, any Senior Mezzanine Collateral, Borrower, any Loan Party, any Individual Property or the operation thereof as mixed-use hotel and casino properties, except as referred to or reflected in said financial statements. Since the date of such financial statements, there has been no material adverse change in the financial condition, operation or business of Borrower or Operating Company from that set forth in said financial statements.

**4.1.12 Condemnation.** No Condemnation or other similar proceeding has been commenced or, to Borrower's best knowledge, is threatened or contemplated with respect to all or any portion of any Individual Property or for the relocation of roadways providing access to any Individual Property.

**4.1.13 Federal Reserve Regulations.** No part of the proceeds of the Loan will be used for the purpose of purchasing or acquiring any "margin stock" within the meaning of Regulation U of the Board of Governors of the Federal Reserve System or for any other purpose

which would be inconsistent with such Regulation U or any other Regulations of such Board of Governors, or for any purposes prohibited by Legal Requirements or by the terms and conditions of this Agreement or the other Loan Documents.

**4.1.14 Utilities and Public Access.** Each Individual Property has rights of access to public ways and is served by water, sewer, sanitary sewer and storm drain facilities adequate to service such Individual Property for its respective intended uses. All public utilities necessary or convenient to the full use and enjoyment of each Individual Property are located either in the public right-of-way abutting such Individual Property (which are connected so as to serve such Individual Property without passing over other property) or in recorded easements serving such Individual Property and such easements are set forth in and insured by the Title Insurance Policies. All roads necessary for the use of each Individual Property for their current respective purposes have been completed and dedicated to public use and accepted by all Governmental Authorities.

**4.1.15 Not a Foreign Person.** Borrower is not a "foreign person" within the meaning of § 1445(f)(3) of the Code.

**4.1.16 Separate Lots.** Each Individual Property is comprised of one (1) or more parcels which constitute a separate tax lot or lots and does not constitute a portion of any other tax lot not a part of such Individual Property.

**4.1.17 Assessments.** There are no pending or, to Borrower's knowledge, proposed special or other assessments for public improvements or otherwise affecting any Individual Property, nor are there any contemplated improvements to any Individual Property that may result in such special or other assessments.

**4.1.18 Enforceability.** The Loan Documents are not subject to any right of rescission, set-off, counterclaim or defense by Borrower, any Affiliates of Borrower including Holdings, Operating Company or Guarantor, including the defense of usury, nor would the operation of any of the terms of the Loan Documents, or the exercise of any right thereunder, render the Loan Documents unenforceable (subject to principles of equity and bankruptcy, insolvency and other laws generally affecting creditors' rights and the enforcement of debtors' obligations), and Borrower, any Affiliates of Borrower including Holdings, Operating Company and Guarantor have not asserted any right of rescission, set-off, counterclaim or defense with respect thereto.

**4.1.19 No Prior Assignment.** There are no prior assignments of the Leases (including the Operating Leases) or of the Rents (or any Revenue) due and payable or to become due and payable which are presently outstanding. There are no prior assignments of the Collateral which are presently outstanding except in accordance with the Loan Documents.

**4.1.20 Insurance.** Borrower (or Mortgage Borrower or Operating Company) has obtained and has delivered to Lender certified copies of all Policies reflecting the insurance coverages, amounts and other requirements set forth in this Agreement. No material claims have been made under any such Policies except such as have been disclosed to Lender, and no Person,

including Borrower, Mortgage Borrower, Senior Mezzanine Borrower and Operating Company, has done, by act or omission, anything which would impair the coverage of any such Policies.

**4.1.21 Use of Property.** Each Individual Property is used exclusively as a mixed-use hotel and casino operation, and other appurtenant and related uses.

**4.1.22 Gaming Licenses and Operating Permits.** (a) Schedule IX contains a correct and complete list of all Gaming Licenses and other material licenses, certification and permits for each of the Properties (and the holder thereof).

(b) Borrower possesses all licenses, permits, franchises, authorizations, certificates, approvals and consents which are material to the ownership of the Collateral. Mortgage Borrower possesses all licenses, permits, franchises, authorizations, certificates, approvals and consents, including, without limitation, all certificates of occupancy, which are material to the ownership and use of each of the Properties, and Operating Company possesses all licenses, permits, franchises, authorizations, certificates, approvals and consents, including, without limitation, all environmental, liquor, Gaming Licenses, health and safety licenses of all Governmental Authorities which are material to the conduct of their business and the use, occupation and operation of each of the Properties and the failure to possess which would have an Individual Material Adverse Effect (collectively, "**Operating Permits**"); each such Operating Permit is and will be in full force and effect (unless, in the case of any Operating Permit, such Operating Permit is no longer necessary or advisable for the conduct of Borrower's, Senior Mezzanine Borrower's, Mortgage Borrower's or Operating Company's business); Borrower, Senior Mezzanine Borrower, Mortgage Borrower, Operating Company and each of its Affiliates are in compliance in all material respects with all such Operating Permits, and no event (including, without limitation, any material violation of any law, rule or regulation) has occurred which would be reasonably likely to lead to the revocation or termination of any such Operating Permit or the imposition of any material restriction thereon.

(c) Operating Company and each of its Affiliates possesses all Gaming Licenses which are material to the conduct of their business and the ownership, use, occupation and operation of each of the Properties. Further, Borrower hereby represents and warrants as follows:

(i) Each Gaming License is in full force and effect (except for such Gaming Licenses as are no longer necessary or advisable for the conduct of Borrower's, Senior Mezzanine Borrower's, Mortgage Borrower's or Operating Company's business); Operating Company and each of its Affiliates, respective directors, members, managers, officers, key personnel and Persons holding a five percent (5%) or greater equity or economic interests directly or indirectly in Operating Company is in compliance in all material respects with all such Gaming Licenses (to the extent required by Legal Requirements), and no event (including, without limitation, any material violation of any Legal Requirements) has occurred which would be reasonably likely to lead to the revocation or termination of any such Gaming Licenses or the imposition of any restriction thereon;

(ii) Borrower has no reason to believe Mortgage Borrower and Operating Company will not be able to maintain in effect all Gaming Licenses necessary for the lawful conduct of their respective businesses or operations wherever now conducted and as planned to be conducted, including the ownership and operation of the Casino Components, pursuant to all applicable Legal Requirements;

(iii) All Gaming Licenses are in full force and effect and have not been amended or otherwise modified, rescinded, revoked or assigned in any manner that would reasonably be expected to have an Individual Material Adverse Effect;

(iv) Neither Mortgage Borrower nor Operating Company is in default in any material respect under, or in violation in any material respect of, any Gaming License (and no event has occurred, and no condition exists, which, with the giving of notice or passage of time or both, would constitute a default thereunder or violation thereof that has caused or would reasonably be expected to cause the loss of any Gaming License) (unless, in the case of any Gaming License, such Gaming License is no longer necessary or advisable for the conduct of Borrower's or Operating Company's business);

(v) Neither Mortgage Borrower nor Operating Company has received any notice of any violation of Legal Requirements which has caused or would reasonably be expected to cause any Gaming License to be suspended, forfeited, modified in any manner that would have an Individual Material Adverse Effect, not renewed, rescinded or revoked (unless, in the case of any Gaming License, such Gaming License is no longer necessary or advisable for the conduct of Mortgage Borrower's or Operating Company's business);

(vi) No condition exists or event has occurred which would reasonably be expected to result in the suspension, revocation, impairment, forfeiture, rescission or non-renewal of any Gaming License (unless, in the case of any Gaming License, such Gaming License is no longer necessary or advisable for the conduct of Mortgage Borrower's or Operating Company's business); and

(vii) The continuation, validity and effectiveness of all Gaming Licenses will not be adversely affected by the transactions contemplated by this Agreement.

(d) There is no proceeding, investigation, or disciplinary action (including, without limitation, before any Gaming Authority, under any Gaming Law or under any Gaming License or other Operating Permit) pending or, to Borrower's knowledge, threatened against any of Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or, to Borrower's knowledge, any of their respective directors, members, managers, officers, key personnel or Persons holding a five percent (5%) or greater direct or indirect equity or economic interest in Mortgage Borrower, Senior Mezzanine Borrower or Operating Company and that could reasonably be expected to have an Individual Material Adverse Effect.

(e) There is no proceeding (including, without limitation, before any Gaming Authority, under any Gaming Law or under any Gaming License or other Operating Permit) pending or, to Borrower's knowledge, threatened either (a) in connection with, or that seeks to

restrain, enjoin, prevent the consummation of or otherwise challenge, any of the Loan Documents or any of the transactions contemplated therein, or (b) that could reasonably be expected to have an Individual Material Adverse Effect.

(f) Neither the execution, delivery or performance of any of the Loan Documents (nor the Securitization or any participations in the Loan, or the creation or sale of any of the Mortgage Loan or Mezzanine Loans) will (i) require the consent of any Gaming Authority not heretofore obtained or (ii) allow or result in the imposition of any material penalty under, or the revocation or termination of, any Gaming License or any material impairment of the rights of the holder of any Gaming License.

**4.1.23 Intentionally Omitted.**

**4.1.24 Intentionally Omitted.**

**4.1.25 Intentionally Omitted.**

**4.1.26 Leases.** (a) The Operating Leases (together with any certificates and notifications entered into in connection therewith) and the Operating Lease Guaranty provided to Lender on the Closing Date are true, correct, accurate and complete copies of such documents and constitute the entire agreement between the parties thereto with respect to the subject matter therein and there are no written agreements modifying, amending, supplementing or restating such documents. Except as set forth on Schedule X, the Properties are not subject to any space Leases other than the Operating Lease and space Leases providing for occupancy of less than one hundred (100) square feet. Each Operating Lease is a “true lease” for all purposes of the Bankruptcy Code (including Section 365(d) and 502(b)(6) thereof) and applicable Legal Requirements, and no Operating Lease constitutes a financing or conveys any interest in the Properties other than the leasehold interest therein demised thereby. Mortgage Borrower is the owner and lessor of landlord’s interest in the Operating Lease and the Operating Lease Guaranty. Currently, no Person has any possessory interest in any Individual Property or right to occupy the same except under and pursuant to the provisions of the Operating Lease, any other space Leases listed on Schedule X and, with respect to a right to occupancy only (and not a possessory interest), hotel guests. Each Operating Lease and Operating Lease Guaranty is in full force and effect and there are no material events of default thereunder by any party thereto and there are no conditions that, with the passage of time or the giving of notice, or both, would constitute a default thereunder. No Rent under any Operating Lease has been paid more than one (1) month in advance of its due date and no Rents or charges under the Operating Lease have been waived, released or otherwise discharged or compromised. There has been no prior sale, transfer or assignment, hypothecation or pledge of any Operating Lease, any Operating Lease Guaranty or of the Rents. No Operating Company has assigned the Operating Lease or sublet all or any portion of any Individual Property except pursuant to the Operating Lease and the terms hereof.

(b) The Properties are not subject to any space Leases other than the Leases described in Schedule X attached hereto. Operating Company is the owner and lessor of landlord’s interest in all such space Leases. No Person has any possessory interest in any Individual Property except under and pursuant to the provisions of the space Leases, and no Person has any right to occupy any portion of any Individual Property except under and pursuant

to the provisions of the space Leases and hotel guests. The current space Leases are in full force and effect and, except as shown in Schedule X attached hereto, to Borrower's knowledge, there are no material defaults thereunder by either party and there are no conditions that, with the passage of time or the giving of notice, or both, would constitute defaults thereunder. No Rent has been paid more than one (1) month in advance of its due date. Except as shown in Schedule X attached hereto, all work to be performed by Mortgage Borrower (or Operating Company) under each space Lease has been performed as and to the extent required and has been accepted by the applicable tenant, and any payments, free rent, partial rent, rebate of rent or other payments, credits, allowances or abatements required to be given by Mortgage Borrower (or Operating Company) to any tenant has already been received by such tenant. There has been no prior sale, transfer or assignment, hypothecation or pledge of any space Lease or of the Rents received therein which is still in effect. To Borrower's knowledge, except as shown on Schedule X, no tenant listed on Schedule X has assigned its space Lease or sublet all or any portion of the premises demised thereby, no such tenant holds its leased premises under assignment or sublease, nor does anyone except such tenant and its employees occupy such leased premises. No tenant under any space Lease has a right or option pursuant to such Lease or otherwise to purchase all or any part of the leased premises or the building of which the leased premises are a part. No tenant under any space Lease has any right or option for additional space in the Improvements except pursuant to such tenant's space Lease.

**4.1.27 Intentionally Omitted.**

**4.1.28 Principal Place of Business; State of Organization.** (a) Borrower's principal place of business as of the date hereof is the address set forth in Schedule I. Each Borrower is organized under the laws of the State of Delaware.

(b) Operating Company's principal place of business as of the date hereof is the address set forth in Schedule I. Each Operating Company is organized under the laws of the state of Delaware.

**4.1.29 Filing and Recording Taxes.** All transfer taxes, deed stamps, intangible taxes or other amounts in the nature of transfer taxes required to be paid by any Person under applicable Legal Requirements currently in effect in connection with the transfer of the Collateral to Borrower have been paid. All recording, stamp, intangible or other similar tax required to be paid by any Person under applicable Legal Requirements currently in effect in connection with the execution, delivery, recordation, filing, registration, perfection or enforcement of any of the Loan Documents, including, without limitation, the Pledge Agreement, have been paid, and, under current Legal Requirements, the Pledge Agreement is enforceable in accordance with their respective terms by Lender (or any subsequent holder thereof), subject to principles of equity and bankruptcy, insolvency and other laws generally applicable to creditors' rights and the enforcement of debtors' obligations.

**4.1.30 Special Purpose Entity/Separateness.** (a) Until the Debt has been paid in full, Borrower hereby represents, warrants and covenants that Borrower and each SPE Party is, shall be and shall continue to be a Special Purpose Entity.

(b) The representations, warranties and covenants set forth in Section 4.1.30(a) shall survive for so long as any amount remains payable to Lender under this Agreement or any other Loan Document.

(c) All of the assumptions made in the Insolvency Opinion, including, but not limited to, any exhibits attached thereto, are true and correct and any assumptions made in any subsequent non-consolidation opinion required to be delivered in connection with the Loan Documents (an “**Additional Insolvency Opinion**”), including, but not limited to, any exhibits attached thereto, will have been and shall be true and correct. Borrower has complied and will comply with, and Borrower shall cause each SPE Party and Operating Company to comply with, all of the assumptions made with respect to the SPE Parties and Operating Company in the Insolvency Opinion. The SPE Parties will have complied and will comply with all of the assumptions made with respect to the SPE Parties in any Additional Insolvency Opinion. Each entity with respect to which an assumption shall be made in any Additional Insolvency Opinion will have complied and will comply with all of the assumptions made with respect to it in any Additional Insolvency Opinion.

(d) All of the assumptions made in the True Lease Opinion, including, but not limited to, any exhibits attached thereto, are true and correct and any assumptions made in any subsequent true lease opinion required to be delivered in connection with the Loan Documents (an “**Additional True Lease Opinion**”), including, but not limited to, any exhibits attached thereto, will have been and shall be true and correct. Each SPE Party has complied and will comply with, and Borrower shall cause Operating Company to comply with, all of the assumptions made with respect to such SPE Parties and Operating Company in the True Lease Opinion. Each SPE Party will have complied and will comply with all of the assumptions made with respect to such SPE Parties in any Additional True Lease Opinion. Each entity with respect to which an assumption shall be made in any Additional True Lease Opinion will have complied and will comply with all of the assumptions made with respect to it in any Additional True Lease Opinion.

**4.1.31 Operating Leases; Operating Lease Guaranty.** The Operating Leases and the Operating Lease Guaranty are in full force and effect and there is no default thereunder by any party thereto and no event has occurred that, with the passage of time and/or the giving of notice would constitute a default thereunder.

**4.1.32 Illegal Activity.** No portion of any Individual Property or the Collateral has been or will be purchased with proceeds of any illegal activity.

**4.1.33 Intentionally Omitted.**

**4.1.34 Investment Company Act.** Borrower is not an “investment company” or a company “controlled” by an “investment company,” within the meaning of the Investment Company Act of 1940, as amended.

**4.1.35 Embargoed Person.** At all times throughout the term of the Loan, including after giving effect to any Transfers permitted pursuant to the Loan Documents, (a) none of the funds or other assets of Borrower, Senior Mezzanine Borrower, Mortgage

Borrower, Holdings, Operating Company and Guarantor constitute property of, or are beneficially owned, directly or indirectly, by any person, entity or government subject to trade restrictions under U.S. law, including, but not limited to, the International Emergency Economic Powers Act, 50 U.S.C. § 1701 *et seq.*, The Trading with the Enemy Act, 50 U.S.C. App. 1 *et seq.*, and any Executive Orders or regulations promulgated thereunder with the result that the investment in any Loan Party or Operating Company, as applicable (whether directly or indirectly), is prohibited by law or the Loan made by the Lender is in violation of law (“**Embargoed Person**”); (b) no Embargoed Person has any interest of any nature whatsoever in any Loan Party, Holdings or Operating Company, as applicable, with the result that the investment in any Loan Party, Holdings or Operating Company, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law; and (c) none of the funds of any Loan Party, Holdings or Operating Company, as applicable, have been derived from any unlawful activity with the result that the investment in any Loan Party, Borrower, Holdings or Operating Company, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law.

**4.1.36 Operating Lease Subsidiary.** Tahoe Propco, LLC is the owner of one hundred percent (100%) of the equity interests of Ground Lease Subsidiary; Ground Lease Subsidiary does not own any assets other than its interests in the Ground Lease and does not have any liabilities other than liabilities under the Ground Lease; Ground Lease Subsidiary does not engage in any business other than that related to its ownership of interests in the Ground Lease.

**4.1.37 Taxes including Gaming Taxes and Fees.** Mortgage Borrower, Borrower and each of their respective Affiliates, and Operating Company and each of its Affiliates, have filed or caused to be filed all Federal, state, local and foreign tax returns (including, without limitation, all reports relating to gaming taxes and fees to the Gaming Authorities) which are required to be filed by them, on or prior to the date hereof, other than tax returns in respect of taxes that (i) are not franchise, capital or income taxes, (ii) in the aggregate are not material and (iii) would not, if unpaid, result in the imposition of any material Lien on any property or assets of Mortgage Borrower, Senior Mezzanine Borrower, Borrower or Operating Company or any of their respective Affiliates. All such filed tax returns were, to Borrower’s knowledge, true, correct and complete when filed. Mortgage Borrower, Senior Mezzanine Borrower, Borrower, Operating Company and each of their respective Affiliates, have paid or caused to be paid all taxes shown to be due and payable on such filed returns or on any assessments received by them, other than any taxes or assessments the validity of which Mortgage Borrower, Senior Mezzanine Borrower, Borrower, Operating Company or such Affiliate, as applicable) is contesting in good faith by appropriate proceedings, and with respect to which Mortgage Borrower, Senior Mezzanine Borrower, Borrower, Operating Company or such Affiliate, as applicable, shall have set aside adequate reserves. None of Mortgage Borrower, Senior Mezzanine Borrower, Borrower, Operating Company or any of their respective Affiliates, has as of the date hereof requested or been granted any extension of time to file any Federal, state, local or foreign tax return. None of Mortgage Borrower, Senior Mezzanine Borrower, Borrower or Operating Company is party to (or has any obligation under) any tax sharing agreement.

**4.1.38 Intentionally Omitted.**

**4.1.39 Intentionally Omitted.**

**4.1.40 Operation of Property.**

(a) The operation, management and use of each Individual Property by Mortgage Borrower and Operating Company is in compliance in all material respects with applicable Legal Requirements, including all applicable Gaming Laws, and all other federal, state, or local governmental authorities including, without limitation, those requirements relating to such Individual Property's physical structure and environment, except to the extent that non-compliance would not reasonably be expected to have an Individual Material Adverse Effect.

(b) The licenses, permits, and regulatory agreements, approvals and registrations relating to each Individual Property, including the Gaming Licenses, (i) may not be, and have not been, transferred to any location other than any Individual Property; have not been pledged as collateral security for any other loan or indebtedness; and are held free from restrictions or known conflicts that would materially impair the use or operation of any Individual Property as intended, (b) are in full force and effect and in good standing and (c) are not provisional, conditional or probationary in any manner.

(c) None of Mortgage Borrower, Senior Mezzanine Borrower, Borrower, Holdings, Guarantor or Operating Company is currently the subject of any proceeding by any Governmental Authority, and no notice of any violation has been received from a Governmental Authority that, in either case, would reasonably be expected to have an Individual Material Adverse Effect or an Aggregate Material Adverse Effect.

(d) None of Mortgage Borrower, Senior Mezzanine Borrower, Borrower or Operating Company has received a statement of charges or deficiencies and no penalty enforcement actions have been undertaken against any of them relating to any Individual Property by any Governmental Authority during the last three (3) calendar years which caused or could cause an Individual Material Adverse Effect or an Aggregate Material Adverse Effect.

(e) Each Operating Lease and Operating Lease Guaranty is in full force and effect and no party to either agreement has defaulted thereunder in any material respect.

(f) None of Mortgage Borrower or Operating Company has pledged its receivables relating to any of the Properties as collateral security for any other loan or indebtedness.

**4.1.41 Mortgage Loan Representations and Warranties.** All of the representations and warranties contained in the Mortgage Loan Documents and Senior Mezzanine Loan Documents are hereby incorporated into this Agreement and deemed made hereunder as and when made thereunder and shall remain incorporated without regard to any waiver, amendment or other modification thereof by the Mortgage Lender or Senior Mezzanine Lender or to whether the related Mortgage Loan Document or Senior Mezzanine Loan Document has been repaid or otherwise terminated, unless otherwise consented to in writing by Lender.

**4.1.42 Affiliates.** Effective as of the consummation of the transactions contemplated by this Agreement, the sole member of Borrower is Principal, which owns one hundred percent (100%) of the membership interests in Borrower. Borrower does not have any subsidiaries except as set forth in Schedule VIII.

**Section 4.2. Survival of Representations.** Borrower agrees that all of the representations and warranties of Borrower set forth in Section 4.1 and elsewhere in this Agreement and in the other Loan Documents shall survive for so long as any amount remains owing to Lender under this Agreement or any of the other Loan Documents by Borrower. All representations, warranties, covenants and agreements made in this Agreement or in the other Loan Documents by Borrower shall be deemed to have been relied upon by Lender notwithstanding any investigation heretofore or hereafter made by Lender or on its behalf.

## **V. BORROWER COVENANTS**

**Section 5.1. Affirmative Covenants.** From the date hereof and until payment and performance in full of all obligations of Borrower under the Loan Documents or the earlier release of the Liens of the Pledge Agreement (and all related obligations) in accordance with the terms of this Agreement and the other Loan Documents, Borrower hereby covenants and agrees with Lender that:

**5.1.1 Existence; Compliance with Legal Requirements.** Borrower shall, and shall cause Mortgage Borrower, Senior Mezzanine Borrower and Operating Company to, do or cause to be done all things necessary to preserve, renew and keep in full force and effect their existence, rights, licenses, permits and franchises and comply with all Legal Requirements applicable to Borrower, Senior Mezzanine Borrower, Mortgage Borrower, the Collateral, the Senior Mezzanine Collateral, Operating Company and the Properties, including, without limitation, Prescribed Laws. There shall never be committed by Borrower and Borrower shall not permit Mortgage Borrower or Senior Mezzanine Borrower to permit any other Person in occupancy of or involved with the operation or use of the Properties, including Operating Company, to commit any act or omission affording the federal government or any state or local government the right of forfeiture against the Collateral, the Senior Mezzanine Collateral, any Individual Property or any part thereof or any monies paid in performance of Borrower's obligations under any of the Loan Documents. Borrower hereby covenants and agrees not to commit, permit or suffer to exist any act or omission affording such right of forfeiture. Borrower shall, and shall cause Mortgage Borrower to, at all times maintain, preserve and protect all franchises and trade names and preserve all the remainder of its property used or useful in the conduct of its business and shall keep the Properties in good working order and repair. Borrower shall cause Mortgage Borrower to keep the Properties insured at all times as (and in the amounts) provided elsewhere in this Agreement. Borrower shall cause Mortgage Borrower to operate any Individual Property that is the subject of the O&M Agreement in accordance with the terms and provisions thereof in all material respects. After prior notice to Lender, Borrower, at its own expense, may contest (or cause Mortgage Borrower to contest) by appropriate legal proceeding promptly initiated and conducted in good faith and with due diligence, the validity of any Legal Requirement, the applicability of any Legal Requirement to Borrower, Senior Mezzanine Borrower, Mortgage Borrower, the Collateral, the Senior Mezzanine Collateral or any Individual Property or any alleged violation of any Legal Requirement, provided that (i) no Event of

Default has occurred and remains uncured; (ii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any applicable material instrument to which Borrower, Senior Mezzanine Borrower or Mortgage Borrower is subject and shall not constitute a default thereunder and such proceeding shall be conducted in accordance with all Legal Requirements; (iii) none of the Collateral, the Senior Mezzanine Collateral or any Individual Property nor any material part thereof or interest therein will be in imminent danger of being sold, forfeited, terminated, cancelled or lost; (iv) Borrower shall promptly upon receipt of a final, non-appealable determination thereof comply with any such Legal Requirement determined to be valid or applicable or cure any violation of any such Legal Requirement; (v) such proceeding shall suspend the enforcement of the contested Legal Requirement against Borrower, Senior Mezzanine Borrower, Mortgage Borrower, the Collateral, the Senior Mezzanine Collateral and any Individual Property; and (vi) Borrower shall furnish such security as may be required in the proceeding, or as may be reasonably requested by Lender, to insure compliance with such Legal Requirement, together with all interest and penalties payable in connection therewith. Lender may apply any such security, as necessary to cause compliance with such Legal Requirement at any time when, in the reasonable judgment of Lender, the validity, applicability or violation of such Legal Requirement is finally established or the Collateral, the Senior Mezzanine Collateral or any Individual Property (or any part thereof or interest therein) shall be in imminent danger of being sold, forfeited, terminated, cancelled or lost.

**5.1.2 Taxes and Other Charges.** Borrower shall pay or shall cause Mortgage Borrower to pay or cause to be paid all Taxes and Other Charges now or hereafter levied or assessed or imposed against the Properties or any part thereof as the same become due and payable; provided, however, Borrower's obligation to cause Mortgage Borrower to directly pay or cause to be paid Taxes shall be suspended for so long as Borrower complies with the terms and provisions of Section 7.2 hereof. Borrower will deliver or cause to be delivered to Lender receipts for payment or other evidence satisfactory to Lender that the Taxes and Other Charges have been so paid or are not then delinquent no later than the date on which the Taxes and/or Other Charges would otherwise be delinquent if not paid. Borrower shall furnish or cause to be furnished to Lender receipts for the payment of the Taxes and the Other Charges prior to the date the same shall become delinquent provided, however, Borrower is not required to furnish such receipts for payment of Taxes in the event that such Taxes have been paid by Lender pursuant to Section 7.2 hereof. Borrower shall not suffer (and shall not permit Mortgage Borrower to suffer) and shall promptly pay or cause to be paid and discharged (or cause Mortgage Borrower to pay or cause to be paid and discharged any Lien or charge whatsoever which may be or become a Lien or charge against the Properties other than Permitted Encumbrances, and shall promptly pay or cause to be paid for all utility services provided to the Properties. After prior notice to Lender, Borrower, at its own expense, may contest (or cause Mortgage Borrower to contest) by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any Taxes or Other Charges, provided that (a) no Default or Event of Default has occurred and remains uncured; (b) such proceeding shall be permitted under and be conducted in accordance with the provisions of any applicable material other instrument to which Borrower or Mortgage Borrower is subject and shall not constitute a default thereunder and such proceeding shall be conducted in accordance with all Legal Requirements; (c) none of the Collateral, the Senior Mezzanine Collateral, any Individual Property or any part of either or interest in either will be in imminent danger of being sold, forfeited, terminated, cancelled or lost; (d) Borrower shall promptly upon

receipt of a final, non-appealable determination thereof pay (or cause Mortgage Borrower to pay) the amount of any such Taxes or Other Charges, together with all costs, interest and penalties which may be payable in connection therewith; (e) such proceeding shall suspend the collection of such contested Taxes or Other Charges from the applicable Individual Property; and (f) Borrower shall furnish or cause Mortgage Borrower to furnish such security as may be required in the proceeding, or as may be reasonably requested by Lender, to insure the payment of any such Taxes or Other Charges, together with all interest and penalties thereon. Lender may pay over any such cash deposit or part thereof held by Lender to the claimant entitled thereto at any time when, in the judgment of Lender, the entitlement of such claimant is established or any Individual Property (or part thereof or interest therein) shall be in danger of being sold, forfeited, terminated, cancelled or lost or there shall be any danger of the Lien of any Mortgage being primed by any related Lien.

**5.1.3 Litigation.** Borrower shall give prompt notice to Lender of any litigation or governmental proceedings pending or, to Borrower's knowledge, threatened against Borrower, Senior Mezzanine Borrower, Mortgage Borrower, the Collateral, Operating Company, Holdings or Guarantor which, in any such case, might materially adversely affect Borrower's, Senior Mezzanine Borrower's, Mortgage Borrower's, the Collateral's, Operating Company's, Holdings's or Guarantor's condition (financial or otherwise) or business or any Individual Property. Borrower shall not, without the prior written consent of Lender (which may be furnished or withheld at its sole and absolute discretion), give its consent or approval to the settlement of any claim against Borrower, other than a fully insured third party claim, in any amount greater than One Hundred Thousand and No/100 Dollars (\$100,000.00).

**5.1.4 Access to Properties.** Borrower shall cause Mortgage Borrower to permit agents, representatives and employees of Lender and any Noteholder, and prospective purchasers of any Note or any interest therein, to inspect the Properties or any part thereof at reasonable hours upon reasonable advance notice, and Borrower shall cause Operating Company to permit such access by Lender, in each case subject to the rights of tenants under Leases and Hotel guests.

**5.1.5 Notice of Default.** Borrower shall promptly advise Lender of any material Default or Event of Default of which Borrower has knowledge, including any Mortgage Loan Default, Senior Mezzanine Loan Default, Senior Mezzanine Loan Event of Default or Mortgage Loan Event of Default.

**5.1.6 Cooperate in Legal Proceedings.** Borrower shall cooperate fully with Lender with respect to any proceedings before any court, board or other Governmental Authority which may in any way affect the rights of Lender hereunder or any rights obtained by Lender under any of the other Loan Documents and, in connection therewith, permit Lender, at its election, to participate in any such proceedings.

**5.1.7 Perform Loan Documents.** Borrower shall observe, perform and satisfy all the terms, provisions, covenants and conditions of, and shall pay when due all costs, fees and expenses to the extent required under the Loan Documents executed and delivered by, or applicable to, Borrower.

**5.1.8 Award and Insurance Benefits.** Borrower shall cooperate with Lender in obtaining for Lender the benefits of any Awards or Insurance Proceeds lawfully or equitably payable in connection with any Individual Property, and Lender shall be reimbursed for any actual, reasonable out-of-pocket expenses incurred in connection therewith (including actual, reasonable out-of-pocket attorneys' fees and disbursements, and, if reasonably required, the payment by Borrower of the expense of an appraisal on behalf of Lender in case of Casualty or Condemnation affecting any Individual Property or any part thereof) out of such Insurance Proceeds.

**5.1.9 Further Assurances.** Borrower shall and shall cause Mortgage Borrower, Senior Mezzanine Borrower, Guarantor and Operating Company to, at Borrower's sole cost and expense:

(a) furnish to Lender all instruments, documents, boundary surveys, footing or foundation surveys, certificates, plans and specifications, appraisals, title and other insurance reports and agreements, and each and every other document, certificate, agreement and instrument, in each case in such party's possession, not subject to confidentiality restrictions barring the delivery of such materials, and which are either required to be furnished by Borrower or Operating Company pursuant to the terms of the Loan Documents or which are reasonably requested by Lender in connection therewith;

(b) execute and deliver to Lender such documents, instruments, certificates, assignments and other writings, and do such other acts necessary or desirable, to evidence, preserve and/or protect the collateral at any time securing or intended to secure the obligations of Borrower under the Loan Documents, as Lender may reasonably require; and

(c) do and execute all and such further lawful and reasonable acts, conveyances and assurances for the better and more effective carrying out of the intents and purposes of this Agreement and the other Loan Documents, as Lender shall reasonably require from time to time.

**5.1.10 Mortgage Taxes.** Borrower represents that it has caused Mortgage Borrower to pay all state, county and municipal recording and all other taxes imposed upon the execution and recordation of the Mortgage.

**5.1.11 Financial Reporting.** (a) Borrower will keep or will cause to be kept and maintained on a Fiscal Year basis, in accordance with GAAP (or such other accounting basis acceptable to Lender), books, records and accounts reflecting all of the financial affairs of Borrower, Senior Mezzanine Borrower and Mortgage Borrower and all items of income and expense in connection with the operation on an individual basis of the Properties. Lender (at Lender's sole cost and expense) shall have the right from time to time at all times during normal business hours upon reasonable notice to examine the books, records and accounts of Borrower, Senior Mezzanine Borrower and Mortgage Borrower at the office of Borrower or any other Person maintaining such books, records and accounts and to make such copies or extracts thereof as Lender shall desire. After the occurrence and during the continuance of an Event of Default, Borrower shall pay any costs and expenses incurred by Lender to examine Borrower's, Senior Mezzanine Borrower's, Mortgage Borrower's or to the extent permitted under the Operating

Lease, Operating Company's accounting records with respect to the Properties, as Lender shall determine to be necessary or appropriate in the protection of Lender's interest.

(b) Borrower will furnish or cause to be furnished to Lender annually, by no later than April 30, 2009, and thereafter within no more than one hundred twenty (120) days following the end of each Fiscal Year of Borrower, a complete copy of the annual financial statements of the Operating Companies, Mortgage Borrower, Senior Mezzanine Borrower and Borrower (and of no other entity or Person), audited by a "Big Four" accounting firm or other independent certified public accountant acceptable to Lender in accordance with GAAP (or such other accounting basis acceptable to Lender) covering the Properties on a combined basis for such Fiscal Year (and no other Persons, Properties or assets) and containing statements of profit and loss for the Operating Companies, Borrower, Senior Mezzanine Borrower, Mortgage Borrower and the Properties (on a combined basis) and a balance sheet for the Operating Companies, Borrower, Senior Mezzanine Borrower, Mortgage Borrower and the Properties (on a combined basis), in each case showing no other assets than the Properties (and the interests of Operating Companies, Mortgage Borrower, Senior Mezzanine Borrower and Borrower therein). In addition, Borrower will furnish or cause to be furnished to Lender by no later than April 30, 2008 (i) a "balance sheet only audit" prepared by a "Big Four" accounting firm or other independent certified public accountant acceptable to Lender (for the Fiscal Year ending December 31, 2007) and (ii) a complete copy of annual financial statements for the Operating Company, Mortgage Borrower, Senior Mezzanine Borrower and Borrower prepared in accordance with GAAP (or such other accounting basis acceptable to Lender) covering the Operating Companies, Mortgage Borrower, Borrower, Senior Mezzanine Borrower, and the Properties on a combined basis for such Fiscal Year (ending December 31, 2007) and containing statements of profit and loss for the Operating Companies, Mortgage Borrower, Senior Mezzanine Borrower, Borrower and the Properties (in each case, on a combined basis), and a balance sheet for the Operating Companies, Mortgage Borrower, Senior Mezzanine Borrower, Borrower and the Properties (in each case on a combined basis). All such statements (including statements for the Fiscal Year ending December 31, 2007, and thereafter for all statements provided yearly to Lender) shall set forth the financial condition and the results of operations for the Properties for such Fiscal Year, and shall include, but not be limited to, amounts representing Borrower's reasonable and good faith determination of aggregate annual EBITDAR from all of the Properties and capital expenditures (allocated between maintenance and growth) at the Properties (it being acknowledged that Borrower's statement of EBITDAR pursuant to the above provisions of this sentence and the balance of this Section 5.1.11 shall not be binding on Lender and shall be subject to Lender's reasonable review). All such statements (including statements for the Fiscal Year ending December 31, 2007, and thereafter for all statements provided yearly to Lender) shall also set forth unaudited schedules for each Individual Property, detailing the statements of profit and loss and a balance sheet for each Individual Property, as well as gross revenues, gross hotel and casino revenues, EBITDAR and capital expenditures (allocated between maintenance and growth). The annual financial statements, as described above, shall be accompanied by (1) a comparison of the budgeted income and expenses and the actual income and expenses for the prior Fiscal Year, (2) in the case of any financial statements for Fiscal Year 2008 and thereafter, an unqualified opinion of a "Big Four" accounting firm or other independent certified public accountant reasonably acceptable to Lender, (3) room rate reports and RevPAR calculations, and (4) an Officer's Certificate certifying (A) that each annual financial statement presents fairly the financial condition and the results of operations of the Operating Companies,

Borrower, Mortgage Borrower, Senior Mezzanine Borrower and the Properties being reported upon, (B) that such financial statements have been prepared in accordance with GAAP (or such other accounting basis acceptable to Lender) and (C) as of the date thereof whether there exists an event or circumstance which constitutes a Default or Event of Default, and if such Default or Event of Default exists, the nature thereof, the period of time it has existed and the action then being taken to remedy the same. Any audits performed by Borrower (and any audited materials and other information provided to Lender, as required hereunder in order for Borrower to comply with the requirements of this subparagraph (b)) may be performed with respect to the Properties on a “combining basis” (so that a single audit of the Properties, rather than individual audits of each of the separate Properties, may be performed and provided).

(c) Borrower will furnish, or cause to be furnished, to Lender on or before sixty (60) days after the end of each fiscal quarter the following items, accompanied by an Officer’s Certificate stating that such items fairly present the financial condition and results of the Operating Companies, Mortgage Borrower, Senior Mezzanine Borrower, Borrower and the Properties, subject to normal year end adjustments, as applicable: (i) quarterly and year to date operating statements (including Capital Expenditures) noting such information as is necessary and sufficient to fairly represent the financial position and results of operation of the Properties during such quarter, and containing a comparison of budgeted income and expenses and the actual income and expenses together with a detailed explanation of any variances of ten percent (10%) or more between budgeted and actual amounts for such periods, all in form reasonably satisfactory to Lender; and (ii) a calculation reflecting the Debt Service Coverage Ratio, gross revenues, gross hotel and casino revenues, EBITDAR and capital expenditures (allocated between maintenance and growth, in the case for the immediately preceding twelve (12) month period as of the last day of such quarter (it being acknowledged that Borrower’s statement of EBITDAR pursuant to the above provisions of this sentence and the balance of this Section 5.1.11 shall not be binding on Lender and shall be subject to Lender’s reasonable review). Borrower shall provide the statements and calculations required hereunder on both a “combined basis” for all Properties and on an Individual Property-by-Individual Property basis. In addition, such Officer’s Certificate shall also state that the representations and warranties of Borrower set forth in Section 4.1.30 are true and correct as of the date of such certificate and that there are no trade payables outstanding for more than ninety (90) days. In addition, prior to a Securitization or Syndication, Borrower shall be obligated to provide the statements and calculations, as well as the Officer’s Certificate, described in this subparagraph (c) to Lender on a monthly basis (such requirements to be modified as appropriate to reflect the fact that the information shall be required to be provided monthly (*e.g.*, monthly rent rolls, monthly and year-to-date operating statements, a calculation reflecting the Debt Service Coverage Ratio for the immediately preceding twelve (12) month period as of the last day of such month), in each case within no more than thirty (30) days following the end of each calendar month.

(d) For the partial year period commencing on the date hereof, and for each Fiscal Year thereafter, Borrower shall submit to Lender for informational purposes only an Annual Budget not later than the commencement of such period or Fiscal Year in form reasonably satisfactory to Lender.

(e) Intentionally Omitted.

(f) If, at the time one or more Disclosure Documents are being prepared for a public Securitization, Lender expects that Borrower alone or Borrower and one or more Affiliates of Borrower collectively, or the Properties and Related Properties collectively, will be a “**Significant Obligor**”, as that term is defined in Item 1101(k) of Regulation AB (as defined below), Borrower shall furnish to Lender upon request (i) the selected financial data or, if applicable, net operating income, required under Item 1112(b)(1) of Regulation AB, if Lender expects that the principal amount of the Loan together with any other loans made to an Affiliate of Borrower or secured by a Related Property, that is included in a Securitization with the Loan (each, a “**Related Loan**”) as of the cut-off date for such Securitization may, or if the principal amount of the Loan together with any Related Loans as of the cut-off date for such Securitization and at any time during which the Loan and any Related Loans are included in a Securitization does, equal or exceed ten percent (10%) (but less than twenty percent (20%)) of the aggregate principal amount of all loans included or expected to be included, as applicable, in the Securitization or (ii) the financial statements required under Item 1112(b)(2) of Regulation AB, if Lender expects that the principal amount of the Loan together with any Related Loans as of the cut-off date for such Securitization may, or if the principal amount of the Loan together with any Related Loans as of the cut-off date for such Securitization and at any time during which the Loan and any Related Loans are included in a Securitization does, equal or exceed twenty percent (20%) of the aggregate principal amount of all loans included or expected to be included, as applicable, in the Securitization. Such financial data or financial statements shall be furnished to Lender (A) within ten (10) Business Days after written notice from Lender in connection with the preparation of Disclosure Documents for the Securitization, (B) not later than thirty (30) days after the end of each fiscal quarter of Borrower and (C) not later than sixty (60) days after the end of each fiscal year of Borrower; provided, however, that Borrower shall not be obligated to furnish financial data or financial statements pursuant to clauses (B) or (C) of this sentence with respect to any period for which a filing pursuant to the Exchange Act in connection with or relating to the Securitization (an “**Exchange Act Filing**”) is not required. If requested by Lender, in writing, Borrower shall use commercially reasonable efforts to furnish to Lender financial data and/or financial statements for any tenant of any of the Properties (other than a tenant that is a reporting company under the Exchange Act) if, in connection with a Securitization, Lender expects there to be, with respect to such tenant or group of affiliated tenants, a concentration within all of the loans included or expected to be included, as applicable, in the Securitization such that such tenant or group of affiliated tenants would constitute a Significant Obligor. “**Related Property**” shall mean a parcel of real property, together with improvements thereon and personal property related thereto, that is “related”, within the meaning of the definition of Significant Obligor, to any of the Properties. “**Regulation AB**” shall mean Regulation AB under the Securities Act and the Exchange Act, as such Regulation may be amended from time to time.

(g) All financial data and financial statements provided by Borrower, Senior Mezzanine Borrower, Mortgage Borrower and Operating Company hereunder pursuant to Section 5.1.11(f) shall be prepared in accordance with GAAP, and all such financial statements shall meet the requirements of Regulation AB, Regulation S-X, Regulation S-K to the extent applicable and any other applicable legal requirements. All financial statements referred to in clause (ii) of Section 5.1.11(f) shall be audited by independent accountants of Borrower reasonably acceptable to Lender in accordance with Regulation AB, Regulation S-X, Regulation S-K to the extent applicable and all other applicable legal requirements, shall be

accompanied by the manually executed report of the independent accountants thereon, which report shall meet the requirements of Regulation AB, Regulation S-X, Regulation S-K to the extent applicable and all other applicable legal requirements, and shall be further accompanied by a manually executed written consent of the independent accountants, in form and substance reasonably acceptable to Lender, to the inclusion of such financial statements in any Disclosure Document and any Exchange Act Filing and to the use of the name of such independent accountants and the reference to such independent accountants as “experts” in any Disclosure Document and Exchange Act Filing, all of which shall be provided at the same time as the related financial statements are required to be provided, in each case if applicable (*i.e.*, in the case of a public securitization). All financial data and financial statements (audited or unaudited) provided by Borrower under this Section 5.1.11(g) shall be accompanied by an Officer’s Certificate which shall state that such financial statements meet the requirements set forth in the first sentence of this Section 5.1.11(g), to the extent applicable.

(h) If requested by Lender, Borrower shall provide Lender, promptly upon request, with any other or additional financial statements, or financial, statistical or operating information, as Lender shall reasonably determine to be required pursuant to Regulation AB, Regulation S-X, Regulation S-K or any amendment, modification or replacement thereto or other legal requirements in connection with any Disclosure Document or any Exchange Act Filing or as shall otherwise be reasonably requested by the Lender.

(i) In the event Lender reasonably determines, in connection with a Securitization, that the financial data and financial statements required in order to comply with Regulation AB, Regulation S-X, Regulation S-K or any amendment, modification or replacement thereto or other legal requirements are other than as provided herein, then notwithstanding the provisions of Sections 5.1.11(f) and (g), Lender may request, and Borrower shall promptly provide, such other financial statements as Lender determines to be necessary or appropriate for such compliance.

(j) Any reports, statements or other information required to be delivered under this Agreement shall be delivered (i) in paper form, and (ii) if requested by Lender and within the capabilities of Borrower’s data systems without change or modification thereto, in electronic form and prepared using a Microsoft Word for Windows or WordPerfect for Windows files (which files may be prepared using a spreadsheet program and saved as word processing files). Borrower agrees that Lender may disclose information regarding any of the Properties, the Collateral, the Senior Mezzanine Collateral, Mortgage Borrower, Senior Mezzanine Borrower, Borrower and Operating Company that is provided to Lender pursuant to this Section in connection with the Securitization to such parties reasonably requesting such information in connection with such Securitization.

**5.1.12 Business and Operations.** Borrower will, and will cause Mortgage Borrower and Operating Company to, continue to engage in the businesses presently conducted by it as and to the extent the same are necessary for the ownership, maintenance, management and operation of the Properties. Borrower will and will cause Senior Mezzanine Borrower, Mortgage Borrower and Operating Company to qualify to do business and will remain in good standing under the laws of each jurisdiction as and to the extent the same are required for the ownership, maintenance, management and operation of the Properties.

**5.1.13 Title to the Properties.** Borrower will cause Mortgage Borrower to warrant and defend (a) the title to each Individual Property and every part thereof, subject only to Liens permitted hereunder (including Permitted Encumbrances) and (b) the validity and priority of the Liens of the Mortgages and the Assignments of Leases, subject only to Liens permitted hereunder (including Permitted Encumbrances), in each case against the claims of all Persons whomsoever. Borrower shall reimburse Lender for any actual out-of-pocket losses, costs, damages or expenses (including reasonable attorneys' fees and court costs) incurred by Lender if an interest in any Individual Property, other than as permitted hereunder, is claimed by another Person. Borrower will warrant and defend (a) the title to the Collateral and every part thereof, subject only to Liens permitted hereunder and (b) the validity and priority of the Liens of the Pledge Agreement, in each case against the claims of all Persons whomsoever. Borrower shall reimburse Lender for any actual out-of-pocket losses, costs, damages or expenses (including reasonable attorneys' fees and court costs) incurred by Lender if an interest in any part of the Collateral, other than as permitted hereunder, is claimed by another Person.

**5.1.14 Costs of Enforcement.** In the event (a) that any Mortgage encumbering any Individual Property or the Lien of the Pledge Agreement is foreclosed in whole or in part or that any such Mortgage or Pledge Agreement is put into the hands of an attorney for collection, suit, action or foreclosure, (b) of the foreclosure of any mortgage prior to or subsequent to any Mortgage or any Lien prior to or subsequent to the Lien of the Pledge Agreement in which proceeding Mortgage Lender or Lender is made a party or exercises any or all of its rights or remedies under such Mortgage or the Pledge Agreement or any other Loan Documents as and when permitted thereby, or (c) of the bankruptcy, insolvency, rehabilitation or other similar proceeding in respect of Borrower, Senior Mezzanine Borrower, Mortgage Borrower or Operating Company or an assignment by Borrower, Senior Mezzanine Borrower, Mortgage Borrower or Operating Company for the benefit of its creditors, Borrower, its successors or assigns, shall be chargeable with and agrees to pay all reasonable out-of-pocket costs of collection and defense, including reasonable out-of-pocket attorneys' fees and costs, incurred by Lender, Mortgage Borrower, Senior Mezzanine Borrower or Borrower in connection therewith and in connection with any appellate proceeding or post-judgment action involved therein, together with all required service or use taxes.

**5.1.15 Estoppel Statement.** (a) After request by Lender, Borrower shall within ten (10) Business Days (but, provided there exists no Default or Event of Default, no more often than twice during the course of each fiscal year of Borrower) furnish Lender with a statement, duly acknowledged and certified, (i) with respect to the Loan, setting forth (A) the original principal amount of the Note, (B) the unpaid principal amount of the Loan, (C) the Interest Rate of the Loan, (D) the date installments of interest and/or principal were last paid, (E) any offsets or defenses to the payment of the Debt, if any, and (F) that the Note, this Agreement, the Pledge Agreement and the other Loan Documents are valid, legal and binding obligations and have not been modified or if modified, giving particulars of such modification, (ii) with respect to any Senior Mezzanine Loan, setting forth (A) the original principal amount of the applicable Senior Mezzanine Loan, (B) the unpaid principal amount of the Senior Mezzanine Loan, (C) the interest rate of the Senior Mezzanine Loan, (D) the date installments of interest and/or principal were last paid, (E) any offsets or defenses to the payment of the debt, if any, and (F) that the Senior Mezzanine Note, the Senior Mezzanine Loan Agreement and the other Senior Mezzanine Loan Documents are valid, legal and binding obligations and have not been modified or if modified,

giving particulars of such modification and (iii) with respect to the Mortgage Loan, setting forth (A) the original principal amount of the Mortgage Loan, (B) the unpaid principal amount of the Mortgage Loan, (C) the interest rate of the Mortgage Loan, (D) the date installments of interest and/or principal were last paid, (E) any offsets or defenses to the payment of the debt, if any, and (F) that the Mortgage Note, the Mortgage Loan Agreement, the Security Instruments and the other Mortgage Loan Documents are valid, legal and binding obligations and have not been modified or if modified, giving particulars of such modification.

(b) Borrower shall exercise reasonable best efforts to deliver to Lender upon request, tenant estoppel certificates from each space tenant leasing space at the Properties, and shall exercise reasonable best efforts to deliver an estoppel certificate from each Ground Lessor, each in form and substance reasonably satisfactory to Lender provided that Borrower shall not be required to deliver such certificates more frequently than two (2) times in any calendar year.

(c) After request by Borrower, but not more than twice during the course of each year, Lender shall furnish Borrower with a statement setting forth (i) the original principal amount of the Loan, (ii) the unpaid principal amount of the Loan, (iii) the Interest Rate of the Loan, (iv) the date installments of interest and/or principal were last paid, and (v) that the Loan Documents have not been modified or if modified, giving particulars of such modification.

**5.1.16 Loan Proceeds.** Borrower shall use the proceeds of the Loan received by it on the Closing Date only for the purposes set forth in Section 2.1.4.

**5.1.17 Performance by Borrower.** Borrower shall in a timely manner observe, perform and fulfill each and every covenant, term and provision of each Loan Document executed and delivered by, or applicable to, Borrower, and shall not enter into or otherwise suffer or permit any amendment, waiver, supplement, termination or other modification of any Loan Document executed and delivered by, or applicable to, Borrower without the prior consent of Lender. Borrower shall cause Mortgage Borrower and Senior Mezzanine Borrower, in a timely manner, to observe, perform and fulfill each and every covenant, term and provision of each Mortgage Loan Document and Senior Mezzanine Loan Documents executed and delivered by, or applicable to, Mortgage Borrower and Senior Mezzanine Borrower, and shall not cause or permit Mortgage Borrower or Senior Mezzanine Borrower to enter into or otherwise suffer or permit any amendment, waiver, supplement, termination or other modification of any Mortgage Loan Document or Senior Mezzanine Loan Document executed and delivered by, or applicable to, Mortgage Borrower or Senior Mezzanine Borrower without the prior written consent of Lender.

**5.1.18 Confirmation of Representations.** Borrower shall deliver, in connection with any Securitization, (a) one or more Officer's Certificates certifying as to the accuracy of all representations made by Borrower in the Loan Documents as of the date of the closing of such Securitization in all relevant jurisdictions, and (b) certificates of the relevant Governmental Authorities in all relevant jurisdictions indicating the good standing and qualification of Mortgage Borrower, Senior Mezzanine Borrower, Borrower and Holdings as of the date of the Securitization.

**5.1.19 No Joint Assessment.** Borrower shall not, and shall not permit Mortgage Borrower to, suffer, permit or initiate the joint assessment of any Individual Property (a) with

any other real property constituting a tax lot separate from such Individual Property, and (b) which constitutes real property with any portion of such Individual Property which may be deemed to constitute personal property, or any other procedure whereby the lien of any taxes which may be levied against such personal property shall be assessed or levied or charged to such real property portion of the Individual Property, except as required by Legal Requirements.

**5.1.20 Leasing Matters.** (a) Borrower shall not (and shall cause Mortgage Borrower and Guarantor (Operating Lease) not to), without the prior written consent of Lender (and, if a Securitization shall have occurred, Borrower shall have obtained and delivered to Lender a Rating Agency Confirmation) restate, materially modify, materially amend or materially supplement (or permit the restatement, material modification, amendment or supplement of) any Operating Lease or Operating Lease Guaranty (provided, that any modification, amendment or supplement affecting any of the economic terms of any Operating Lease or any of the terms of the Operating Lease Guaranty shall be deemed to be material for purposes hereof), terminate or accept the surrender (or permit the termination or surrender) of any Operating Lease or Operating Lease Guaranty, or release or materially waive (or permit the release or material waiver of) the Operating Company or Guarantor (Operating Lease) from the performance or observance of any obligation or condition under the Operating Leases or Operating Lease Guaranty. In connection with a material modification, Lender may request, and in such event, Borrower shall not effect such modification without, an Additional True Lease Opinion in form and substance reasonably satisfactory to Lender issued by Borrower's counsel (at Borrower's expense). Borrower shall not permit (or cause or permit Mortgage Borrower to permit) the prepayment of any rents under the Operating Leases for more than one (1) month prior to the due date thereof. Notwithstanding the foregoing, Lender's consent shall not be required in connection with any modification, amendment or waiver of any provision of the Operating Lease as may be reasonably necessary to comply with the requirements of this Agreement or any other Loan Document or that makes the provisions of the Operating Lease consistent with the provisions of this Agreement or any other Loan Document. Notwithstanding anything contained in this Section 5.1.20(a) to the contrary, (x) Lender's consent to any amendment, modification or supplement of the Operating Lease (or any new Operating Lease) or the Operating Lease Guaranty may also be conditioned on the delivery by Borrower, upon the reasonable request of Lender, of an Additional Insolvency Opinion and/or an Additional True Lease Opinion acceptable to Lender (and, if a Securitization shall have occurred, acceptable to the Rating Agencies), and (y) Lender's consent to any assignment of any Operating Lease or Operating Lease Guaranty (or of any interest therein) or any material amendment, material modification or material supplement of any Operating Lease shall also be conditioned on the delivery by Borrower, upon the reasonable request of Lender, of an Additional Insolvency Opinion and an Additional True Lease Opinion acceptable to Lender (and, if a Securitization shall have occurred, acceptable to the Rating Agencies).

(b) Borrower shall not permit (or consent to) an assignment by any Operating Company of any such Operating Company's interest(s) under any Operating Lease or an assignment by any Mortgage Borrower of any such Mortgage Borrower's interest(s) under any Operating Lease Guaranty without, in each case, Lender's prior written consent (and, if a Securitization shall have occurred, at Lender's request, without Borrower providing to Lender a Rating Agency Confirmation and an Additional True Lease Opinion).

(c) All space Leases and all renewals of space Leases executed after the date hereof entered into by Operating Company shall (i) provide for rental rates, rent credits and free rent periods comparable to existing local market rates for comparable properties, (ii) be on commercially reasonable terms, (iii) provide that such Lease is subordinate to the Mortgage encumbering the Individual Property in question and that the lessee will attorn to Mortgage Lender and any purchaser at a foreclosure sale; (iv) not contain any terms which would materially adversely affect Lender's rights under the Loan Documents; (v) not grant to the Tenants thereunder any option or right to purchase the applicable Individual Property (or any portion thereof); and (v) in the case of Major Leases, have initial terms less than twenty (20) consecutive years, in each case (unless otherwise consented to by Lender pursuant to clause (d) below).

(d) (i) Any Major Lease entered into by Operating Company with respect to an Individual Property executed after the date hereof (and any renewal of any Major Lease with respect to an Individual Property), and any space Lease or space Lease renewal proposed to be entered into by Operating Company after the date hereof and that does not meet the criteria set forth in Sections 5.1.20(a) and subparagraph (c) above, shall be subject to the prior written approval of Lender, which approval shall not be unreasonably withheld, conditioned or delayed. Borrower shall not terminate or accept the surrender of (and shall not permit Operating Company or Mortgage Borrower to terminate or accept the surrender of) a Major Lease (unless by reason of a tenant default) without the consent of Lender.

(ii) Every submission to Lender of any proposed Major Lease (or Major Lease renewal, amendment, modification or termination) for Lender's approval shall be forwarded to Lender together with a notice from Borrower (in bold typeface) that states "YOUR FAILURE TO RESPOND TO THIS NOTICE AND REQUEST FOR APPROVAL WITHIN TEN (10) BUSINESS DAYS OF YOUR RECEIPT OF THIS NOTICE SHALL CONSTITUTE YOUR DEEMED CONSENT TO THE MATTERS DESCRIBED IN OR THAT ARE THE SUBJECT OF THIS NOTICE". If Lender responds to Borrower's request by identifying missing documents or materials that are incomplete or inaccurate (and that are the subject of the request for approval), then Borrower shall re-submit such documents or materials to Lender for its approval together with a second notice from Borrower that complies with this section.

(iii) If Lender fails to approve or disapprove any such proposed request or submission attached to a first notice or request sent by Borrower (or the matters that are the subject of the re-submitted notice or request for approval) within ten (10) Business Days of receipt of same, Borrower shall re-submit such instruments or materials to Lender for Lender's approval and give Lender a second notice (in bold typeface) that states "SECOND NOTICE — YOUR FAILURE TO RESPOND TO THIS NOTICE AND REQUEST FOR APPROVAL WITHIN FIVE (5) BUSINESS DAYS OF YOUR RECEIPT OF THIS NOTICE SHALL CONSTITUTE YOUR DEEMED CONSENT TO THE MATTERS DESCRIBED IN OR THAT ARE THE SUBJECT OF THIS NOTICE". If Lender fails to respond to such second notice within five (5) Business Days of receipt of same, then Lender's consent to the proposed request or submission that is the subject of such notice shall be deemed granted.

(e) Borrower shall and shall cause Mortgage Borrower and Operating Company to (i) observe and perform the obligations imposed upon the lessor under the Leases in

a commercially reasonable manner; (ii) enforce the terms, covenants and conditions contained in the Leases upon the part of the lessee thereunder to be observed or performed in a commercially reasonable manner and in a manner not to impair the value of the Individual Property involved; (iii) not collect any of the rents more than one (1) month in advance (other than security deposits); (iv) not execute any other assignment of lessor's interest in the Leases or the Rents (except as contemplated by the Loan Documents); (v) not alter, modify or change the terms of the Leases in a manner inconsistent with the provisions of the Loan Documents; and (vi) execute and deliver at the request of Lender all such further assurances, confirmations and assignments in connection with the Leases as Lender shall from time to time reasonably require.

(f) Upon request, Borrower shall furnish Lender with executed copies of all new Leases or Lease renewals or amendments.

(g) Notwithstanding anything to the contrary contained herein, Borrower shall not enter into (or permit Operating Company or Mortgage Borrower to enter into) a lease of all or substantially all of any Individual Property without Lender's prior consent.

**5.1.21 Alterations.** (a) Borrower shall cause all Alterations with respect to any portion of any of the Properties to be conducted and performed with due diligence in a good and workmanlike manner, and all materials used and work done shall be in accordance with all applicable Legal Requirements. In addition, with respect to the Convention Center Project and the Tower Project, to the extent such projects are pursued, Borrower agrees to cause Mortgage Borrower to (i) diligently pursue each such project to completion in a timely manner, subject to delays arising from Force Majeure events, (ii) cause the work to be performed in connection with each such project in substantial conformance with the plans and specifications for such project, and otherwise in conformity with the Mortgage Loan Agreement, each Senior Mezzanine Loan Agreement and this Agreement, (iii) provide Lender with reasonably detailed monthly progress reports (and such information as Lender shall reasonably request from time to time) regarding the status of the Convention Center Project and the Tower Project, (iv) upon the substantial completion of each such project, provide Lender with evidence of the substantial completion of each such project, copies of final unconditional lien waivers from the general contractors, construction managers or subcontractors for such project (if requested by Lender) and evidence of the final payment of all amounts due in connection with each such project, and a title search for the affected Individual Property indicating that such Individual Property is free from all liens, claims and other encumbrances not previously approved by Lender, and (v) upon final completion of each such project, provide Lender with a final survey acceptable to Lender showing the "as-built" location of the completed Improvements and all easements appurtenant thereto, and "as-built" plans and specifications for Lender's file and a certificate of occupancy to the extent issued by the relevant Governmental Authority.

(b) Borrower shall obtain Lender's prior consent to (i) any Material Alterations (unless collateral or a completion guaranty is provided as set forth in subparagraph (c) below) or (ii) any Alterations to any of the Improvements (even if otherwise described in clause (i) above) that is reasonably likely to have an Individual Material Adverse Effect. Lender's consent shall not be required for any Alterations other than the Alterations described in the preceding sentence. Notwithstanding any provision hereof to the contrary, without Lender's consent, not to be unreasonably withheld or delayed, in no event shall Borrower close or shutter,

or undertake or permit any Tenant or other Person to undertake, an Alteration that, alone or together with other work then being undertaken, closes or shutters, more than ten percent (10%) of the income-generating space in any Individual Property at any one time. Prior to undertaking any Alteration with respect to an Individual Property in excess of five percent (5%) of the sum of the Allocated Loan Amount for such Individual Property and the "Allocated Loan Amounts" under (and as defined in each of) the Mortgage Loan Agreement and the Other Mezzanine Loan Agreements for such Individual Property, to afford Lender a prior and reasonable opportunity to determine whether or not the proposed Alteration would have an Individual Material Adverse Effect, Borrower will deliver such plans, specifications, project schedules, logistical plans, construction budgets (including a statement of sources and uses) and such other information as Lender may reasonably request in respect of such Alteration for review by Lender (and its consultants). All reasonable out-of-pocket costs and expenses incurred by Lender in connection with reviewing said Alterations proposal, including, without limitation, reasonable counsel fees and disbursements and Lender's consultants, shall be paid by Borrower. The above-referenced submission to Lender shall be delivered with a notice from Borrower (in bold typeface) that states "YOUR FAILURE TO RESPOND TO THIS NOTICE AND REQUEST FOR APPROVAL WITHIN TEN (10) BUSINESS DAYS OF YOUR RECEIPT OF THIS NOTICE SHALL CONSTITUTE YOUR DEEMED CONSENT TO THE MATTERS DESCRIBED IN OR THAT ARE THE SUBJECT OF THIS NOTICE". If Lender responds to Borrower's request by identifying missing documents or materials that are incomplete or inaccurate (and that are the subject of the request for approval), then Borrower shall re-submit such documents or materials to Lender for its approval together with a second notice from Borrower that complies with this Section. If Lender fails to approve or disapprove any such proposed request or submission attached to a first notice or request sent by Borrower (or the matters that are the subject of the re-submitted notice or request for approval) within ten (10) Business Days of receipt of same, Borrower shall re-submit such instruments or materials to Lender for Lender's approval and give Lender a second notice (in bold typeface) that states "SECOND NOTICE — YOUR FAILURE TO RESPOND TO THIS NOTICE AND REQUEST FOR APPROVAL WITHIN TEN (10) BUSINESS DAYS OF YOUR RECEIPT OF THIS NOTICE SHALL CONSTITUTE YOUR DEEMED CONSENT TO THE MATTERS DESCRIBED IN OR THAT ARE THE SUBJECT OF THIS NOTICE". If Lender fails to respond to such second notice within ten (10) Business Days of receipt of same, then Lender's consent to the proposed request or submission that is the subject of such notice shall be deemed granted.

(c) With respect to any Material Alteration, unless otherwise consented to by Lender, Borrower shall promptly deliver to Mortgage Lender as security for the payment of such amounts and as additional security for Borrower's obligations under the Loan Documents any of the following: (A) cash, (B) U.S. Obligations, (C) other securities having a rating acceptable to Lender and that the applicable Rating Agencies have confirmed in writing will not, in and of itself, result in a downgrade, withdrawal or qualification of the initial, or, if higher, then current ratings assigned to any Securities or any class thereof in connection with any Securitization, (D) a completion and performance bond or an irrevocable letter of credit (payable on sight draft only) issued by an Eligible Institution, or (E) a completion guaranty from an Approved Guarantor in the form attached hereto as Exhibit A (with such changes as Lender shall approve), together with evidence reasonably satisfactory to Lender that the Approved Guarantor has reasonable liquidity taking into account the nature and amount of the guaranteed obligations under such completion guaranty (it being agreed that, if the Approved Guarantor in question is

Holdings, then the amounts available for repayment of such obligations under any revolving credit facility in effect at such time in favor of Harrah's Operating Company, Inc. will be taken into account in determining whether Holdings has reasonable liquidity), and with, if required by applicable Rating Agency requirements, an Additional Insolvency Opinion. Such security, including the amount of the guaranteed obligations under any completion guaranty delivered as aforesaid, shall be in an amount equal to the sum of (i) the excess of the total unpaid amounts with respect to alterations to the Improvements on the applicable Individual Property (other than such amounts to be paid or reimbursed by tenants under the Leases) over the Threshold Amount and (ii) the costs of collection, and, upon the occurrence and during the continuance of an Event of Default, Lender may apply such security from time to time at the option of Lender to pay for such alterations.

**5.1.22 Operation of Properties.** (a) Borrower shall cause Mortgage Borrower to cause each of the Properties to be operated, in all material respects, in accordance with the Operating Leases and in accordance with all applicable Legal Requirements, including Gaming Laws, and all Gaming Licenses and other Operating Permits and in a manner consistent with their respective use as of the Closing Date. Borrower shall cause Operating Company to post all required bonds, if any, with any Gaming Authority as and in the amounts required under all applicable Legal Requirements (and shall, if Lender makes a request therefor, promptly provide Lender with copies of all such bonds).

(b) Borrower shall not, without Lender's prior written consent, permit Operating Company to assign or transfer, and Operating Company shall not, without Lender's prior written consent, assign or transfer, or delegate any responsibilities with respect to, any Gaming License or Operating Permit.

(c) Borrower shall cause Operating Company to make all filings required under the Gaming Laws, or in connection with any Gaming Licenses or Operating Permits, including in connection with the origination of the Mortgage Loan and the Mezzanine Loans, and shall deliver copies of such filings as Lender shall reasonably request to Lender, promptly upon request. Borrower will timely pay all fees, investigative fees and costs required by the Gaming Authorities with respect to any such approvals and licenses. Borrower will and will cause Mortgage Borrower to diligently and comprehensively respond to any inquiries and requests from the Gaming Authorities and promptly file or cause to be filed any additional information required in connection with any required filings as soon as practicable after receipt of requests therefor.

(d) Upon request of Lender, Borrower shall deliver to Lender (or cause Operating Company to deliver to Lender) such evidence of compliance (by Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company and each Individual Property) with all Legal Requirements, including Gaming Laws as shall be reasonably requested by Lender. Borrower shall immediately deliver to Lender (and shall cause Operating Company and Mortgage Borrower to deliver to Lender) any notice of material non-compliance or material violation of any Legal Requirement, or of any material inquiry or investigation commenced by the Gaming Authorities in connection with any of the Properties. Borrower shall immediately notify Lender if it, Senior Mezzanine Borrower, Mortgage Borrower or Operating Company believe that any material license, including any Gaming License, is being or could be revoked or

suspended, or that any action is pending, being considered or being, or could be, taken to revoke or suspend Borrower's, Senior Mezzanine Borrower's, Mortgage Borrower's or Operating Company's material licenses, including the Gaming Licenses, or to fine, penalize or impose remedies upon Borrower, Mortgage Borrower, Senior Mezzanine Borrower or Operating Company, or that any action is pending, being considered, or being, or could be, taken to discontinue, suspend, deny, decrease or recoup any payments due, made or coming due to Borrower, Senior Mezzanine Borrower, Mortgage Borrower or Operating Company, in each case if same might reasonably be expected to have an Individual Material Adverse Effect. Borrower shall immediately deliver to Lender any notice received by Borrower, Senior Mezzanine Borrower, Mortgage Borrower or Operating Company alleging or relating to the material non-compliance by Borrower, Senior Mezzanine Borrower, Mortgage Borrower or Operating Company with any Legal Requirements, including Gaming Laws.

(e) In the event that any of the Operating Leases expire or are terminated (without limiting any obligation of Borrower to obtain Lender's consent to any termination or modification of any of the Operating Leases in accordance with the terms and provisions of this Agreement), Borrower shall cause Mortgage Borrower to promptly enter into a replacement Operating Lease (in form and substance satisfactory to Lender) with Operating Company or another operating company reasonably satisfactory to Lender, provided Borrower will obtain a Rating Agency Confirmation as a condition to the effectiveness of such replacement Operating Lease and that Borrower will cause Guarantor (Operating Lease) to execute and deliver an operating lease guaranty in the same form and substance as the Operating Lease Guaranty.

(f) Borrower shall cause Mortgage Borrower to: (i) promptly perform and/or observe, in all material respects, all of the covenants and agreements required to be performed and observed by it under the Operating Lease and do all things necessary to preserve and to keep unimpaired its material rights thereunder; (ii) promptly notify Lender of any material default under any Operating Lease or Operating Lease Guaranty of which it is aware; (iii) promptly deliver to Lender a copy of each financial statement, business plan, capital expenditures plan, notice, report and estimate received by it under each Operating Lease; and (iv) enforce the performance and observance of all of the material covenants and agreements required to be performed and/or observed by each Operating Company under each Operating Lease and by each Guarantor (Operating Lease) under each Operating Lease Guaranty, in a commercially reasonable manner.

(g) Borrower shall cause Mortgage Borrower to cause the Hotel Components to be at all times open for business as a hotel and the Casino Components to be open for business as a casino, except to the extent necessary to undertake any alterations or repairs (subject to the provisions of this Agreement with respect to the performance of any such alterations or repairs). Borrower shall cause each Individual Property to be at all times operated, managed and maintained, at all times and in the manner and accordance with the standards required pursuant to the Operating Leases and all applicable Legal Requirements in all material respects.

(h) If Mortgage Borrower shall be in material default under any Operating Lease, then, subject to the terms of such Operating Lease, Borrower shall cause Mortgage Borrower (subject to any applicable Legal Requirements) to grant Lender the right (but not the obligation), to cause the default or defaults under such Operating Lease to be remedied and

otherwise exercise any and all rights of Mortgage Borrower under such Operating Lease, as may be necessary to prevent or cure any default provided such actions are necessary to protect Lender's interest under the Loan Documents, and Lender shall have the right to enter all or any portion of the affected Individual Property at such times and in such manner as Lender deems necessary, to prevent or to cure any such default. The actions or payments of Lender to cure any default by Mortgage Borrower under any Operating Lease shall not remove or waive, as between Borrower and Lender, any default that may occur or occurred under this Agreement by virtue of such default by Mortgage Borrower under such Operating Lease. All out-of-pocket sums reasonably expended by Lender to cure any such default shall be paid by Borrower to Lender, upon demand, with interest on such sum at the rate set forth in this Agreement from the date such sum is expended to and including the date the reimbursement payment is made to Lender. All such indebtedness shall be deemed to be secured by the Pledge Agreement and the Collateral.

(i) Borrower shall notify Lender promptly in writing of (i) the occurrence, to Borrower's knowledge, of any material default by any party to any Operating Lease or any Operating Lease Guaranty, (ii) the occurrence, to Borrower's knowledge, of any event that, with the passage of time or service of notice, or both, would constitute a material default by any party under any Operating Lease or any Operating Lease Guaranty, and (iii) the receipt by Borrower or its Affiliate of any notice (written or otherwise) from any party under any Operating Lease or any Operating Lease Guaranty noting or claiming the occurrence of any material default by Borrower under such Operating Lease or such Operating Lease Guaranty.

(j) Borrower shall (subject to any applicable Legal Requirements) promptly cause Mortgage Borrower to execute, acknowledge and deliver to Lender such instruments as may reasonably be required to permit Lender to cure any material default under any Operating Lease or permit Lender to take such other action required to enable Lender to cure or remedy the matter in default and preserve the value of the security interest of Lender under the Loan Documents with respect to the Collateral. Upon the occurrence and during the continuance of an Event of Default, Borrower irrevocably appoints Lender as its true and lawful attorney-in-fact to do, in its name or otherwise, any and all acts and to execute any and all documents that are necessary to preserve any rights of Mortgage Borrower under or with respect to any Operating Lease, including, without limitation, the right to effectuate any extension or renewal of any Operating Lease, or to preserve any rights of Mortgage Borrower whatsoever in respect of any part of any Operating Lease (and the above powers granted to Lender are coupled with an interest and shall be irrevocable).

(k) With respect to any Operating Lease or any Operating Lease Guaranty, Borrower shall, from time to time, upon ten (10) Business Days' prior written request from Lender, execute, acknowledge and deliver to Lender, a statement containing the following: (A) a statement that such Operating Lease or such Operating Lease Guaranty is unmodified and in full force and effect or, if there have been modifications, that the Operating Lease or the Operating Lease Guaranty is in full force and effect as modified and setting forth such modifications, (B) a statement that Mortgage Borrower is not in default thereunder beyond any applicable grace, cure or notice period or, if any such default shall exist thereunder, a description of such default and the steps being taken to cure such default, (C) a statement that, to Borrower's knowledge, either the other party thereto is not in default thereunder beyond any applicable grace, cure or notice period or, if any such default shall exist thereunder, a description of such default and the steps

being taken to cure such default and (D) such other information with respect to the Operating Lease or the Operating Lease Guaranty as Lender shall reasonably request.

(l) With respect to any Operating Lease, Borrower shall, from time to time, upon ten (10) Business Days of Lender's prior written request from Lender, provide Lender with a statement from each Operating Company containing the following: (A) a statement that such Operating Lease is unmodified and in full force and effect or, if there have been modifications, that the Operating Lease is in full force and effect as modified and setting forth such modifications, (B) a statement that Operating Company is not in default thereunder beyond any applicable grace, cure or notice period or, if any such default shall exist thereunder, a description of such default and the steps being taken to cure such default, (C) a statement that, to Operating Company's knowledge, the Mortgage Borrower is not in default thereunder beyond any applicable grace, cure or notice period or, if any such default shall exist thereunder, a description of such default and the steps being taken to cure such default and (D) such other information with respect to Operating Company, any Operating Lease and/or any Operating Lease Guaranty as Lender shall reasonably request.

(m) With respect to any Operating Lease Guaranty, Borrower shall, from time to time, upon ten (10) Business Days of Lender's prior written request from Lender, provide Lender with a statement from Guarantor (Operating Lease) containing the following: (A) a statement that such Operating Lease Guaranty is unmodified and in full force and effect or, if there have been modifications, that the Operating Lease Guaranty is in full force and effect as modified and setting forth such modifications; (B) a statement that Guarantor (Operating Lease) is not in default thereunder beyond any applicable grace, cure or notice period or, if any such default shall exist thereunder, a description of such default and the steps being taken to cure such default; and (C) such other information with respect to such Guarantor (Operating Lease) and/or Operating Lease Guaranty as Lender shall reasonably request

**5.1.23 Ground Lease Estoppel.** Borrower shall, on or prior to May 28, 2008, either (i) effect the substitution of the Properties commonly known as "Paris Las Vegas" and "Harrah's Laughlin" for the Individual Properties referred to as "Harrah's Lake Tahoe", "Harvey's Lake Tahoe", "Bill's Lake Tahoe" and "Showboat Atlantic City" as described in Section 2.5.2 of this Agreement or (ii) (x) cause the occurrence of the events set forth in clause (ii) of the Ground Lease Side Letter and (y) in connection therewith, deliver to Lender updates to its UCC Title Insurance Policy and any endorsements to the Mortgage Borrower's owner's policies delivered to Lender in connection with the closing of the Loan, together with such other documents, instruments and new or updated opinions (including as to enforceability, non-consolidation and true lease matters) as Lender may reasonably request. The failure by Borrower to cause the occurrence of the event described in clause (i) or of the events described in clause (ii) above, on or prior to May 28, 2008 shall constitute a "Ground Lease Estoppel Trigger Event" hereunder, but shall not constitute a Default or an Event of Default hereunder.

**5.1.24 Mortgage Loan Reserve Funds.** Borrower shall cause Mortgage Borrower and Senior Mezzanine Borrower to deposit and maintain each of the Mortgage Loan Reserve Funds and Senior Mezzanine Loan Reserve Funds (if any) as more particularly set forth in Article VII of the Mortgage Loan Agreement and Senior Mezzanine Loan Agreement and to perform and comply with all the terms and provisions relating thereto. Borrower grants to

Lender a first-priority perfected security interest in Borrower's interest in each of the Mortgage Loan Reserve Funds and Senior Mezzanine Loan Reserve Funds, if any, subject to the prior rights of Mortgage Lender and Senior Mezzanine Lender, and any and all monies now or hereafter deposited in each Mortgage Loan Reserve Fund and Senior Mezzanine Loan Reserve Funds as additional security for payment of the Debt to the extent Borrower has an interest in same. Subject to the qualifications regarding Mortgage Lender's and Senior Mezzanine Lender's interest in the Mortgage Loan Reserve Funds and Senior Mezzanine Loan Reserve Funds (as applicable), if any, until expended or applied in accordance with the Mortgage Loan Documents, Senior Mezzanine Loan Documents or the Loan Documents, Borrower's interest in the Mortgage Loan Reserve Funds and Senior Mezzanine Loan Reserve Funds shall constitute additional security for the Debt and upon the occurrence of an Event of Default, Lender may, in addition to any and all other remedies available to Lender, apply any sums then present in any or all of the Mortgage Loan Reserve Funds and Senior Mezzanine Loan Reserve Funds to the payment of the Debt in any order in its sole discretion and/or hold the same as Collateral for the Loan.

**5.1.25 Notices.** Borrower shall give notice, or cause notice to be given to Lender promptly upon the occurrence and during the continuance of an Event of Default and upon any of the following:

(a) any Mortgage Loan Event of Default or Senior Mezzanine Loan Event of Default;

(b) any default or event of default under any contractual obligation of Borrower, or, to the knowledge of Borrower, Senior Mezzanine Borrower, Mortgage Borrower, Operating Company, Principal or Guarantor that could reasonably be expected to have an Individual Material Adverse Affect or an Aggregate Material Adverse Affect;

(c) any litigation or proceeding affecting Borrower, or, to the knowledge of Borrower, affecting any of Mortgage Borrower, Senior Mezzanine Borrower, Operating Company, Principal or Guarantor, which could or could reasonably be expected to have an Individual Material Adverse Effect or an Aggregate Material Adverse Effect; or

(d) a change in the business, operations, property or financial or other condition or prospects of Borrower, or, to the knowledge of Borrower, Senior Mezzanine Borrower, Mortgage Borrower, Operating Company, Principal or Guarantor which could reasonably be expected to have an Individual Material Adverse Affect or an Aggregate Material Adverse Affect.

**5.1.26 Special Distributions.** On each date on which amounts are required to be paid to Lender under any of the Loan Documents (or required to be disbursed to the Mezzanine Collection Account, if applicable) Borrower shall exercise its rights under the First Mezzanine Borrower Company Agreement to cause Senior Mezzanine Borrower to make to Borrower a distribution in an aggregate amount such that Lender shall receive the amount required to be disbursed to the Mezzanine Collection Account or otherwise paid to Lender on such date.

**5.1.27 Curing.** Lender shall have the right, but shall not have the obligation, to exercise Borrower's rights under the First Mezzanine Borrower Company Agreement (a) to cure a Mortgage Loan Default, or Senior Mezzanine Loan Default, (b) to cure a Mortgage Loan Event of Default, or Senior Mezzanine Loan Event of Default, (c) to satisfy any Liens, claims or judgments against the Properties (except for Liens permitted by the Mortgage Loan Documents or Senior Mezzanine Loan Documents), (d) to satisfy any Liens, claims or judgments against the Senior Mezzanine Collateral, in the case of either (a), (b) or (c), unless Borrower, Senior Mezzanine Borrower or Mortgage Borrower shall be diligently pursuing remedies to cure the Mortgage Loan Default, the Senior Mezzanine Loan Default, the Senior Mezzanine Loan Event of Default or Mortgage Loan Event of Default or to satisfy any such Liens, claims or judgments, in either case to Lender's sole satisfaction. Borrower shall reimburse Lender on demand for any and all costs incurred by Lender in connection with curing any such Mortgage Loan Default, Senior Mezzanine Loan Default, Mortgage Loan Event of Default or Senior Mezzanine Loan Event of Default or satisfying any Liens, claims or judgments against any of the Properties or the Senior Mezzanine Collateral.

**5.1.28 Senior Borrower Covenants.** Borrower shall cause Mortgage Borrower and Senior Mezzanine Borrower to comply with all obligations with which Mortgage Borrower and/or Senior Mezzanine Borrower have covenanted to comply under the Mortgage Loan Agreement, Senior Mezzanine Loan Agreement, all Senior Mezzanine Loan Documents and all other Mortgage Loan Documents, as applicable (including, without limitation, those certain affirmative and negative covenants set forth in Article V of the Mortgage Loan Agreement and Senior Mezzanine Loan Agreement), unless otherwise consented to in writing by Lender.

**Section 5.2. Negative Covenants.** From the date hereof until payment and performance in full of all obligations of Borrower under the Loan Documents or the earlier release of the Liens of the Collateral in accordance with the terms of this Agreement and the other Loan Documents, Borrower covenants and agrees with Lender that it will not do, directly or indirectly, any of the following (without, in each case, the prior written consent of Lender):

**5.2.1 Operation of Properties.** (a) Borrower shall not cause or permit Mortgage Borrower to, without Lender's prior consent: (i) surrender, terminate or cancel (or permit to be surrendered, terminated or canceled) any of the Operating Leases or any Operating Lease Guaranty; (ii) reduce or consent to the reduction of (or permit the reduction or the consent to the reduction) of the term of any of the Operating Leases; (iii) decrease or consent to any decrease (or permit to be decreased or the consent to the decrease) of the amount of any rent or other charges payable under any of the Operating Leases; (iv) Transfer, convey, assign, sell, mortgage, encumber, pledge, hypothecate, grant a security interest in, grant an option or options with respect to, or otherwise dispose of (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, whether or not for consideration) the Properties or any collateral for the Mortgage Loan (or permit Operating Company to do so), in each case without the prior written consent of Lender or except as expressly permitted in Section 5.2.10, or (v) otherwise modify, change, supplement, alter or amend, or waive or release (or permit to be modified, changed, supplemented, altered, amended, waived or released) any of the rights and remedies of Borrower, Mortgage Borrower or any Operating Company under any of the Operating Leases in any material respect or any Operating Lease Guaranty (provided that Lender shall not unreasonably withhold its consent to any modification, change, supplement, alteration,

amendment, waiver or release of the Operating Lease as may be reasonably necessary to comply with the requirements of this Agreement or any other Loan Document).

(b) During the continuance of an Event of Default, Borrower shall not exercise (and shall not cause or permit Mortgage Borrower to exercise) any rights, make any decisions, grant any approvals or otherwise take any action under any Operating Lease, Operating Lease Guaranty or any management agreement without, in each instance, the prior written consent of Lender, which consent may be withheld in Lender's sole discretion.

**5.2.2 Liens.** (a) Borrower shall not create, incur, assume or suffer to exist any Lien on any of the Collateral, except Liens created by or permitted pursuant to the Loan Documents. Borrower shall not, and shall not cause or permit Mortgage Borrower or Senior Mezzanine Borrower to create, incur, assume or suffer to exist any Lien on any portion of any Individual Property or Senior Mezzanine Collateral or permit any such action to be taken, except:

(i) Permitted Encumbrances;

(ii) Liens created by or permitted pursuant to the Loan Documents, Senior Mezzanine Loan Documents or Mortgage Loan Documents; and

(iii) Liens for Taxes or Other Charges not yet due.

(b) Borrower shall not incur any Indebtedness other than the Loan, shall not permit Mortgage Borrower to incur any Indebtedness other than the Mortgage Loan and Permitted Indebtedness (as defined in the Mortgage Loan Agreement), and shall not permit Senior Mezzanine Borrower to incur any Indebtedness other than the Senior Mezzanine Loans. Borrower shall not permit any Operating Company to incur Indebtedness in excess or other than Permitted Indebtedness (Operating Company).

**5.2.3 Dissolution.** Borrower shall not, and shall not permit Mortgage Borrower, Senior Mezzanine Borrower or Operating Company to, (a) engage in any dissolution, liquidation or consolidation or merger with or into any other business entity, (b) engage in any business activity not related to (i) in the case of Borrower, the ownership of the Collateral, (ii) in the case of Senior Mezzanine Borrower, ownership of the Senior Mezzanine Collateral, (iii) in the case of Mortgage Borrower, the ownership and operation of the Properties and (iv) in the case of Operating Company, the leasing and operation of the Properties, (c) transfer, lease or sell, in one transaction or any combination of transactions, the assets or all or substantially all of the properties or assets of Borrower, Senior Mezzanine Borrower or Mortgage Borrower except to the extent permitted by the Loan Documents, (d) modify (in any material respect), amend (in any material respect), waive or terminate its organizational documents or its qualification and good standing in any jurisdiction or (e) cause Holdings to (i) dissolve, wind up or liquidate or take any action, or omit to take an action, as a result of which Holdings, Senior Mezzanine Borrower or Mortgage Borrower would be dissolved, wound up or liquidated in whole or in part, or (ii) amend (in any material respect), modify (in any material respect), waive or terminate the certificate of incorporation or bylaws of Holdings, Senior Mezzanine Borrower or Mortgage Borrower, in each case, without obtaining the prior consent of Lender.

**5.2.4 Change in Business.** Borrower shall not cause Mortgage Borrower to enter into any line of business other than the ownership and operation of any of the Properties and other activities reasonably ancillary thereto, or make any material change in the scope or nature of its business objectives, purposes or operations, or undertake or participate in activities other than the continuance of its present business. In addition, Borrower shall not permit or cause Mortgage Borrower to cancel or otherwise forgive or release any material claim or debt (other than termination of Leases in accordance herewith) owed to Mortgage Borrower by any Person, except for adequate consideration and in the ordinary cause of Mortgage Borrower's business. Borrower shall not enter into any line of business other than the ownership of the Collateral, or make any material change in the scope or nature of its business objectives, purposes or operations, or undertake or participate in activities other than the continuance of its present business. Borrower shall not allow Senior Mezzanine Borrower to enter into any line of business other than the direct or indirect ownership of the applicable Senior Mezzanine Collateral or make any material change in the scope or nature of its business objectives, purposes or operations, or undertake or participate in activities other than the continuance of its present business.

**5.2.5 Debt Cancellation.** Borrower shall not, and shall not permit Mortgage Borrower, Senior Mezzanine Borrower or Operating Company to, cancel or otherwise forgive or release any claim or debt (other than termination of Leases in accordance herewith) owed to Mortgage Borrower, Borrower or Senior Mezzanine Borrower by any Person, except for adequate consideration and in the ordinary course of Mortgage Borrower's, Borrower's or Senior Mezzanine Borrower's business. In addition, Borrower shall not permit or cause itself, Senior Mezzanine Borrower, or Mortgage Borrower to cancel or otherwise forgive or release any material claim or debt (other than termination of Leases in accordance herewith) owed to Senior Mezzanine Borrower, Borrower or Mortgage Borrower by any Person, except for adequate consideration and in the ordinary course of Mortgage Borrower's, Borrower's or Senior Mezzanine Borrower's business.

**5.2.6 Zoning.** Borrower shall not, and shall not permit Mortgage Borrower or Operating Company to, initiate or consent to any zoning reclassification of any portion of any Individual Property or seek any variance under any existing zoning ordinance or use or permit the use of any portion of any Individual Property in any manner that could result in such use becoming a non-conforming use under any zoning ordinance or any other applicable land use law, rule or regulation, without the prior consent of Lender.

**5.2.7 Ground Lease.** Borrower shall not (or shall not cause or permit Mortgage Borrower or Ground Lease Subsidiary, as applicable, to) (a) fail to pay any rent, additional rent or other charge mentioned in or made payable under any Ground Lease as and when such rent or other charge is due (unless waived in writing by the ground lessor under such Ground Lease), (b) permit to occur any event of default (beyond any applicable notice, grace or cure periods) by any Mortgage Borrower or Ground Lease Subsidiary, as applicable, as tenant under the related Ground Lease, in the observance or performance of any term, covenant or condition of such Ground Lease on the part of such Mortgage Borrower, or Ground Lease Subsidiary, as applicable, to be observed or performed (unless waived in writing by the ground lessor under such Ground Lease), (c) permit any one or more of the events referred to in any Ground Lease to occur which would cause such Ground Lease to terminate without notice or action by the ground

lessor under such Ground Lease or which would entitle such ground lessor to terminate such Ground Lease and the term thereof by giving notice to the related Mortgage Borrower or Ground Lease Subsidiary, as applicable, as tenant thereunder (unless waived in writing by the ground lessor under such Ground Lease), (d) permit the leasehold estate created by any Ground Lease to be surrendered or any Ground Lease to be terminated or canceled for any reason or under any circumstances whatsoever or (e) permit any of the terms, covenants or conditions of any Ground Lease to be materially modified, materially changed, materially supplemented, materially altered, or materially amended without the consent of Lender except as otherwise may be permitted by this Agreement.

**5.2.8 Principal Place of Business and Organization.** Borrower shall not, nor shall Borrower permit Mortgage Borrower, Senior Mezzanine Borrower or Operating Company to, change the place of its organization as set forth in Section 4.1.28 without the consent of Lender, which consent shall not be unreasonably withheld. Upon Lender's request, Borrower shall (and shall cause Mortgage Borrower, Senior Mezzanine Borrower or Operating Company to) execute and deliver additional financing statements, security agreements and other instruments which may be necessary to effectively evidence or perfect Mortgage Lender's security interest in any of the Properties, any Senior Mezzanine Lender's Security Interest in the related Senior Mezzanine Collateral or Lender's security interest in the Collateral as a result of such change of place of organization.

**5.2.9 ERISA.** (a) Borrower shall not engage in any transaction which would cause any obligation, or action taken or to be taken, hereunder (or the exercise by Lender of any of its rights under the Note, this Agreement or the other Loan Documents) to be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under ERISA.

(b) Borrower further covenants and agrees to deliver to Lender such certifications or other evidence from time to time throughout the term of the Loan, as requested by Lender in its sole discretion, that (i) Borrower is not an "employee benefit plan" as defined in Section 3(3) of ERISA, which is subject to Title I of ERISA, or a "governmental plan" within the meaning of Section 3(32) of ERISA; (ii) Borrower is not subject to any state statute regulating investments of, or fiduciary obligations with respect to, governmental plans; and (iii) one or more of the following circumstances is true:

(A) Equity interests in Borrower are publicly offered securities, within the meaning of 29 C.F.R. § 2510.3-101(b)(2);

(B) Less than twenty-five percent (25%) of each outstanding class of equity interests in Borrower is held by "benefit plan investors" within the meaning of 29 C.F.R. § 2510.3-101(f)(2); or

(C) Borrower qualifies as an "operating company" or a "real estate operating company" within the meaning of 29 C.F.R. § 2510.3-101(c) or (e).

**5.2.10 Transfers.** (a) Without the prior consent of Lender and except to the extent otherwise set forth in this Section 5.2.10, Borrower shall not, and shall not permit any other Person holding any direct or indirect legal, economic, beneficial or other ownership interest

in Borrower, the Collateral, the Senior Mezzanine Collateral or one or more of the Properties to, (1) Transfer all or any part of the Collateral, the Senior Mezzanine Collateral or one or more of the Properties, (2) permit any Transfer (directly or indirectly) of any direct or indirect interest in Borrower, or (3) permit any Transfer (directly or indirectly) of any direct or indirect interest in Operating Company or any transfer or assignment or subletting (of all or substantially of any Individual Property) by any Operating Company under any Operating Lease.

(b) A Transfer of (but not a mortgage, pledge, hypothecation, encumbrance or grant of a security interest in) an indirect beneficial interest in Borrower consisting of ownership interests in or at any level above the level of Ninth Mezzanine Borrower shall be permitted without Lender's consent (but subject to the last sentence of Section 5.2.10(d)), provided that (i) immediately prior to such Transfer, no Event of Default shall have occurred and be continuing, (ii) Borrower is at all times Controlled and at least fifty percent (50%) owned (directly or indirectly) by Qualified Transferees, (iii) subsequent to such Transfer, Borrower will continue to be a Special Purpose Entity, (iv) if (1) such Transfer causes the Transferee to own, in the aggregate with the ownership interests of its Affiliates, more than a forty nine percent (49%) interest in Borrower (and the Transferee (together with the ownership interests of its Affiliates) did not, prior to such Transfer, own more than a forty-nine percent (49%) interest in Borrower), or (2) such Transfer, together with all other Transfers by Borrower, whether in a single Transfer or in a series of Transfers and whether or not effected simultaneously, results in a Transfer of more than forty-nine percent (49%) of the aggregate interests in Borrower, then, if required by applicable Rating Agency requirements, an acceptable non-consolidation opinion is delivered to the holder of the Loan and to each of the Rating Agencies concerning, as applicable, Borrower, the new Transferee and/or their respective owners, and (v) subsequent to such Transfer, the beneficial ownership of Borrower and Operating Company will be substantially identical. For purposes hereof, Control shall not be deemed absent solely because other parties have veto rights with respect to major decisions. Further, a Change in Control shall be deemed a Transfer hereunder and, unless clauses (ii) through (v) of this Section 5.2.10(b) shall be satisfied, the same shall be an Event of Default hereunder (and for the sake of clarity, nothing else contained in this Section 5.2.10 or this Agreement shall be deemed to limit or qualify the above terms of this sentence).

(c) A Transfer of (but not a mortgage, pledge, hypothecation, encumbrance or grant of a security interest in) a direct or indirect beneficial interest in Operating Company shall be permitted without Lender's consent (but subject to the last sentence of Section 5.2.10(d)), provided that (i) immediately prior to such Transfer, no Event of Default shall have occurred and be continuing, (ii) Operating Company is at all times Controlled and at least fifty percent (50%) owned (directly or indirectly) by Qualified Transferees, and (iii) subsequent to such Transfer, the beneficial ownership of Borrower and Operating Company will be substantially identical. For purposes hereof, Control shall not be deemed absent solely because other parties have veto rights with respect to major decisions.

(d) In the event that a permitted Transfer of more than a forty nine percent (49%) interest in Borrower is made pursuant to this Section 5.2.10, at Borrower's request, Lender shall release Guarantor from (i) the obligations and liabilities under any Guaranty for obligations and liabilities that occurred subsequent to such Transfer, provided that a replacement guarantor(s) reasonably satisfactory to Lender shall have executed and delivered to Lender

replacement guarantees in form and substance substantially similar to the applicable Guaranty, pursuant to which such replacement guarantor(s) expressly assumes all of Guarantor's obligations under the applicable Guaranty for obligations and liabilities arising from and after the date of such Transfer, and (ii) the obligations and liabilities under any Guaranty for obligations and liabilities that occurred either prior or subsequent to such Transfer, provided that a replacement guarantor(s) reasonably satisfactory to Lender shall have executed and delivered to Lender replacement guarantees in form and substance substantially similar to the applicable Guaranty, pursuant to which such replacement guarantor(s) expressly assumes all of Guarantor's obligations under the applicable Guaranty, including those which occurred prior to the Transfer. Notwithstanding the foregoing or anything else that may be construed to the contrary, in no event may Borrower effect a Transfer, or permit or suffer any Transfer, that would result in any loss or impairment of any Gaming License or in any similar event that would have an Individual Property Material Adverse Effect or Aggregate Property Material Adverse Effect.

(e) Notwithstanding the foregoing or anything herein to the contrary, but subject to the final sentence of Section 5.2.10(d), nothing contained in this Agreement or the other Loan Documents shall in any way restrict or prohibit, nor shall any notice to Lender or consent of Lender or Rating Agency Confirmation be required in connection with the Transfer or issuance in the ordinary course of any securities in any Person whose securities are publicly traded on a national exchange (except to the extent that the same would cause a Change of Control) or with an initial public offering of securities issued by Holdings or of subsidiary of Holdings (other than the Borrower and any Mezzanine Borrower (provided that, in the case of an issuance by a subsidiary, such issuance would not cause a Change in Control).

(f) Assumptions of the Loan shall be permitted, provided that the following conditions are satisfied and/or occur to Lender's satisfaction:

(i) such sale has been approved or deemed approved under the Mortgage Loan Documents and Senior Mezzanine Loan Documents and all conditions set forth in the Mortgage Loan Documents and Senior Mezzanine Loan Documents relating thereto have been satisfied;

(ii) an assumption of this Agreement, the Note, the Pledge Agreement and the other Loan Documents as so modified by the proposed transferee, subject to the provisions of Section 9.3 hereof;

(iii) payment of all of reasonable out-of-pocket costs and expenses incurred in connection with such Transfer including, without limitation, the cost of any legal fees and expenses, Rating Agency fees and expenses or required legal opinions;

(iv) the payment of a non-refundable assumption fee equal to Lender's Share of One Million and No/100 Dollars (\$1,000,000) per transaction (effecting an assumption of the Loan) or series of related transactions (effected to implement an assumption of the Loan);

(v) the delivery of an Additional Insolvency Opinion reflecting the proposed transfer satisfactory in form and substance to Lender; and the delivery of an Additional True-Lease Opinion in form and substance satisfactory to Lender;

(vi) the proposed Transferee being Controlled and at least 50% owned, directly or indirectly, by one or more Qualified Transferees;

(vii) the Operating Company being Controlled and at least 50% owned, directly or indirectly, by one or more Qualified Transferees, having sufficient experience (or having a manager that has sufficient experience) in the management of properties similar to the Properties, and such Operating Company or its manager not having materially less than the same level of experience in the operation of properties similar to the Properties as the current Operating Company under the Operating Lease and, in each case, Lender shall be provided with reasonable evidence thereof (and Lender reserves the right to approve the Transferee(s) without approving the substitution of the Operating Company) and the operating tenant shall be either the Operating Company or, if permitted by applicable Legal Requirements, a manager acceptable to Lender under a management agreement acceptable to Lender; provided that so long as the Operating Lease is in force and effect and the current Operating Company shall continue to be the tenant thereunder and owned and Controlled by the same Person(s) that currently own and Control the Operating Company, the condition with respect to the Operating Company set forth in this subclause (vi) shall be deemed to have been met in all respects;

(viii) the delivery of evidence reasonably satisfactory to Lender that the single purpose nature and bankruptcy remoteness of Borrower, its shareholders, partners or members, as the case may be, following such transfers are in accordance with the then current standards of Lender and the Rating Agencies; and the Transferee(s)' continued compliance with the representations and covenants set forth in Section 4.1.30 and Section 5.2.9 hereof;

(ix) Borrower's delivery to Lender of evidence reasonably satisfactory to Lender of any required approval or consent of any Governmental Authority, including the Gaming Authorities, that has direct or indirect authority or oversight over Borrower, Mortgage Borrower, Senior Mezzanine Borrower, the Properties, Operating Company or the operations conducted at the Properties to the change in ownership and/or operator of the Properties (or any part thereof);

(x) prior to any release of the Guarantor, a substitute guarantor reasonably acceptable to Lender shall have assumed all of the obligations of the Guarantor under the Guaranty (FF&E), the Guaranty (Recourse Carveouts), the Operating Lease Guaranty, the Guaranty (Ground Lease Estoppel), any completion guaranty provided under Section 5.1.21 and the Environmental Indemnity or executed replacement guaranties and an environmental indemnity reasonably satisfactory to Lender;

(xi) receipt of evidence satisfactory to Lender that all of the entities which own interests in the transferee similar to the interests in Borrower owned by the Mezzanine Borrower (1) shall assume the Mezzanine Loan (if still outstanding) and all the

agreements of Mezzanine Borrower under the Mezzanine Loan Documents (and without limiting the foregoing, all of the ownership interests in Borrower, all payments thereon and all proceeds thereof shall be pledged to Lender on terms no less favorable than the pledge of the Collateral under the applicable Pledge Agreement), (2) shall each be a bankruptcy-remote single purpose entity, and (3) shall otherwise have a legal, financial and ownership structure that is (a) substantially the same as the Mezzanine Borrower or (b) at least as favorable to the Mezzanine Lender, as determined by the Mezzanine Lender in its reasonable discretion, as the legal, financial and ownership structure of Mezzanine Borrower;

(xii) receipt of evidence satisfactory to Lender that all of the entities which own interests in the transferee similar to the interests in Third Mezzanine Borrower owned by the Fourth Mezzanine Borrower (1) shall assume the Fourth Mezzanine Loan (if still outstanding) and all the agreements of Fourth Mezzanine Borrower under the Fourth Mezzanine Loan Documents (and without limiting the foregoing, all of the ownership interests in Third Mezzanine Borrower, all payments thereon and all proceeds thereof shall be pledged to Lender on terms no less favorable than the pledge of the Collateral under the applicable Pledge Agreement), (2) shall each be a bankruptcy-remote single purpose entity, and (3) shall otherwise have a legal, financial and ownership structure that is (a) substantially the same as the Fourth Mezzanine Borrower or (b) at least as favorable to the Fourth Mezzanine Lender, as determined by the Fourth Mezzanine Lender in its reasonable discretion, as the legal, financial and ownership structure of Fourth Mezzanine Borrower;

(xiii) receipt of evidence satisfactory to Lender that all of the entities which own interests in the transferee similar to the interests in Fourth Mezzanine Borrower owned by the Fifth Mezzanine Borrower (1) shall assume the Fifth Mezzanine Loan (if still outstanding) and all the agreements of Fifth Mezzanine Borrower under the Fifth Mezzanine Loan Documents (and without limiting the foregoing, all of the ownership interests in Fourth Mezzanine Borrower, all payments thereon and all proceeds thereof shall be pledged to Lender on terms no less favorable than the pledge of the Collateral under the applicable Pledge Agreement), (2) shall each be a bankruptcy remote single purpose entity, and (3) shall otherwise have a legal, financial and ownership structure that is (a) substantially the same as the Fifth Mezzanine Borrower or (b) at least as favorable to the Fifth Mezzanine Lender, as determined by the Fifth Mezzanine Lender in its reasonable discretion, as the legal, financial and ownership structure of Fifth Mezzanine Borrower;

(xiv) receipt of evidence satisfactory to Lender that all of the entities which own interests in the transferee similar to the interests in Fifth Mezzanine Borrower owned by the Sixth Mezzanine Borrower (1) shall assume the Sixth Mezzanine Loan (if still outstanding) and all the agreements of Sixth Mezzanine Borrower under the Sixth Mezzanine Loan Documents (and without limiting the foregoing, all of the ownership interests in Fifth Mezzanine Borrower, all payments thereon and all proceeds thereof shall be pledged to Lender on terms no less favorable than the pledge of the Collateral under the applicable Pledge Agreement), (2) shall each be a bankruptcy remote single purpose entity, and (3) shall otherwise have a legal, financial and ownership structure that

is (a) substantially the same as the Sixth Mezzanine Borrower or (b) at least as favorable to the Sixth Mezzanine Lender, as determined by the Sixth Mezzanine Lender in its reasonable discretion, as the legal, financial and ownership structure of Sixth Mezzanine Borrower;

(xv) receipt of evidence satisfactory to Lender that all of the entities which own interests in the transferee similar to the interests in Sixth Mezzanine Borrower owned by the Seventh Mezzanine Borrower (1) shall assume the Seventh Mezzanine Loan (if still outstanding) and all the agreements of Seventh Mezzanine Borrower under the Seventh Mezzanine Loan Documents (and without limiting the foregoing, all of the ownership interests in Sixth Mezzanine Borrower, all payments thereon and all proceeds thereof shall be pledged to Lender on terms no less favorable than the pledge of the Collateral under the applicable Pledge Agreement), (2) shall each be a bankruptcy remote single purpose entity, and (3) shall otherwise have a legal, financial and ownership structure that is (a) substantially the same as the Seventh Mezzanine Borrower or (b) at least as favorable to the Seventh Mezzanine Lender, as determined by the Seventh Mezzanine Lender in its reasonable discretion, as the legal, financial and ownership structure of Seventh Mezzanine Borrower;

(xvi) receipt of evidence satisfactory to Lender that all of the entities which own interests in the transferee similar to the interests in Seventh Mezzanine Borrower owned by the Eighth Mezzanine Borrower (1) shall assume the Eighth Mezzanine Loan (if still outstanding) and all the agreements of Eighth Mezzanine Borrower under the Eighth Mezzanine Loan Documents (and without limiting the foregoing, all of the ownership interests in Seventh Mezzanine Borrower, all payments thereon and all proceeds thereof shall be pledged to Lender on terms no less favorable than the pledge of the Collateral under the applicable Pledge Agreement), (2) shall each be a bankruptcy remote single purpose entity, and (3) shall otherwise have a legal, financial and ownership structure that is (a) substantially the same as the Eighth Mezzanine Borrower or (b) at least as favorable to the Eighth Mezzanine Lender, as determined by the Eighth Mezzanine Lender in its reasonable discretion, as the legal, financial and ownership structure of Eighth Mezzanine Borrower; and

(xvii) receipt of evidence satisfactory to Lender that all of the entities which own interests in the transferee similar to the interests in Eighth Mezzanine Borrower owned by the Ninth Mezzanine Borrower (1) shall assume the Ninth Mezzanine Loan (if still outstanding) and all the agreements of Ninth Mezzanine Borrower under the Ninth Mezzanine Loan Documents (and without limiting the foregoing, all of the ownership interests in Eighth Mezzanine Borrower, all payments thereon and all proceeds thereof shall be pledged to Lender on terms no less favorable than the pledge of the Collateral under the applicable Pledge Agreement), (2) shall each be a bankruptcy remote single purpose entity, and (3) shall otherwise have a legal, financial and ownership structure that is (a) substantially the same as the Ninth Mezzanine Borrower or (b) at least as favorable to the Ninth Mezzanine Lender, as determined by the Ninth Mezzanine Lender in its reasonable discretion, as the legal, financial and ownership structure of Ninth Mezzanine Borrower.

(xviii) a written consent to the transfer from the lender under each Mezzanine Loan (and, if any, a Permitted Mezzanine Loan) or receipt by Lender of other evidence satisfactory to Lender that all conditions imposed under the terms of each Mezzanine Loan and Permitted Mezzanine Loan shall have been complied with by the borrower thereunder or otherwise waived by the applicable lender;

(xix) subsequent to such assumption of the Loan, the beneficial ownership of Borrower and Operating Company will be substantially identical; and

(xx) the delivery of a new Owner's Title Policy, in an amount equal to the value of the Properties, together with an endorsement to Lender in form and substance reasonably satisfactory to Lender.

Lender agrees to provide a written consent to a transfer pursuant to this Section 5.2.10(f) upon satisfaction of all of the conditions set forth in this Section 5.2.10(f) other than the condition set forth in clause (xix) of this Section 5.2.10(f).

(g) Restrictions on Transfers set forth herein or in the Pledge Agreement shall not apply to (i) the pledge of the Collateral to Lender pursuant to the Pledge Agreement, (ii) the pledge by First Mezzanine Borrower of the ownership interests in Mortgage Borrower as security for the First Mezzanine Loan pursuant to the First Mezzanine Loan Agreement, (iii) the pledge by Second Mezzanine Borrower of the ownership interests in First Mezzanine Borrower as security for the Second Mezzanine Loan pursuant to the Second Mezzanine Loan Agreement, (iv) the pledge by Fourth Mezzanine Borrower of the ownership interests in Borrower as security for the Fourth Mezzanine Loan pursuant to the Fourth Mezzanine Loan Agreement, (v) the pledge by Fifth Mezzanine Borrower of the ownership interests in Fourth Mezzanine Borrower as security for the Fifth Mezzanine Loan pursuant to the Fifth Mezzanine Loan Agreement, (vi) the pledge by Sixth Mezzanine Borrower of the ownership interests in Fifth Mezzanine Borrower as security for the Sixth Mezzanine Loan pursuant to the Sixth Mezzanine Loan Agreement, (vii) the pledge by Seventh Mezzanine Borrower of the ownership interests in Sixth Mezzanine Borrower as security for the Seventh Mezzanine Loan pursuant to the Seventh Mezzanine Loan Agreement, (viii) the pledge by Eighth Mezzanine Borrower of the ownership interests in Seventh Mezzanine Borrower as security for the Eighth Mezzanine Loan pursuant to the Eighth Mezzanine Loan Agreement, (ix) the pledge by Ninth Mezzanine Borrower of the ownership interests in Eighth Mezzanine Borrower as security for the Ninth Mezzanine Loan pursuant to the Ninth Mezzanine Loan Agreement, (x) any pledge pursuant to a New Mezzanine Loan or (xi) the Transfer or pledge of any direct or indirect interest in Holdings, provided that no Change in Control shall occur.

(h) Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Debt immediately due and payable upon a Transfer without Lender's consent. This provision shall apply to every Transfer regardless of whether voluntary or not, or whether or not Lender has consented to any previous Transfer.

**5.2.11 Operating Lease Subsidiary.** Borrower shall not cause or permit Mortgage Borrower to Transfer any of its interests in Ground Lease Subsidiary without the prior

written consent of Lender; Borrower shall not permit Mortgage Borrower to cause or permit Ground Lease Subsidiary to own any assets other than its interests in the Ground Lease or to incur any liabilities other than liabilities under the Ground Lease; Borrower shall not permit Mortgage Borrower to cause or permit Ground Lease Subsidiary to engage in any business other than that related to its ownership of interests in the Ground Lease.

**5.2.12 Limitations on Distributions.** Following the occurrence and during the continuance of an Event of Default, Borrower shall not make any distributions to its members. If any Distributions shall be received by Borrower or any Affiliate of Borrower after the occurrence and during the continuance of an Event of Default, Borrower shall hold, or shall cause the same to be held, in trust for the benefit of Lender.

**5.2.13 Other Limitations.** Prior to the payment in full of the Debt, neither Borrower nor any of its Affiliates shall, without the prior written consent of Lender (which may be furnished or withheld at its sole and absolute discretion), give its consent or approval to any of the following actions or items: the distribution by Mortgage Borrower or Senior Mezzanine Borrower of property other than cash.

**5.2.14 Refinancing.** Borrower shall not consent to or permit a refinancing of the Mortgage Loan or Senior Mezzanine Loan unless it obtains the prior consent of Lender, unless the Loan shall be paid in full in connection with such refinancing in accordance with this Agreement. Borrower shall not consent to or permit a prepayment in full or in part of the Mortgage Loan or Senior Mezzanine Loan unless it obtains the prior consent of Lender, unless the Loan shall likewise be prepaid (in the same proportion, in the case of any partial prepayment) in accordance with this Agreement.

**Section 5.3. General.** For avoidance of doubt, all requirements contained in this Article V with respect to the Operating Company shall mean that it shall be a Default or Event of Default hereunder if Operating Company fails to perform in the specified manner, but Lender acknowledges that Operating Company is not a party to this Agreement and that Borrower does not control Operating Company.

## **VI. INSURANCE; CASUALTY; CONDEMNATION**

**Section 6.1. Insurance.** (a) Borrower shall cause Mortgage Borrower to maintain at all times during the term of the Loan the Policies required under Section 6.1 of the Mortgage Loan Agreement, including, without limitation, meeting all insurer requirements thereunder. In addition, Borrower shall cause Lender to be named “as their interest may appear”, under the Policies required under Sections 6.1(a)(i), (ii), (iii), (iv), (v), (vi), (vii), (viii), (ix), (x) and (xi) of the Mortgage Loan Agreement and as an “additional insured” with respect to liability coverages. Borrower shall also cause all insurance policies required under this Section 6.1 to provide for at least thirty (30) days’ prior notice to Lender in the event of policy cancellation or material changes. Borrower shall provide Lender with evidence of all such insurance required hereunder on or before the date on which Mortgage Borrower is required to provide such evidence to Mortgage Lender. For purposes of this Agreement, Lender shall have the same approval rights over the insurance referred to above and in the Mortgage Loan Agreement (including, without limitation, the insurers, deductibles and coverages thereunder, as well as the

right to require other reasonable insurance pursuant to Section 6.1 of the Mortgage Loan Agreement) as are provided in favor of the Mortgage Lender in the Mortgage Loan Agreement.

(b) If at any time Lender is not in receipt of written evidence that all insurance required hereunder is in full force and effect, Lender shall have the right, without notice to Borrower, to take such action as Lender deems necessary to protect its interest in any of the Properties or the Collateral, including, without limitation, the obtaining of such insurance coverage as Lender in its sole discretion deems appropriate (but limited to the coverages and amounts required under the Mortgage Loan Agreement) and all premiums incurred by Lender in connection with such action or in obtaining such insurance and keeping it in effect shall be paid by Borrower to Lender upon demand and shall bear interest at the Default Rate.

**Section 6.2. Casualty.** If the Individual Property shall be materially damaged or destroyed, in whole or in part, by fire or other casualty (a "Casualty"), Borrower shall give prompt notice of such damage to Lender and shall cause Mortgage Borrower to promptly commence and diligently prosecute the completion of the Restoration of the Individual Property as nearly as possible to the condition the Individual Property was in immediately prior to such Casualty, with such alterations as may be reasonably approved by Lender and otherwise in accordance with Section 6.4 of the Mortgage Loan Agreement. Borrower shall cause Mortgage Borrower to pay all costs of such Restoration whether or not such costs are covered by insurance. Lender may, but shall not be obligated to make proof of loss if not made promptly by Borrower or Mortgage Borrower. In addition, Lender may participate in any settlement discussions with any insurance companies with respect to any Casualty in which the Net Proceeds or the costs of completing the Restoration are equal to or greater than, in the case of each Casualty, an amount equal to five percent (5%) of the sum of the Allocated Loan Amount for the affected Individual Property and the "Allocated Loan Amounts" under (and as defined in each of) the Mortgage Loan Agreement and the Other Mezzanine Loan Agreements for the affected Individual Property, and Borrower shall deliver to Lender all instruments required by Lender to permit such participation.

**Section 6.3. Condemnation.** Borrower shall promptly give Lender notice of the actual or threatened commencement of any proceeding for the Condemnation of any Individual Property and shall cause Mortgage Borrower to deliver to Lender copies of any and all papers served in connection with such proceedings. Lender may participate in any such proceedings, and Borrower shall from time to time deliver to Lender all instruments requested by it to permit such participation. Borrower shall, at its expense, diligently prosecute any such proceedings, and shall consult with Lender, its attorneys and experts, and cooperate with them in the carrying on or defense of any such proceedings. Notwithstanding any taking by any public or quasi-public authority through Condemnation or otherwise (including, but not limited to, any transfer made in lieu of or in anticipation of the exercise of such taking), Borrower shall continue to pay the Debt at the time and in the manner provided for its payment in the Note and in this Agreement and the Debt shall not be reduced until any Award shall have been actually received and applied by Lender, after the deduction of expenses of collection, to the reduction or discharge of the Debt. Lender shall not be limited to the interest paid on the Award by the condemning authority but shall be entitled to receive out of the Award interest at the rate or rates provided herein or in the Note. If any Individual Property or any portion thereof is taken by a condemning authority, Borrower shall cause Mortgage Borrower to promptly commence and

diligently prosecute the Restoration of the applicable Individual Property and otherwise comply with the provisions of Section 6.4 of the Mortgage Loan Agreement. If any Individual Property is sold, through foreclosure or otherwise, prior to the receipt by Lender of the Award, Lender shall have the right, whether or not a deficiency judgment on the Note shall have been sought, recovered or denied, to receive the Award, or a portion thereof sufficient to pay the Debt.

**Section 6.4. Restoration.** Borrower shall, or shall cause Mortgage Borrower to, deliver to Lender all reports, plans, specifications, documents and other materials that are delivered to Mortgage Lender under Section 6.4 of the Mortgage Loan Agreement in connection with the Restoration of any Individual Property after a Casualty or Condemnation.

## VII. RESERVE FUNDS

### Section 7.1. Intentionally Omitted.

**Section 7.2. Tax and Insurance Escrow Fund.** (a) If (and for so long as) a Trigger Event shall have occurred and shall not have been cured by a Trigger Event Cure, on each Payment Date during such period, Borrower shall pay to Lender (or Servicer, as directed by Lender) an amount equal to (i) one-twelfth of the Taxes that Lender estimates will be payable during the next ensuing twelve (12) months in order to accumulate with Lender sufficient funds to pay all such Taxes at least thirty (30) days prior to their respective due dates, and (ii) one-twelfth of the Insurance Premiums that Lender estimates will be payable for the renewal of the coverage afforded by the Policies upon the expiration thereof in order to accumulate with Lender sufficient funds to pay all such Insurance Premiums at least thirty (30) days prior to the expiration of the Policies (said amounts in (i) and (ii) above hereinafter called the “**Tax and Insurance Escrow Fund**”). Lender shall apply the Tax and Insurance Escrow Fund to payments of Taxes and Insurance Premiums required to be made by Borrower pursuant to Section 5.1.2 hereof and under the Mortgage Loan Agreement. In making any payment relating to the Tax and Insurance Escrow Fund, Lender may do so according to any bill, statement or estimate procured from the appropriate public office (with respect to Taxes) or insurer or agent (with respect to Insurance Premiums), without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof. If the amount of the Tax and Insurance Escrow Fund shall exceed the amounts due for Taxes and Insurance Premiums pursuant to Section 5.1.2 hereof, provided no Event of Default shall have occurred and be continuing, Lender shall return any excess to Borrower (or to Operating Company, if so directed by Borrower). In allocating such excess, Lender may deal with the Person shown on the records of Lender to be the owner of the Properties. If at any time Lender reasonably determines that the Tax and Insurance Escrow Fund is not or will not be sufficient to pay Taxes and Insurance Premiums by the dates set forth in (i) and (ii) above, Lender shall notify Borrower of such determination and Borrower shall increase its monthly payments to Lender by the amount that Lender estimates is sufficient to make up the deficiency at least thirty (30) days prior to the due date of the Taxes and/or thirty (30) days prior to expiration of the Policies, as the case may be.

(b) Notwithstanding the foregoing, Borrower shall not be required to make any deposits into the Tax and Insurance Escrow Fund on account of Insurance Premiums if (and for so long as) Borrower shall maintain a blanket insurance policy in respect of the Properties

that is in accordance with the provisions of Section 6.1(a) and otherwise satisfactory to Lender in all material respects.

(c) Any amount remaining in the Tax and Insurance Escrow Fund following the occurrence of a Trigger Event Cure shall be returned to Borrower (or Operating Company, as directed by Borrower).

**7.2.1 Waiver of Tax Escrow.** Borrower shall be relieved of its obligation to make deposits of Tax and Insurance Escrow Fund under Section 7.2 above, provided that (a) Mortgage Borrower or Senior Mezzanine Borrower is required to and does make monthly deposits to a tax escrow account under the Mortgage Loan or Senior Mezzanine Loan, and (b) Lender receives evidence acceptable to it of the making of such deposits and of the payment of all such Taxes.

**7.2.2 Tax and Insurance Escrow Funds After Debt Paid.** Any Tax and Insurance Escrow Funds remaining after the Debt has been paid in full shall be remitted (i) if the Fourth Mezzanine Loan is outstanding, then to the Fourth Mezzanine Lender or (ii) if the Fourth Mezzanine Loan is no longer outstanding, then to the Fifth Mezzanine Lender in accordance with the Fourth Mezzanine Loan Agreement or (iii) if the Fourth Mezzanine Loan and the Fifth Mezzanine Loan are no longer outstanding, then to the Sixth Mezzanine Lender in accordance with the Fifth Mezzanine Loan Agreement or (iv) if the Fourth Mezzanine Loan, the Fifth Mezzanine Loan and the Sixth Mezzanine Loan are no longer outstanding, then to the Seventh Mezzanine Lender in accordance with the Sixth Mezzanine Loan Agreement or (v) if the Fourth Mezzanine Loan, the Fifth Mezzanine Loan, the Sixth Mezzanine Loan and the Seventh Mezzanine Loan are no longer outstanding, then to the Eighth Mezzanine Lender in accordance with the Seventh Mezzanine Loan Agreement or (vi) if the Fourth Mezzanine Loan, the Fifth Mezzanine Loan, the Sixth Mezzanine Loan, the Seventh Mezzanine Loan and the Eighth Mezzanine Loan are no longer outstanding, then to the Ninth Mezzanine Lender in accordance with the Eighth Mezzanine Loan Agreement or (vii) if the Fourth Mezzanine Loan, the Fifth Mezzanine Loan, the Sixth Mezzanine Loan, the Seventh Mezzanine Loan, the Eighth Mezzanine Loan and the Ninth Mezzanine Loan are no longer outstanding then to Borrower or, at Borrower's election, shall be credited against the Debt simultaneously with the satisfaction of the balance of the Loan.

**Section 7.3. FF&E Reserve Account.**

**7.3.1 FF&E Reserve Fund.** (a) Unless Borrower shall have delivered to Lender a Guaranty (FF&E), Borrower shall pay to Lender (or Servicer, as directed by Lender) on each Payment Date an amount equal to (i) one-twelfth of three percent (3%) of the amount of all Revenues for the full calendar year prior to the first (1st) day of the month in which such Payment Date occurs, less (ii) any amount spent during the previous calendar month by Borrower or Operating Company on behalf of Borrower in accordance with the Operating Lease on account of FF&E (other than from the FF&E Reserve Fund, it being understood that amounts expended on account of FF&E from the FF&E Reserve Fund shall not be included in any deductions required pursuant to the preceding subclause (i) and that any FF&E that is purchased through disbursements from the FF&E Reserve Fund may not be subsequently financed by Borrower or Operating Company). Notwithstanding anything to the contrary contained herein,

in no event shall Borrower be required to maintain in the FF&E Reserve Account an amount in excess of the aggregate amount of all FF&E deposits required to be made in the preceding calendar year (as determined, for purposes of this sentence, utilizing the monthly formula set forth in the preceding sentence). In addition, notwithstanding anything to the contrary contained herein, for purposes of determining the amount of any required FF&E Reserve Fund deposits (and for purposes of calculating such amount, monthly, based on the formula set forth in the first sentence of this Section 7.3.1), Revenues shall include Revenue from the Hotel Component and the Casino Component but shall not include non-Hotel or Casino related Revenues (e.g., Rents from retail tenants).

(b) Amounts deposited by Borrower as described in this Section 7.3.1 shall hereinafter be referred to as the “**FF&E Reserve Fund**” and the account in which such amounts are held shall hereinafter be referred to as the “**FF&E Reserve Account**”.

**7.3.2 Disbursements from FF&E Reserve Account.** (a) All disbursements from the FF&E Reserve Account shall be made solely for the purpose of reimbursing Borrower (or Operating Company for FF&E bought on behalf and in the name of Borrower in accordance with the Operating Lease, as directed by Borrower) for its costs and expenses incurred, or for paying costs to be incurred, in connection with the repair, replacement and/or upgrade of FF&E at the Properties. Provided no Event of Default shall have occurred and be continuing, Lender shall, within ten (10) days following request by Borrower, make disbursements from the FF&E Reserve Fund no more frequently than once in any thirty (30) day period, in amounts no less than \$10,000 per disbursement (or a lesser amount if the total amount in the FF&E Reserve Account is less than \$10,000, in which case only one disbursement of the amount remaining in the account shall be made), and upon delivery by Borrower (or Operating Company) of Lender’s standard form of draw request accompanied by copies of invoices for the amounts requested and, if required by Lender for requests in excess of \$50,000 for a single item, receipts and releases from all parties furnishing materials and/or services in connection with the requested payment.

(b) Disbursements may be made from the FF&E Reserve Account, at Borrower’s election, directly to third parties (as directed by Borrower).

(c) In no event shall funds in the FF&E Reserve Account be utilized to pay (or reimburse any Person) for any Capital Expenditures or non-recurring work being performed at the Properties.

**7.3.3 Balance in the FF&E Reserve Account.** (a) The insufficiency of any balance in the FF&E Reserve Account shall not relieve Borrower from its obligation to fulfill all preservation and maintenance covenants in the Loan Documents.

**7.3.4 Waiver of FF&E Reserve.** Borrower shall be relieved of its obligation to make deposits of FF&E Reserve Fund under Section 7.3 above, provided that either (a) (i) Mortgage Borrower or Senior Mezzanine Borrower is required to and does make monthly deposits to a FF&E reserve account under the Mortgage Loan or Senior Mezzanine Loan, and (ii) Lender receives evidence acceptable to it of the making of such deposits or (b) an FF&E Guaranty is provided to Mortgage Lender.

**7.3.5 FF&E Reserve Funds After Debt Paid.** Any FF&E Reserve Funds remaining after the Debt has been paid in full shall be remitted (i) if the Third Mezzanine Loan is outstanding, to the Third Mezzanine Lender or (ii) if the Third Mezzanine Loan is not then outstanding, but the Fourth Mezzanine Loan is outstanding, then to the Fifth Mezzanine Lender in accordance with the Fourth Mezzanine Loan Agreement or (iii) if the Fourth Mezzanine Loan and the Fifth Mezzanine Loan are no longer outstanding, then to the Sixth Mezzanine Lender in accordance with the Fifth Mezzanine Loan Agreement or (v) if the Fourth Mezzanine Loan, the Fifth Mezzanine Loan and the Sixth Mezzanine Loan are no longer outstanding, then to the Seventh Mezzanine Lender in accordance with the Sixth Mezzanine Loan Agreement or (vi) if the Fourth Mezzanine Loan, the Fifth Mezzanine Loan, the Sixth Mezzanine Loan and the Seventh Mezzanine Loan are no longer outstanding, then to the Eighth Mezzanine Lender in accordance with the Seventh Mezzanine Loan Agreement or (vii) if the Fourth Mezzanine Loan, the Fifth Mezzanine Loan, the Sixth Mezzanine Loan, the Seventh Mezzanine Loan and the Eighth Mezzanine Loan are no longer outstanding, then to the Ninth Mezzanine Lender in accordance with the Eighth Mezzanine Loan Agreement or (viii) if the Fourth Mezzanine Loan, the Fifth Mezzanine Loan, the Sixth Mezzanine Loan, the Seventh Mezzanine Loan, the Eighth Mezzanine Loan and the Ninth Mezzanine Loan are no longer outstanding then to Borrower.

**Section 7.4. Ground Rent Funds.**

**7.4.1 Deposits of Ground Rent Funds.** If (and for so long as) a Trigger Event shall have occurred and shall not have been cured by a Trigger Event Cure, Borrower shall deposit with Lender (or Servicer, as directed by Lender), at least ten (10) Business Days prior to each Payment Date during such period, an amount equal to the Ground Rent that will be payable under the Ground Lease for the month in which such Payment Date occurs. Amounts deposited by Borrower as described in this Section 7.4.1 shall hereinafter be referred to as the “**Ground Rent Reserve Fund**” and the account in which such amounts are held shall hereinafter be referred to as the “**Ground Rent Reserve Account**”. Such deposit may be increased by Lender in the amount Lender deems is necessary in its reasonable discretion based on any increases in the Ground Rent.

**7.4.2 Release of Ground Rent Funds.** Provided no Event of Default has occurred and is continuing, Lender shall apply the Ground Rent Reserve Funds to payments of Ground Rent. In making any payment relating to Ground Rent, Lender may do so according to any bill or statement given by the Ground Lessor without inquiry into the accuracy of such bill or statement or into the validity of any rent, additional rent or other charge thereof. If the amount of the Ground Rent Reserve Funds shall exceed the amounts due for Ground Rent, Lender shall return any excess to Borrower.

**7.4.3 Waiver of Ground Rent Reserve.** Borrower shall be relieved of its obligation to make deposits of Ground Rent Reserve Funds under Section 7.4 above, provided that (a) Mortgage Borrower or Senior Mezzanine Borrower is required to and does make monthly deposits to a ground rent reserve account under the Mortgage Loan or Senior Mezzanine Loan, and (b) Lender receives evidence acceptable to it of the making of such deposits and of the payment of all Ground Rent.

**7.4.4 Ground Rent Reserve Funds After Debt Paid.** Any Ground Rent Reserve Funds remaining after the Debt has been paid in full shall be remitted (i) if the Fourth Mezzanine Loan is outstanding, to the Fourth Mezzanine Lender or (ii) if the Fourth Mezzanine Loan is no longer outstanding, then to the Fifth Mezzanine Lender in accordance with the Fourth Mezzanine Loan Agreement or (iii) if the Fourth Mezzanine Loan and the Fifth Mezzanine Loan are no longer outstanding, then to the Sixth Mezzanine Lender in accordance with the Fifth Mezzanine Loan Agreement or (iv) if the Fourth Mezzanine Loan, the Fifth Mezzanine Loan and the Sixth Mezzanine Loan are no longer outstanding, then to the Seventh Mezzanine Lender in accordance with the Sixth Mezzanine Loan Agreement or (v) if the Fourth Mezzanine Loan, the Fifth Mezzanine Loan, the Sixth Mezzanine Loan and the Seventh Mezzanine Loan are no longer outstanding, then to the Eighth Mezzanine Lender in accordance with the Seventh Mezzanine Loan Agreement or (vi) if the Fourth Mezzanine Loan, the Fifth Mezzanine Loan, the Sixth Mezzanine Loan, the Seventh Mezzanine Loan and the Eighth Mezzanine Loan are no longer outstanding, then to the Ninth Mezzanine Lender in accordance with the Eighth Mezzanine Loan Agreement or (vii) if the Fourth Mezzanine Loan, the Fifth Mezzanine Loan, the Sixth Mezzanine Loan, the Seventh Mezzanine Loan, the Eighth Mezzanine Loan and the Ninth Mezzanine Loan are no longer outstanding then to Borrower.

**Section 7.5. Reserve Funds, Generally.** (a) Borrower grants to Lender a first-priority perfected security interest in each of the Reserve Funds and any and all monies now or hereafter deposited in each Reserve Fund as additional security for payment of the Debt. Until expended or applied in accordance herewith, the Reserve Funds shall constitute additional security for the Debt. Upon the occurrence and during the continuance of an Event of Default, Lender may, in addition to any and all other rights and remedies available to Lender, apply any sums then present in any or all of the Reserve Funds to the payment of the Debt in any order in its sole discretion. The Reserve Funds shall not constitute trust funds and may be commingled with other monies held by Lender.

(b) Borrower shall not, without obtaining the prior consent of Lender, further pledge, assign or grant any security interest in any Reserve Fund or the monies deposited therein or permit any lien or encumbrance to attach thereto, or any levy to be made thereon, or any UCC-1 Financing Statements, except those naming Lender as the secured party, to be filed with respect thereto.

(c) The Reserve Funds shall be held by Lender (or Servicer) and may be invested at Borrower's election and direction in Permitted Investments routinely offered by the Servicer of the Securitization for investment by Borrower. All interest or other earnings on a Reserve Fund shall be added to and become a part of such Reserve Fund for the benefit of Borrower and shall be disbursed in the same manner as other monies deposited in such Reserve Fund. Borrower shall have the right to direct Lender (or Servicer) to invest sums on deposit in the Eligible Account in Permitted Investments provided (a) such investments are permitted by applicable federal, state and local rules, regulations and laws, (b) the maturity date of the Permitted Investment is not later than the date on which the applicable Reserve Funds are required for payment of an obligation for which such Reserve Fund was created, and (c) no Event of Default shall have occurred and be continuing. Borrower shall be responsible for payment of any federal, state or local income or other tax applicable to the interest or income earned on the Reserve Funds. No other investments of the sums on deposit in the Reserve Funds

shall be permitted except as set forth in this Section 7.5. Borrower shall bear all reasonable costs associated with the investment of the sums in the account in Permitted Investments. Such costs shall be deducted from the income or earnings on such investment, if any, and to the extent such income or earnings shall not be sufficient to pay such costs, such costs shall be paid by Borrower promptly on demand by Lender. Lender shall have no liability for the rate of return earned or losses incurred on the investment of the sums in Permitted Investments.

(d) Borrower shall indemnify Lender and hold Lender harmless from and against any and all actions, suits, claims, demands, liabilities, losses, damages, obligations and costs and expenses (including litigation costs and reasonable attorneys fees and expenses) arising from or in any way connected with the Reserve Funds or the performance of the obligations for which the Reserve Funds were established. Borrower shall assign to Lender all rights and claims Borrower may have against all Persons supplying labor, materials or other services which are to be paid from or secured by the Reserve Funds; provided, however, that Lender may not pursue any such right or claim unless an Event of Default has occurred and remains uncured.

**Section 7.6. Transfer of Reserve Funds Under Mortgage Loan and Senior Mezzanine Loan.** (a) If Mortgage Lender or Senior Mezzanine Lender waives any reserves or escrow accounts required in accordance with the terms of the Mortgage Loan Agreement or Senior Mezzanine Loan Agreement which reserves or escrow accounts are also required in accordance with the terms of this Article VII, or if the Mortgage Loan or Senior Mezzanine Loan is refinanced or paid off in full (without a prepayment of the Loan) and Reserve Funds that are required hereunder are not required under the new mortgage loan, if any, then Borrower shall cause any amounts that would have been deposited into any reserves or escrow accounts in accordance with the terms of the Mortgage Loan Agreement or Senior Mezzanine Loan Agreement to be paid to and deposited with Lender in accordance with the terms of this Article VII (and Borrower shall enter into lockbox and cash management agreements for the benefit of Lender in form and substance acceptable to Lender).

## VIII. DEFAULTS

**Section 8.1. Event of Default.** (a) Each of the following events shall constitute an event of default hereunder (an “**Event of Default**”):

(i) if (A) any portion of the Debt is not paid in full on the Maturity Date, (B) the Debt Service is not paid in full on or before the related Payment Date, or (C) any other portion of the Debt is not paid within five (5) days of when due;

(ii) if any of the Taxes or Other Charges are not paid (with respect to each Individual Property) prior to Delinquency;

(iii) if the Policies (with respect to each Individual Property) are not kept in full force and effect, or if certified copies of the Policies (for each Individual Property) are not delivered to Lender upon request (or certificates thereof, if a Policy shall be renewed and certified copies of the Policy are not immediately available upon such renewal (Borrower agreeing in such instance to provide copies of the Policies to Lender promptly thereafter));

(iv) if Borrower Transfers or otherwise encumbers any portion of the Properties or the Collateral or Senior Mezzanine Collateral, or there shall otherwise occur a Transfer, without Lender's prior consent in violation of the provisions of this Agreement, the Pledge Agreement or any other Loan Document or any Transfer is made in violation of the provisions of Section 5.2.10;

(v) if any representation or warranty made by Borrower or any other Loan Party herein or in any other Loan Document, or in any report, certificate, financial statement or other instrument, agreement or document furnished to Lender shall have been false or misleading in any material respect as of the date the representation or warranty was made (and, with respect to any such breach which is not the subject of any other subsection of this Section 8.1 and which is capable of being cured, Borrower fails to remedy such condition within ten (10) days following notice to Borrower from Lender, in the case of any such breach which can be cured by the payment of a sum of money, or within thirty (30) days following notice from Lender in the case of any other such breach);

(vi) if Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Principal, Holdings, Operating Company or any Guarantor shall make an assignment for the benefit of creditors;

(vii) if a receiver, liquidator or trustee shall be appointed for Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Principal, Holdings, Operating Company or Guarantor, or if Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Principal, Holdings, Operating Company or Guarantor shall be adjudicated a bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to federal bankruptcy law, or any similar federal or state law, shall be filed by or against, consented to, or acquiesced in by, Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Principal, Holdings, Operating Company or Guarantor, or if any proceeding for the dissolution or liquidation of Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Principal, Holdings, Operating Company or Guarantor shall be instituted; provided, however, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Principal, Holdings, Operating Company or Guarantor, upon the same not being discharged, stayed or dismissed within ninety (90) days;

(viii) if Borrower attempts to assign its rights under this Agreement or any of the other Loan Documents or any interest herein or therein in contravention of the Loan Documents;

(ix) if Borrower breaches any of its respective negative covenants contained in Section 5.2 or any covenant contained in Section 4.1.30 or Section 5.1.11 hereof (and, with respect to any such breach of any covenant set forth in Section 5.1.11 which is not the subject of any other subsection of this Section 8.1, Borrower fails to remedy such condition within ten (10) days after notice to Borrower from Lender, in the case of any such Default under Section 5.1.11 which can be cured by the payment of a sum of

money, or for thirty (30) days after notice from Lender in the case of any other such Default under Section 5.1.11);

(x) with respect to any term, covenant or provision set forth herein which specifically contains a notice requirement or grace period, if Borrower shall be in default under such term, covenant or condition after the giving of such notice or the expiration of such grace period;

(xi) if any of the assumptions contained in the Insolvency Opinion delivered to Lender in connection with the Loan, or in the Additional Insolvency Opinion delivered subsequent to the closing of the Loan, is or shall become untrue in any material respect; or if any of the assumptions contained in the True Lease Opinion delivered to Lender in connection with the Loan, or in the Additional True Lease Opinion delivered subsequent to the closing of the Loan, is or shall become untrue in any material respect;

(xii) if Mortgage Borrower, Operating Company or Guarantor (Operating Lease) is in default of any of its material obligations under the Operating Lease (or under another lease and/or management agreement in substitution for the Operating Lease in accordance herewith) or under the Operating Lease Guaranty (or under another operating lease guaranty in substitution for the Operating Lease Guaranty in accordance herewith) beyond any applicable notice and cure periods contained therein; or if any Operating Lease (or such other lease and/or management agreement) or any Operating Lease Guaranty (or such other operating lease guaranty) shall be surrendered or any Operating Lease or any Operating Lease Guaranty shall be terminated or canceled for any reason or under any circumstances whatsoever, except with the consent of Lender; or if any of the terms, covenants or conditions of the Operating Lease (or such other lease and/or management agreement) or the Operating Lease Guaranty (or such other operating lease guaranty) shall in any manner be modified, changed, supplemented, altered, restated or amended without the consent of Lender except as may otherwise expressly permitted in this Agreement;

(xiii) if any Affiliate of Borrower that is or becomes a party to the Windstorm Insurance Intercreditor Agreement is in default of any of its material obligations under the Windstorm Insurance Intercreditor Agreement beyond any applicable notice and cure periods contained therein; or if the Windstorm Insurance Intercreditor Agreement shall be surrendered, terminated or canceled for any reason or under any circumstances whatsoever, except with the consent of Lender; or if any of the terms, covenants or conditions of the Windstorm Insurance Intercreditor Agreement shall in any manner be modified, changed, supplemented, altered, restated or amended without the consent of Lender;

(xiv) if Borrower, Senior Mezzanine Borrower or Mortgage Borrower fails to comply with the covenants as to Prescribed Laws set forth in Section 5.1.1 hereof;

(xv) if (A) subject to any notice and cure periods contained in the applicable Ground Lease, Mortgage Borrower or Ground Lease Subsidiary, as applicable, shall fail in the payment of any rent, additional rent or other charge mentioned in or made payable

by such Ground Lease as and when such rent or other charge is payable (unless waived by the landlord under such Ground Lease), (B) subject to any notice and cure periods contained in the applicable Ground Lease, there shall occur any default by Mortgage Borrower or Ground Lease Subsidiary, as applicable, as tenant under such Ground Lease, in the observance or performance of any term, covenant or condition of the Ground Lease on the part of Mortgage Borrower or Ground Lease Subsidiary, as applicable, to be observed or performed (unless waived by the landlord under the Ground Lease) (other than any such default being contested by Borrower in good faith by appropriate proceedings, provided that (i) no Event of Default has occurred and remains uncured, (ii) such proceeding shall be conducted in accordance with all applicable statutes, laws and ordinances, (iii) in Lender's reasonable determination, the Ground Lease is not in imminent danger of being forfeited, terminated, cancelled or lost and the Operating Company's use and operation of the ground leased premises in connection with the operation of Harrah's Lake Tahoe", "Harvey's Lake Tahoe" or "Bill's Lake Tahoe" is not in imminent danger of being denied, forfeited, terminated, cancelled or lost and (iv) Borrower shall furnish such security as may be reasonably requested by Lender), (C) any one or more of the events referred to in any Ground Lease shall occur which would cause the Ground Lease to terminate without notice or action by the landlord under the Ground Lease or which would entitle the landlord to terminate the Ground Lease and the term thereof by giving notice to Mortgage Borrower or Ground Lease Subsidiary, as applicable, as tenant thereunder (unless waived by the landlord under the Ground Lease), (D) the leasehold estate created by any Ground Lease shall be surrendered or the Ground Lease shall be terminated or canceled for any reason or under any circumstances whatsoever unless Mortgage Borrower or Ground Lease Subsidiary, as applicable, acquires the fee interest and mortgages same to Lender (unless Mortgage Borrower acquires the fee interest, with Lender's prior reasonable approval, and mortgages same to Mortgage Lender) or (E) if any of the terms, covenants or conditions of any Ground Lease shall in any manner be modified, changed, supplemented, altered, or amended without the consent of Lender except as otherwise permitted by this Agreement;

(xvi) any Gaming License shall be refused, suspended, revoked, modified in a materially adverse manner or canceled or allowed to lapse or any proceeding is commenced by any Governmental Authority for the purpose of suspending, revoking or canceling any Gaming License in any materially adverse respect, or any Governmental Authority shall have appointed a conservator, supervisor or trustee to or for any of the Casino Components and, in each case of the foregoing, such action could reasonably be expected to (A) have an Individual Material Adverse Effect, (B) materially and adversely effect the continued operation of the Casino Components in the usual course of business and in substantially the same manner and to at least the same standard as was maintained prior to such action, or (C) result in any material decrease in the then expected cash flow and revenues to be derived from the Casino Components;

(xvii) if Borrower shall continue to be in Default under any of the other terms, covenants or conditions of this Agreement not specified in subsections (i) to (xv) above, for ten (10) days after notice to Borrower from Lender, in the case of any Default which can be cured by the payment of a sum of money, or for thirty (30) days after notice from Lender in the case of any other Default; provided, however, that if such non-monetary

Default is susceptible of cure but cannot reasonably be cured within such thirty (30) day period and provided further that Borrower shall have commenced to cure such Default within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for such time as is reasonably necessary for Borrower in the exercise of due diligence to cure such Default, such additional period not to exceed one hundred twenty (120) days;

(xviii) if there shall be a default under any of the other Loan Documents beyond any applicable cure periods contained in such documents, whether as to Borrower, Mortgage Borrower, Senior Mezzanine Borrower, the Collateral or any Individual Property, or if any other such event shall occur or condition shall exist, if the effect of such event or condition is to accelerate the maturity of any portion of the Debt or to permit Lender to accelerate the maturity of all or any portion of the Debt;

(xix) if the Liens created pursuant to any Loan Document shall cease to be a fully protected enforceable first priority security interest in the Collateral, or any portion of the Collateral is Transferred without Lender's prior written consent except as permitted hereunder; or

(xx) if a Mortgage Loan Event of Default or Senior Mezzanine Loan Event of Default shall occur.

(b) Upon the occurrence of an Event of Default (other than an Event of Default described in clauses (vi) or (vii) above) and at any time thereafter, in addition to any other rights or remedies available to it pursuant to this Agreement and the other Loan Documents or at law or in equity, Lender may take such action, without notice or demand, that Lender deems advisable to protect and enforce its rights against Borrower and in and to all or any of the Collateral, including, without limitation, declaring the Debt to be immediately due and payable, and Lender may enforce or avail itself of any or all rights or remedies provided in the Loan Documents and may exercise all the rights and remedies of a secured party under the Uniform Commercial Code, as adopted and enacted by the State or States where any of the Collateral is located against Borrower and any or all of the Collateral, including, without limitation, all rights or remedies available at law or in equity; and upon any Event of Default described in clauses (vi) or (vii) above, the Debt and all other obligations of Borrower hereunder and under the other Loan Documents shall immediately and automatically become due and payable, without notice or demand, and Borrower hereby expressly waives any such notice or demand, anything contained herein or in any other Loan Document to the contrary notwithstanding.

**Section 8.2. Remedies.** (a) Upon the occurrence of an Event of Default, but in compliance with applicable Gaming Laws, all or any one or more of the rights, powers, privileges and other remedies available to Lender against Borrower under this Agreement or any of the other Loan Documents executed and delivered by, or applicable to, Borrower or at law or in equity may be exercised by Lender at any time and from time to time, whether or not all or any of the Debt shall be declared due and payable, and whether or not Lender shall have commenced any foreclosure proceeding or other action for the enforcement of its rights and remedies under any of the Loan Documents with respect to all or any of the Collateral. Any such actions taken by Lender shall be cumulative and concurrent and may be pursued independently,

singularly, successively, together or otherwise, at such time and in such order as Lender may determine in its sole discretion, to the fullest extent permitted by law, without impairing or otherwise affecting the other rights and remedies of Lender permitted by law, equity or contract or as set forth herein or in the other Loan Documents. Without limiting the generality of the foregoing, Borrower agrees that if an Event of Default is continuing (i) Lender is not subject to any “one action” or “election of remedies” law or rule, and (ii) all liens and other rights, remedies or privileges provided to Lender shall remain in full force and effect until Lender has exhausted all of its remedies against the Collateral and the Collateral has been foreclosed upon, sold and/or otherwise realized upon in satisfaction of the Debt or the Debt has been paid in full.

(b) With respect to Borrower and the Collateral, nothing contained herein or in any other Loan Document shall be construed as requiring Lender to resort to any portion of the Collateral for the satisfaction of any of the Debt in preference or priority to any other portion of the Collateral, and Lender may seek satisfaction out of all of the Collateral or any part thereof, in its absolute discretion in respect of the Debt. In addition, Lender shall have the right from time to time to partially foreclose upon the Collateral in any manner and for any amounts secured by the Pledge Agreement then due and payable as determined by Lender in its sole discretion including, without limitation, the following circumstances: (i) in the event Borrower defaults beyond any applicable grace period in the payment of one or more scheduled payments of principal and interest, Lender may foreclose upon the Collateral to recover such delinquent payments, or (ii) in the event Lender elects to accelerate less than the entire outstanding principal balance of the Loan, Lender may foreclose upon the Collateral to recover so much of the principal balance of the Loan as Lender may accelerate and such other sums secured by the Collateral as Lender may elect. Notwithstanding one or more partial foreclosures, the Collateral shall remain subject to the Pledge Agreement and the other Loan Documents to secure payment of sums secured by the Pledge Agreement and other Loan Documents and not previously recovered.

(c) Upon the occurrence and during the continuance of an Event of Default, Lender shall have the right from time to time to sever the Note and the other Loan Documents into one or more separate notes, pledges and other security documents (the “**Severed Loan Documents**”) in such denominations as Lender shall determine in its sole discretion for purposes of evidencing and enforcing its rights and remedies provided hereunder. Borrower shall execute and deliver to Lender from time to time, promptly after the request of Lender, a severance agreement and such other documents as Lender shall request in order to effect the severance described in the preceding sentence, all in form and substance reasonably satisfactory to Lender. Borrower hereby absolutely and irrevocably appoints Lender as its true and lawful attorney, coupled with an interest, in its name and stead to make and execute all documents necessary or desirable to effect the aforesaid severance, Borrower ratifying all that its said attorney shall do by virtue thereof; provided, however, Lender shall not make or execute any such documents under such power until three (3) days after notice has been given to Borrower by Lender of Lender’s intent to exercise its rights under such power. Borrower shall be obligated to pay any costs or expenses incurred in connection with the preparation, execution, recording or filing of the Severed Loan Documents. The Severed Loan Documents shall not contain any representations, warranties or covenants not contained in the Loan Documents and any such representations and warranties contained in the Severed Loan Documents will be given by Borrower only as of the Closing Date. The Severed Loan Documents shall (a) not increase the aggregate stated principal

amount of the Loan, (b) provide that the weighted average spread of the Loan on the date of such severance shall equal the weighted average spread which was applicable to the Loan immediately prior to such severance (Borrower acknowledging that such Severed Loan Document may, in connection with the application of principal to the amounts evidenced by such Severed Loan Documents, subsequently cause the weighted average spread of such new notes or modified notes to change), (c) not adversely affect the overall economics to Borrower of the Loan, taken as a whole, or (d) expose Borrower to any additional costs or increased risk of any liability (beyond that or greater than that existing in the Loan Documents in effect on the date hereof).

(d) The rights, powers and remedies of Lender under this Agreement shall be cumulative and not exclusive of any other right, power or remedy which Lender may have against Borrower pursuant to this Agreement or the other Loan Documents, or existing at law or in equity or otherwise. Lender's rights, powers and remedies may be pursued singularly, concurrently or otherwise, at such time and in such order as Lender may determine in Lender's sole discretion. No delay or omission to exercise any remedy, right or power accruing upon an Event of Default shall impair any such remedy, right or power or shall be construed as a waiver thereof, but any such remedy, right or power may be exercised from time to time and as often as may be deemed expedient. A waiver of one Default or Event of Default with respect to Borrower shall not be construed to be a waiver of any subsequent Default or Event of Default by Borrower or to impair any remedy, right or power consequent thereon.

(e) Any amounts recovered from the Collateral after an Event of Default may be applied by Lender toward the payment of any interest and/or principal of the Loan and/or any other amounts due under the Loan Documents in such order, priority and proportions as Lender in its sole discretion shall determine.

(f) Upon the occurrence and during the continuance of an Event of Default, Lender may, but without any obligation to do so and without notice to or demand on Borrower and without releasing Borrower from any obligation hereunder or being deemed to have cured any Event of Default hereunder, make, do or perform any obligation of Borrower hereunder in such manner and to such extent as Lender may deem necessary. Borrower shall cause Mortgage Borrower to permit Lender to enter upon any Individual Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in any Individual Property for such purposes, and the cost and expense thereof (including reasonable attorneys' fees to the extent permitted by law), with interest as provided in this Section 8.2, shall constitute a portion of the Debt and shall be due and payable to Lender upon demand. All such costs and expenses incurred by Lender in remedying such Event of Default or such failed payment or act or in appearing in, defending, or bringing any action or proceeding shall bear interest at the Default Rate, for the period after such cost or expense was incurred into the date of payment to Lender. All such costs and expenses incurred by Lender together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and be secured by the liens, claims and security interests provided to Lender under the Loan Documents and shall be immediately due and payable upon demand by Lender therefore. Upon the occurrence and during the continuance of a Senior Mezzanine Loan Event of Default, Lender may, but without any obligation to do so and without notice to or demand on Borrower or Senior Mezzanine Borrower and without releasing Senior Mezzanine Borrower from any obligation under the

Senior Mezzanine Loan Documents or being deemed to have cured any Senior Mezzanine Loan Event of Default, make, do or perform any obligation of Senior Mezzanine Borrower under Senior Mezzanine Loan Documents in such manner and to such extent as Lender may deem necessary. All such costs and expenses incurred by Lender in remedying such Senior Mezzanine Loan Event of Default or such failed payment or act shall bear interest at the Default Rate, for the period after such cost or expense was incurred into the date of payment to Lender. All such costs and expenses incurred by Lender together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and be secured by the liens, claims and security interests provided to Lender under the Loan Documents and shall be immediately due and payable upon demand by Lender therefor. Upon the occurrence and during the continuance of a Mortgage Loan Event of Default, Lender may, but without any obligation to do so and without notice to or demand on Borrower or Mortgage Borrower and without releasing Mortgage Borrower from any obligation under the Mortgage Loan Documents or being deemed to have cured any Mortgage Loan Event of Default, make, do or perform any obligation of Mortgage Borrower under Mortgage Loan Documents in such manner and to such extent as Lender may deem necessary. All such costs and expenses incurred by Lender in remedying such Mortgage Loan Event of Default or such failed payment or act shall bear interest at the Default Rate, for the period after such cost or expense was incurred into the date of payment to Lender. All such costs and expenses incurred by Lender together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and be secured by the liens, claims and security interests provided to Lender under the Loan Documents and shall be immediately due and payable upon demand by Lender therefor.

(g) For the purpose of carrying out the provisions and exercising the rights, powers and privileges granted in this Section 8.2, Borrower hereby irrevocably constitutes and appoints the Lender its true and lawful attorney-in-fact to execute, acknowledge and deliver any instruments and do and perform any acts such as are referred to in this subsection in the name and on behalf of Borrower upon the occurrence and during the continuance of an Event of Default. This power of attorney is a power coupled with an interest and cannot be revoked.

**Section 8.3. Intentionally Omitted.**

**Section 8.4. Costs of Collection.** In the event that after an Event of Default and during the continuance thereof: (a) the Note or any of the Loan Documents is placed in the hands of an attorney for collection or enforcement or is collected or enforced through any legal proceeding; (b) an attorney is retained to represent Lender in any bankruptcy, reorganization, receivership, or other proceedings affecting creditors' rights and involving a claim under the Note or any of the Loan Documents or (c) an attorney is retained to protect or enforce the lien or any of the terms of this Agreement, the Pledge Agreement or any of the Loan Documents, then, in any such instance, Borrower shall pay to Lender all reasonable attorneys' fees, costs and expenses actually incurred in connection therewith, including costs of appeal, together with interest on any judgment obtained by Lender at the Default Rate.

**IX. SPECIAL PROVISIONS**

**Section 9.1. Sale of Notes and Securitization.** Borrower acknowledges and agrees that the Lender may sell all or any portion of the Loan and the Loan Documents, or issue

one or more participations therein, or consummate one or more private or public securitizations of rated single- or multi-class securities (the “**Securities**”) secured by or evidencing ownership interests in all or any portion of the Loan and the Loan Documents or a pool of assets that include the Loan and the Loan Documents (such sales, participations and/or securitizations, collectively, a “**Securitization**”). At the request of Lender, and to the extent not already required to be provided by Borrower under this Agreement, Borrower shall use reasonable efforts to provide information not in the possession of Lender or which may be reasonably required by Lender in order to satisfy the market standards to which Lender customarily adheres or which may be reasonably required by prospective investors and/or the Rating Agencies in connection with any such Securitization including, without limitation, to:

(a) provide or cause Mortgage Borrower and Senior Mezzanine Borrower to provide additional and/or updated Provided Information, together with appropriate verification and/or consents related to the Provided Information through letters of auditors or opinions of counsel of independent attorneys reasonably acceptable to Lender and the Rating Agencies;

(b) cooperate in good faith in the preparation of descriptive materials for presentations to any or all of the Rating Agencies, and work with, and if requested, supervise, third-party service providers engaged by Borrower, Holdings and their respective affiliates to obtain, collect, and deliver information requested or required by Lender or the Rating Agencies;

(c) deliver, if required or requested by any Rating Agency, (i) updated opinions of counsel as to non-consolidation, due execution and enforceability with respect to the Properties, Borrower, Mortgage Borrower, Senior Mezzanine Borrower, the Collateral, the Senior Mezzanine Collateral, Principal, Holdings and their respective Affiliates and the Loan Documents, and (ii) revised organizational documents for Borrower, which counsel opinions and organizational documents shall be reasonably satisfactory to Lender and the Rating Agencies;

(d) if required by any Rating Agency, use commercially reasonable efforts to deliver such additional tenant estoppel letters, subordination agreements or other agreements from parties to agreements that affect any of the Properties, which estoppel letters, subordination agreements or other agreements shall be reasonably satisfactory to Lender and the Rating Agencies;

(e) execute such amendments to the Loan Documents as may be requested by Lender or the Rating Agencies to effect the Securitization and/or deliver one or more new component notes to replace the original note or modify the original note to reflect multiple components of the Loan such that the pricing and marketability of the Securities and the size of each class of Securities and the rating assigned to each such class by the Rating Agencies shall provide the most favorable rating levels and achieve the optimum rating levels for the Loan, provided that, (i) the aggregate stated principal amount of the notes, following such amendments or delivery of new or component notes, shall equal the aggregate stated principal amount of the Loan immediately prior thereto, (ii) the weighted average spread of the Loan on the date of such amendment or delivery of new or component notes shall equal the weighted average spread which was applicable to the Loan immediately prior to such adjustment (Borrower acknowledging that such new notes or modified notes may, in connection with the application of principal to such new notes or modified note following the occurrence of an Event of Default,

but not otherwise, subsequently cause the weighted average spread of such new notes or modified notes to change and (iii) the provisions of Section 2.1.5 otherwise shall apply to any such amendments and delivery of new or component notes (such provisions being incorporated herein by this reference);

(f) if requested by Lender, review any information regarding any of the Properties, Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Principal, the Collateral, the Senior Mezzanine Collateral, Holdings, the Operating Company and the Loan which is contained in a preliminary or final private placement memorandum, prospectus, prospectus supplement (including any amendment or supplement to either thereof), or other disclosure document to be used by Lender or any affiliate thereof; and

(g) supply to Lender such documentation, financial statements and reports in form and substance required in order to comply with any applicable securities laws (to the extent in Borrower's possession, or in the possession of Borrower's advisors, agents or employees), including, without limitation, if applicable, information necessary to comply with any applicable reporting or information requirements under Regulation D under the Securities Act of 1933 or Regulation S under the Securities Act of 1933.

Lender and Borrower each shall pay their respective costs and expenses incurred in connection with the foregoing, including, without limitation, legal fees in connection with any of the foregoing matters; except that all costs and expenses of Lender and Borrower associated with any restructuring of the Loan requested by Lender, including under Sections 2.1.5, 2.1.6 and 2.1.7, shall be paid solely by Lender.

**Section 9.2. Securitization Indemnification.** (a) Borrower understands that certain of the Provided Information may be included in Disclosure Documents in connection with the Securitization and may also be included in filings with the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended (the "**Securities Act**"), or the Securities and Exchange Act of 1934, as amended (the "**Exchange Act**"), or provided or made available to investors or prospective investors in the Securities, the Rating Agencies, and service providers relating to the Securitization. In the event that the Disclosure Document is required to be revised prior to the sale of all Securities, Borrower will cooperate with the holder of the Note in updating the Disclosure Document by providing all current information necessary to keep the Disclosure Document accurate and complete in all material respects to the extent in Borrower's possession.

(b) Borrower agrees to provide, in connection with the Securitization, an indemnification agreement (i) certifying that (A) Borrower has carefully examined the Disclosure Documents, including, without limitation, the sections entitled "Risk Factors," "Special Considerations," "Description of the Collateral," "Description of the Mezzanine Loans," "The Operating Company," "The Borrower" and "Certain Legal Aspects of the Mezzanine Loans," and (B) such sections and such other information in the Disclosure Documents (to the extent such information relates to or includes any Provided Information or any information regarding the Properties, Borrower, Mortgage Borrower, the Collateral, the Senior Mezzanine Collateral and/or Operating Company) (collectively with the Provided Information, the "**Covered Disclosure Information**") do not contain any untrue statement of a

material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, (ii) indemnifying Lender, each Noteholder, JPM (whether or not it is the Lender), any Affiliate of JPM or a Noteholder that has filed any registration statement relating to the Securitization or has acted as the sponsor or depositor in connection with the Securitization, any Affiliate of JPM or a Noteholder that acts as an underwriter, placement agent or initial purchaser of Securities issued in the Securitization, any other co-underwriters, co-placement agents or co-initial purchasers of Securities issued in the Securitization, and each of their respective officers, directors, partners, employees, representatives, agents and Affiliates and each Person or entity who controls any such Person within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act (collectively, the "Indemnified Persons"), for any losses, claims, damages, liabilities, costs or expenses (including, without limitation, legal fees and expenses for enforcement of these obligations (collectively, the "Liabilities")) to which any such Indemnified Person may become subject insofar as the Liabilities arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in the Covered Disclosure Information or arise out of or are based upon the omission or alleged omission to state in the Covered Disclosure Information a material fact required to be stated therein or necessary in order to make the statements in the Covered Disclosure Information, in light of the circumstances under which they were made, not misleading and (iii) agreeing to reimburse each Indemnified Person for any legal or other expenses incurred by such Indemnified Person, as they are incurred, in connection with investigating or defending the Liabilities provided, however, that Borrower shall have liability with respect to Liabilities arising out of or based upon the Covered Disclosure Information only to the extent that such Liabilities arise out of or are based upon any such untrue statement or omission made in the Covered Disclosure Information in reliance upon and in conformity with information furnished to Lender or such Noteholder by or on behalf of Borrower in connection with the preparation of the Disclosure Documents or in connection with the underwriting or the closing of the Loan (including without limitation financial statements of Borrower and operating statements and rent rolls with respect to the Properties), and in no event shall Borrower be liable for Liabilities arising from information contained in a Disclosure Document that was not provided to Borrower for comment at least five (5) Business Days prior to its dissemination or on which Borrower provided comments to Lender in writing and Lender failed to incorporate such comments (assuming such comments were accurate). This indemnity agreement will be in addition to any liability which Borrower may otherwise have. Moreover, the indemnification provided for in clauses (ii) and (iii) above shall be effective whether or not an indemnification agreement described in clause (i) above is provided.

(c) In connection with filings under the Exchange Act (if any), Borrower agrees to indemnify (i) the Indemnified Persons for Liabilities to which any such Indemnified Person may become subject insofar as the Liabilities arise out of or are based upon any untrue statement or alleged untrue statement of any material fact in the Covered Disclosure Information, or the omission or alleged omission to state in the Covered Disclosure Information a material fact required to be stated therein or necessary in order to make the statements in the Covered Disclosure Information, in light of the circumstances under which they were made, not misleading and (ii) reimburse each Indemnified Person for any legal or other expenses incurred by such Indemnified Persons, as they are incurred, in connection with defending or investigating the Liabilities.

(d) Promptly after receipt by an Indemnified Person of notice of any claim or the commencement of any action, the Indemnified Person shall, if a claim in respect thereof is to be made against Borrower, notify Borrower in writing of the claim or the commencement of that action; provided, however, that the failure to notify Borrower shall not relieve it from any liability which it may have under the indemnification provisions of this Section 9.2 except to the extent that it has been materially prejudiced by such failure and, provided, further, that the failure to notify Borrower shall not relieve it from any liability which it may have to an Indemnified Person otherwise than under the provisions of this Section 9.2. If any such claim or action shall be brought against an Indemnified Person, and it shall notify Borrower thereof, Borrower shall be entitled to participate therein and, to the extent that it wishes, assume the defense thereof with counsel reasonably satisfactory to the Indemnified Person. After notice from any Borrower to an Indemnified Person of its election to assume the defense of such claim or action, Borrower shall not be liable to the Indemnified Person for any legal or other expenses subsequently incurred by the Indemnified Person in connection with the defense thereof except as provided in the following sentence; provided, however, if the defendants in any such action include both Borrower, on the one hand, and one or more Indemnified Persons on the other hand, and an Indemnified Person shall have reasonably concluded that there are any legal defenses available to it and/or other Indemnified Persons that are different or in addition to those available to Borrower, the Indemnified Person or Persons shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on behalf of such Indemnified Person or Persons. The Indemnified Person shall instruct its counsel to maintain reasonably detailed billing records for fees and disbursements for which such Indemnified Person is seeking reimbursement hereunder and shall submit copies of such detailed billing records to substantiate that such counsel's fees and disbursements are solely related to the defense of a claim for which Borrower is required hereunder to indemnify such Indemnified Person. Borrower shall not be liable for the expenses of more than one (1) such separate counsel unless such Indemnified Person shall have reasonably concluded that there may be legal defenses available to it that are different from or additional to those available to another Indemnified Person.

(e) Without the prior consent of the Indemnified Person in question (which consent shall not be unreasonably withheld), Borrower shall not settle or compromise or consent to the entry of any judgment in any pending or threatened claim, action, suit or proceeding in respect of which indemnification may be sought hereunder (whether or not any Indemnified Person is an actual or potential party to such claim, action, suit or proceeding) unless Borrower shall have given such Indemnified Person reasonable prior notice thereof and shall have obtained an unconditional release of each Indemnified Person hereunder from all liability arising out of such claim, action, suit or proceedings. As long as Borrower has complied with its obligations to defend and indemnify hereunder, Borrower shall not be liable for any settlement made by any Indemnified Person without the consent of Borrower (which consent shall not be unreasonably withheld).

(f) Borrower agrees that if any indemnification or reimbursement sought pursuant to this Section 9.2 is finally judicially determined to be unavailable for any reason or is insufficient to hold any Indemnified Person harmless (with respect only to the Liabilities that are the subject of this Section 9.2), then Borrower, on the one hand, and such Indemnified Person, on the other hand, shall contribute to the Liabilities for which such indemnification or

reimbursement is held unavailable or is insufficient: (x) in such proportion as is appropriate to reflect the relative benefits to Borrower, on the one hand, and such Indemnified Person, on the other hand, from the transactions to which such indemnification or reimbursement relates; or (y) if the allocation provided by clause (x) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (x) but also the relative faults of Borrower, on the one hand, and all Indemnified Persons, on the other hand, as well as any other equitable considerations. Notwithstanding the provisions of this Section 9.2, (A) no party found liable for a fraudulent misrepresentation shall be entitled to contribution from any other party who is not also found liable for such fraudulent misrepresentation, and (B) Borrower agrees that in no event shall the amount to be contributed by the Indemnified Persons collectively pursuant to this paragraph exceed the amount of the fees (by underwriting discount or otherwise) actually received by the Indemnified Persons in connection with the closing of the Loan or the Securitization.

(g) Borrower agrees that the indemnification, contribution and reimbursement obligations set forth in this Section 9.2 shall apply whether or not any Indemnified Person is a formal party to any lawsuits, claims or other proceedings. Borrower further agrees that the Indemnified Persons are intended third party beneficiaries under this Section 9.2.

(h) The liabilities and obligations of the Indemnified Persons and Borrower under this Section 9.2 shall survive the termination of this Agreement and the satisfaction and discharge of the Debt.

(i) Notwithstanding anything to the contrary contained herein, Borrower shall have no obligation to act as depositor with respect to the Loan or an issuer or registrant with respect to the Securities issued in any Securitization.

**Section 9.3. Exculpation.** (a) Subject to the qualifications below, Lender shall not enforce the liability and obligation of Borrower to perform and observe the obligations contained in the Note, this Agreement, the Pledge Agreement or the other Loan Documents by any action or proceeding wherein a money judgment shall be sought against Borrower, except that Lender may bring a foreclosure action, an action for specific performance or any other appropriate action or proceeding to enable Lender and each Noteholder to enforce and realize upon its interest under the Note, this Agreement, the Pledge Agreement and the other Loan Documents, or in the Collateral, or any other collateral given to Lender pursuant to the Loan Documents; provided, however, that, except as specifically provided herein, any judgment in any such action or proceeding shall be enforceable against Borrower only to the extent of Borrower's interest in the Collateral and in any other collateral given to Lender, and Lender, by accepting the Note, this Agreement, the Pledge Agreement and the other Loan Documents, agrees that it shall not sue for, seek or demand any deficiency judgment against Borrower in any such action or proceeding under, or by reason of, or in connection with, the Note, this Agreement, the Pledge Agreement or the other Loan Documents. The provisions of this Section shall not, however, (a) constitute a waiver, release or impairment of any obligation evidenced or secured by any of the Loan Documents; (b) impair the right of Lender to name Borrower as a party defendant in any action or suit for foreclosure and sale under the Pledge Agreement; (c) affect the validity or enforceability of or any Guaranty made in connection with the Loan or any of the rights and remedies of Lender thereunder; (d) impair the right of Lender to obtain the appointment of a

receiver; (e) intentionally omitted; (f) constitute a prohibition against Lender to seek a deficiency judgment against Borrower in order to fully realize the security granted by the Pledge Agreement or to commence any other appropriate action or proceeding in order for Lender to exercise its remedies against all of the Collateral; or (g) constitute a waiver of the right of Lender to enforce the liability and obligation of Borrower, by money judgment or otherwise, to the extent of any actual loss, damage, cost, expense, liability, claim or other obligation incurred by Lender (including attorneys' fees and costs reasonably incurred) arising out of or in connection with the following:

(i) fraud or intentional misrepresentation by Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor in connection with the execution and delivery of the Loan Documents and/or the Loan;

(ii) the misappropriation, conversion or misapplication in contravention of the Loan Documents by Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor of any funds of Borrower, Senior Mezzanine Borrower, Mortgage Borrower or Operating Company, including, without limitation, (A) any Revenues, (B) any Net Liquidation Proceeds or Insurance Proceeds, (C) any Awards received in connection with a Condemnation, (D) any Rents or security deposits (or any item of Revenue, from whatever source) following an Event of Default, or (E) any distribution or other payments made in connection with any part of the Collateral or Senior Mezzanine Collateral;

(iii) the misappropriation, conversion or misapplication by Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor of any security deposits or Rents paid more than one (1) month in advance;

(iv) any act of actual intentional physical waste by Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor;

(v) the breach of any representation, warranty, covenant or indemnification provision in the Environmental Indemnity Agreement concerning environmental laws, hazardous substances and asbestos and any indemnification of Lender with respect thereto in either document;

(vi) if Borrower, Mortgage Borrower, Senior Mezzanine Borrower or Operating Company fails to obtain Lender's prior consent to any voluntary intentional Transfer as required by this Agreement, the Mortgage Loan Agreement or the Mortgages, as applicable;

(vii) any security deposits, advance deposits or any other deposits collected with respect to any of the Properties which are not delivered to Mortgage Lender upon a foreclosure of any of the Properties or action in lieu thereof, except to the extent any such security deposits were applied in accordance with the terms and conditions of any of the Leases prior to the occurrence of the Event of Default that gave rise to such foreclosure or action in lieu thereof;

(viii) in the event of: (A) Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor filing a voluntary petition under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (B) the filing of an involuntary petition against Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law by any Person in which Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor or any of their respective Affiliates, agents or employees colludes with or such other Person, or Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor soliciting or causing to be solicited petitioning creditors for any involuntary petition against Borrower, Operating Company or any Guarantor from any Person; (C) Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor filing an answer consenting to or otherwise acquiescing in or joining in any involuntary petition filed against it by any other Person, other than Lender, under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (D) Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor consenting to or acquiescing in or joining in an application for the appointment of a custodian, receiver, trustee, or examiner for Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor or any of the Properties, the Collateral, the Senior Mezzanine Collateral or any portion thereof, other than at the request of Lender; or (E) Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor making an assignment for the benefit of creditors (other than Lender), or admitting, in writing or in any legal proceeding, its insolvency or inability to pay its debts as they become due;

(ix) if Borrower, Senior Mezzanine Borrower or Mortgage Borrower fails to maintain its status as a Special Purpose Entity or breaches any material representation or warranty set forth in Section 4.1.30 of this Agreement; and

(x) if Borrower, Mortgage Borrower, Senior Mezzanine Borrower or Operating Company fails to obtain Lender's prior consent to any voluntary Indebtedness (other than (x) with respect to Mortgage Borrower, Permitted Indebtedness and (y) with respect to Operating Company, Permitted Indebtedness (Operating Company), as applicable) or voluntary Lien (other than Permitted Encumbrances) encumbering any of the Properties, Senior Mezzanine Collateral or Collateral as required by this Agreement, the Senior Mezzanine Loan Agreement, the Mortgage Loan Agreement, the Pledge Agreement or the Mortgages.

Notwithstanding anything to the contrary under this Agreement, neither any present or future Affiliate of Borrower (other than Guarantor, to the extent provided under the Guaranty) nor any present or future shareholder, officer, director, employee, trustee, beneficiary, advisor, partner, member, principal, participant or agent of or in any Borrower or of or in any person or entity that is or becomes an Affiliate of any Borrower shall have any personal liability, directly or indirectly, under or in connection with the Loan Documents. Neither the negative capital account of any Affiliate of Borrower in Borrower, or in any other Affiliate of Borrower in any other Affiliate of Borrower, nor any obligation of any Affiliate of Borrower in any Borrower to restore a negative capital account or to contribute or loan capital to any Borrower or to any other

Affiliate of Borrower shall at any time be deemed to be the property or an asset of any Borrower (or any other Affiliate of Borrower) and neither Lender nor its successors or assigns shall have any right to collect, enforce or proceed against any such negative capital account or obligation to restore, contribute or loan capital.

(b) Notwithstanding anything to the contrary in this Agreement, the Note or any of the Loan Documents, Lender shall not be deemed to have waived any right which Lender may have under Section 506(a), 506(b), 1111(b) or any other provisions of the Bankruptcy Code to file a claim for the full amount of the Indebtedness or to require that all collateral shall continue to secure all of the Indebtedness owing to Lender in accordance with the Loan Documents.

**Section 9.4. Servicer.** (a) At the option of Lender, the Loan may be serviced by a servicer/trustee (the “**Servicer**”) selected by Lender and Lender may delegate all or any portion of its responsibilities under this Agreement and the other Loan Documents to the Servicer pursuant to a servicing agreement (the “**Servicing Agreement**”) between Lender and Servicer. Lender shall be responsible for any set-up fees or any other initial costs relating to or arising under the Servicing Agreement (arising in connection with the Securitization) and the payment of the monthly servicing fee due to Servicer under the Servicing Agreement, and, unless otherwise specifically set forth herein, Borrower shall be responsible for the payment of all fees and other reasonable out-of-pocket expenses incurred by Servicer resulting from any Borrower requests (for approvals or otherwise) to Servicer.

(b) In the event of a Securitization or syndication, the grant of participations in the Loan or any secondary marketing by Lender, Mortgage Borrower and the Mezzanine Borrowers, collectively may rely upon approvals or consents given by one (1) agent or representative in respect of the Mortgage Lender and the Mezzanine Lenders for the matter in question (which such parties shall designate, and pending further notice from Lender, such agent shall be JPM). Borrower shall only pay legal fees for the outside counsel of one Servicer.

**Section 9.5. Assignments and Participations.** (a) In addition to the rights Lender has under Section 9.1, Lender shall have the right, subject to this Section 9.5, to assign, sell, negotiate, pledge or hypothecate all or any portion of their rights and obligations hereunder (a “**Syndication**”). Except in connection with a Securitization, no Lender shall assign, sell, negotiate, pledge, hypothecate or otherwise transfer all or any portion of its rights in and to the Loan to any other Person (an “**Assignee**”) (a) other than in compliance with Section 9.9 hereof; and (b) unless such transaction shall be an assignment of a constant (and not varying), ratable percentage of such Lender’s interest in the Loan; provided, however, any Lender shall have the right at any time without the consent of or notice to any other Lender or other Person to grant a security interest in all or any portion of such Lender’s interest in the Loan to any Federal Reserve Bank or the central reserve bank or similar authority of any other country to secure any obligation of such Lender to such bank or similar authority (a “**Central Bank Pledge**”). Effective on any such assignment and assumption by the assignee and on compliance with Section 9.9 hereof, the assigning Lender shall have no further liability hereunder with respect to the interest of such Lender that was the subject of such transfer and such Assignee shall be a Lender with respect to such interest, and Borrower shall have the same rights as to such Assignee with respect to such interest from and after the date of such assignment as if such Lender were an

original Lender hereunder. Except for a Central Bank Pledge or financing transaction under a repurchase agreement, a Lender making any such assignment shall notify Borrower of same, specifying the Assignee thereof and the amount of the assignment and shall provide such other detail as Borrower may reasonably request to substantiate compliance with the foregoing.

**Section 9.6. Participation.** Lender may, without the consent of the Borrower, in compliance with applicable law, sell participations to one or more banks or other entities (a "**Participant**"), in all or a portion of Lender's rights and obligations under this Agreement (including all or a portion of the Loan owing to it); provided that (A) Lender's obligations under this Agreement shall remain unchanged, (B) Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) the Borrower shall continue to deal solely and directly with Lender in connection with Lender's rights and obligations under this Agreement. The Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.2.3 and 2.2.4 (subject to requirements and limitations therein) to the same extent as if it were a Noteholder and had acquired its interest by assignment pursuant to Section 9.5. Each Lender that sells a participation shall, acting solely for this purpose as an agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each participant's interest in the Loans or other obligations under this Agreement (the "**Participant Register**"). The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each person whose name is recorded in the Participant Register as the owner of such Loan or other obligation hereunder as the owner thereof for all purposes of this Agreement notwithstanding any notice to the contrary.

**Section 9.7. Borrower's Facilitation of Transfer.** In order to facilitate permitted assignments and other transfers to Assignees and sales to Participants, Borrower shall execute and deliver to Lender and shall cause Guarantor to execute and deliver to Lender such further documents, instruments or agreements as Lender may reasonably require, including, if required by Lender, supplemental notes in the principal amount of such Lender's pro rata share of the Loan substantially in the form of such Lender's Note against surrender of the prior notes, and such supplemental note shall (i) be payable to order of such Lender, (ii) be dated as of the date hereof, and (iii) mature on the Maturity Date. Such supplemental note shall provide that it evidences a portion of the existing indebtedness hereunder and under the Notes and not any new or additional indebtedness of Borrower. The term "Note" as used in this Agreement and in all the other Loan Documents shall include all such supplemental notes but exclude any Note it replaces. Notwithstanding the foregoing, such documents, instruments or agreements shall not (a) increase the obligations or liabilities of any such Person hereunder or under the other Loan Documents in excess of the obligations or liabilities intended to be provided herein or in the other Loan Documents or (b) decrease such Person's rights hereunder or under the other Loan Documents to less than what they were prior to the execution of such documents, instruments or agreements. In addition, Borrower agrees to reasonably cooperate with Lender, including providing such information and documentation regarding Borrower, Senior Mezzanine Borrower, Mortgage Borrower, Holdings, the Operating Company and any other Person as Lender or any potential Assignee or Participant may reasonably request and to meet with potential Assignees and Participants upon reasonable notice. Lender and Borrower each shall pay their respective costs and expenses incurred in connection with the foregoing, including, without limitation, legal fees in connection with any of the foregoing matters, except that all costs and

expenses of Lender and Borrower associated with any restructuring of the Loan requested by Lender, including under Section 2.1.5, 2.1.6 and 2.1.7, shall be paid solely by Lender.

**Section 9.8. Notice; Registration Requirement.** No Syndication of any part of Lender's interest in and to the Loan shall be effective or permitted under Section 9.5 until (a) an assignment and acceptance agreement in a form reasonably acceptable to Lender (an "**Assignment and Acceptance**") with respect to such Syndication shall have been delivered to Lender, (b) Lender shall have registered such Assignee's name and address in the Register which Lender maintains for the recordation of the names, addresses and interests of Noteholders, and (c) if such Assignee is not already a Lender hereunder, such Assignee shall deliver any tax forms required hereunder. The entries in the Register shall be conclusive, absent manifest error. This Section 9.8 shall not apply to any Central Bank Pledge.

**Section 9.9. Registry.** Borrower hereby designates Lender to serve as Borrower's agent, solely for purposes of this Section 9.9, to maintain at one of its offices a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the names and addresses of each Assignee, and the principal amount of the Loan (or portions thereof) owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). Failure to make any such recordation, or any error in such recordation shall not affect Borrower's obligations in respect of the Loan. With respect to any Lender, the transfer of the rights to the principal of, and interest on, its interest in the Loan shall not be effective until such transfer is recorded on the Register maintained by Lender with respect to ownership of such Loan and prior to such recordation all amounts owing to the transferor with respect to such Note shall remain owing to the transferor. The registration of a transfer of all or part of the Loan shall be recorded by Lender on the Register only upon the acceptance by Lender of a properly executed and delivered Assignment and Acceptance by the assignor and assignee. At the assigning Lender's option, concurrently with the delivery of an Assignment and Acceptance pursuant to which an interest of such Lender in the Loan was assigned to such Assignee, the assigning Lender shall surrender to Borrower its Note, if any, evidencing the portion of the Loan corresponding to the interest so transferred and Borrower shall deliver to Lender one or more new promissory notes in the same aggregate principal amount issued to the assigning Lender and/or the Assignee.

**Section 9.10. Cooperation in Syndication.** Borrower agrees to assist the Lender in completing a Syndication satisfactory to the Lender. Such assistance shall include (i) direct contact between senior management and advisors of Borrower and the proposed Assignees and/or Participants, (ii) assistance in the preparation of a confidential information memorandum and other marketing materials to be used in connection with the Syndication, (iii) the hosting, with the Lender, of one or more meetings of prospective Assignees and/or Participants, (iv) the delivery of appraisals satisfactory to the Lender if required. To assist the Lender in its Syndication efforts, Borrower agrees promptly to prepare and provide to the Lender all information with respect to Borrower, Senior Mezzanine Borrower, Mortgage Borrower, Holdings, the Operating Company, Guarantor, the Collateral, the Senior Mezzanine Collateral and the Properties contemplated hereby, including all financial information and projections (the "**Projections**"), as the Lender may reasonably request in connection with the Syndication of the Loan. If required in connection with the Syndication, Borrower hereby agrees to:

(a) deliver updated financial and operating statements and other information reasonably required by the Lender to facilitate the Syndication;

(b) use reasonable efforts to deliver reliance letters reasonably satisfactory to the Lender with respect to the environmental assessments and reports delivered to the Lender prior to the Closing Date, which will run to the Lender and its successors and assigns;

(c) execute modifications to the Loan Documents required by the Lender, provided that such modification will not (except as set forth in (d)) change any material or economic terms of the Loan Documents, or otherwise increase the obligations or decrease the rights of Borrower pursuant to the Loan Documents (except to a de minimis extent); and

(d) if the Lender elects, in its sole discretion, prior to or upon a Syndication, to exercise its rights under Section 2.1.5, Borrower agrees to cooperate with the Lender in connection with the foregoing and to execute the required modifications and amendments to the Notes, this Agreement and the Loan Documents and to use reasonable efforts to provide opinions necessary to effectuate the same. Such Notes or components may be assigned different interest rates, so long as the weighted average of such interest rates does not exceed the Applicable Interest Rate, except in connection with the application of principal to such Notes or components following the occurrence of an Event of Default.

Lender and Borrower each shall pay their respective costs and expenses incurred in connection with the foregoing, including, without limitation, legal fees in connection with any of the foregoing matters, except that all costs and expenses of Lender and Borrower associated with any restructuring of the Loan requested by Lender, including under Sections 2.1.5, 2.1.6 and 2.1.7, shall be paid solely by Lender.

## X. MISCELLANEOUS

**Section 10.1. Survival.** This Agreement and all covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the making by Lender of the Loan and the execution and delivery to Lender of the Note, and shall continue in full force and effect so long as all or any of the Debt is outstanding and unpaid unless a longer period is expressly set forth herein or in the other Loan Documents. Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the legal representatives, successors and assigns of such party. All covenants, promises and agreements in this Agreement, by or on behalf of Borrower, shall inure to the benefit of the legal representatives, successors and assigns of Lender.

**Section 10.2. Lender's Discretion.** Whenever pursuant to this Agreement, Lender exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Lender, the decision of Lender to approve or disapprove or to decide whether arrangements or terms are satisfactory or not satisfactory shall (except as is otherwise specifically herein provided) be in the sole discretion of Lender and shall be final and conclusive. Whenever this Agreement expressly provides that Lender may not withhold or shall be reasonable in granting its consent or its approval of an arrangement or term, such provisions shall also be deemed to prohibit Lender from delaying or conditioning such consent or approval.

**Section 10.3. Governing Law.** (a) THIS AGREEMENT WAS NEGOTIATED IN THE STATE OF NEW YORK, THE LOAN WAS MADE BY LENDER AND ACCEPTED BY BORROWER IN THE STATE OF NEW YORK, AND THE PROCEEDS OF THE LOAN DELIVERED PURSUANT HERETO WERE DISBURSED FROM THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS AND THE OBLIGATIONS ARISING HEREUNDER AND THEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA. TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER AND LENDER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVE ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS, AND THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER OR BORROWER ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS MAY AT LENDER'S OPTION BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW AND BORROWER WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND BORROWER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. BORROWER DOES HEREBY DESIGNATE AND APPOINT:

Corporation Service Company  
2711 Centerville Road, Suite 400  
Wilmington, DE 19808

AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON ITS BEHALF SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY FEDERAL OR STATE COURT IN NEW YORK, NEW YORK, AND AGREES THAT SERVICE OF PROCESS UPON SAID AGENT AT SAID ADDRESS AND NOTICE OF SAID SERVICE MAILED OR DELIVERED TO BORROWER IN THE MANNER PROVIDED HEREIN SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON

**BORROWER IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE STATE OF NEW YORK. BORROWER (I) SHALL GIVE PROMPT NOTICE TO LENDER OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER, (II) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN NEW YORK, NEW YORK (WHICH SUBSTITUTE AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS), AND (III) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE IF ITS AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN NEW YORK, NEW YORK OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR.**

**Section 10.4. Modification, Waiver in Writing.** No modification, amendment, extension, discharge, termination or waiver of any provision of this Agreement, or of the Note, or of any other Loan Document, nor consent to any departure by Borrower therefrom, shall in any event be effective unless the same shall be in a writing signed by the party against whom enforcement is sought, and then such waiver or consent shall be effective only in the specific instance, and for the purpose, for which given. Except as otherwise expressly provided herein, no notice to, or demand on Borrower, shall entitle Borrower to any other or future notice or demand in the same, similar or other circumstances. To the extent required by any Gaming Law, Borrower shall notify all relevant Gaming Authorities of any amendment to this Agreement or any Loan Document.

**Section 10.5. Delay Not a Waiver.** Except as expressly set forth herein, neither any failure nor any delay on the part of Lender in insisting upon strict performance of any term, condition, covenant or agreement, or exercising any right, power, remedy or privilege hereunder, or under the Note or under any other Loan Document, or any other instrument given as security therefor, shall operate as or constitute a waiver thereof, nor shall a single or partial exercise thereof preclude any other future exercise, or the exercise of any other right, power, remedy or privilege. In particular, and not by way of limitation, by accepting payment after the due date of any amount payable under this Agreement, the Note or any other Loan Document, Lender shall not be deemed to have waived any right either to require prompt payment when due of all other amounts due under this Agreement, the Note or the other Loan Documents, or to declare a default for failure to effect prompt payment of any such other amount.

**Section 10.6. Notices.** All notices, consents, approvals and requests required or permitted hereunder or under any other Loan Document shall be given in writing and shall be effective for all purposes if hand delivered or sent by (a) certified or registered United States mail, postage prepaid, return receipt requested or (b) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery, and by telecopier (with answer back acknowledged), addressed as follows (or at such other address and Person as shall be designated from time to time by any party hereto, as the case may be, in a notice to the other parties hereto in the manner provided for in this Section 10.6):

If to Lender: JPMorgan Chase Bank, N.A.  
270 Park Avenue, 10th Floor  
New York, New York 10017  
Attention: Michael Mesard  
Facsimile No.: (212) 834-6592

with a copy to: Sullivan & Cromwell LLP  
125 Broad Street  
New York, New York 10004  
Attention: Arthur S. Adler  
Facsimile No.: 212-558-3588

Cadwalader, Wickersham & Taft LLP  
One World Financial Center  
New York, New York 10281  
Attention: Fredric L. Altschuler  
Facsimile No.: (212) 504-6666

If to Borrower: One Caesars Palace Drive  
Las Vegas, Nevada 89109  
Attention: Chief Financial Officer  
Facsimile No.: (702) 407-6081

With a copy to: One Caesars Palace Drive  
Las Vegas, Nevada 89109  
Attention: General Counsel  
Facsimile No.: (702) 407-6418

and

Cleary Gottlieb Steen & Hamilton LLP  
One Liberty Plaza  
New York, New York 10006  
Attention: Michael Weinberger  
Facsimile No.: (212) 225-3999

and

Pircher, Nichols & Meeks  
1925 Century Park East, Seventeenth Floor  
Los Angeles, California 90067  
Attention: David Packer  
Facsimile No.: (310) 201-8922

A notice shall be deemed to have been given: in the case of hand delivery, at the time of delivery; in the case of registered or certified mail, when delivered or the first attempted delivery on a Business Day; or in the case of expedited prepaid delivery and telecopy, upon the first

attempted delivery on a Business Day; or in the case of telecopy, upon sender's receipt of a machine-generated confirmation of successful transmission after advice by telephone to recipient that a telecopy notice is forthcoming. Each Borrower hereby designates Tahoe Mezz 3, LLC, a Delaware limited liability company ("**Borrower Agent**"), as the party to give and receive notices on behalf of Borrower hereunder, and any notice received by Lender by a Borrower other than Borrower Agent shall not constitute effective notice to, or be binding upon Lender hereunder. Notwithstanding the foregoing, any notice by Lender to one or more Borrowers other than Borrower Agent shall be deemed to constitute effective notice to all of the Borrowers.

**Section 10.7. Trial by Jury. BORROWER AND LENDER HEREBY AGREE NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVE ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY BORROWER AND LENDER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. BORROWER AND LENDER ARE HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER.**

**Section 10.8. Headings.** The Article and/or Section headings and the Table of Contents in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

**Section 10.9. Severability.** Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

**Section 10.10. Preferences.** Lender shall have the continuing and exclusive right to apply or reverse and reapply any and all payments by Borrower to any portion of the obligations of Borrower hereunder (except that, unless there exists an Event of Default, payments of principal shall be applied to components of the Note on a pro-rata basis). To the extent Borrower makes a payment or payments to Lender, which payment or proceeds or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable cause, then, to the extent of such payment or proceeds received, the obligations hereunder or part thereof intended to be satisfied shall be revived and continue in full force and effect, as if such payment or proceeds had not been received by Lender.

**Section 10.11. Waiver of Notice.** Borrower hereby expressly waives, and shall not be entitled to, any notices of any nature whatsoever from Lender except with respect to matters for which this Agreement or the other Loan Documents specifically and expressly

provide for the giving of notice by Lender to Borrower and except with respect to matters for which Borrower is not, pursuant to applicable Legal Requirements, permitted to waive the giving of notice.

**Section 10.12. Remedies of Borrower.** In the event that a claim or adjudication is made that Lender or its agents have acted unreasonably or unreasonably delayed acting in any case where by law or under this Agreement or the other Loan Documents, Lender or such agent, as the case may be, has an obligation to act reasonably or promptly, Borrower agrees that neither Lender nor its agents shall be liable for any monetary damages, and Borrower's sole remedies shall be limited to commencing an action seeking injunctive relief or declaratory judgment (except in cases of bad faith, gross negligence or willful misconduct). The parties hereto agree that any action or proceeding to determine whether Lender has acted reasonably shall be determined by an action seeking declaratory judgment.

**Section 10.13. Expenses; Indemnity.** (a) Borrower covenants and agrees to pay or, if Borrower fails to pay, to reimburse, Lender and each Noteholder upon receipt of notice from such Person for all reasonable out-of-pocket costs and expenses (including reasonable attorneys' fees and disbursements) incurred by such Person in connection with (i) the preparation, negotiation, execution and delivery of this Agreement and the other Loan Documents and the consummation of the transactions contemplated hereby and thereby and all the costs of furnishing all opinions by counsel for Borrower (including, without limitation, any opinions requested by such Person as to any legal matters arising under this Agreement or the other Loan Documents with respect to the Properties); (ii) Borrower's ongoing performance of and compliance with Borrower's respective agreements and covenants contained in this Agreement and the other Loan Documents on its part to be performed or complied with after the Closing Date, including, without limitation, confirming compliance with environmental, gaming and insurance requirements if necessary or advisable due to reasonably suspected non-compliance; (iii) the negotiation, preparation, execution, delivery and administration of any consents, amendments, waivers or other modifications to this Agreement and the other Loan Documents and any other documents or matters requested by Borrower; (iv) securing Borrower's compliance with any requests made pursuant to the provisions of this Agreement, if Borrower defaults in its obligations hereunder; (v) the filing and recording fees and expenses, title insurance and reasonable fees and expenses of counsel for providing to Lender or any Noteholder all required legal opinions, and other similar expenses incurred in creating and perfecting the Liens in favor of Lender (or, as applicable, any Noteholder) pursuant to this Agreement and the other Loan Documents; (vi) enforcing or preserving any rights, either in response to third party claims or in prosecuting or defending any action or proceeding or other litigation, in each case against, under or affecting Borrower, Senior Mezzanine Borrower, Mortgage Borrower, Operating Company, this Agreement, the other Loan Documents, the Properties, the Collateral or any other security given for the Loan; and (vii) enforcing any obligations of or collecting any payments due from Borrower under this Agreement, the other Loan Documents or with respect to the Properties, Operating Company or in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a "work-out" or of any insolvency or bankruptcy proceedings; provided, however, that Borrower shall not be liable for the payment of any such costs and expenses to any Person to the extent the same arise by reason of the gross negligence, illegal acts, fraud or willful misconduct of such Person. Any cost and expenses due and payable to Lender or any Noteholder may be

paid from any amounts in the Mezzanine Collection Account upon the occurrence and during the continuance of an Event of Default.

(b) Borrower shall indemnify, defend and hold harmless Lender from and against any and all other actual liabilities, obligations, losses, damages (excluding, however, any punitive and consequential damages), penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel for Lender in connection with any investigative, administrative or judicial proceeding commenced or threatened, whether or not Lender shall be designated a party thereto), that may be imposed on, incurred by, or asserted against Lender in any manner relating to or arising out of (i) any breach by Borrower of its obligations under, or any material misrepresentation by Borrower contained in, this Agreement or the other Loan Documents, (ii) the use or intended use of the proceeds of the Loan, (iii) the Leases or any of the duties, responsibilities or obligations of Borrower or any Operating Company thereunder, (iv) the transactions contemplated in the Collection Account Agreements or (v) any third-party claims alleging that the Loan, the Senior Mezzanine Loan or the Mortgage Loan, the Operating Lease, the Operating Lease Guaranty or any of the Loan Documents violates any agreements or Legal Requirements binding on the Borrower or its Affiliates or their respective properties (collectively, the “**Indemnified Liabilities**”); provided, however, that Borrower shall not have any obligation to Lender hereunder to the extent that such Indemnified Liabilities arise from the gross negligence, illegal acts, fraud or willful misconduct of Lender. To the extent that the undertaking to indemnify, defend and hold harmless set forth in the preceding sentence may be unenforceable because it violates any law or public policy, Borrower shall pay the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by Lender.

(c) Borrower covenants and agrees to pay for or, if Borrower fails to pay, to reimburse Lender for, any fees and expenses incurred by any Rating Agency in connection with any request by Borrower that required Rating Agency Confirmation pursuant to the terms hereof.

**Section 10.14. Schedules Incorporated.** The Schedules annexed hereto are hereby incorporated herein as a part of this Agreement with the same effect as if set forth in the body hereof.

**Section 10.15. Offsets, Counterclaims and Defenses.** Any assignee of Lender’s interest in and to this Agreement, the Note and the other Loan Documents shall take the same free and clear of all offsets, counterclaims or defenses which are unrelated to such documents which Borrower may otherwise have against any assignor of such documents, and no such unrelated counterclaim or defense shall be interposed or asserted by Borrower in any action or proceeding brought by any such assignee upon such documents and any such right to interpose or assert any such unrelated offset, counterclaim or defense in any such action or proceeding is hereby expressly waived by Borrower.

**Section 10.16. No Joint Venture or Partnership; No Third Party Beneficiaries.** (a) Borrower and Lender intend that the relationships created hereunder and under the other Loan Documents be solely that of borrower and lender. Nothing herein or therein is intended to create a joint venture, partnership, tenancy-in-common, or joint tenancy

relationship between Borrower and Lender nor to grant Lender any interest in the Properties other than that of mortgagee, beneficiary or lender.

(b) Except as expressly provided herein, this Agreement and the other Loan Documents are solely for the benefit of Lender and Borrower and nothing contained in this Agreement or the other Loan Documents shall be deemed to confer upon anyone other than Lender and Borrower any right to insist upon or to enforce the performance or observance of any of the obligations contained herein or therein. Lender and Borrower acknowledge and agree that the Noteholders are intended third party beneficiaries of all rights and remedies of the Lender hereunder. All conditions to the obligations of Lender to make the Loan hereunder are imposed solely and exclusively for the benefit of Lender and no other Person shall have standing to require satisfaction of such conditions in accordance with their terms or be entitled to assume that Lender will refuse to make the Loan in the absence of strict compliance with any or all thereof and no other Person shall under any circumstances be deemed to be a beneficiary of such conditions, any or all of which may be freely waived in whole or in part by Lender if, in Lender's sole discretion, Lender deems it advisable or desirable to do so.

**Section 10.17. Intentionally Omitted.**

**Section 10.18. Waiver of Marshalling of Assets.** To the fullest extent permitted by law, Borrower, for itself and its successors and assigns, waives all rights to a marshalling of the assets of Borrower, Borrower's partners and others with interests in Borrower, and of the Properties, or to a sale in inverse order of alienation in the event of foreclosure of all or any of the Mortgages, and agrees not to assert any right under any laws pertaining to the marshalling of assets, the sale in inverse order of alienation, homestead exemption, the administration of estates of decedents, or any other matters whatsoever to defeat, reduce or affect the right of Lender under the Loan Documents to a sale of the Properties for the collection of the Debt without any prior or different resort for collection or of the right of Lender to the payment of the Debt out of the net proceeds of the Properties in preference to every other claimant whatsoever. In addition, Borrower, for itself and its successors and assigns, waives in the event of foreclosure of any or all of the Collateral, any equitable right otherwise available to Borrower which would require the separate sale of the Collateral with respect to each Mortgage Borrower or require Lender to exhaust its remedies against any Collateral with respect to each Mortgage Borrower or any combination of such Collateral before proceeding against any other Collateral with respect to one or more Mortgage Borrowers; and further in the event of such foreclosure Borrower does hereby expressly consent to and authorize, at the option of Lender, the foreclosure and sale either separately or together of any combination of the Collateral.

**Section 10.19. Waiver of Counterclaim.** Borrower hereby waives the right to assert a counterclaim, other than a compulsory counterclaim, in any action or proceeding brought against it by Lender or its agents.

**Section 10.20. Conflict; Construction of Documents; Reliance.** In the event of any conflict between the provisions of this Loan Agreement and any of the other Loan Documents, the provisions of this Loan Agreement shall control. The parties hereto acknowledge that they were represented by competent counsel in connection with the negotiation, drafting and execution of the Loan Documents and that such Loan Documents shall

not be subject to the principle of construing their meaning against the party which drafted same. Borrower acknowledges that, with respect to the Loan, Borrower shall rely solely on its own judgment and advisors in entering into the Loan without relying in any manner on any statements, representations or recommendations of Lender or any parent, subsidiary or Affiliate of Lender. Lender shall not be subject to any limitation whatsoever in the exercise of any rights or remedies available to it under any of the Loan Documents or any other agreements or instruments which govern the Loan by virtue of the ownership by it or any parent, subsidiary or Affiliate of Lender of any equity interest any of them may acquire in Borrower, and Borrower hereby irrevocably waives the right to raise any defense or take any action on the basis of the foregoing with respect to Lender's exercise of any such rights or remedies. Borrower acknowledges that Lender engages in the business of real estate financings and other real estate transactions and investments which may be viewed as adverse to or competitive with the business of Borrower or its Affiliates.

**Section 10.21. Brokers and Financial Advisors.** Borrower hereby represents that it has dealt with no financial advisors, brokers, underwriters, placement agents, agents or finders in connection with the transactions contemplated by this Agreement (other than those the fees and other claims of which shall be paid by Borrower). Borrower hereby agrees to indemnify, defend and hold Lender and each Noteholder harmless from and against any and all claims, liabilities, costs and expenses of any kind (including Lender's attorneys' fees and expenses) in any way relating to or arising from a claim by any Person that such Person acted on behalf of Borrower or Lender in connection with the transactions contemplated herein. Each of Lender and (by its acceptance of its respective Note) the Noteholders hereby represents that it has dealt with no financial advisors, brokers, underwriters, placement agents, agents or finders in connection with the transactions contemplated by this Agreement. The provisions of this Section 10.21 shall survive the expiration and termination of this Agreement and the payment of the Debt.

**Section 10.22. Prior Agreements.** This Agreement and the other Loan Documents contain the entire agreement of the parties hereto and thereto in respect of the transactions contemplated hereby and thereby, and all prior agreements among or between such parties, whether oral or written, including, without limitation, the Commitment Letter dated December 19, 2006 between Affiliates of Borrower and Lender are superseded by the terms of this Agreement and the other Loan Documents.

**Section 10.23. Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which counterparts together shall constitute one agreement with the same effect as if the parties had signed the same signature page.

**Section 10.24. Intentionally Omitted.**

**Section 10.25. Gaming Laws.** All rights, remedies and powers in or under this Agreement may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of the Gaming Laws.

**Section 10.26. Certain Additional Rights of Lender (VCOC).** Notwithstanding anything to the contrary contained in this Agreement, Lender shall have:

(a) the right to routinely consult with and advise Borrower's management regarding the significant business activities and business and financial developments of Borrower, Senior Mezzanine Borrower and Mortgage Borrower, provided that any such advice or consultation shall be completely nonbinding on Borrower, and; provided, however, that such consultations shall not include discussions of environmental compliance programs or disposal of hazardous substances;

(b) the right, in accordance with the terms of this Agreement, to examine the books and records of Borrower, Senior Mezzanine Borrower and Mortgage Borrower at any reasonable times upon reasonable notice;

(c) the right, in accordance with the terms of this Agreement, including, without limitation, Section 5.1.11 hereof, to receive monthly, quarterly and year end financial reports, including balance sheets, statements of income, shareholder's equity and cash flow, a management report and schedules of outstanding indebtedness, in each case to the extent explicitly set forth herein; and

(d) the right, without restricting any other rights of Lender under this Agreement (including any similar right), to reasonably approve any acquisition by Borrower, Senior Mezzanine Borrower or Mortgage Borrower of any other significant real property.

The rights described above in this Section 10.26 may be exercised by any entity which owns and controls, directly or indirectly, substantially all of the interests in Lender.

## **XI. JOINT AND SEVERAL LIABILITY; WAIVERS**

**Section 11.1. Joint and Several Liability; Primary Obligors.** Each entity comprising Borrower (each, a "**Borrower Entity**") shall be a primary obligor with respect to payment of the Debt and performance of Borrower's obligations under the Loan Documents and all such Borrower Entities shall be jointly and severally liable for payment of the Debt and performance of such other obligations. As used in this Article, references to "**Other Borrowers**" shall mean all Borrower Entities other than the particular Borrower Entity referred to.

**Section 11.2. Waivers.** Without limiting the primary liability of each Borrower Entity as set forth above, to the extent any such Borrower Entity is determined to be secondarily liable with respect to any portion of the Debt or any other obligation hereunder, the following shall apply:

**11.2.1 No Duty to Pursue Others.** It shall not be necessary for Lender (and each Borrower Entity hereby waives any rights which such Borrower Entity may have to require Lender), in order to enforce the obligations of such Borrower Entity hereunder, first to (a) institute suit or exhaust its remedies against any Other Borrower or others liable on the Debt or any other person, (b) enforce Lender's rights against any collateral mortgaged, pledged or

granted by any Other Borrower which shall ever have been given to secure the Debt ("**Other Borrower Collateral**"), (c) enforce Lender's rights against any other guarantors of the Debt, (d) join Borrower or any others liable on the Debt in any action against any Other Borrower seeking to enforce the Loan Documents, (e) exhaust any remedies available to Lender against any collateral which shall ever have been given to secure the Debt, or (f) resort to any other means of obtaining payment of the Loan by any Other Borrower. Lender shall not be required to mitigate damages or take any other action pertaining to any Other Borrower or any Other Borrower Collateral to reduce, collect or enforce the Debt from any Other Borrower.

**11.2.2 Waivers.** Such Borrower Entity agrees to the provisions of the Loan Documents, and hereby waives notice of (a) any loans or advances made by Lender to any Other Borrower, (b) acceptance of the Loan Documents, (c) any amendment or extension of the Note, the Loan Agreement or of any other Loan Documents entered into by any Other Borrower, (d) the execution and delivery by any Other Borrower and Lender of any other loan or credit agreement or of any Other Borrower's execution and delivery of any promissory notes or other documents arising under the Loan Documents or in connection with the Other Borrower Collateral, (e) the occurrence of any breach by any Other Borrower or an Event of Default with respect to any Other Borrower or Other Borrower Collateral, (f) Lender's transfer or disposition of the Debt, or any part thereof, (g) sale or foreclosure (or posting or advertising for sale or foreclosure) of any Other Borrower Collateral, (h) protest, proof of non-payment or default by any Other Borrower and (i) any other action at any time taken or omitted by Lender, and, generally, all demands and notices to any Other Borrower of every kind in connection with the Loan Documents, any documents or agreements evidencing, securing or relating to any of the Debt.

**11.2.3 Waiver of Subrogation, Reimbursement and Contribution.** Notwithstanding anything to the contrary contained in the Loan Documents, each Borrower hereby unconditionally and irrevocably waives, releases and abrogates, prior to the payment in full of the Loan and for a period of ninety-one (91) days thereafter any and all rights it may now or hereafter have under any agreement, at law or in equity (including any law subrogating such Borrower Entity to the rights of Lender), to assert any claim against or seek contribution, indemnification or any other form of reimbursement (other than pursuant to the express provisions of the Contribution Agreement) from any Other Borrower or any other party liable for payment of any or all of the Debt for any payment made by such Borrower Entity under or in connection with the Loan Documents or otherwise.

**11.2.4 Events and Circumstances Not Reducing or Discharging Guarantor's Obligations.** Each Borrower Entity hereby consents and agrees to each of the following, and agrees that such Borrower Entity's obligations under the Loan Documents shall not be released, diminished, impaired, reduced or adversely affected by any of the following, and waives any common law, equitable, statutory or other rights (including rights to notice) which such Borrower Entity might otherwise have as a result of or in connection with any of the following:

(a) **Modifications.** Any renewal, extension, increase, modification, alteration, restatement or rearrangement entered into by any Other Borrower of all or any part of the Debt, the Note, the Loan Agreement, the other Loan Documents, or any other document, instrument,

contract or understanding between any Other Borrower and Lender, or any other parties, pertaining to the Debt or any failure of Lender to notify Borrower Entity of any such action.

(b) Adjustment. Any adjustment, indulgence, forbearance or compromise that might be granted or given by Lender to any Other Borrower.

(c) Condition of Borrower or Borrower Entity. The insolvency, bankruptcy, arrangement, adjustment, composition, liquidation, disability, dissolution or lack of power of any Other Borrower or any other party at any time liable for the payment of all or part of the Debt; or any dissolution of any Other Borrower, or any sale, lease or transfer of any or all of the assets of Borrower or of any Other Borrower, or any changes in the shareholders, partners or members of any Other Borrower; or any reorganization of any Other Borrower.

(d) Invalidity of Debt. The invalidity, illegality or unenforceability of all or any part of the Debt, or any document or agreement executed in connection with the Debt, for any reason whatsoever, including the fact that (a) the Debt, or any part thereof, exceeds the amount permitted by law, (b) the act of creating the Debt or any part thereof is ultra vires, (c) the officers or representatives executing the Note, the Loan Agreement or the other Loan Documents or otherwise creating the Debt acted in excess of their authority, (d) the Debt violate applicable usury laws, (e) any Other Borrower has valid defenses, claims or offsets (whether at law, in equity or by agreement) which render the Debt wholly or partially uncollectible from such Other Borrower, (f) the creation, performance or repayment of the Debt (or the execution, delivery and performance of any document or instrument by any Other Borrower representing part of the Debt or executed in connection with the Debt, or given to secure the repayment of the Debt) is illegal, uncollectible or unenforceable, or (g) the Note, the Loan Agreement or any of the other Loan Documents have been forged or otherwise are irregular or not genuine or authentic, it being agreed that such Borrower Entity shall remain liable hereon regardless of whether any Other Borrower or any other Person be found not liable on the Debt or any part thereof for any reason.

(e) Release of Obligors. Any full or partial release of the liability of any Other Borrower on the Debt, or any part thereof, or of any guarantor(s) thereof, or any other person or entity now or hereafter liable, whether directly or indirectly, jointly, severally, or jointly and severally, to pay, perform, guarantee or assure the payment of the Debt, or any part thereof, it being recognized, acknowledged and agreed by such Borrower Entity that such Borrower Entity may be required to pay the Debt in full without assistance or support of any other party, and such Borrower Entity has not been induced to enter into the Loan Documents on the basis of a contemplation, belief, understanding or agreement that other Persons will be liable to pay or perform the Debt, or that Lender will look to other Persons to pay or perform the Debt.

(f) Other Collateral. The taking or accepting of any other security, collateral or guaranty, or other assurance of payment, for all or any part of the Debt.

(g) Release of Collateral. Any release, surrender, exchange, subordination, deterioration, waste, loss or impairment (including negligent, willful, unreasonable or unjustifiable impairment) of any collateral, property or security at any time existing in connection with, or assuring or securing payment of, all or any part of the Debt.

(h) Care and Diligence. The failure of Lender or any other party to exercise diligence or reasonable care in the preservation, protection, enforcement, sale or other handling or treatment of Other Borrower Collateral, all or any part of such collateral, property or security, including any neglect, delay, omission, failure or refusal of Lender (a) to take or prosecute any action for the collection of any of the Debt or (b) to foreclose, or initiate any action to foreclose, or, once commenced, prosecute to completion any action to foreclose upon Other Borrower Collateral, or (c) to take or prosecute any action in connection with any instrument or agreement evidencing or securing all or any part of the Debt.

(i) Unenforceability. The fact that any collateral, security, security interest or lien contemplated or intended to be given, created or granted as security for the repayment of the Debt, or any part thereof, shall not be properly perfected or created, or shall prove to be unenforceable or subordinate to any other security interest or lien, it being recognized and agreed by such Borrower Entity that such Borrower Entity is not entering into the Loan Documents in reliance on, or in contemplation of the benefits of, the validity, enforceability, collectibility or value of any of the collateral for the Debt.

(j) Offset. Any existing or future right of offset, claim or defense of Borrower against Lender, or any other Person, or against payment of the Debt by any Other Borrower, whether such right of offset, claim or defense arises in connection with the Debt (or the transactions creating the Debt) or otherwise.

(k) Merger. The reorganization, merger or consolidation of any Other Borrower into or with any other corporation or entity.

(l) Preference. Any payment by Borrower to Lender is held to constitute a preference under bankruptcy laws, or for any reason Lender is required to refund such payment or pay such amount to Borrower or someone else.

**Section 11.3. Other Actions Taken or Omitted.** Any other action taken or omitted to be taken with respect to the Loan Documents, the Debt, or Other Borrower Collateral, whether or not such action or omission prejudices such Borrower Entity or increases the likelihood that such Borrower Entity will be required to pay the Debt pursuant to the terms hereof, it is the unambiguous and unequivocal intention of such Borrower Entity that such Borrower Entity shall be obligated to pay the Debt when due, notwithstanding any occurrence, circumstance, event, action, or omission whatsoever pertaining to any Other Borrower or any Other Borrower Collateral, whether contemplated or not, and whether or not otherwise or particularly described herein, which obligation shall be deemed satisfied only upon the full and final payment and satisfaction of the Debt.

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**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed by their duly authorized representatives, all as of the day and year first above written.

**BORROWER:**

**HARRAH'S LAS VEGAS MEZZ 3, LLC,**  
a Delaware limited liability company

By:  /s/ Jonathan S. Halkyard  
Name: Jonathan S. Halkyard  
Title: President and Treasurer

**HARRAH'S ATLANTIC CITY MEZZ 3, LLC,**  
a Delaware limited liability company

By:  /s/ Jonathan S. Halkyard  
Name: Jonathan S. Halkyard  
Title: President and Treasurer

**TAHOE MEZZ 3, LLC,**  
a Delaware limited liability company

By:  /s/ Jonathan S. Halkyard  
Name: Jonathan S. Halkyard  
Title: President and Treasurer

**RIO MEZZ 3, LLC,**  
a Delaware limited liability company

By:  /s/ Jonathan S. Halkyard  
Name: Jonathan S. Halkyard  
Title: President and Treasurer

**FLAMINGO LAS VEGAS MEZZ 3, LLC,**  
a Delaware limited liability company

By: /s/ Jonathan S. Halkyard

Name: Jonathan S. Halkyard

Title: President and Treasurer

**SHOWBOAT ATLANTIC CITY MEZZ 3, LLC,**  
a Delaware limited liability company

By: /s/ Jonathan S. Halkyard

Name: Jonathan S. Halkyard

Title: President and Treasurer

**LENDER:**

**JPMORGAN CHASE BANK, N.A.**

By: /s/ Jennifer A. Loughrey

Name: Jennifer A. Loughrey

Title: Vice President

**FOURTH MEZZANINE LOAN AGREEMENT**

Dated as of January 28, 2008

Between

**THE ENTITIES IDENTIFIED ON THE SIGNATURE PAGES  
HEREOF AS BORROWER,**  
collectively, as Borrower

and

**JPMORGAN CHASE BANK N.A.,**  
as Lender

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## FOURTH MEZZANINE LOAN AGREEMENT

THIS FOURTH MEZZANINE LOAN AGREEMENT, dated as of January 28, 2008 (as amended, restated, replaced, supplemented or otherwise modified from time to time, this “**Agreement**”), between **JPMORGAN CHASE BANK, N.A.**, a banking association chartered under the laws of the United States of America, having an address at 270 Park Avenue, New York, New York 10017 (“**Lender**”), and **THE ENTITIES IDENTIFIED ON THE SIGNATURE PAGES HEREOF AS BORROWER**, each a Delaware limited liability company having its principal place of business at the addresses set forth on Schedule I attached hereto (collectively, “**Borrower**”).

### WITNESSETH:

**WHEREAS**, JPMorgan Chase Bank, N.A., having an address at 270 Park Avenue, New York, New York 10017, as mortgage lender (“**Mortgage Lender**”), is making a loan in the principal amount of Four Billion and No/100 Dollars (\$4,000,000,000) (the “**Mortgage Loan**”) to Mortgage Borrower (as hereinafter defined) pursuant to that certain Loan Agreement, dated as of the date hereof (as the same may be amended, supplemented, replaced or otherwise modified from time to time, the “**Mortgage Loan Agreement**”), which Mortgage Loan is evidenced by the Mortgage Note (as hereinafter defined) made by Mortgage Borrower to Mortgage Lender and secured by, among other things, the Mortgage (as hereinafter defined) given by Mortgage Borrower in favor of Mortgage Lender pursuant to which Mortgage Borrower has granted Mortgage Lender a first priority mortgage on, among other things, the Properties and other collateral as more fully described in the Mortgage;

**WHEREAS**, JPMorgan Chase Bank, N.A., having an address at 270 Park Avenue, New York, New York 10017, as first mezzanine lender (“**First Mezzanine Lender**”), is making a loan in the principal amount of Three Hundred Million and No/100 Dollars (\$300,000,000) (the “**First Mezzanine Loan**”) to First Mezzanine Borrower (as hereinafter defined) pursuant to that certain First Mezzanine Loan Agreement, dated as of the date hereof (as the same may be amended, supplemented, replaced or otherwise modified from time to time, the “**First Mezzanine Loan Agreement**”), which First Mezzanine Loan is evidenced by the First Mezzanine Note (as hereinafter defined) made by First Mezzanine Borrower to First Mezzanine Lender and secured by, among other things, the First Mezzanine Pledge Agreement (as hereinafter defined) given by First Mezzanine Borrower in favor of First Mezzanine Lender pursuant to which First Mezzanine Borrower has granted First Mezzanine Lender a first priority security interest on, among other things, the Collateral (as defined in the First Mezzanine Pledge Agreement);

**WHEREAS**, JPMorgan Chase Bank, N.A., having an address at 270 Park Avenue, New York, New York 10017, as second mezzanine lender (“**Second Mezzanine Lender**”), is making a loan in the principal amount of Two Hundred Seventy Five Million and No/100 Dollars (\$275,000,000) (the “**Second Mezzanine Loan**”) to Second Mezzanine Borrower (as hereinafter defined) pursuant to that certain Second Mezzanine Loan Agreement, dated as of the date hereof (as the same may be amended, supplemented, replaced or otherwise

modified from time to time, the **“Second Mezzanine Loan Agreement”**), which Second Mezzanine Loan is evidenced by the Second Mezzanine Note (as hereinafter defined) made by Second Mezzanine Borrower to Second Mezzanine Lender and secured by, among other things, the Second Mezzanine Pledge Agreement (as hereinafter defined) given by Second Mezzanine Borrower in favor of Second Mezzanine Lender pursuant to which Second Mezzanine Borrower has granted Second Mezzanine Lender a first priority security interest on, among other things, the Collateral (as defined in the Second Mezzanine Pledge Agreement);

**WHEREAS**, JPMorgan Chase Bank, N.A., having an address at 270 Park Avenue, New York, New York 10017, as third mezzanine lender (**“Third Mezzanine Lender”**), is making a loan in the principal amount of Two Hundred Seventy Five Million and No/100 Dollars (\$275,000,000) (the **“Third Mezzanine Loan”**) to Third Mezzanine Borrower (as hereinafter defined) pursuant to that certain Third Mezzanine Loan Agreement, dated as of the date hereof (as the same may be amended, supplemented, replaced or otherwise modified from time to time, the **“Third Mezzanine Loan Agreement”**), which Third Mezzanine Loan is evidenced by the Third Mezzanine Note (as hereinafter defined) made by Third Mezzanine Borrower to Third Mezzanine Lender and secured by, among other things, the Third Mezzanine Pledge Agreement (as hereinafter defined) given by Third Mezzanine Borrower in favor of Third Mezzanine Lender pursuant to which Third Mezzanine Borrower has granted Third Mezzanine Lender a first priority security interest on, among other things, the Collateral (as defined in the Third Mezzanine Pledge Agreement);

**WHEREAS**, First Mezzanine Borrower is the legal and beneficial owner of all of the interests in Mortgage Borrower;

**WHEREAS**, Second Mezzanine Borrower is the legal and beneficial owner of all of the interests in First Mezzanine Borrower;

**WHEREAS**, Third Mezzanine Borrower is the legal and beneficial owner of all of the interests in Second Mezzanine Borrower;

**WHEREAS**, Borrower is the legal and beneficial owner of all of the interests in Third Mezzanine Borrower;

**WHEREAS**, Borrower desires to obtain the Loan (as hereinafter defined) from Lender;

**WHEREAS**, as a condition precedent to the obligation of Lender to make the Loan to Borrower, Borrower has entered into that certain Pledge and Security Agreement (Fourth Mezzanine Loan), dated as of the date hereof, in favor of Lender (as amended, supplemented or otherwise modified from time to time, the **“Pledge Agreement”**), pursuant to which Borrower has granted to Lender a first priority security interest in the Collateral (as defined in the Pledge Agreement) as collateral security for the Debt (as hereinafter defined); and

**WHEREAS**, Lender is willing to make the Loan to Borrower, subject to and in accordance with the terms of this Agreement and the other Loan Documents (as hereinafter defined).

**NOW THEREFORE**, in consideration of the making of the Loan by Lender and the covenants, agreements, representations and warranties set forth in this Agreement, the parties hereto hereby covenant, agree, represent and warrant as follows:

**I. DEFINITIONS; PRINCIPLES OF CONSTRUCTION**

**Section 1.1. Definitions.** For all purposes of this Agreement, except as otherwise expressly required or unless the context clearly indicates a contrary intent:

**“Acceptable Counterparty”** shall mean any counterparty to the Interest Rate Cap Agreement that has and shall maintain, until the expiration of the applicable Interest Rate Cap Agreement, a long-term unsecured debt rating of at least “A+” by S&P and “Aa3” from Moody’s, which rating shall not include a “t” or otherwise reflect a termination risk and is otherwise reasonably acceptable to Lender.

**“Additional Insolvency Opinion”** shall have the meaning set forth in Section 4.1.30(c) hereof.

**“Additional True Lease Opinion”** shall have the meaning set forth in Section 4.1.30(d) hereof.

**“Affiliate”** shall mean, as to any Person, any other Person that, directly or indirectly, is in Control of, is Controlled by or is under common Control with such Person or is a director or officer of such Person or of an Affiliate of such Person.

**“Aggregate Debt Service”** shall mean, with respect to any particular period of time, the sum of (a) the Debt Service, (b) the Mortgage Debt Service and (c) the Other Mezzanine Debt Service.

**“Aggregate Material Adverse Effect”** shall mean any event or condition that, either singly or in the aggregate, could reasonably be expected to have or result in a material adverse effect upon (a) the business, operations, economic performance, prospects, assets or condition (financial or otherwise) of (i) Mortgage Borrower, Senior Mezzanine Borrower or Borrower (taken as a whole), (ii) Guarantor, (iii) Operating Company (taken as a whole), (iv) the Operating Lease or the Operating Lease Guaranty (taken as a whole) or (v) the Properties (taken as a whole), the Collateral, the Senior Mezzanine Collateral, the Hotel Components (taken as a whole) or the Casino Components (taken as a whole); (b) the ability of Mortgage Borrower (taken as a whole), Senior Mezzanine Borrower (taken as a whole), Borrower (taken as a whole) or Guarantor to perform, in all material respects, its obligations under the Loan Documents, Senior Mezzanine Loan Documents or Mortgage Loan Documents (taken as a whole) to which such entity is a party; (c) the ability of Operating Company (taken as a whole) to perform, in all material respects, the obligations under the Operating Leases (taken as a whole); or the ability of Guarantor (Operating Lease) (taken as a whole) to perform, in all material respects, the

obligations under the Operating Lease Guaranty (taken as a whole); (d) the enforceability or validity of (i) the Operating Lease (taken as a whole) or the Operating Lease Guaranty (taken as a whole), (ii) the Loan Documents, Senior Mezzanine Loan Documents or Mortgage Loan Documents (taken as a whole) or the perfection or priority of the Liens created under the Loan Documents, Senior Mezzanine Loan Documents or Mortgage Loan Documents (taken as a whole); (e) the value of, or cash flow from, the Properties or the operations thereof (taken as a whole) or the Collateral; or (f) the material rights, interests and remedies of Lender under the Loan Documents (taken as a whole).

“**Allocated Loan Amount**” shall mean, for an Individual Property, the amount set forth on Schedule II attached hereto.

“**ALTA**” shall mean American Land Title Association, or any successor thereto.

“**Alteration**” shall mean, with respect to any Individual Property, any alteration, improvement, demolition, construction or removal of all or any portion of the Improvements at such Individual Property.

“**Annual Budget**” shall mean, individually and collectively as the context requires, (a) the Borrower Annual Budget and (b) the Operating Company Annual Budget.

“**Applicable Interest Rate**” shall mean the rate or rates at which the outstanding principal amount of the Loan bears interest from time to time in accordance with the provisions of Section 2.2.3 hereof.

“**Approved Guarantor**” means (x) Holdings, for so long Holdings meets the Minimum Value Test, or (y) any other guarantor that meets the Minimum Value Test and is otherwise reasonably satisfactory to Lender.

“**Assignee**” shall have the meaning set forth in Section 9.5 hereof.

“**Assignment and Acceptance**” shall have the meaning set forth in Section 9.8 hereof.

“**Award**” shall mean any compensation paid by any Governmental Authority in connection with a Condemnation with respect to all or any part of any Individual Property.

“**Bankruptcy Action**” shall mean with respect to any Person (a) such Person filing a voluntary petition under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (b) the filing of an involuntary petition against such Person under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law, or soliciting or causing to be solicited petitioning creditors for any involuntary petition against such Person; (c) such Person filing an answer consenting to or otherwise acquiescing in or joining in any involuntary petition filed against it, by any other Person under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law, or soliciting or causing to be solicited petitioning creditors for any involuntary petition from any Person; (d) such Person consenting to or acquiescing in or joining in an application for the appointment of a custodian, receiver, trustee, or examiner for such Person or any portion of its property; or (e) such Person making an

assignment for the benefit of creditors, or admitting, in writing or in any legal proceeding, its insolvency or inability to pay its debts as they become due.

**“Bankruptcy Code”** shall mean Title 11 of the United States Code, 11 U.S.C. §101, et seq., as the same may be amended from time to time, and any successor statute or statutes and all rules and regulations from time to time promulgated thereunder, and any comparable foreign laws relating to bankruptcy, insolvency or creditors’ rights or any other Federal or state bankruptcy or insolvency law.

**“Basic Carrying Costs”** shall mean, for any period, with respect to each Individual Property, the sum of the following costs associated with such Individual Property for such period: (a) Taxes, (b) Insurance Premiums and (c) Ground Rent.

**“Bill’s Lake Tahoe Casino”** shall mean that certain property identified on Schedule II as “Bill’s Lake Tahoe” having a street address of 15 Highway 50, Stateline, Nevada.

**“Borrower”** shall have the meaning set forth in the introductory paragraph hereto, together with its successors and permitted assigns. As used herein, the term “Borrower” shall mean one of the Borrowers individually, or the Borrowers collectively, as the context shall require.

**“Borrower Agent”** shall have the meaning set forth in Section 10.6 hereof.

**“Borrower Annual Budget”** shall mean the operating budget of Mortgage Borrower, prepared by Mortgage Borrower for the applicable Fiscal Year or other period.

**“Borrower Entity”** shall have the meaning set forth in Section 11.1 hereof.

**“Business Day”** shall mean any day other than a Saturday, Sunday or any other day on which national banks in New York, New York are not open for business.

**“Capital Expenditures”** shall mean, for any period, the amount expended for items capitalized under GAAP (including expenditures for building improvements or major repairs, leasing commissions, tenant improvements and Fixtures).

**“Capitalized Software Expenditures”** shall mean, for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities) by a Person during such period in respect of licensed or purchased software or internally developed software and software enhancements that, in accordance with GAAP, are or are required to be reflected as capitalized costs on the consolidated balance sheet of such Person.

**“Cash Management Account”** shall have the meaning set forth in the Mortgage Loan Agreement.

**“Casino Components”** shall mean, collectively, those portions of each Individual Property devoted to the operation of casino gaming operations, including (without limitation) those areas devoted to the conduct of games of chance, facilities associated directly with gaming operations including, without limitation, casino support areas such as surveillance and security

areas, cash cages, counting and accounting areas and gaming back-of-the-house areas in each case, to the extent the operation thereof requires a Gaming License under applicable Gaming Laws. The Casino Components are more particularly described and set forth in each Operating Lease, as appropriate.

“**Casualty**” shall have the meaning set forth in Section 6.2 hereof.

“**Change in Control**” shall mean (1) a “Change in Control” as defined in the Credit Agreement, dated the date hereof, among Hamlet Merger Inc., a Delaware corporation, Harrah’s Operating Company, Inc., a Delaware corporation, the Lenders party thereto from time to time, Bank of America, N.A., as administrative agent and collateral agent for the Lenders, and certain other parties thereto, or (2) a Change in Control as defined in clause (b) of said definition except that references therein to Borrower shall be deemed to refer to Holdings.

“**Closing Date**” shall mean the date of the funding of the Loan.

“**Code**” shall mean the Internal Revenue Code of 1986, as amended, as it may be further amended from time to time, and any successor statutes thereto, and applicable U.S. Department of Treasury regulations issued pursuant thereto in temporary or final form.

“**Collateral**” shall have the meaning set forth in the Pledge Agreement.

“**Collateral Assignment of Interest Rate Cap Agreement**” shall mean that certain Collateral Assignment of Interest Rate Cap Agreement, dated as of the date hereof, executed by Borrower in connection with the Loan for the benefit of the Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Collection Account**” shall have the meaning set forth in the Mortgage Loan Agreement.

“**Collection Banks**” shall mean any Eligible Institution(s) designated by Mortgage Borrower as Collection Bank and reasonably approved by Lender from time to time in accordance with the terms hereof, or (c) any other financial institution otherwise reasonably approved by Lender and, if a Securitization has occurred, with respect to which a Rating Agency Confirmation has been obtained.

“**Condemnation**” shall mean a temporary or permanent taking by any Governmental Authority as the result or in lieu or in anticipation of the exercise of the right of condemnation or eminent domain, of all or any part of any Individual Property, or any interest therein or right accruing thereto, including any right of access thereto or any change of grade affecting such Individual Property or any part thereof.

“**Consolidated Net Income**” shall mean, with respect to any Person for any period, the aggregate of the Net Income of such Person for such period, on a consolidated basis; provided, however, that, without duplication,

(i) any net after-tax extraordinary, nonrecurring or unusual gains or losses or income or expense or charge (less all fees and expenses relating thereto), including,

without limitation, any severance, relocation or other restructuring expenses, any expenses related to any reconstruction, decommissioning, recommissioning or reconfiguration of fixed assets for alternative uses, fees, expenses or charges relating to new product lines, curtailments or modifications to pension and post-retirement employee benefit plans, excess pension charges, acquisition integration costs, facilities opening costs, project start-up costs, business optimization costs, signing, retention or completion bonuses, shall be excluded,

(ii) any net after tax income or loss from disposed, abandoned, transferred, closed or discontinued operations and any net after tax gain or loss on disposal of disposed, abandoned, transferred, closed or discontinued operations shall be excluded,

(iii) any net after tax gain or loss (less all fees and expenses or charges relating thereto) attributable to business dispositions or asset dispositions other than in the ordinary course of business (as determined in good faith by the management of the Borrower) shall be excluded,

(iv) Consolidated Net Income for such period shall not include the cumulative effect of a change in accounting principles during such period,

(v) effects of purchase accounting adjustments (including the effects of such adjustments pushed down to such Person) in component amounts required or permitted by GAAP, resulting from the application of purchase accounting in relation to any consummated acquisition or the amortization or write-off of any amounts thereof, net of taxes, shall be excluded,

(vi) any impairment charges or asset write-offs, in each case pursuant to GAAP, and the amortization of intangibles arising pursuant to GAAP, shall be excluded,

(vii) any non cash compensation charge or expenses realized or resulting from stock option plans, employee benefit plans or post-employment benefit plans, or grants or sales of stock, stock appreciation or similar rights, stock options, restricted stock, preferred stock or other rights shall be excluded,

(viii) accruals and reserves that are established or adjusted within twelve months after the Closing Date and that are so required to be established or adjusted in accordance with GAAP or as a result of adoption or modification of accounting policies shall be excluded,

(ix) non-cash gains, losses, income and expenses resulting from fair value accounting required by the applicable standard under GAAP and related interpretations shall be excluded,

(x) (i) the non-cash portion of "straight-line" rent expense shall be excluded and (ii) the cash portion of "straight-line" rent expense which exceeds the amount expensed in respect of such rent expense shall be included,

(xi) to the extent covered by insurance and actually reimbursed, or, so long as such Person has made a determination that there exists reasonable evidence that such amount will in fact be reimbursed by the insurer and only to the extent that such amount is (i) not denied by the applicable carrier in writing within 180 days and (ii) in fact reimbursed within 365 days of the date of such evidence (with a deduction for any amount so added back to the extent not so reimbursed within 365 days), expenses with respect to liability or casualty events or business interruption shall be excluded, and

(xii) non-cash charges for deferred tax asset valuation allowances shall be excluded.

**“Contribution Agreement”** shall mean that certain Contribution Agreement, dated as of the date hereof, between Borrower and Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

**“Control”** shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management, policies or activities of a Person, whether through ownership of voting securities, by contract or otherwise. **“Controlled”** and **“Controlling”** shall have correlative meanings.

**“Convention Center Parcel”** shall mean the parcel shown on Schedule XXII and comprising a part of the Harrah’s Atlantic City Property.

**“Convention Center Project”** shall mean that certain conference center currently contemplated to be constructed on the Convention Center Parcel by the Mortgage Borrower and/or the Operating Company owning the Harrah’s Atlantic City Property, and more fully described in the schematic designs for the Convention Center Project provided by Mortgage Borrower to Mortgage Lender. The Convention Center Project will not be funded with the proceeds of the Loan (but will be funded by Mortgage Borrower, including with capital contributions).

**“Counterparty”** shall mean, with respect to the Interest Rate Cap Agreement and any Replacement Interest Rate Cap Agreement, any Acceptable Counterparty.

**“Covered Disclosure Information”** shall have the meaning set forth in Section 9.2(b) hereof.

**“Debt”** shall mean the outstanding principal amount set forth in, and evidenced by, this Agreement and the Notes together with all interest accrued and unpaid thereon (including any interest that would accrue on the outstanding principal amount of the Loan through and including the end of any applicable Interest Period, even if such Interest Period extends beyond any applicable Payment Date, prepayment date or the Maturity Date) and all other sums due to Lender in respect of the Loan under the Notes, this Agreement, the Pledge Agreement and the other Loan Documents.

**“Debt Service”** shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under this Agreement and the Notes.

**“Debt Service Coverage Ratio”** shall mean a ratio for the applicable period in which:

(a) the numerator is EBITDAR of the Operating Company for the four (4) quarter period preceding the date of determination, as set forth in the financial statements required hereunder; and

(b) the denominator is the sum of (i) the aggregate amount of Mortgage Debt Service which was due and payable for such preceding four (4) quarter period calculated, for these purposes, assuming that (A) the spread on the Mortgage Loan is the Spread (as defined in the Mortgage Loan Agreement) and (B) LIBOR is equal to the lesser of (y) LIBOR on the date of determination, or (z) the applicable Strike Price, (ii) the aggregate amount of Mezzanine Debt Service (including the Debt Service) which was due and payable for such preceding four (4) quarter period calculated, for these purposes, assuming that (A) the spread on the Mezzanine Loans is the “Spread” as defined in each Mezzanine Loan Agreement and (B) LIBOR is equal to the lesser of (y) LIBOR on the date of determination, or (z) the applicable Strike Price (as defined in the Mortgage Loan Agreement), and (iii) the aggregate amount of the Permitted Mezzanine Debt Service which was due and payable for such preceding four (4) quarter period (or the annualized amount, if the Permitted Mezzanine Loan were outstanding for less than 12 calendar months) calculated, for these purposes, assuming that (A) the spread on the Permitted Mezzanine Loan is the “Spread” (as defined in the documents evidencing the Permitted Mezzanine Loan Documents and (B) LIBOR is equal to the lesser of (y) LIBOR on the date of determination, or (z) the strike price under the related interest rate cap purchased in connection with the Permitted Mezzanine Loan);

provided, however, that, solely for the purpose of Section 2.5, the Debt Service Coverage Ratio shall be determined as described in Section 2.5.1(c).

**“Default”** shall mean the occurrence of any event hereunder or under any other Loan Document which, but for the giving of notice or passage of time, or both, would be an Event of Default.

**“Default Rate”** shall mean a rate per annum equal to the lesser of (a) the Maximum Legal Rate and (b) two percent (2%) above the Applicable Interest Rate.

**“Delinquency”** shall mean, with respect to each Individual Property, the latest date on which Taxes or Other Charges may be paid (with respect to such Individual Property) without the payment of a premium, penalty or interest.

**“Determination Date”** shall mean, with respect to any Interest Period, the date that is two (2) London Business Days prior to the fifteenth (15<sup>th</sup>) day of the calendar month in which such Interest Period commences.

**“Disclosure Document”** shall mean a prospectus, prospectus supplement, private placement memorandum, offering memorandum, offering circular, term sheet, road show presentation materials or other offering documents or marketing materials, in each case in preliminary or final form, used to offer Securities in connection with a Securitization.

**“EBITDAR”** shall mean, with respect to any Person for any period, the Consolidated Net Income of such Person plus the sum of (in each case without duplication and to the extent the respective amounts described in subclauses (i) through (vi) below reduced such Consolidated Net Income (and were not excluded therefrom) for the respective period for which EBITDAR is being determined):

(i) provision for Taxes based on income, profits or capital for such period, including, without limitation, state, franchise and similar taxes and foreign withholding taxes (including penalties and interest related to taxes or arising from tax examinations);

(ii) Interest Expense for such period (net of interest income for such period);

(iii) depreciation and amortization expenses for such period including, but not exclusively, the amortization of intangible assets, deferred financing fees and Capitalized Software Expenditures and amortization of unrecognized prior service costs and actuarial gains and losses related to pensions and other post-employment benefits;

(iv) any expenses or charges (other than depreciation or amortization expense as described in the preceding clause (iii)) related to any acquisition, disposition, recapitalization or the incurrence, modification or repayment of Indebtedness permitted to be incurred by this Agreement (including a refinancing thereof) (whether or not successful), including (y) any amendment or other modification of such Indebtedness, and (z) commissions, discounts, yield and other fees and charges (including any interest expense) related to any such Indebtedness;

(v) restructuring charges or reserves (which, for the avoidance of doubt, shall include, without limitation, the effect of inventory optimization programs, retention, severance, systems establishment costs, contract termination costs, future lease commitments and excess pension charges), to the extent that such expenses, charges or reserves are considered to be extraordinary expenses under GAAP;

(vi) any costs or expense incurred pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement or any stock subscription or shareholder agreement, to the extent that such cost or expenses are funded with cash proceeds contributed to the capital of such Person;

(vii) with respect to the Operating Company, the Fixed Rent payable under the Operating Lease; and

(viii) if the Captive Insurance Company shall be utilized to provide terrorism coverage hereunder, the amount of the premiums expended by Mortgage Borrower to obtain such terrorism coverage to the extent such amount exceeds the Terrorism Premium Limit and such excess is retained by the Captive Insurance Company;

provided that EBITDAR shall be reduced by the sum of the following for the respective period for which EBITDAR is being determined:

(A) management fees equal to the greater of (x) 3 percent per annum of gross revenues at the Properties and (y) the actual management fees payable under any management agreement (provided the foregoing shall not be construed as Lender's approval of any management agreement except in accordance with the terms hereof), without double counting actual amounts incurred and otherwise reflected in the calculation of EBITDAR, and

(B) FF&E reserves equal to 3 percent per annum of gross hotel and casino revenues at the Properties without double counting actual amounts incurred and otherwise reflected in the calculation of EBITDAR.

**"EBITDAR (Closing Date)"** shall mean EBITDAR for calendar year 2007, as agreed upon between Borrower and Lender.

**"Eighth Mezzanine Borrower"** shall mean, collectively, the entities set forth on Schedule XX hereto, each a Delaware limited liability company, together with their respective successors and permitted assigns. As used herein, the term "Eighth Mezzanine Borrower" shall mean one of the Eighth Mezzanine Borrowers individually, or the Eighth Mezzanine Borrowers collectively, as the context shall require.

**"Eighth Mezzanine Debt Service"** shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Eighth Mezzanine Notes.

**"Eighth Mezzanine Lender"** shall mean JPMorgan Chase Bank, N.A., in its capacity as the holder of the Eighth Mezzanine Loan, together with its successors and assigns.

**"Eighth Mezzanine Loan"** shall mean that certain loan in the original principal amount of Two Hundred Seventy Five Million and No/100 Dollars (\$275,000,000) of even date herewith made by Eighth Mezzanine Lender to Eighth Mezzanine Borrower.

**"Eighth Mezzanine Loan Agreement"** shall mean that certain Eighth Mezzanine Loan Agreement, dated as of the date hereof, between Eighth Mezzanine Borrower and Eighth Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**"Eighth Mezzanine Loan Documents"** shall mean the Eighth Mezzanine Loan Agreement, the Eighth Mezzanine Notes and all other documents and instruments executed and delivered in connection with the Eighth Mezzanine Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

**"Eighth Mezzanine Notes"** shall mean that Notes as defined in the Eighth Mezzanine Loan Agreement.

**"Eligibility Requirements"** means, with respect to any Person, that such Person (a) has total assets (in name or under management) in excess of \$4,000,000,000 and (except with respect to a pension advisory firm or similar fiduciary) capital/statutory surplus or shareholder's

equity of \$1,000,000,000, (b) is regularly engaged in the business of owning and operating commercial real estate properties, (c) is not currently, and its principals are not currently, subject to a Bankruptcy Action and for the immediately preceding 10 years, neither it nor any material subsidiary has been subject to a Bankruptcy Action, and (d) has not been, and its principals have not been, convicted and is not under current indictment for a felony or crime involving moral turpitude, has not been found by a court of competent jurisdiction to have violated federal or state securities laws, and is not an organized crime figure.

**“Eligible Account”** shall mean a separate and identifiable account from all other funds held by the holding institution that is either (a) an account or accounts maintained with a federal or state-chartered depository institution or trust company which complies with the definition of Eligible Institution or (b) a segregated trust account or accounts maintained with a federal or state chartered depository institution or trust company acting in its fiduciary capacity which, in the case of a state chartered depository institution or trust company, is subject to regulations substantially similar to 12 C.F.R. § 9.10(b), having in either case a combined capital and surplus of at least \$50,000,000 and subject to supervision or examination by federal and state authority. An Eligible Account will not be evidenced by a certificate of deposit, passbook or other instrument.

**“Eligible Institution”** shall mean a depository institution or trust company, the short term unsecured debt obligations or commercial paper of which are rated at least “A-1” by S&P, “P-1” by Moody’s and “F-1” by Fitch in the case of accounts in which funds are held for thirty (30) days or less (or, in the case of accounts in which funds are held for more than thirty (30) days, the long term unsecured debt obligations of which are rated at least “A” by Fitch and S&P and “A2” by Moody’s). After a Securitization of all or any portion of the Loan, only the ratings of those Rating Agencies rating the Securities shall be taken into account in determining whether institutions or trust companies constitute Eligible Institutions.

**“Embargoed Person”** shall have the meaning set forth in Section 4.1.35 hereof.

**“Environmental Indemnity”** shall mean that certain Environmental Indemnity Agreement, dated as of the date hereof, executed by Borrower and Guarantor in connection with the Loan for the benefit of Lender and the Noteholders, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

**“Equipment”** shall mean, with respect to each Individual Property, any equipment now owned or hereafter acquired by Mortgage Borrower or Operating Company, which is used at or in connection with the Improvements or such Individual Property or is located thereon or therein, including (without limitation) all Gaming Equipment, all machinery, equipment, furnishings, and electronic data-processing and other office equipment now owned or hereafter acquired by or on behalf of Mortgage Borrower or Operating Company and any and all additions, substitutions and replacements of any of the foregoing), together with all attachments, components, parts, equipment and accessories installed thereon or affixed thereto.

**“ERISA”** shall mean the Employee Retirement Income Security Act of 1974, as amended.

**“Event of Default”** shall have the meaning set forth in Section 8.1(a) hereof.

**“Exchange Act”** shall have the meaning set forth in Section 9.2(a) hereof.

**“Exchange Act Filing”** shall have the meaning set forth in Section 5.1.11(f) hereof.

**“FF&E”** shall mean, with respect to each Individual Property, collectively, furnishings, fixtures (other than Fixtures) and Equipment located in the guest rooms, hallways, lobbies, restaurants, lounges, meeting and banquet rooms, parking facilities, public areas or otherwise in any portion of such Individual Property, including (without limitation) all fixed asset supplies (including, but not limited to, linen, china, glassware, tableware, uniforms, other hotel inventory and similar items, whether used in connection with public space or guest rooms), beds, chairs, bookcases, tables, carpeting, drapes, couches, luggage carts, luggage racks, bars, bar fixtures, radios, television sets, intercom and paging equipment, electric and electronic equipment, heating, lighting and plumbing fixtures, fire prevention and extinguishing apparatus, cooling and air-conditioning systems, elevators, escalators, stoves, ranges, refrigerators, laundry machines, tools, machinery, boilers, incinerators, switchboards, conduits, compressors, vacuum cleaning systems, floor cleaning, waxing and polishing equipment, cabinets, lockers, shelving, dishwashers, garbage disposals, washer and dryers, gaming equipment and other casino equipment and all other customary hotel and casino resort equipment and other tangible property owned by Mortgage Borrower or Operating Company, or in which Mortgage Borrower or Operating Company has or shall have an interest, now or hereafter located at such Individual Property and useable in connection with the present or future operation and occupancy of such Individual Property; provided, however, that FF&E shall not include items owned by tenants under space Leases (other than the Operating Lease) or by third party operators (other than Operating Company).

**“FF&E Reserve Account”** shall have the meaning set forth in Section 7.3 hereof.

**“FF&E Reserve Fund”** shall have the meaning set forth in Section 7.3 hereof.

**“Fifth Mezzanine Borrower”** shall mean, collectively, the entities set forth on Schedule XVII hereto, each a Delaware limited liability company, together with their respective successors and permitted assigns. As used herein, the term “Fifth Mezzanine Borrower” shall mean one of the Fifth Mezzanine Borrowers individually, or the Fifth Mezzanine Borrowers collectively, as the context shall require.

**“Fifth Mezzanine Debt Service”** shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Fifth Mezzanine Notes.

**“Fifth Mezzanine Lender”** shall mean JPMorgan Chase Bank, N.A., in its capacity as the holder of the Fifth Mezzanine Loan, together with its successors and assigns.

**“Fifth Mezzanine Loan”** shall mean that certain loan in the original principal amount of Two Hundred Seventy Five Million and No/100 Dollars (\$275,000,000) of even date herewith made by Fifth Mezzanine Lender to Fifth Mezzanine Borrower.

**“Fifth Mezzanine Loan Agreement”** shall mean that certain Fifth Mezzanine Loan Agreement, dated as of the date hereof, between Fifth Mezzanine Borrower and Fifth Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**“Fifth Mezzanine Loan Documents”** shall mean the Fifth Mezzanine Loan Agreement, the Fifth Mezzanine Notes and all other documents and instruments executed and delivered in connection with the Fifth Mezzanine Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

**“Fifth Mezzanine Notes”** shall mean the “Notes” as defined in the Fifth Mezzanine Loan Agreement.

**“First Mezzanine Borrower”** shall mean, collectively, the entities set forth on Schedule XIV hereto, each a Delaware limited liability company, together with their respective successors and permitted assigns. As used herein, the term “First Mezzanine Borrower” shall mean one of the First Mezzanine Borrowers individually, or the First Mezzanine Borrowers collectively, as the context shall require.

**“First Mezzanine Borrower Company Agreements”** shall mean, collectively, the Limited Liability Company Agreements of First Mezzanine Borrower, by each Borrower, as sole member, dated as of the date hereof.

**“First Mezzanine Debt Service”** shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the First Mezzanine Note.

**“First Mezzanine Lender”** shall have the meaning set forth in the Recitals.

**“First Mezzanine Loan”** shall have the meaning set forth in the Recitals.

**“First Mezzanine Loan Agreement”** shall have the meaning set forth in the Recitals.

**“First Mezzanine Loan Documents”** shall mean the First Mezzanine Loan Agreement, the First Mezzanine Notes, and all other documents and instruments executed and delivered in connection with the First Mezzanine Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

**“First Mezzanine Notes”** shall mean the “Notes” as defined in the First Mezzanine Loan Agreement.

**“First Mezzanine Pledge Agreement”** shall mean that certain Pledge and Security Agreement (First Mezzanine Loan), dated as of the date hereof, between First Mezzanine Borrower and First Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**“Fiscal Year”** shall mean each twelve (12) month period commencing on January 1 and ending on December 31 during each year of the term of the Loan.

**“Fitch”** shall mean Fitch, Inc.

**“Fixed Rent”** shall mean the Base Rent (as defined in the Operating Lease) payable under the Operating Lease.

**“Fixtures”** shall mean, with respect to each Individual Property, all Equipment now owned, or the ownership of which is hereafter acquired, by Mortgage Borrower which is so related to the Land and the Improvements forming part of the Individual Property in question that it is deemed fixtures or real property under applicable Legal Requirements, including, without limitation, all building or construction materials intended for construction, reconstruction, alteration, decoration or repair of or installation on the applicable Individual Property, construction equipment, appliances, machinery, plant equipment, fittings, apparatuses, fixtures and other items now or hereafter attached to, installed in or used in connection with (temporarily or permanently) any of the Improvements or the Land, including, but not limited to, engines, devices for the operation of pumps, pipes, plumbing, call and sprinkler systems, fire extinguishing apparatuses and equipment, heating, ventilating, incinerating, electrical, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances and equipment, pollution control equipment, security systems, disposals, dishwashers, refrigerators and ranges, recreational equipment and facilities of all kinds, and water, electrical, storm and sanitary sewer facilities, utility lines and equipment (whether owned individually or jointly with others, and, if owned jointly, to the extent of Mortgage Borrower’s interest therein) and all other utilities whether or not situated in easements, all water tanks, water supply, water power sites, fuel stations, fuel tanks, fuel supply, and all other structures, together with all accessions, appurtenances, additions, replacements, betterments and substitutions or any of the foregoing and the proceeds thereof.

**“Flamingo Las Vegas”** shall mean that certain Individual Property identified on Schedule II as the “Flamingo Las Vegas” and having a street address of 3555 Las Vegas Boulevard South, Las Vegas, Nevada.

**“Force Majeure”** shall mean any delay caused by reason of strike, lock-out or other labor trouble, casualty, governmental preemption of priorities or other controls in connection with a national or other public emergency or shortages of fuel, supplies or labor resulting therefrom or other causes beyond Borrower’s reasonable control.

**“Foreign Taxes”** shall have the meaning set forth in Section 2.2.3(e) hereof.

**“GAAP”** shall mean generally accepted accounting principles in the United States of America as of the date of the applicable financial report.

**“Gaming Authorities”** shall mean, in any jurisdiction in which Borrower, Senior Mezzanine Borrower, Mortgage Borrower, Operating Company or any of their respective subsidiaries manages or conducts any casino, gaming business or activities, the applicable gaming board, commission, or other governmental gaming regulatory authority, body or agency which (a) has, or may at any time after the Closing Date have, jurisdiction over the gaming activities at any of the Properties or any successor to such authority or (b) is, or may at any time

after the Closing Date be, responsible for interpreting, administering and enforcing the Gaming Laws.

**“Gaming Equipment”** shall mean any and all gaming devices, gaming device parts inventory and other related gaming equipment and supplies used in connection with the operation of a casino, including (without limitation), slot machines, gaming tables, cards, dice, chips, tokens, player tracking systems, cashless wagering systems, electronic betting systems, mobile gaming systems and associated equipment which are located at the Casino Components, owned or leased by Operating Company or Mortgage Borrower and used or useable exclusively in the present or future operation of slot machines and live games at the Casino Component, together with all improvements and/or additions thereto.

**“Gaming Laws”** or **“Gaming Regulations”** shall mean all applicable constitutions, treaties, laws, statutes and municipal ordinances pursuant to which any Gaming Authority possesses regulatory, licensing or permitting authority over gaming, gambling or casino or casino-related activities and all rules, rulings, orders, ordinances and regulations of any Gaming Authority applicable to the gambling, casino, gaming businesses or casino or casino-related activities of Borrower, Senior Mezzanine Borrower, Mortgage Borrower or the Operating Companies or any of their respective subsidiaries in any jurisdiction, as in effect from time to time, including the policies, interpretations and administration thereof by the Gaming Authorities.

**“Gaming License”** shall mean, in any jurisdiction in which Borrower, Senior Mezzanine Borrower, Mortgage Borrower, Operating Company or any of their respective subsidiaries conducts any casino and gaming business or activities, any license, qualification, franchise, accreditation, approval, registration, permit, finding of suitability or other authorization relating to gaming, the gaming business or the operation of a casino under the Gaming Laws or required by the Gaming Authorities or otherwise necessary for the operation of gaming, the gaming business or a resort casino.

**“Gaming Liquidity Requirement”** shall mean the minimum bankroll requirements for cash and cash equivalents required to be maintained by each Operating Company pursuant to Gaming Laws in an amount no greater than is mandated by applicable law, which requirements may be subject to (a) adjustment in an amount equal to any incremental increase or decrease in the amount of the Gaming Liquidity Requirement that is required to be maintained by Operating Company under applicable Gaming Laws as a result of any increase or decrease in gaming business at the applicable Casino Component, or (b) subject to increase or decrease due to any change in the applicable requirements under Gaming Laws generally.

**“Gaming Operating Reserve”** shall mean, with respect to the Casino Component, such cash funds and reserves that are held and maintained on-site at each Individual Property by Operating Company, in its capacity as the duly licensed operator of the Casino Component, including (without limitation) casino chips, tokens, checks and markers; provided, however, that all such Gaming Operating Reserves (a) are established and maintained in compliance with all applicable Gaming Liquidity Requirements, (b) are solely for use in the day-to-day operation and management of each Casino Component in the ordinary course of business,

and (c) in the case of each Individual Property, are in amounts customary and generally comparable for casinos comparable to the Individual Property in question.

**“Governmental Authority”** shall mean any court, board, agency, commission, office or other authority of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence, including, without limitation, all Gaming Authorities having jurisdiction over the Properties (and any operations conducted thereat), Mortgage Borrower, Borrower and Operating Company. For the avoidance of doubt, the term “Governmental Authority” shall include, and be deemed to include, all Gaming Authorities.

**“Ground Lease”** shall mean, individually and collectively, as the context requires, those certain ground leases listed in Schedule IV, as the same may be amended, supplemented, replaced or otherwise modified from time to time in accordance with the provisions hereof.

**“Ground Lease Estoppel Reserve Amount”** shall have the meaning set forth in the Ground Lease Side Letter.

**“Ground Lease Estoppel Trigger Event”** shall have the meaning set forth in Section 5.1.23 hereof.

**“Ground Lease Estoppel Trigger Spread”** shall have the meaning set forth in the Ground Lease Side Letter.

**“Ground Lease Side Letter”** shall have the meaning assigned to such term in the Mortgage Loan Agreement.

**“Ground Lease Subsidiary”** shall have the meaning assigned to such term in the Mortgage Loan Agreement.

**“Ground Rent”** shall mean any rent, additional rent or other charge payable by the tenant under the Ground Lease.

**“Ground Rent Reserve Account”** shall have the meaning set forth in Section 7.4 hereof.

**“Ground Rent Reserve Funds”** shall have the meaning set forth in Section 7.4.

**“Guarantor”** shall mean, collectively, Guarantor (FF&E), Guarantor (Recourse Carveouts), Guarantor (Operating Lease), Guarantor (Ground Lease Estoppel) and any guarantor under any completion guaranty provided under Section 5.1.21.

**“Guarantor (FF&E)”** shall mean any Approved Guarantor. Initially, Guarantor (FF&E) shall mean Holdings, and its successors. If Holdings fails to meet the Minimum Value Test, then Borrower shall replace Holdings, as the guarantor under the Guaranty (FF&E), with an Approved Guarantor.

**“Guarantor (Ground Lease Estoppel)”** shall mean Holdings, and its successors.

**“Guarantor (Operating Lease)”** shall mean Holdings, and its successors.

**“Guarantor (Recourse Carveouts)”** shall mean Holdings, and its successors.

**“Guaranty”** shall mean, collectively, the Guaranty (FF&E), the Guaranty (Recourse Carveouts), the Guaranty (Ground Lease Estoppel), the Operating Lease Guaranty and any completion guaranty provided under Section 5.1.21.

**“Guaranty (FF&E)”** shall mean that certain Guaranty (FF&E) (Fourth Mezzanine Loan), dated as of the date hereof, from Guarantor (FF&E) to Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

**“Guaranty (Ground Lease Estoppel)”** shall mean that certain Guaranty (Harvey’s - Payment) (Fourth Mezzanine), dated as of the date hereof, from Guarantor (Ground Lease Estoppel) to Lender, as the same may be amended, restated, supplemented or modified from time to time.

**“Guaranty (Recourse Carveouts)”** shall mean that certain Guaranty (Recourse Carveouts) (Fourth Mezzanine Loan), dated as of the date hereof, from Guarantor (Recourse Carveouts) to Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

**“Harrah’s Atlantic City Property”** shall mean that certain Individual Property identified on Schedule II as “Harrah’s Atlantic City” and having a street address of 777 Harrah’s Boulevard, Atlantic City, New Jersey.

**“Holdings”** shall mean Harrah’s Entertainment, Inc., and its successors.

**“Hotel Components”** shall mean, collectively, those portions of each Individual Property devoted to the operation of a hotel and related facilities, excluding the Casino Component, but including (without limitation) (a) all guest rooms and suites, hotel amenities, restaurants, conference centers, meeting, banquet and other public rooms, spa, parking spaces and other facilities of the hotel portion of such Individual Property, and (b) any theaters or performing arts spaces in the Individual Property in question. The Hotel Components are more particularly described and set forth in each Operating Lease, as applicable.

**“Improvements”** shall have the meaning set forth in the granting clause of the related Mortgage with respect to each Individual Property.

**“Indebtedness”** of a Person, at a particular date, means the sum (without duplication) at such date of (a) all indebtedness of such Person (including, without limitation, amounts for borrowed money and indebtedness in the form of mezzanine debt and preferred equity); (b) obligations evidenced by bonds, debentures, notes, or other similar instruments; (c) obligations for the deferred purchase price of property or services (including trade obligations); (d) obligations under letters of credit; (e) obligations under acceptance facilities; (f) all guaranties, endorsements (other than for collection or deposit in the ordinary course of

business) and other contingent obligations to purchase, to provide funds for payment, to supply funds, to invest in any Person or entity, or otherwise to assure a creditor against loss; and (g) obligations secured by any Liens, whether or not the obligations have been assumed.

**“Indemnified Liabilities”** shall have the meaning set forth in Section 10.13 hereof.

**“Indemnified Person”** shall have the meaning set forth in Section 9.2(b) hereof.

**“Independent Director”** or **“Independent Manager”** shall mean a natural person who is not and will not be while serving and has not been during the five years preceding his or her initial appointment to such position any of the following: (a) a stockholder (other than a stockholder who owns a *de minimis* amount of shares and receive *de minimis* income therefrom, or who indirectly owns stock through its interest in one or more mutual funds), member (other than as a Special Member or Springing Member of Borrower), director, manager (except in his or her capacity as an Independent Manager on the Board of Managers of Borrower), officer, employee, partner, attorney, trustee or counsel of Borrower or any Affiliate of Borrower or any direct or indirect parent of either of them, including Holdings, (b) a creditor, customer (other than a retail customer of an Individual Property), supplier or other Person who derives any of its purchases or revenues from its activities with Borrower or any Affiliate of Borrower, including Holdings, (c) a Person or other entity controlling or under common control with any such stockholder, partner, member, director, manager or officer, customer, supplier or other Person excluded from serving as Independent Director or Independent Manager described in the foregoing subclause (a) or subclause (b), or (d) a member of the immediate family by blood or marriage of any such stockholder, member, manager, director, officer, employee, partner, attorney, customer, supplier or other Person excluded from serving as Independent Director or Independent Manager in subclause (a) or subclause (b). A natural person who satisfies the foregoing definition other than subclause (b) above shall not be disqualified from serving as an Independent Manager, if such individual is an independent director provided by a nationally recognized company that provides professional independent directors and managers, it being hereby acknowledged and agreed that Corporation Service Company satisfies such criteria. Further, a natural person who otherwise satisfies the foregoing definition except for subclause (a) by reason of being the independent director of a “special purpose entity” affiliated with the Borrower shall not be disqualified from serving as an Independent Director of the Borrower if such individual is either (i) a Professional Independent Director or (ii) the fees and other income that such individual earns from serving as independent director of affiliates of the Borrower in any given year constitute in the aggregate less than five percent (5%) of such individual’s annual income for that year. Notwithstanding the immediately preceding sentence, an Independent Director may not simultaneously serve as Independent Director of the Borrower and independent director of a special purpose entity that owns a direct or indirect equity interest in the Borrower or a direct or indirect interest in any co-borrower with the Borrower. For purposes of this paragraph, a “special purpose entity” is an entity, whose organizational documents contain restrictions on its activities and impose requirements intended to preserve such entity’s separateness that are substantially similar to the “special purpose entity” provisions of this Agreement. Notwithstanding anything herein to the contrary, an Independent Director may not simultaneously serve as Independent Director of a Borrower and an independent director of a special purpose entity that owns a direct or indirect equity interest in any Borrower; provided,

however, that one Independent Director of Borrower (but not both Independent Directors simultaneously) may serve as an independent director of each Other Mezzanine Borrower.

**“Individual Material Adverse Effect”** shall mean any event or condition that, either singly or in the aggregate, could reasonably be expected to have or result in a material adverse effect upon (a) the business, operations, economic performance, prospects, assets or condition (financial or otherwise) of (i) any Borrower, any Senior Mezzanine Borrower or any Mortgage Borrower, (ii) Guarantor, (iii) any Operating Company, (iv) any Operating Lease or Operating Lease Guaranty or (v) the Collateral, the Senior Mezzanine Collateral or any Individual Property or any Hotel Component or Casino Component thereon; (b) the ability of any Borrower, any Senior Mezzanine Borrower, any Mortgage Borrower or Guarantor to perform, in all material respects, its obligations under each of the Loan Documents, Senior Mezzanine Loan Documents or Mortgage Loan Documents to which it is a party; (c) the ability of any Operating Company to perform, in all material respects, its obligations under its Lease; (d) the enforceability or validity of (i) any Operating Lease or Operating Lease Guaranty, or (ii) any Loan Document, Senior Mezzanine Loan Document, Mortgage Loan Document or the perfection or priority of any Lien created under any Loan Document, Senior Mezzanine Loan Document or Mortgage Loan Document; (e) the value of, or cash flow from, any Individual Property, the Collateral, the Senior Mezzanine Collateral or the operations thereof; or (f) the material rights, interests and remedies of Lender under any of the Loan Documents.

**“Individual Property”** shall mean, individually, any one of the properties identified on Schedule II (it being the Improvements thereon and all Fixtures and all Equipment, FF&E and personal property owned by Mortgage Borrower and encumbered by a Mortgage, together with all rights pertaining to such property and Improvements, as more particularly described in the Granting Clauses of each Mortgage and referred to therein as the “Property”). For all purposes herein and in the other Loan Documents and to the extent not prohibited by the Ground Lease, the premises leased by Ground Lease Subsidiary or Borrower, as applicable, under the Ground Lease shall constitute a part of the Individual Property known as “Harvey’s Lake Tahoe”, “Harrah’s Lake Tahoe” and “Bill’s Lake Tahoe”, except that such ground leased premises shall not be subject to a lien of a Mortgage or an Operating Lease unless and until required pursuant hereto, the Mortgage Loan Agreement or pursuant to the Ground Lease Side Letter.

**“Insolvency Opinion”** shall mean that certain non-consolidation opinion letter dated the date hereof delivered by Cleary Gottlieb Steen & Hamilton LLP in connection with the Loan.

**“Institutional Lender”** shall mean any Person reasonably acceptable to Lender in all respects that is either (a) a real estate investment trust, bank, saving and loan association, investment bank, insurance company, trust company, commercial credit corporation, pension plan, pension fund or pension advisory firm, mutual fund, government entity or plan, provided that any such Person referred to in this clause (a) satisfies the Eligibility Requirements; (b) an investment company, money management firm or “qualified institutional buyer” within the meaning of Rule 144A under the Securities Act of 1933, as amended, or an institutional “accredited investor” within the meaning of Regulation D under the Securities Act of 1933, as amended, provided that any such Person referred to in this clause (b) satisfies the Eligibility

Requirements; (c) an institution substantially similar to any of the foregoing entities described in clauses (a) or (b) that satisfies the Eligibility Requirements; (d) any entity controlled by any of the entities described in clauses (a) or (c) above; or (e) an investment fund, limited liability company, limited partnership or general partnership where a Permitted Fund Manager or an entity that is otherwise an Institutional Lender under clauses (a), (b), (c) or (d) of this definition acts as the general partner, managing member or fund manager and at least fifty percent (50%) of the equity interests in such investment fund are owned, directly or indirectly, by one or more entities that are otherwise Institutional Lenders under clauses (a), (b), (c) or (d) of this definition.

**“Insurance Premiums”** shall have the meaning set forth in the Mortgage Loan Agreement.

**“Insurance Proceeds”** shall have the meaning set forth in the Mortgage Loan Agreement.

**“Interest Expense”** shall mean, with respect to any Person for any period, the sum of (a) gross interest expense of such Person for such period on a consolidated basis, including (i) the amortization of debt discounts, (ii) the amortization of all fees payable in connection with the incurrence of Indebtedness to the extent included in interest expense and (iii) the portion of any payments or accruals with respect to equipment financing and equipment leases allocable to interest expense, (b) capitalized interest of such Person, and (c) commissions, discounts, yield and other fees and charges incurred in connection with any indebtedness which are payable to any Person other than Borrower. For purposes of the foregoing, interest on equipment financing or equipment leases shall be deemed to accrue at an interest rate reasonably determined by the Borrower to be the rate of interest implicit in such equipment financing or equipment lease in accordance with GAAP.

**“Interest Period”** shall mean (a) for the first interest period hereunder, (i) if the Closing Date occurs on or before the fourteenth (14<sup>th</sup>) day of a calendar month, the period commencing on the Closing Date and ending on (and including) the fourteenth (14<sup>th</sup>) day of the calendar month in which the Closing Date occurs, and (ii) if the Closing Date occurs on or after the fifteenth (15<sup>th</sup>) day of a calendar month, the period commencing on the Closing Date and ending on (and including) the fourteenth (14<sup>th</sup>) day of the following calendar month and (b) for each interest period thereafter commencing February 15, 2008, the period commencing on the fifteenth (15<sup>th</sup>) day of each calendar month and ending on (and including) the fourteenth (14<sup>th</sup>) day of the following calendar month. Each Interest Period as set forth in clause (b) above shall be a full month and shall not be shortened by reason of any payment of the Loan prior to the expiration of such Interest Period. Notwithstanding the foregoing, Lender shall have the right, in connection with a Securitization, to change the Interest Period and Payment Date, provided that in doing so, Lender shall not increase Borrower’s costs hereunder (other than the direct costs of implementing such change, such as legal fees, which Borrower hereby agrees to pay).

**“Interest Rate Cap Agreement”** shall mean, as applicable, an Interest Rate Cap Agreement (together with the confirmation and schedules relating thereto) in form and substance reasonably satisfactory to Lender between Borrower and an Acceptable Counterparty or a Replacement Interest Rate Cap Agreement.

“**JPM**” shall mean JPMorgan Chase Bank, N.A. and its successors in interest.

“**Lease**” shall mean any lease (including the Operating Lease), sublease or subsublease, letting, license, concession or other agreement (whether written or oral and whether now or hereafter in effect) pursuant to which any Person is granted a possessory interest in, or right to use or occupy all or any portion of any space in any Individual Property (other than short term arrangements with transient hotel guests entered into in the usual course of business), and (a) every modification, amendment or other agreement relating to such lease, sublease, subsublease, or other agreement entered into in connection with such lease, sublease, subsublease, or other agreement and (b) every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto (including the Operating Lease Guaranty).

“**Legal Requirements**” shall mean, with respect to each Individual Property and the Collateral, all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions of Governmental Authorities affecting such Individual Property, the Senior Mezzanine Collateral, the Collateral or any part thereof (including, without limitation, all Gaming Laws), or affecting the construction, use, alteration or operation thereof, or any part thereof, whether now or hereafter enacted and in force, and all permits, licenses and authorizations and regulations relating thereto (including, without limitation, all Gaming Licenses and Operating Permits), and all covenants, agreements, restrictions and encumbrances contained in any instruments, either of record or known to Borrower, Mortgage Borrower or Operating Company, at any time in force affecting such Individual Property or any part thereof, including, without limitation, any which may (a) require repairs, modifications or alterations in or to such Individual Property or any part thereof, or (b) in any way limit the use and enjoyment thereof. Legal Requirements shall include any (x) judicial, administrative or other governmental or quasi governmental order, injunction, writ, judgment, decree, ruling, interpretation, finding or other directive, whether domestic or foreign; (y) arbitrator’s, mediator’s or referee’s decision, finding, award or recommendation; or (z) charter, rule, regulation or other organizational or governance document of any self-regulatory or governing body or organization. For the avoidance of doubt, the term “Legal Requirements” shall include, and be deemed to include, all applicable Gaming Laws and Gaming Regulations.

“**Lender**” shall have the meaning set forth in the introductory paragraph hereto, together with its successors and assigns.

“**Lender’s Share**” shall mean a fraction, the numerator of which is the outstanding principal amount of the Loan and the denominator of which is the sum of the outstanding principal amounts of the Mortgage Loan, the Loan and the Other Mezzanine Loans (in each case, as of the date of determination).

“**Liabilities**” shall have the meaning set forth in Section 9.2(b) hereof.

“**LIBOR**” shall mean, with respect to each Interest Period, the rate (expressed as a percentage per annum and rounded to the next nearest 1/100 of 1%) for deposits in U.S. dollars, for a one-month period, that appears on Reuters Screen LIBOR01 Page (or the successor

thereto) as of 11:00 a.m., London time, on the related Determination Date. If such rate does not appear on Reuters Screen LIBOR01 Page as of 11:00 a.m., London time, on such Determination Date, LIBOR shall be the arithmetic mean of the offered rates (expressed as a percentage per annum) for deposits in U.S. dollars for a one-month period that appear on the Reuters Screen Libor Page as of 11:00 a.m., London time, on such Determination Date, if at least two such offered rates so appear. If fewer than two such offered rates appear on the Reuters Screen Libor Page as of 11:00 a.m., London time, on such Determination Date, Lender shall request the principal London office of any four major reference banks in the London interbank market selected by Lender to provide such bank's offered quotation (expressed as a percentage per annum) to prime banks in the London interbank market for deposits in U.S. dollars for a one-month period as of 11:00 a.m., London time, on such Determination Date for the amounts of not less than U.S. \$1,000,000. If at least two such offered quotations are so provided, LIBOR shall be the arithmetic mean of such quotations. If fewer than two such quotations are so provided, Lender shall request any three major banks in New York City selected by Lender to provide such bank's rate (expressed as a percentage per annum) for loans in U.S. dollars to leading European banks for a one-month period as of approximately 11:00 a.m., New York City time on the applicable Determination Date for amounts of not less than U.S. \$1,000,000. If at least two such rates are so provided, LIBOR shall be the arithmetic mean of such rates. LIBOR shall be determined conclusively by Lender or its agent. Notwithstanding the foregoing, for the Interest Period ending February 14, 2008, LIBOR is 3.31%.

**"LIBOR Loan"** shall mean the Loan at such time as interest thereon accrues at a rate of interest based upon LIBOR.

**"Lien"** shall mean, with respect to each Individual Property, the Senior Mezzanine Collateral and the Collateral, any mortgage, deed of trust, lien, pledge, hypothecation, assignment, security interest, or any other encumbrance, charge or restriction on transfer of, on or affecting Borrower, Senior Mezzanine Borrower, Mortgage Borrower, any Individual Property, the Senior Mezzanine Collateral or the Collateral, any portion of either or any interest therein, including, without limitation, any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, the filing of any financing statement, and mechanic's, materialmen's and other similar liens and encumbrances, in each case whether arising by contract, operation of law, or otherwise.

**"Liquidation Event"** shall have the meaning set forth in Section 2.4.2 hereof.

**"Loan"** shall mean the loan made by Lender to Borrower pursuant to this Agreement.

**"Loan Adjustment"** shall have the meaning set forth in Section 2.1.6 hereof.

**"Loan Amount"** shall mean, as determined from time to time, the outstanding principal amount of the Loan.

**"Loan Documents"** shall mean, collectively, this Agreement, the Note, the Pledge Agreement, the Environmental Indemnity, the O&M Agreement, the Guaranty (Recourse Carveouts), the Guaranty (FF&E), the Guaranty (Ground Lease Estoppel), the Collateral

**“Loan Party”** shall mean, collectively, Mortgage Borrower, Borrower, Senior Mezzanine Borrower, Principal and Guarantor.

**“London Business Day”** shall mean any day other than a Saturday, Sunday or any other day on which commercial banks in London, England are not open for business.

**“Major Lease”** shall mean any of the following: (a) with respect to any Individual Property, any Lease (i) covering in excess of forty thousand (40,000) net rentable square feet at such Individual Property or (ii) made with a Tenant that is a Tenant under another Lease at such Individual Property (or with a Tenant that is an Affiliate of a Tenant under another Lease at such Individual Property) if any such Leases, together, cover in excess of forty thousand (40,000) net rentable square feet or more at such Individual Property, (b) any Lease of space at any Individual Property with an Affiliate of Mortgage Borrower, or (c) any Lease that is not the result of arm’s length negotiations; provided, however, that the Operating Lease shall not constitute a Major Lease for purposes of this Agreement.

**“Material Alteration”** shall mean any Alteration with respect to all or a portion of any Individual Property that (i) when aggregated with all other Alterations at such Individual Property then being conducted involve an estimated total cost in excess of an amount equal to ten percent (10%) of the sum of the Allocated Loan Amount for such Individual Property and the “Allocated Loan Amounts” under (and as defined in each of) the Mortgage Loan Agreement and the Other Mezzanine Loan Agreements for such Individual Property or (ii) when aggregated with all other Alterations at the Properties, including such Individual Property, then being conducted, involve an estimated total cost in excess of an amount equal to five percent (5%) of the sum of the Loan Amount, the Mortgage Loan Amount and the Other Mezzanine Loan Amount (and, as used herein, **“Threshold Amount”** shall mean whichever of said 5% or 10% amount shall have been exceeded, provided that if both shall have been exceeded, then the lower of such two amounts shall be the “Threshold Amount”); provided, that, in determining whether one or more Alterations comprise a Material Alteration, there shall not be included (a) merely decorative work such as painting, wall papering, carpeting and replacement of FF&E to the extent the same are of a routine and recurring nature, performed in the ordinary course of business; (b) tenant improvement work performed by a tenant pursuant to the terms of any Lease (other than the Operating Lease) entered into in accordance with the terms hereof, so long as such work does not adversely affect any structural component of any Improvements, any utility or HVAC system contained in any Improvements or the exterior of any building constituting a part of any Improvements, (c) any Alterations which are performed in connection with the Restoration of any portion of any Individual Property after the occurrence of a Casualty or Condemnation in accordance with the terms and provisions of this Agreement, or (d) the Tower Project or the Convention Center Project.

**“Maturity Date”** shall mean the Scheduled Maturity Date or such other date on which the final payment of principal of the Notes becomes due and payable as therein or herein provided, whether at such Scheduled Maturity, by declaration of acceleration, or otherwise.

**“Maximum Legal Rate”** shall mean the maximum nonusurious interest rate, if any, that at any time or from time to time may be contracted for, taken, reserved, charged or received on the indebtedness evidenced by the Note and as provided for herein or the other Loan Documents, under the laws of such state or states whose laws are held by any court of competent jurisdiction to govern the interest rate provisions of the Loan.

**“Mezzanine Borrowers”** shall mean, collectively, Borrower, First Mezzanine Borrower, Second Mezzanine Borrower, Third Mezzanine Borrower, Fifth Mezzanine Borrower, Sixth Mezzanine Borrower, Seventh Mezzanine Borrower, Eighth Mezzanine Borrower, Ninth Mezzanine Borrower and any New Mezzanine Borrower.

**“Mezzanine Collection Account”** shall have the meaning set forth in Section 2.6.4 hereof.

**“Mezzanine Debt Service”** shall mean, with respect to any particular period of time, the sum of (a) the Debt Service, (b) the First Mezzanine Debt Service, (c) the Second Mezzanine Debt Service, (d) the Third Mezzanine Debt Service, (e) the Fifth Mezzanine Debt Service, (f) the Sixth Mezzanine Debt Service, (g) the Seventh Mezzanine Debt Service, (h) the Eighth Mezzanine Debt Service, (i) the Ninth Mezzanine Debt Service, and (j) debt service on any New Mezzanine Loan.

**“Mezzanine Lenders”** shall mean, collectively, Lender, First Mezzanine Lender, Second Mezzanine Lender, Third Mezzanine Lender, Fifth Mezzanine Lender, Sixth Mezzanine Lender, Seventh Mezzanine Lender, Eighth Mezzanine Lender, Ninth Mezzanine Lender and Lender, as lender under any New Mezzanine Loan.

**“Mezzanine Loan Agreements”** shall mean, collectively, this Agreement, the First Mezzanine Loan Agreement, the Second Mezzanine Loan Agreement, the Third Mezzanine Loan Agreement, the Fifth Mezzanine Loan Agreement, the Sixth Mezzanine Loan Agreement, the Seventh Mezzanine Loan Agreement, the Eighth Mezzanine Loan Agreement, the Ninth Mezzanine Loan Agreement and any New Mezzanine Loan Agreement.

**“Mezzanine Loan Amount”** shall mean, as determined from time to time, the outstanding principal amount of the Mezzanine Loans.

**“Mezzanine Loan Documents”** shall mean, collectively, the Loan Documents, the First Mezzanine Loan Documents, the Second Mezzanine Loan Documents, the Third Mezzanine Loan Documents, the Fifth Mezzanine Loan Documents, the Sixth Mezzanine Loan Documents, the Seventh Mezzanine Loan Documents, the Eighth Mezzanine Loan Documents, the Ninth Mezzanine Loan Documents and any loan documents entered into in connection with any New Mezzanine Loan.

**“Mezzanine Loans”** shall mean, collectively, this Loan, the First Mezzanine Loan, the Second Mezzanine Loan, the Third Mezzanine Loan, the Fifth Mezzanine Loan, the Sixth Mezzanine Loan, the Seventh Mezzanine Loan, the Eighth Mezzanine Loan, the Ninth Mezzanine Loan and any New Mezzanine Loan.

**“Minimum Value Test”** shall mean, with respect to any Person, that the greater of the book value or the fair market value of the assets of such Person (excluding, for purposes of making such determination, the value of the Properties) exceeds Five Billion and No/100 Dollars (\$5,000,000,000.00) in the aggregate, as certified to Lender in an Officer’s Certificate prepared in good faith based on the most recent financial statements of such Person.

**“Monthly Disbursements”** shall have the meaning provided in Section 2.6.2.

**“Monthly FF&E Reserve Amount”** means the monthly deposit for FF&E required pursuant to Section 7.3 of this Agreement.

**“Monthly Ground Rent Reserve Amount”** means the monthly deposit for Ground Rent required pursuant to Section 7.4 of this Agreement.

**“Monthly Tax and Insurance Amount”** means the monthly deposit for Taxes and Insurance required pursuant to Section 7.2 of this Agreement.

**“Moody’s”** shall mean Moody’s Investors Service, Inc.

**“Mortgage”** shall mean, with respect to each Individual Property, that certain first priority Mortgage (or Deed of Trust or Deed to Secure Debt) and Security Agreement, dated the date hereof, executed and delivered by Mortgage Borrower as security for the Mortgage Loan and encumbering such Individual Property and any first priority Mortgage (Deed of Trust or Deed to Secure Debt) and Security Agreement delivered pursuant to the Ground Lease Side Letter, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

**“Mortgage Borrower”** shall mean, collectively, the entities set forth on Schedule XIII hereto, each a Delaware limited liability company, together with their respective successors and permitted designs. As used herein the term “Mortgage Borrower” shall mean one of the Mortgage Borrowers individually or the Mortgage Borrowers collectively, as the context shall require.

**“Mortgage Debt Service”** shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Mortgage Note and the Mortgage Loan Agreement.

**“Mortgage Lender”** shall have the meaning set forth in the Recitals.

**“Mortgage Loan”** shall have the meaning set forth in the Recitals.

**“Mortgage Loan Agreement”** shall have the meaning set forth in the Recitals.

**“Mortgage Loan Amount”** shall mean, as determined from time to time, the outstanding principal amount of the Mortgage Loan.

**“Mortgage Loan Default”** shall mean a “Default” as defined in the Mortgage Loan Agreement.

**“Mortgage Loan Documents”** shall mean the Mortgage Loan Agreement, the Mortgage Note, the Mortgage and all other documents and instruments executed and delivered in connection with the Mortgage Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

**“Mortgage Loan Event of Default”** shall mean an “Event of Default” as defined in the Mortgage Loan Agreement.

**“Mortgage Loan Reserve Funds”** shall mean the “Reserve Funds” as defined in the Mortgage Loan Agreement.

**“Mortgage Note”** shall mean the “Note” as defined in the Mortgage Loan Agreement.

**“Net Income”** shall mean, with respect to any Person, the net income (loss) of such Person, determined in accordance with GAAP and before any reduction in respect of preferred stock dividends.

**“Net Liquidation Proceeds After Debt Service”** shall mean, with respect to any Liquidation Event, all amounts paid to or received by or on behalf of Borrower, Senior Mezzanine Borrower or Mortgage Borrower in connection with such Liquidation Event, including, without limitation, proceeds of any sale, refinancing or other disposition or liquidation, less (a) Lender’s, Senior Mezzanine Lender’s and/or Mortgage Lender’s reasonable costs incurred in connection with the recovery thereof, (b) amounts required or permitted to be deducted therefrom and amounts paid pursuant to the Mortgage Loan Documents and Senior Mezzanine Loan Documents to Mortgage Lender and/or Senior Mezzanine Lender (as applicable), (c) in the case of a foreclosure sale, disposition or Transfer of the Property in connection with realization thereon following a Mortgage Loan Event of Default, such reasonable and customary costs and expenses of sale or other disposition (including attorneys’ fees and brokerage commissions), (d) in the case of a foreclosure sale, disposition or Transfer of any Senior Mezzanine Collateral in connection with realization thereon following a Senior Mezzanine Loan Default under any Senior Mezzanine Loan Documents, such reasonable and customary costs and expenses of sale or other disposition (including attorneys’ fees and brokerage commissions), (e) in the case of a foreclosure sale, such costs and expenses incurred by Mortgage Lender under the Mortgage Loan Documents as Mortgage Lender shall be entitled to receive reimbursement for under the terms of the Mortgage Loan Documents, (f) in the case of a foreclosure sale, such costs and expenses incurred by Senior Mezzanine Lender under the Senior Mezzanine Loan Documents as Senior Mezzanine Lender shall be entitled to receive reimbursement for under the terms of the Senior Mezzanine Loan Documents, (g) in the case of a refinancing of the Mortgage Loan and/or Senior Mezzanine Loan, such costs and expenses (including attorneys’ fees) of such refinancing as shall be reasonably approved by Mortgage Lender and/or Senior Mezzanine Lender, as the case may be, and (h) the amount of any prepayments required pursuant to the Mortgage Loan Documents, Senior Mezzanine Loan Documents, and/or the Loan Documents, in connection with any such Liquidation Event.

**“Net Proceeds”** shall have the meaning set forth in Section 6.4 hereof.

**“New Mezzanine Borrower”** shall have the meaning set forth in Section 2.1.7.

**“New Mezzanine Loan”** shall have the meaning set forth in Section 2.1.7.

**“Ninth Mezzanine Borrower”** shall mean, collectively, the entities set forth on Schedule XXI hereto, each a Delaware limited liability company, together with their respective successors and permitted assigns. As used herein, the term “Ninth Mezzanine Borrower” shall mean one of the Ninth Mezzanine Borrowers individually, or the Ninth Mezzanine Borrowers collectively, as the context shall require.

**“Ninth Mezzanine Debt Service”** shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Ninth Mezzanine Note.

**“Ninth Mezzanine Lender”** shall mean JPMorgan Chase Bank, N.A., in its capacity as the holder of the Ninth Mezzanine Loan, together with its successors and assigns.

**“Ninth Mezzanine Loan”** shall mean that certain loan in the original principal amount of Two Hundred Seventy Five Million and No/100 Dollars (\$275,000,000) of even date herewith made by Ninth Mezzanine Lender to Ninth Mezzanine Borrower.

**“Ninth Mezzanine Loan Agreement”** shall mean that certain Ninth Mezzanine Loan Agreement, dated as of the date hereof, between Ninth Mezzanine Borrower and Ninth Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**“Ninth Mezzanine Loan Documents”** shall mean the Ninth Mezzanine Loan Agreement, the Ninth Mezzanine Notes and all other documents and instruments executed and delivered in connection with the Ninth Mezzanine Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

**“Ninth Mezzanine Notes”** shall mean the “Notes” as defined in the Ninth Mezzanine Loan Agreement.

**“Note”** or **“Notes”** shall mean, collectively, Note A-1, Note A-2, Note A-3, Note A-4, Note A-5, Note A-6, Note A-7, Note A-8 and Note A-9.

**“Note A-1”** shall mean that certain Promissory Note A-1 (Fourth Mezzanine Loan), dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of Forty One Million Two Hundred Fifty Four Thousand Five Hundred Eighty Three and 34/100 Dollars (\$41,254,583.34), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**“Note A-2”** shall mean that certain Promissory Note A-2 (Fourth Mezzanine Loan), dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of Forty One Million Two Hundred Fifty Four Thousand Five Hundred Eighty Three and 34/100 Dollars (\$41,254,583.34), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**“Note A-3”** shall mean that certain Promissory Note A-3 (Fourth Mezzanine Loan), dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of Forty One Million Two Hundred Fifty Four Thousand Five Hundred Eighty Three and 33/100 Dollars (\$41,254,583.33), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**“Note A-4”** shall mean that certain Promissory Note A-4 (Fourth Mezzanine Loan), dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of Forty One Million Two Hundred Fifty Four Thousand Five Hundred Eighty Three and 33/100 Dollars (\$41,254,583.33), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**“Note A-5”** shall mean that certain Promissory Note A-5 (Fourth Mezzanine Loan), dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of Forty One Million Two Hundred Fifty Four Thousand Five Hundred Eighty Three and 33/100 Dollars (\$41,254,583.33), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**“Note A-6”** shall mean that certain Promissory Note A-6 (Fourth Mezzanine Loan), dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of Forty One Million Two Hundred Fifty Four Thousand Five Hundred Eighty Three and 33/100 Dollars (\$41,254,583.33), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**“Note A-7”** shall mean that certain Promissory Note A-7 (Fourth Mezzanine Loan), dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of Nine Million One Hundred Fifty Seven Thousand Five Hundred and No/100 Dollars (\$9,157,500.00), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**“Note A-8”** shall mean that certain Promissory Note A-8 (Fourth Mezzanine Loan), dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of Nine Million One Hundred Fifty Seven Thousand Five Hundred and No/100 Dollars (\$9,157,500.00), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**“Note A-9”** shall mean that certain Promissory Note A-9 (Fourth Mezzanine Loan), dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of Nine Million One Hundred Fifty Seven Thousand Five Hundred and No/100 Dollars (\$9,157,500.00), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**“Noteholders”** shall mean, collectively, the holders of the Notes from time to time and a **“Noteholder”** shall mean any holder of a Note from time to time (provided that the transfer of a Note shall not result in any prior Noteholder’s loss of any indemnification provided for hereunder to a Noteholder).

**“OC Accounts”** shall have the meaning set forth in Section 2.6.1(c).

**“O&M Agreement”** shall mean, with respect to each Individual Property (to the extent required by the environmental reports referenced in Section 3.1.3(e) hereof, that certain Operations and Maintenance Agreement (Fourth Mezzanine Loan), dated as of the date hereof, between Borrower and Lender given in connection with the Loan, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

**“Officer’s Certificate”** shall mean a certificate delivered to Lender by Borrower which is signed by an authorized senior officer of Borrower or the general partner or managing member of Borrower, as applicable.

**“Off-Shore Accounts”** shall mean the accounts more particularly described on Schedule V.

**“Operating Company”** shall mean, collectively, the tenants under the Operating Leases, and their successors and permitted assigns.

**“Operating Company Annual Budget”** shall mean, individually and collectively as the context requires, with respect to each Operating Company, the operating budget of such Operating Company, including all planned Capital Expenditures, prepared by such Operating Company for the applicable Fiscal Year or other period.

**“Operating Lease”** shall mean, collectively, those certain Lease Agreements listed on Schedule VI, dated as of the date hereof, having a term of fifteen (15) years commencing on the Closing Date, and any similar Lease Agreement executed and delivered pursuant to the Ground Lease Side Letter, as the same may be amended, supplemented, replaced or otherwise modified from time to time in accordance with the provisions hereof.

**“Operating Lease Guaranty”** shall mean, collectively, those certain Lease Guaranty Agreements listed on Schedule VIA, executed and delivered by Guarantor (Operating Lease), dated as of the date hereof, unconditionally guaranteeing the payment and performance by the Operating Company of all of its obligations under the Operating Lease, and any similar Lease Guaranty Agreement executed and delivered pursuant to the Ground Lease Side Letter, as such Lease Guaranty Agreements may be amended, supplemented, replaced or otherwise modified from time to time in accordance with the provisions hereof.

**“Operating Permits”** shall have the meaning set forth in Section 4.1.22 hereof.

**“O’Shea’s”** shall have the meaning ascribed to such term in the Mortgage Loan Agreement.

**“Other Borrower Collateral”** shall have the meaning set forth in Section 11.2.1 hereof.

**“Other Borrowers”** shall have the meaning set forth in Section 11.1 hereof.

**“Other Charges”** shall mean all ground rents, maintenance charges, impositions other than Taxes, and any other charges, including, without limitation, vault charges and license

fees for the use of vaults, chutes and similar areas adjoining any Individual Property, now or hereafter levied or assessed or imposed against such Individual Property or any part thereof.

**“Other Mezzanine Borrowers”** shall mean, individually or collectively as the context may require, all of the Mezzanine Borrowers other than Borrower.

**“Other Mezzanine Debt Service”** shall mean, individually or collectively as the context may require, all of the Mezzanine Debt Service other than the Debt Service.

**“Other Mezzanine Lenders”** shall mean, individually or collectively as the context may require, all of the Mezzanine Lenders other than Lender.

**“Other Mezzanine Loans”** shall mean, individually or collectively as the context may require, all of the Mezzanine Loans other than the Loan.

**“Other Mezzanine Loan Agreements”** shall mean, individually or collectively as the context may require, all of the Mezzanine Loan Agreements other than this Agreement.

**“Other Mezzanine Loan Amounts”** shall mean, as determined from time to time, the outstanding principal amounts of all of the Mezzanine Loans other than the Loan.

**“Owner’s Title Policy”** shall mean those certain ALTA extended coverage owner’s policies of title insurance issued in connection with the closing of the Mortgage Loan insuring the Mortgage Borrower as the owner of the Property.

**“Participant”** shall have the meaning set forth in Section 9.6 hereof.

**“Participant Register”** shall have the meaning set forth in Section 9.6 hereof.

**“Payment Date”** shall mean the ninth (9<sup>th</sup>) calendar day of each calendar month during the term of the Loan, and if such day is not a Business Day, then the Business Day immediately preceding such day, commencing on March 9, 2008 and continuing to and including the Maturity Date. Notwithstanding the foregoing, the Payment Date in the final Interest Period shall be the Maturity Date (*i.e.*, the second to last Business Day in such Interest Period rather than the ninth calendar day of such month).

**“Permitted Encumbrances”** shall mean, with respect to an Individual Property, collectively (a) the Liens and security interests created by the Mortgage Loan Documents; (b) all Liens, encumbrances and other matters disclosed in the Title Insurance Policies relating to such Individual Property or any part thereof; (c) Liens, if any, for Taxes and Other Charges imposed by any Governmental Authority not yet due or delinquent; (d) the Operating Lease; (e) such other title and survey exceptions as Lender has approved or may approve in writing in Lender’s reasonable discretion; (f) any Lien being contested by Borrower in good faith by appropriate proceedings, provided that (i) no Default or Event of Default has occurred and remains uncured, (ii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any applicable material instrument to which Mortgage Borrower is subject and shall not constitute a default thereunder and such proceeding shall be conducted in accordance with all applicable statutes, laws and ordinances, (iii) no Individual Property nor any part thereof or

interest therein will be in imminent danger of being sold, forfeited, terminated, cancelled or lost, (iv) such proceeding shall suspend the enforcement of the contested Lien against Mortgage Borrower and any Individual Property, and (v) Borrower shall furnish such security as may be required by GAAP or as may be reasonably requested by Lender; (g) statutory Liens for amounts not yet due and payable, provided that no Individual Property nor any part thereof or interest therein will be in imminent danger of being sold, forfeited, terminated, cancelled or lost; (h) Liens incurred in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security; (i) any Lien securing the financing of FF&E (including equipment leases) entered into by Mortgage Borrower or Operating Company in the ordinary course of business, subject to the limitations specified in the definitions of "Permitted Indebtedness" and "Permitted Indebtedness (Operating Company)", as applicable; (j) rights of tenants under Leases, as tenants only; (k) rights of hotel guests at the Hotel Components of the Properties; (l) zoning restrictions, easements, rights-of-way, restrictions on use of real property and other similar encumbrances incurred or entered into in the ordinary course of business which do not, in each case, have an Individual Material Adverse Effect; and (m) liens granted by Operating Company securing equipment financing leases and/or equipment acquisition financings permitted hereunder as "Permitted Indebtedness (Operating Company)," subject to the final sentence of said definition, or as "Permitted Indebtedness".

**"Permitted Fund Manager"** means any Person that on the date of determination (a) is one of the entities listed on Schedule VII or any other nationally-recognized manager of investment funds investing in debt or equity interests relating to commercial real estate, (b) is investing through a fund with committed capital of at least \$1,000,000,000, (c) is not subject to a Bankruptcy Action, (d) has not been, and none of its material subsidiaries has been, subject to a Bankruptcy Action for the preceding 5 years, (e) has not been convicted and is not under current indictment for a felony or crime involving moral turpitude, (f) has not been found by a court of competent jurisdiction to have violated federal or state securities laws, and (g) is not an organized crime figure (as determined by Lender in its reasonable discretion).

**"Permitted Indebtedness"** shall have the meaning assigned to such term in the Mortgage Loan Agreement.

**"Permitted Indebtedness (Operating Company)"** shall mean, collectively, (a) trade and operational debt (including equipment financing leases, such as leases with providers of Gaming Equipment) relating to the operation of the Properties and the routine administration of Operating Company incurred in the ordinary course of business with trade creditors and in amounts as are normal and reasonable under the circumstances, are not evidenced by a note, are required to be paid within ninety (90) days after same are incurred (except in the case of operating leases) and are paid when due, (b) accrued and unpaid payroll, benefits and payroll taxes with respect to employees of Operating Company or its Affiliates engaged with respect to the Properties incurred in the ordinary course of business and paid when due, (c) debt owed to affiliates, provided such debt is made subject to an intercreditor and standstill agreement in favor of Lender in form and substance reasonably satisfactory to Lender, and (d) such other Indebtedness specifically permitted pursuant to the Operating Lease (including the Gaming Equipment Facility Agreements (as defined in the Mortgage Loan Agreement)). In no event shall the Permitted Indebtedness (Operating Company) and Permitted Indebtedness of each Operating Company and Mortgage Borrower on an aggregate basis,

excluding for purposes of this sentence the Indebtedness described in subclause (b) of the preceding sentence, exceed five percent (5%) of the sum of the Loan Amount, the Mortgage Loan Amount and the Other Mezzanine Loan Amounts in the aggregate (each as determined from time to time).

**“Permitted Investments”** shall have the meaning set forth in the Mortgage Loan Agreement.

**“Permitted Mezzanine Debt Loan-to-Value Ratio”** shall mean the ratio, as of a particular date, in which (a) the numerator is equal to the sum of (i) the outstanding principal amount of the Mortgage Loan, (ii) the outstanding principal amount of the Mezzanine Loans, and any New Mezzanine Loan, plus (iii) the amount of the Permitted Mezzanine Loan, and (b) the denominator is equal to the appraised value of the Properties subject to the Lien of the Mortgage as determined by Lender based on Appraisals obtained by Lender (at Borrower’s sole cost and expense) and satisfactory to Lender and dated no earlier than ninety (90) days prior to the date of determination or such other Appraisals as are approved by Lender in its sole discretion.

**“Permitted Mezzanine Debt Service”** shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Permitted Mezzanine Loan Documents.

**“Permitted Mezzanine DSCR”** shall mean, for the applicable period, the ratio of (a) EBITDAR for such period from the Properties to (b) the sum of (i) the Mortgage Debt Service and Mezzanine Debt Service for such period, plus (ii) principal and/or interest due and payable (or, for purposes of the calculation to be made pursuant to Section 2.8(d), that would have been due and payable had the Permitted Mezzanine Loan then been in place) for such period on the Permitted Mezzanine Loan at the interest rate set forth in the Permitted Mezzanine Loan Documents or, if the Permitted Mezzanine Loan is a floating rate loan, assuming that (A) the spread on the Permitted Mezzanine Loan is the “Spread” as defined in the documents evidencing the Permitted Mezzanine Loan and (B) LIBOR is equal to the lesser of (y) LIBOR on the date of determination, or (z) the strike price under the related interest rate cap purchased in connection with the Permitted Mezzanine Loan.

**“Permitted Mezzanine Loan”** shall have the meaning set forth in Section 2.8 hereof.

**“Permitted Mezzanine Loan Documents”** shall have the meaning set forth in Section 2.8(g) hereof.

**“Permitted Mezzanine Loan Election”** shall have the meaning set forth in Section 2.8 hereof.

**“Permitted Mezzanine Loan Lender”** shall have the meaning set forth in Section 2.8 hereof.

**“Person”** shall mean any individual, corporation, partnership, joint venture, limited liability company, estate, trust, unincorporated association, any federal, state, county or

municipal government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

**“Physical Conditions Report”** shall mean, with respect to each Individual Property, a report prepared by a company satisfactory to Lender regarding the physical condition of such Individual Property, satisfactory in form and substance to Lender in its sole discretion.

**“Pledge Agreement”** shall mean that certain Pledge and Security Agreement (Loan), dated as of the date hereof, between Borrower and Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**“Pledged Company Interests”** shall have the meaning set forth in the Pledge Agreement.

**“Policies”** shall have the meaning specified in Section 6.1(b) hereof.

**“Prepayment Date”** shall have the meaning specified in Section 2.4.1 hereof.

**“Prescribed Laws”** shall mean, collectively, (a) the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56) (The USA PATRIOT Act), as amended, (b) Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, and relating to Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, (c) the International Emergency Economic Power Act, 50 U.S.C. §1701 *et seq.* and (d) all other Legal Requirements relating to money laundering or terrorism.

**“Prime Rate”** shall mean the annual rate of interest publicly announced by Citibank, N.A. in New York, New York, as its base rate, as such rate shall change from time to time. If Citibank, N.A. ceases to announce a base rate, Prime Rate shall mean the rate of interest published in The Wall Street Journal from time to time as the “Prime Rate.” If more than one “Prime Rate” is published in The Wall Street Journal for a day, the average of such “Prime Rates” shall be used, and such average shall be rounded up to the nearest one-eighth of one percent (0.125%). If The Wall Street Journal ceases to publish the “Prime Rate,” Lender shall select an equivalent publication that publishes such “Prime Rate,” and if such “Prime Rates” are no longer generally published or are limited, regulated or administered by a governmental or quasi-governmental body, then Lender shall select a comparable interest rate index.

**“Prime Rate Loan”** shall mean the Loan at such time as interest thereon accrues at a rate of interest based upon the Prime Rate.

**“Prime Rate Spread”** shall mean the difference (expressed as the number of basis points) between (a) LIBOR plus the Spread on the date LIBOR was last applicable to the Loan and (b) the Prime Rate on the date that LIBOR was last applicable to the Loan; provided, however, in no event shall such difference be a negative number.

**“Principal”** shall mean Fifth Mezzanine Borrower.

**“Projections”** shall have the meaning set forth in Section 9.10 hereof.

**“Properties”** shall mean, collectively, each and every Individual Property which is subject to the terms of this Agreement.

**“Provided Information”** shall mean any and all financial and other information provided at any time by, or on behalf of, Borrower, Senior Mezzanine Borrower, or Mortgage Borrower with respect to the Properties, Borrower, any Affiliates of Borrower, including Holdings, Guarantor and/or Operating Company.

**“Qualified Transferee”** means (a) any of the Mezzanine Lenders, (b) Apollo Management, L.P., TPG Capital, L.P. f/k/a Texas Pacific Group, their respective Affiliates and senior or executive principals of Apollo Management, L.P. or TPG Capital, L.P. who are the holders from time to time of voting interests in Holdings, and investment funds Controlled by either of them (but excluding for purposes of this clause (b) “portfolio companies” of the foregoing), or (c) one or more of the following:

- (i) a real estate investment trust, bank, saving and loan association, investment bank, insurance company, trust company, commercial credit corporation, pension plan, pension fund or pension advisory firm, mutual fund, government entity or plan, provided that any such Person referred to in this clause (i) satisfies the Eligibility Requirements;
- (ii) an investment company, money management firm or “qualified institutional buyer” within the meaning of Rule 144A under the Securities Act of 1933, as amended, or an institutional “accredited investor” within the meaning of Regulation D under the Securities Act of 1933, as amended, provided that any such Person referred to in this clause (ii) satisfies the Eligibility Requirements;
- (iii) an institution substantially similar to any of the foregoing entities described in clauses (c)(i) or (c)(ii) that satisfies the Eligibility Requirements;
- (iv) any entity Controlled by any of the entities described in clause (a) or clauses (c)(i) or (c)(ii) above, or Holdings or any entity Controlled by Holdings (provided in each case there shall have occurred no Change in Control);
- (v) a Qualified Trustee in connection with a securitization of, the creation of collateralized debt obligations (“CDO”) secured by or financing through an “owner trust” of, any Mezzanine Loan (collectively, “**Securitization Vehicles**”), so long as (A) the special servicer or manager of such Securitization Vehicle has the Required Special Servicer Rating and (B) the entire “controlling class” of such Securitization Vehicle, other than with respect to a CDO Securitization Vehicle, is held by one or more entities that are otherwise Qualified Transferees under clauses (c)(i), (ii), (iii) or (iv) of this definition; provided that the operative documents of the related Securitization Vehicle require that (1) in the case of a CDO Securitization Vehicle, the “equity interest” in such Securitization Vehicle is owned by one or more entities that are Qualified Transferees under clauses (c)(i), (ii), (iii) or (iv) of this definition and (2) if any of the relevant trustee, special servicer, manager fails to meet the requirements of this clause (v), such Person

must be replaced by a Person meeting the requirements of this clause (v) within thirty (30) days; or

(vi) an investment fund, limited liability company, limited partnership or general partnership where a Permitted Fund Manager or an entity that is otherwise a Qualified Transferee under clauses (c)(i), (ii), (iii) or (iv) of this definition acts as the general partner, managing member or fund manager and at least 50% of the equity interests in such investment vehicle are owned, directly or indirectly, by one or more entities that are otherwise Qualified Transferees under clauses (c)(i), (ii), (iii) or (iv) of this definition;

provided, however, that no Transferee shall be a Qualified Transferee if (and for so long as) such Transferee is, or is Controlled by, an Embargoed Person or a Person that has been found “unsuitable,” for any reason, by a Gaming Authority.

**“Qualified Trustee”** means (a) a corporation, national bank, national banking association or a trust company, organized and doing business under the laws of any state or the United States of America, authorized under such laws to exercise corporate trust powers and to accept the trust conferred, having a combined capital and surplus of at least \$100,000,000 and subject to supervision or examination by federal or state authority, (b) an institution insured by the Federal Deposit Insurance Corporation or (c) an institution whose long-term senior unsecured debt is rated either of the then in effect top two rating categories of each of the Rating Agencies.

**“Rating Agencies”** shall mean each of S&P, Moody’s and Fitch, or any other nationally recognized statistical rating agency which has been approved by Lender and that rates a Securitization of the Loan (or any component thereof).

**“Rating Agency Confirmation”** means, collectively, a written affirmation from each of the Rating Agencies that the credit rating of the Securities given by such Rating Agency of such Securities immediately prior to the occurrence of the event with respect to which such Rating Agency Confirmation is sought will not be qualified, downgraded or withdrawn as a result of the occurrence of such event, which affirmation may be granted or withheld in such Rating Agency’s sole and absolute discretion. In the event that, at any given time, no such Securities shall have been issued and are then outstanding, then the term Rating Agency Confirmation shall be deemed instead to require the written approval of Lender based on its good faith determination of whether the Rating Agencies would issue a Rating Agency Confirmation if any such Securities were outstanding.

**“Regulation AB”** shall have the meaning set forth in Section 5.1.11(f) hereof.

**“Regulation S-K”** shall mean Regulation S-K under the Securities Act of 1933 and the Securities Exchange Act of 1934, as amended.

**“Regulation S-X”** shall mean Regulation S-X under the Securities Act of 1933 and the Securities Exchange Act of 1934, as amended.

**“Related Loan”** shall have the meaning set forth in Section 5.1.11(f) hereof.

**“Related Property”** shall have the meaning set forth in Section 5.1.11(f) hereof.

**“Release”** shall have the meaning set forth in Section 2.5.1 hereof.

**“Release Borrower”** shall have the meaning set forth in Section 2.5.1 hereof.

**“Release Price”** shall mean, in connection with a release of an Individual Property from the Lien of a Mortgage as provided in Section 2.5, an amount equal to one hundred ten percent (110%) of the applicable Allocated Loan Amount for the first and second Individual Properties released, 115% of the applicable Allocated Loan Amount for the third and fourth Individual Properties released and (110%) of the applicable Allocated Loan Amount for any Individual Property thereafter released; provided if the Paris Las Vegas property becomes an Individual Property as contemplated by the last paragraph of Section 2.5.2, then such Individual Property shall have a Release Price of 120% of its Allocated Loan Amount and each other Individual Property shall have a Release Price of 110% of its Allocated Loan Amount.

**“Rents”** shall mean, with respect to each Individual Property, and without duplication, all rents, rent equivalents, moneys payable as damages or in lieu of rent or rent equivalents, royalties (including, without limitation, all oil and gas-or other mineral royalties and bonuses), income, receivables, receipts, revenues, deposits (including, without limitation, security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, and other consideration of whatever form or nature received by or paid to or for the account of or benefit of Mortgage Borrower or the Operating Company (or employees of Mortgage Borrower or the Operating Company) from any and all sources arising from or attributable to such Individual Property, and proceeds, if any, from business interruption or other loss of income or insurance, including, without limitation, all hotel receipts, revenues and credit card receipts collected from guest rooms, restaurants, bars, meeting rooms, banquet rooms and recreational facilities, all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of property or rendering of services by Mortgage Borrower or any operator or manager of the Hotel Components or the commercial spaces located in the Improvements or acquired from others (including, without limitation, from the rental of any office space, retail space, guest rooms or other space, halls, stores and offices, and deposits securing reservations of such space), license, lease, sublease and concession fees and rentals, health club membership fees, food and beverage wholesale and retail sales, service charges, vending machine sales and proceeds, if any, from business interruption or other loss of income insurance.

**“Replacement Interest Rate Cap Agreement”** means an interest rate cap agreement from an Acceptable Counterparty with terms identical to the Interest Rate Cap Agreement except that the same shall be effective in connection with replacement of the Interest Rate Cap Agreement following a downgrade, withdrawal or qualification of the long-term unsecured debt rating of the Counterparty; provided that to the extent any such interest rate cap agreement does not meet the foregoing requirements, a “Replacement Interest Rate Cap Agreement” shall be such interest rate cap agreement approved in writing by each of the Rating Agencies and Lender with respect thereto.

**“Reserve Account”** shall mean any one of the Tax and Insurance Escrow Account, the FF&E Reserve Account, the Ground Rent Reserve Account and any other escrow fund or reserve account established pursuant to the Loan Documents.

**“Reserve Funds”** shall mean, collectively, the Tax and Insurance Escrow Fund, the FF&E Reserve Fund, the Ground Rent Reserve Fund, the Ground Lease Estoppel Reserve Amount and any other escrow fund established pursuant to the Loan Documents.

**“Restoration”** shall mean the repair and restoration of an Individual Property after a Casualty or Condemnation as nearly as possible to the condition the Individual Property was in immediately prior to such Casualty or Condemnation, with such alterations as may be reasonably approved by Lender.

**“Revenue”** shall mean all Rents and items of income or revenue (of any kind) collected by Mortgage Borrower or Operating Company.

**“S&P”** shall mean Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc.

**“Sale or Pledge”** shall mean a voluntary or involuntary sale, conveyance, assignment, transfer, encumbrance or pledge of a legal or beneficial interest.

**“Scheduled Maturity Date”** shall mean February 13, 2013.

**“Second Mezzanine Borrower”** shall mean, collectively, the entities set forth on Schedule XV hereto, each a Delaware limited liability company, together with their respective successors and permitted assigns. As used herein, the term “Second Mezzanine Borrower” shall mean one of the Second Mezzanine Borrowers individually, or the Second Mezzanine Borrowers collectively, as the context shall require.

**“Second Mezzanine Debt Service”** shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Second Mezzanine Note.

**“Second Mezzanine Lender”** shall mean JPMorgan Chase Bank, N.A., in its capacity as the holder of the Second Mezzanine Loan, together with its successors and assigns.

**“Second Mezzanine Loan”** shall mean that certain loan in the original principal amount of Two Hundred Seventy Five Million and No/100 Dollars (\$275,000,000) of even date herewith made by Second Mezzanine Lender to Second Mezzanine Borrower.

**“Second Mezzanine Loan Agreement”** shall mean that certain Second Mezzanine Loan Agreement, dated as of the date hereof, between Second Mezzanine Borrower

and Second Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**“Second Mezzanine Loan Documents”** shall mean the Second Mezzanine Loan Agreement, the Second Mezzanine Note, the Second Mezzanine Pledge Agreement and all other documents and instruments executed and delivered in connection with the Second Mezzanine Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

**“Second Mezzanine Notes”** shall mean the “Notes” as defined in the Second Mezzanine Loan Agreement and payable to the order of Second Mezzanine.

**“Second Mezzanine Pledge Agreement”** shall mean that certain Pledge and Security Agreement (Second Mezzanine Loan), dated as of the date hereof, between Second Mezzanine Borrower and Second Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**“Securities”** shall have the meaning set forth in Section 9.1 hereof.

**“Securities Act”** shall have the meaning set forth in Section 9.2(a) hereof.

**“Securitization”** shall have the meaning set forth in Section 9.1 hereof.

**“Senior Mezzanine Borrower”** shall mean, collectively, First Mezzanine Borrower, Second Mezzanine Borrower and Third Mezzanine Borrower.

**“Senior Mezzanine Collateral”** shall mean, collectively, the “Collateral” as defined in each Senior Mezzanine Loan Agreement.

**“Senior Mezzanine Lender”** shall mean First Mezzanine Lender, Second Mezzanine Lender and Third Mezzanine Lender.

**“Senior Mezzanine Loan”** shall mean the First Mezzanine Loan, the Second Mezzanine Loan and the Third Mezzanine Loan.

**“Senior Mezzanine Loan Agreement”** shall mean the First Mezzanine Loan Agreement, the Second Mezzanine Loan Agreement and the Third Mezzanine Loan Agreement.

**“Senior Mezzanine Loan Default”** shall mean, collectively, a “Default” under any of the Senior Mezzanine Loan Documents.

**“Senior Mezzanine Loan Documents”** shall mean, collectively, the First Mezzanine Loan Documents, the Second Mezzanine Loan Documents and the Third Mezzanine Loan Documents.

**“Senior Mezzanine Loan Event of Default”** shall mean, collectively, an “Event of Default” under any of the Senior Mezzanine Loan Documents.

**“Senior Mezzanine Loan Reserve Funds”** shall mean, collectively, the “Reserve Funds” as defined in the Senior Mezzanine Loan Agreement.

**“Servicer”** shall have the meaning set forth in Section 9.4 hereof.

**“Servicing Agreement”** shall have the meaning set forth in Section 9.4 hereof.

**“Seventh Mezzanine Borrower”** shall mean, collectively, the entities set forth on Schedule XIX hereto, each a Delaware limited liability company, together with their respective successors and permitted assigns. As used herein, the term “Seventh Mezzanine Borrower” shall mean one of the Seventh Mezzanine Borrowers individually, or the Seventh Mezzanine Borrowers collectively, as the context shall require.

**“Seventh Mezzanine Debt Service”** shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Seventh Mezzanine Note.

**“Seventh Mezzanine Lender”** shall mean JPMorgan Chase Bank, N.A., in its capacity as the holder of the Seventh Mezzanine Loan, together with its successors and assigns.

**“Seventh Mezzanine Loan”** shall mean that certain loan in the original principal amount of Two Hundred Seventy Five Million and No/100 Dollars (\$275,000,000) of even date herewith made by Seventh Mezzanine Lender to Seventh Mezzanine Borrower.

**“Seventh Mezzanine Loan Agreement”** shall mean that certain Seventh Mezzanine Loan Agreement, dated as of the date hereof, between Seventh Mezzanine Borrower and Seventh Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**“Seventh Mezzanine Loan Documents”** shall mean the Seventh Mezzanine Loan Agreement, the Seventh Mezzanine Notes and all other documents and instruments executed and delivered in connection with the Seventh Mezzanine Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

**“Seventh Mezzanine Notes”** shall mean the “Notes” as defined in the Seventh Mezzanine Loan Agreement.

**“Severed Loan Documents”** shall have the meaning set forth in Section 8.2(c) hereof.

**“Significant Obligor”** shall have the meaning set forth in Section 5.1.11(f) hereof.

**“Sixth Mezzanine Borrower”** shall mean, collectively, the entities set forth on Schedule XVIII hereto, each a Delaware limited liability company, together with their respective

successors and permitted assigns. As used herein, the term “Sixth Mezzanine Borrower” shall mean one of the Sixth Mezzanine Borrowers individually, or the Sixth Mezzanine Borrowers collectively, as the context shall require.

“**Sixth Mezzanine Debt Service**” shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Sixth Mezzanine Notes.

“**Sixth Mezzanine Lender**” shall mean JPMorgan Chase Bank, N.A., in its capacity as the holder of the Sixth Mezzanine Loan, together with its successors and assigns.

“**Sixth Mezzanine Loan**” shall mean that certain loan in the original principal amount of Two Hundred Seventy Five Million and No/100 Dollars (\$275,000,000) of even date herewith made by Sixth Mezzanine Lender to Sixth Mezzanine Borrower.

“**Sixth Mezzanine Loan Agreement**” shall mean that certain Sixth Mezzanine Loan Agreement, dated as of the date hereof, between Sixth Mezzanine Borrower and Sixth Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Sixth Mezzanine Loan Documents**” shall mean the Sixth Mezzanine Loan Agreement, the Sixth Mezzanine Notes and all other documents and instruments executed and delivered in connection with the Sixth Mezzanine Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

“**Sixth Mezzanine Notes**” shall mean the “Notes” as defined in the Sixth Mezzanine Loan Agreement.

“**Special Member**” shall mean a Springing Member in a given Delaware limited liability company who has become a member in such limited liability company to the extent so provided in such limited liability company’s operating agreement.

“**Special Purpose Entity**” shall mean a corporation, limited partnership or limited liability company which at all times on and after the date hereof:

(a) is organized solely for the purpose of (i) owning, holding, selling, transferring, exchanging, managing and operating the Collateral, entering into this Agreement with the Lender, refinancing the Collateral in connection with a permitted repayment of the Loan, and transacting lawful business that is incident, necessary and appropriate to accomplish the foregoing; or (ii) acting as a general partner of the limited partnership that owns the Collateral or member of the limited liability company that owns the Collateral;

(b) is not engaged and will not engage in any business unrelated to (i) the ownership of the Collateral, (ii) acting as general partner of the limited partnership that owns the Collateral or (iii) acting as a member of the limited liability company that owns the Collateral, as applicable;

(c) does not have and will not have any assets other than those related to the Collateral or its partnership interest in the limited partnership or the member interest in the limited liability company that owns the Collateral or acts as the general partner or managing member thereof, as applicable;

(d) has not engaged, sought or consented to and will not engage in, seek or consent to any dissolution, winding up, liquidation, consolidation, merger, sale of all or substantially all of its assets, transfer of partnership or membership interests (if such entity is a general partner in a limited partnership or a member in a limited liability company) or amendment of its limited partnership agreement, articles of incorporation, articles of organization, certificate of formation or operating agreement (as applicable) with respect to the matters set forth in this definition;

(e) if such entity is a limited partnership, has, as its only general partners, Special Purpose Entities that are corporations, limited partnerships or limited liability companies;

(f) if such entity is a corporation, has at least two (2) Independent Directors, and has not caused or allowed and will not cause or allow the board of directors of such entity to take any action requiring the unanimous affirmative vote of one hundred percent (100%) of the members of its board of directors unless two (2) Independent Directors shall have participated in such vote;

(g) if such entity is a limited liability company with more than one member, has at least one member that is a Special Purpose Entity that is a Delaware corporation or limited liability company that has at least two (2) Independent Directors;

(h) if such entity is a limited liability company with only one member, is a limited liability company organized in the State of Delaware that has (i) as its only member a non-managing member, (ii) at least two (2) Independent Managers and has not caused or allowed and will not cause or allow the board of managers of such entity to take any action requiring the unanimous affirmative vote of one hundred percent (100%) of the managers unless two (2) Independent Managers shall have participated in such vote and (iii) at least one springing member that will become the non-managing member of such entity upon the dissolution of the existing non-managing member;

(i) if such entity is (i) a limited liability company, has articles of organization, a certificate of formation and/or an operating agreement, as applicable, (ii) a limited partnership, has a limited partnership agreement, or (iii) a corporation, has a certificate of incorporation or articles that, in each case, provide that such entity will not, while any obligations remain outstanding under the Loan Documents: (A) dissolve, merge, liquidate, consolidate; (B) sell all or substantially all of its assets or the assets of the Borrower (as applicable), except as permitted in connection with the release of an Individual Property as provided in Section 2.5.1; (C) engage in any other business activity, or amend its organizational documents with respect to the matters set forth in this definition without the consent of the Lender; or (D) without the affirmative vote of two (2) Independent Directors and of all other directors of the corporation (that is such

entity or the general partner or managing or co-managing member of such entity), file a bankruptcy or insolvency petition or otherwise institute insolvency proceedings with respect to itself or to any other entity in which it has a direct or indirect legal or beneficial ownership interest;

(j) is and will remain solvent and pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from and to the extent of its assets as the same shall become due, and is maintaining and will maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations; provided, however, that the foregoing shall not require the Member to make additional capital contributions to the company;

(k) has not failed and will not fail to correct any known misunderstanding regarding the separate identity of such entity;

(l) has maintained and will maintain its bank accounts, books and records separate from any other Person and will file its own tax returns separate from those of any other Person, except to the extent the company is treated as a “disregarded entity” for tax purposes and is not required to file tax returns under applicable law;

(m) has maintained and will maintain its own records, books, resolutions and agreements;

(n) has not commingled and will not commingle its funds or assets with assets of any other Person;

(o) has held and will hold its assets in its own name;

(p) has conducted and will conduct its business in its own name;

(q) has maintained and will maintain its financial statements, accounting records and other entity documents separate and apart from any other Person and will have its assets listed on the financial statement of any other Person; provided, however, that the company’s assets may be included in a consolidated financial statement of its Affiliate, provided, that, (i) appropriate notation shall be made on such consolidated financial statements to indicate the separateness of the company from such Affiliate and to indicate the company’s assets and credit are not available to satisfy the debts and other obligations of such Affiliate or any other Person and (ii) such assets shall also be listed on the company’s own separate balance sheet;

(r) has paid and will pay its own liabilities and expenses, including the salaries of its own employees (if any), out of its own funds and assets, and has maintained and will maintain a sufficient number of employees (if any) in light of its contemplated business operations;

(s) has observed and will observe all partnership, corporate or limited liability company formalities necessary to maintain its separate existence;

(t) has and will not incur, create, or assume any Indebtedness other than (i) the Loan and (ii) certain Indebtedness to Affiliates that was incurred in connection with the formation of Borrower and Operating Company and the transfer of the Properties to Mortgage Borrower and was satisfied and/or released in full prior to the funding of the Loan hereunder;

(u) has not and will not assume or guarantee or become obligated for the debts of any other Person or hold out its credit as being available to satisfy the obligations of any other Person except as co-borrowers of the Loan;

(v) has not and will not acquire obligations or securities of its partners, members or shareholders or any Affiliate (other than Mortgage Borrower);

(w) has allocated and will allocate fairly and reasonably any overhead expenses that are shared with any Affiliate, including, but not limited to, paying for shared office space and services performed by any employee of an Affiliate;

(x) maintains and uses and will maintain and use separate stationery, invoices and checks, if any, bearing its name. The stationery, invoices, and checks, if any, utilized by the Special Purpose Entity or utilized to collect its funds or pay its expenses shall bear its own name and shall not bear the name of any other entity unless such entity is clearly designated as being the Special Purpose Entity's agent;

(y) has not pledged and will not pledge its assets for the benefit of any Person except as co-borrowers of the Loan;

(z) has held itself out and identified itself and will hold itself out to the public and all other Persons and identify itself as a separate and distinct entity under its own name or in a name franchised or licensed to it by an entity other than an Affiliate of Borrower and not as a division or part of any other Person;

(aa) has maintained and will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;

(bb) has not made and will not make loans to any Person or hold evidence of indebtedness issued by any other Person or entity (other than cash and investment-grade securities issued by an entity that is not an Affiliate of or subject to common ownership with such entity);

(cc) correct any known misunderstanding regarding its separate identity and has not identified and will not identify its partners, members or shareholders, or any Affiliate of any of them, as a division or part of it, and has not identified itself and shall not identify itself as a division of any other Person;

(dd) except for capital contributions or capital distributions permitted under the terms and conditions of this Agreement and properly reflected on the books and records of this company, has not entered into or been a party to, and will not enter into or be a

party to, any transaction with its partners, members, shareholders or Affiliates except in the ordinary course of its business and on terms which are commercially reasonable and are no less favorable to it than would be obtained in a comparable arm's-length transaction with an unrelated third party (including an appropriate shared services agreement with Affiliates);

(ee) has not and will not have any obligation to, and will not, indemnify its partners, officers, directors or members, as the case may be, unless such an obligation is fully subordinated to the Debt and will not constitute a claim against it in the event that cash flow in excess of the amount required to pay the Debt is insufficient to pay such obligation;

(ff) if such entity is a corporation, it shall consider the interests of its creditors in connection with all corporate actions;

(gg) does not and will not have any of its obligations guaranteed by any Affiliate (except each Borrower as a co-borrower under the Loan);

(hh) has complied and will comply with all of the terms and provisions contained in its organizational documents. The statement of facts contained in its organizational documents are true and correct and will remain true and correct; and

(ii) form, acquire, or hold any subsidiary (whether corporate, partnership, limited liability company, or other) or own any equity interest in any other entity (other than, with respect to Borrower, its interest in Fourth Mezzanine Borrower, and with respect to Principal, its interest in Borrower).

**"SPE Party"** shall mean Borrower and any other Person that is required to be a "Special Purpose Entity" under applicable Rating Agency criteria so as to make Borrower a Special Purpose Entity.

**"Spread"** shall mean (i) unless and until a Ground Lease Estoppel Trigger Event exists, 3.00% and (ii) upon the occurrence of a Ground Lease Estoppel Trigger Event, the Ground Lease Estoppel Trigger Spread.

**"Spread Maintenance Outside Date"** shall mean February 10, 2009.

**"Spread Maintenance Premium"** shall mean, in connection with any repayment of any of the outstanding principal amount of the Loan prior to and including the Spread Maintenance Outside Date (whether a voluntary or mandatory prepayment), an amount equal to the product of (a) the principal amount of such prepayment, (b) the Spread and (c) a fraction, the numerator of which shall be the actual number of days from (but excluding) the date of such prepayment (or, if later, the last date of the Interest Period during which interest on the amount of such payment shall have been paid by Borrower, as required in this Agreement) through (and including) the Spread Maintenance Outside Date and the denominator of which is three hundred sixty (360).

**“Springing Member”** shall mean a Person who has signed the limited liability company agreement of a given Delaware limited liability company, which agreement provides that, upon the withdrawal, dissolution or disassociation of the last remaining member of such limited liability company (subject to applicable Gaming Laws), such Person shall become a member of such limited liability company having no economic interest therein.

**“State”** shall mean, with respect to an Individual Property, the State or Commonwealth in which such Individual Property or any part thereof is located.

**“Strike Price”** shall mean four and one-half percent (4.5%).

**“Survey”** shall mean a survey of the Individual Property in question prepared pursuant to the requirements contained in Section 3.1.3(c) hereof.

**“Syndication”** shall have the meaning set forth in Section 9.5 hereof.

**“Tax and Insurance Escrow Fund”** shall have the meaning set forth in Section 7.2 hereof.

**“Taxes”** shall mean all real estate and personal property taxes, assessments, water rates or sewer rents, now or hereafter levied or assessed or imposed against any Individual Property or part thereof.

**“Third Mezzanine Borrower”** shall mean, collectively, the entities set forth on Schedule XV hereto, each a Delaware limited liability company, together with their respective successors and permitted assigns. As used herein, the term “Third Mezzanine Borrower” shall mean one of the Third Mezzanine Borrowers individually, or the Third Mezzanine Borrowers collectively, as the context shall require.

**“Third Mezzanine Debt Service”** shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Third Mezzanine Note.

**“Third Mezzanine Lender”** shall mean JPMorgan Chase Bank, N.A., in its capacity as the holder of the Third Mezzanine Loan, together with its successors and assigns.

**“Third Mezzanine Loan”** shall mean that certain loan in the original principal amount of Two Hundred Seventy Five Million and No/100 Dollars (\$275,000,000) of even date herewith made by Third Mezzanine Lender to Third Mezzanine Borrower.

**“Third Mezzanine Loan Agreement”** shall mean that certain Third Mezzanine Loan Agreement, dated as of the date hereof, between Third Mezzanine Borrower and Third Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**“Third Mezzanine Loan Documents”** shall mean the Third Mezzanine Loan Agreement, the Third Mezzanine Notes and all other documents and instruments executed and

delivered in connection with the Third Mezzanine Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

**“Third Mezzanine Notes”** shall mean the “Notes” as defined in the Third Mezzanine Loan Agreement.

**“Third Mezzanine Pledge Agreement”** shall mean that certain Pledge and Security Agreement (Third Mezzanine Loan), dated as of the date hereof, between Third Mezzanine Borrower and Third Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**“Threshold Amount”** shall have the meaning set forth in the definition of Material Alteration.

**“Title Insurance Policies”** shall mean, with respect to each Individual Property, an ALTA mortgagee title insurance policy in a form acceptable to Lender (or, if an Individual Property is in a State which does not permit the issuance of such ALTA policy, such form as shall be permitted in such State and acceptable to Lender) issued with respect to such Individual Property and insuring the lien of the Mortgage encumbering such Individual Property.

**“Tower Project”** shall mean that certain “New Atlantic City Tower Project” more fully described in (a) the Site, Design and Floor Plans, dated October 5, 2005, and prepared by Paul Steelman Design Group, and (b) Harrah’s Hotel/Podium/Garage Expansion: Summary of Project Costs, each delivered to Lender. The Tower Project will include a podium (of approximately 175,000 square feet) connecting the current Bayview Tower to a new approximately nine hundred (900) room tower to be built. The Tower Project will not be funded with the proceeds of the Loan (but will be funded by Mortgage Borrower or Operating Company, including with capital contributions).

**“Transfer”** shall mean to, directly or indirectly, sell, assign, convey, mortgage, transfer, pledge, hypothecate, encumber, grant a security interest in, exchange or otherwise dispose of any beneficial interest or grant any option or warrant with respect to, or where used as a noun, a direct or indirect sale, assignment, conveyance, transfer, pledge or other disposition of any beneficial interest by any means whatsoever whether voluntary, involuntary, by operation of law or otherwise. A Transfer shall include, but not be limited to, (a) an installment sales agreement wherein Mortgage Borrower agrees to sell an Individual Property or any part thereof or Borrower agrees to sell the Collateral, in each case, for a price to be paid in installments; (b) an agreement by Mortgage Borrower leasing all or a substantial part of an Individual Property for other than actual occupancy by a space tenant thereunder or a sale, assignment or other transfer of, or the grant of a security interest in, Mortgage Borrower’s right, title and interest in and to any Leases or any Rents; (c) if a Person restricted or affected by the provisions of this Agreement is a corporation, any merger, consolidation or sale or pledge of such corporation’s stock or the creation or issuance of new stock; (d) if a Person restricted or affected by the provisions of this Agreement is a limited or general partnership or joint venture, any merger or consolidation or the change, removal, resignation or addition of a general partner or the sale or pledge of the partnership interest of any general partner or any profits or proceeds relating to such partnership interest, or the sale or pledge of limited partnership interests or any

profits or proceeds relating to such limited partnership interest or the creation or issuance of new limited partnership interests; (e) if a Person restricted or affected by the provisions of this Agreement is a limited liability company, any merger or consolidation or the change, removal, resignation or addition of a managing member or non-member manager (or if no managing member, any member) or the sale or pledge of the membership interest of a managing member (or if no managing member, any member) or any profits or proceeds relating to such membership interest, or the sale or pledge of non-managing membership interests or the creation or issuance of new non-managing membership interests; (f) if a Person restricted or affected by the provisions of this Agreement is a trust or nominee trust, any merger, consolidation or the sale or pledge of the legal or beneficial interest in such Person or the creation or issuance of new legal or beneficial interests; or (g) any direct or indirect sale, assignment, conveyance, transfer, pledge or other disposition (by any means whatsoever whether voluntary, involuntary, by operation of law or otherwise) of the Collateral, the Senior Mezzanine Collateral or any part thereof or any legal or beneficial interest therein.

**“Transferee”** shall mean the Person to whom a Transfer is being effected.

**“Trigger Event”** shall mean, as of the end of any calendar quarter, any period of time during which EBITDAR from the Properties, calculated for the trailing twelve (12) month period immediately prior to the applicable calculation date, is less than eighty-five percent (85%) of the EBITDAR (Closing Date), as determined by Lender.

**“Trigger Event Cure”** shall mean that EBITDAR (excluding, in making such calculation, any capital contributions made to or for the benefit of Borrower, Mortgage Borrower or Operating Company, or payments made on the account of Borrower, Mortgage Borrower or Operating Company by any Affiliate of Borrower, Mortgage Borrower or Operating Company) from the Properties, calculated for the trailing twelve (12) month period immediately prior to the applicable calculation date, is equal to or greater than eighty-five percent (85%) of the EBITDAR (Closing Date) for two (2) consecutive calendar quarters.

**“True-Lease Opinion”** shall mean that certain true lease opinion letter dated the date hereof delivered by Cleary Gottlieb Steen & Hamilton LLP in connection with the Loan.

**“UCC”** or **“Uniform Commercial Code”** shall mean the Uniform Commercial Code as in effect in the applicable State in which an Individual Property is located.

**“UCC Title Insurance Policy”** shall have the meaning set forth in [Section 3.13\(b\)](#) hereof.

**“U.S. Obligations”** shall mean non-redeemable securities evidencing an obligation to timely pay principal and/or interest in a full and timely manner that are direct obligations of the United States of America for the payment of which its full faith and credit is pledged or other “government securities” within the meaning of Section 2(a)(16) of the Investment Company Act of 1940, as amended.

**“Windstorm Insurance Intercreditor Agreement”** means that certain Windstorm Insurance Intercreditor Agreement, dated as of the date hereof, by and among Lender, the Mortgage Lender, the Other Mezzanine Lenders, each of the “Other Owners” named

therein and made a party thereto, Bank of America, N.A., and the "Other Secured Parties" named therein and made a party thereto, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**Section 1.2. Principles of Construction.** All references to sections and schedules are to sections and schedules in or to this Agreement unless otherwise specified. All uses of the word "including" shall mean "including, without limitation" unless the context shall indicate otherwise. Unless otherwise specified, the words "hereof," "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. Unless otherwise specified, all meanings attributed to defined terms herein shall be equally applicable to both the singular and plural forms of the terms so defined. With respect to cross-references contained herein to the Mortgage Loan Documents or to the Other Mezzanine Loan Documents (including with respect to any cross-references to defined terms therein), unless otherwise specifically provided herein, such cross-references shall be with respect to the Mortgage Loan Documents or the Other Mezzanine Loan Documents as the case may be, in existence as of the date hereof, and no modification or amendment to such cross-referenced sections of the Mortgage Loan Documents or the Other Mezzanine Loan Documents shall be binding upon Lender unless Lender shall have expressly agreed in writing to be bound by such modification or amendment. Terms used herein and not otherwise defined herein (but defined in the Mortgage Loan Agreement) shall have the meaning set forth in the Mortgage Loan Agreement as of the Closing Date, notwithstanding any subsequent amendment of the Mortgage Loan Agreement to such defined terms unless Lender shall have consented to such amendment. The words "Borrower shall cause Mortgage Borrower to", "Borrower shall not permit Mortgage Borrower to", "Borrower shall cause Senior Mezzanine Borrower to", "Borrower shall not permit Senior Mezzanine Borrower to", "Borrower shall cause Operating Company to" or "Borrower shall not permit Operating Company to" (or words of similar meaning) shall mean Borrower shall cause Mortgage Borrower, Senior Mezzanine Borrower or Operating Company (subject to the provisions of Section 5.3), as applicable, to so act or not to so act, as applicable.

**Section 1.3. Direction of Mortgage Borrower or with Respect to the Properties.** Borrower and Lender hereby acknowledge and agree that, as to any clauses or provisions contained in this Agreement or any of the other Loan Documents to the effect that (i) Borrower shall cause Mortgage Borrower and/or Senior Mezzanine Borrower to act or to refrain from acting in any manner or (ii) Borrower shall cause to occur or not to occur, or otherwise be obligated in any manner with respect to, any matters pertaining to Mortgage Borrower, Senior Mezzanine Borrower or any of the Properties, such clause or provision, in each case, is intended to mean, and shall be construed as meaning, that Borrower has undertaken to act and is obligated to act only in Borrower's capacity as the sole member of Senior Mezzanine Borrower but not directly with respect to Senior Mezzanine Borrower, Mortgage Borrower or any of the Properties or in any other manner which would violate any of the covenants contained in Section 4.1.30 (Special Purpose Entity) hereof or other similar covenants contained in Borrower's organizational documents.

## II. GENERAL TERMS

### Section 2.1. Loan Commitment; Disbursement to Borrower.

**2.1.1 Agreement to Lend and Borrow.** Subject to and upon the terms and conditions set forth herein, Lender hereby agrees to make and Borrower hereby agrees to accept the Loan on the Closing Date.

**2.1.2 Single Disbursement to Borrower.** Borrower may request and receive only one borrowing hereunder in respect of the Loan and any amount borrowed and repaid hereunder in respect of the Loan may not be reborrowed.

**2.1.3 The Note, the Pledge Agreement and Loan Documents.** The Loan shall be evidenced by the Note (in the aggregate principal amount of Two Hundred Seventy Five Million and No/100 Dollars (\$275,000,000) and secured by the Pledge Agreement and the other Loan Documents.

**2.1.4 Use of Proceeds.** Borrower shall use the proceeds of the Loan solely to (a) make an equity contribution to Mortgage Borrower (through each Senior Mezzanine Borrower) in order to cause Mortgage Borrower to use such amounts for any use permitted pursuant to Section 2.1.4 of the Mortgage Loan Agreement, (b) pay costs and expenses incurred in connection with the closing of the Loan, as approved by Lender, and (c) distribute the balance, if any, to Borrower.

**2.1.5 Component Notes.** Lender shall have the right at any time to modify the Loan in order to create an additional note or additional notes, adjust the interest rate spread on the Notes or notes, reduce the number of notes, reallocate the principal balances of the Notes or notes or eliminate the component note structure of the Loan provided that (a) the aggregate stated principal amount of the Loan on the date of each such adjustment shall equal the aggregate stated principal amount of the Loan immediately prior to such adjustment, and (b) the weighted average spread of the Loan on the date of such adjustment shall equal the weighted average spread which was applicable to the Loan immediately prior to such adjustment (Borrower acknowledging that such new notes or modified notes may, in connection with the application of principal to such new notes or modified note following the occurrence of an Event of Default, but not otherwise, subsequently cause the weighted average spread of such new notes or modified notes to change). In connection with any such modification of the Note and notes, or the creation of additional note(s), (i) Borrower shall cooperate with all reasonable requests of Lender and shall execute and deliver such documents as shall reasonably be requested by Lender in connection therewith, all in form and substance reasonably satisfactory to Lender and, to the extent applicable, the Rating Agencies, including, without limitation, (y) revised title insurance policies and Interest Rate Protection Agreements, and (z) such amendments to the Loan Documents as are reasonably requested; (ii) Lender shall have received opinions of legal counsel with respect to due execution, authority and enforceability of the amended Loan Documents, and additional or updated nonconsolidation opinions for the Loan, each in form reasonably acceptable to Lender and prospective investors and in form acceptable to the Rating Agencies; and (iii) Lender shall pay the actual, reasonable out-of-pocket costs and expenses incurred by Borrower in connection with the foregoing, including, without limitation, the actual, reasonable

out-of-pocket legal fees incurred by Borrower in connection with any of the foregoing matters. For the avoidance of doubt, and notwithstanding anything to the contrary contained herein, such modifications and any modifications under Sections 2.1.6 and 2.1.7 below shall not, absent an Event of Default, adversely affect the overall economics to Borrower of the Loan, taken as a whole, or expose Borrower to any additional costs (other than as set forth above) or increased risk of any liability (beyond that or greater than that existing in the Loan Documents in effect on the date hereof), and Borrower shall not be required to execute any document or agreement which would materially decrease its rights or materially increase its obligations relative to those set forth herein and in the other Loan Documents.

**2.1.6 Adjustment of Mortgage Loan and Mezzanine Loans.** Lender shall have the right at any time to adjust the respective principal amounts of the Mortgage Loan and the Mezzanine Loans (or either one of them) and/or to adjust the interest rate spread on the Mortgage Loan and the Mezzanine Loans (or either one of them) (such adjustment, a **“Loan Adjustment”**), provided that (a) the aggregate stated principal amount of the Mortgage Loan and the Mezzanine Loans on the date of each such Loan Adjustment shall equal the aggregate stated principal amount of the Mortgage Loan and the Mezzanine Loans immediately prior to such Loan Adjustment, and (b) Lender shall have the right to adjust the interest rate spread on the Mortgage Loan and the Mezzanine Loans, provided that the weighted average spread of the Mortgage Loan and the Mezzanine Loans on the date of each such Loan Adjustment shall equal the weighted average spread which was applicable to the Mortgage Loan and the Mezzanine Loans immediately prior to such Loan Adjustment (it being acknowledged that the weighted average spread will remain constant except in connection with the application of principal to such new notes or modified notes following the occurrence of an Event of Default). In connection with any Loan Adjustment, (i) Mortgage Borrower and Mezzanine Borrowers shall cooperate with all reasonable requests of Lender and shall execute and deliver such documents as shall reasonably be requested by Lender in connection therewith, all in form and substance reasonably satisfactory to Lender and, to the extent applicable, the Rating Agencies, including, without limitation, (y) revised title insurance policies, mezzanine endorsements, UCC policies and Interest Rate Protection Agreements, and (z) such amendments to the Mortgage Loan Documents and the Mezzanine Loan Documents as are reasonably requested in connection with the Loan Adjustment (provided that such amendments do not or would not (i) materially decrease the rights of the Mortgage Borrower or Mezzanine Borrowers, or, absent an Event of Default, materially increase the obligations of the Mortgage Borrower or the Mezzanine Borrowers, as the case may be, under the Mortgage Loan Documents or the Mezzanine Loan Documents (as applicable) or (ii) absent an Event of Default, expose the Mortgage Borrower or any of the Mezzanine Borrowers to additional costs or increased risk of any liability under the Mortgage Loan Documents or the Mezzanine Loan Documents (as applicable) (beyond that or greater than that existing in the Mortgage Loan Documents, or the Mezzanine Loan Documents, as applicable, on the date hereof); (ii) Lender shall have received opinions of legal counsel with respect to due execution, authority and enforceability of the amended Mortgage Loan Documents or Mezzanine Loan Documents, as appropriate, and additional or updated nonconsolidation opinions for the Mortgage Loan and the Mezzanine Loans, each in form reasonably acceptable to Lender and prospective investors and in form acceptable to the Rating Agencies; and (iii) Lender shall pay the actual, reasonable out-of-pocket costs and expenses incurred by Borrower in connection with the foregoing, including, without limitation, the actual, reasonable out-of-pocket legal fees incurred by Borrower in connection with any of the foregoing matters.

**2.1.7 Creation of New Mezzanine Loans.** Lender shall at all times have the right to create one or more additional mezzanine loans (each, a “**New Mezzanine Loan**”), adjust the respective principal amounts of the Mortgage Loan and the Mezzanine Loans (or any one of them) upon the creation of the New Mezzanine Loan and/or to adjust the interest rate spread on the Mortgage Loan and the Mezzanine Loans (or any one of them) upon the creation of the New Mezzanine Loan, and to reallocate the principal balance and the interest rate spreads of the Mortgage Loan, the Mezzanine Loans and any New Mezzanine Loan amongst each other (or any one of them), provided that (a) the aggregate stated principal amount of the Mortgage Loan, the Mezzanine Loans and the New Mezzanine Loans on the date of such adjustment (and the creation of the New Mezzanine Loan) shall equal the aggregate stated principal amount of the Mortgage Loan, the Mezzanine Loans and the New Mezzanine Loan(s) immediately prior to such adjustment, (b) Lender shall have the right to adjust the interest rate spread on the Mortgage Loan, the Mezzanine Loans and the New Mezzanine Loan(s), provided that the weighted average spread of the Mortgage Loan, the Mezzanine Loans and the New Mezzanine Loan(s) on the date of such adjustment shall equal the weighted average spread which was applicable to the Mortgage Loan and the Mezzanine Loans (and the New Mezzanine Loans, if applicable) immediately prior to such adjustment (it being acknowledged that the weighted average spread will remain constant except in connection with the application of principal to such new notes or modified notes following the occurrence of an Event of Default), and (c) the terms and provisions of each of the Mortgage Loan and the Mezzanine Loans (and the New Mezzanine Loans, if applicable) shall otherwise remain unchanged. In connection with any New Mezzanine Loan, (i) Borrower shall cause the formation of one or more special purpose, bankruptcy remote entities as required by Lender in order to serve as the borrower under any New Mezzanine Loan (each, a “**New Mezzanine Borrower**”) and the applicable organizational documents of Mortgage Borrower and each Mezzanine Borrower (and of each previously created New Mezzanine Borrower, if applicable) shall be amended and modified as necessary or required in the formation of any New Mezzanine Borrower; (ii) Mortgage Borrower and Mezzanine Borrowers (and each previously created New Mezzanine Borrower, if applicable) shall cooperate with all reasonable requests of Lender and shall execute and deliver such documents as shall reasonably be requested by Lender in connection therewith, all in form and substance reasonably satisfactory to Lender and, to the extent applicable, the Rating Agencies, including, without limitation, (x) revised title insurance policies, mezzanine endorsements, UCC policies and Interest Rate Protection Agreements, (y) in connection with the creation of any New Mezzanine Loan, a promissory note and loan documents necessary to evidence such New Mezzanine Loan, and (z) such amendments to the Mortgage Loan Documents and the Mezzanine Loan Documents (and the loan documents of any previously created New Mezzanine Borrower, if applicable) as are reasonably necessary in connection with the creation of such New Mezzanine Loan (provided that such amendments do not or would not (i) materially decrease the rights of the Mortgage Borrower or Mezzanine Borrowers (and any previously created New Mezzanine Borrowers, if applicable), or, absent an Event of Default, materially increase the obligations of the Mortgage Borrower or the Mezzanine Borrowers (and any previously created New Mezzanine Borrowers, if applicable), as the case may be, under such borrower’s applicable loan documents, or (ii) absent an Event of Default, expose the Mortgage Borrower or any of the Mezzanine Borrowers (or any previously created New Mezzanine Borrowers, if applicable) to additional costs or increased risk of any liability under such borrower’s applicable loan documents (beyond that or greater than that existing in the existing loan documents on the date hereof)); (iii) Lender

shall have received opinions of legal counsel with respect to due execution, authority and enforceability of the amended Mortgage Loan Documents, the amended Mezzanine Loan Documents and the loan documents for the New Mezzanine Loan, as appropriate, and additional or updated nonconsolidation opinions for the Mortgage Loan, the Mezzanine Loans and each such New Mezzanine Loan, as appropriate, each in form reasonably acceptable to Lender and prospective investors and in form acceptable to the Rating Agencies; and (iv) Lender shall pay the actual, reasonable out-of-pocket costs and expenses incurred by Borrower in connection with the foregoing, including, without limitation, the actual, reasonable out-of-pocket legal fees incurred by Borrower in connection with any of the foregoing matters.

**Section 2.2. Interest Rate.**

**2.2.1 Interest Generally.** Except as herein provided with respect to interest accruing at the Default Rate, interest on the principal balance of the Loan outstanding from time to time shall accrue from the Closing Date up to and including the Maturity Date (including, without limitation, all interest that would accrue on the outstanding principal balance of the Loan through the end of the Interest Period during which the Maturity Date occurs (even if such period extends beyond the Maturity Date)) at the Applicable Interest Rate. Interest on the outstanding principal balance of the Loan existing on the commencement of an Interest Period shall accrue for the entire Interest Period and shall be owed by Borrower for the entire Interest Period regardless of whether any principal portion of the Loan is repaid prior to the expiration of such Interest Period.

**2.2.2 Interest Calculation.** Interest on the outstanding principal balance of the Loan shall be calculated by multiplying (a) the actual number of days elapsed in the period for which the calculation is being made by (b) a daily rate based on a three hundred sixty (360) day year (that is, the Applicable Interest Rate or the Default Rate, as then applicable, expressed as an annual rate divided by 360) by (c) the outstanding principal balance.

**2.2.3 Determination of Interest Rate.** (a) The Applicable Interest Rate with respect to the Loan shall be: (i) LIBOR plus the Spread with respect to the applicable Interest Period for a LIBOR Loan or (ii) the Prime Rate plus the Prime Rate Spread for a Prime Rate Loan if the Loan is converted to a Prime Rate Loan pursuant to the provisions of Section 2.2.3(c) or Section 2.2.3(f).

(b) Subject to the terms and conditions of this Section 2.2.3, the Loan shall be a LIBOR Loan and Borrower shall pay interest on the outstanding principal amount of the Loan at LIBOR plus the Spread for the applicable Interest Period. Any change in the rate of interest hereunder due to a change in the Applicable Interest Rate shall become effective as of the opening of business on the first day on which such change in the Applicable Interest Rate shall become effective. Each determination by Lender of the Applicable Interest Rate shall be conclusive and binding for all purposes, absent manifest error.

(c) In the event that Lender shall have determined (which determination shall be conclusive and binding upon Borrower absent manifest error) that by reason of circumstances affecting the interbank eurodollar market, adequate and reasonable means do not exist for ascertaining LIBOR, then Lender shall forthwith give notice by telephone of such determination,

confirmed in writing, to Borrower at least one (1) Business Day prior to the last day of the related Interest Period. If such notice is given, the related outstanding LIBOR Loan shall be converted, on the last day of the then current Interest Period, to a Prime Rate Loan.

(d) If, pursuant to the terms of this Agreement, any portion of the Loan has been converted to a Prime Rate Loan and Lender shall determine (which determination shall be conclusive and binding upon Borrower absent manifest error) that the event(s) or circumstance(s) which resulted in such conversion shall no longer be applicable, Lender shall give notice by telephone of such determination, confirmed in writing, to Borrower at least one (1) Business Day prior to the last day of the related Interest Period. If such notice is given, the related outstanding Prime Rate Loan shall be converted to a LIBOR Loan on the last day of the then current Interest Period.

(e) With respect to a LIBOR Loan, all payments made by Borrower hereunder shall be made free and clear of, and without reduction for or on account of, income, stamp or other taxes, levies, imposts, duties, charges, fees, deductions, reserves or withholdings imposed, levied, collected, withheld or assessed by any Governmental Authority and imposed on any non-U.S. Lender due to a change in U.S. law after the date such non-U.S. Lender acquired its interest in the Loan (such non-excluded taxes, levies, imports, duties, charges, fees, deductions, reserves or withholdings being referred to collectively as **"Foreign Taxes"**), excluding (i) income and franchise taxes, (ii) any Taxes imposed by reason of any connection between the non-U.S. Lender and the taxing jurisdiction other than entering into this Agreement and receiving payments hereunder, and (iii) any Taxes imposed by reason of the non-U.S. Lender's failure to complete and deliver to the Borrower, prior to the date on which the first payment to such Lender is due hereunder and (so long as it remains eligible to do so) from time to time thereafter, (x) (i) an Internal Revenue Service Form W-9 (or successor form) establishing that the Lender is not subject to U.S. backup withholding tax, (ii) an Internal Revenue Service Form W-8BEN (or successor form) certifying that such Lender is entitled to benefits under an income tax treaty to which the United States is a party that reduces the rate of withholding tax on payments of interest to zero, or (iii) an Internal Revenue Service Form W-8ECI certifying that the income receivable pursuant to this Agreement is effectively connected with the conduct of a trade or business in the United States, as appropriate; and (y) any successor or additional form required by the Internal Revenue Service or any taxing authority reasonably requested by the Borrower in order to secure an exemption from, or reduction in the rate of, Foreign Taxes. If any Foreign Taxes are required to be withheld from any amounts payable to Lender hereunder, the amounts so payable to Lender shall be increased to the extent necessary to yield to Lender (after payment of all Foreign Taxes) interest or any such other amounts payable hereunder at the rate or in the amounts specified hereunder. Whenever any Foreign Tax is payable pursuant to applicable law by Borrower, as promptly as possible thereafter, Borrower shall send to Lender an original official receipt, if available, or certified copy thereof showing payment of such Foreign Tax. Borrower hereby indemnifies Lender for any incremental Foreign Taxes, interest or penalties that may become payable by Lender which may result from any failure by Borrower to pay any such Foreign Tax when due to the appropriate taxing authority or any failure by Borrower to remit to Lender the required receipts or other required documentary evidence thereof (provided such documents are reasonably available to the Borrower).

(f) If any requirement of law or any change therein or in the interpretation or application thereof, shall hereafter make it unlawful for Lender to make or maintain a LIBOR Loan as contemplated hereunder and the events giving rise thereto affect similarly situated banks or financial institutions generally, (i) the obligation of Lender hereunder to make a LIBOR Loan or to convert a Prime Rate Loan to a LIBOR Loan shall be canceled forthwith and (ii) any outstanding LIBOR Loan shall be converted automatically to a Prime Rate Loan on the next succeeding Payment Date or within such earlier period as required by law.

(g) In the event that any change in any requirement of law or in the interpretation or application thereof, or compliance by Lender with any request or directive (whether or not having the force of law) hereafter issued from any central bank or other Governmental Authority and the events giving rise thereto affect similarly situated banks or financial institutions generally:

(i) shall hereafter impose, modify or hold applicable any reserve, special deposit, compulsory loan or similar requirement against assets held by, or deposits or other liabilities in or for the account of, advances or loans by, or other credit extended by, or any other acquisition of funds by, the office of Lender that holds the Loan which is not otherwise included in the determination of LIBOR hereunder;

(ii) shall hereafter require the Lender to hold additional capital against the Loan in excess of that currently required by Governmental Authorities to be held against loans similar in nature to the Loan; or

(iii) shall hereafter impose on Lender any other condition affecting loans to borrowers subject to LIBOR-based interest rates and Lender determines that, by reason thereof, the cost to Lender of making or maintaining the Loan to Borrower is increased, or any amount received by Lender hereunder in respect of any portion of the Loan is reduced, in each case by an amount deemed by Lender in good faith to be material;

then, in any such case, Borrower shall promptly pay Lender, upon demand, any additional amounts necessary to compensate Lender for such additional cost or reduced amount receivable which Lender deems to be material as determined in good faith by Lender. If Lender becomes entitled to claim any additional amounts pursuant to this Section 2.2.3(g), Lender shall provide Borrower with not less than ninety (90) days notice specifying in reasonable detail the event by reason of which it has become so entitled and the additional amount required to fully compensate Lender for such additional cost or reduced amount. A certificate as to any additional costs or amounts payable pursuant to the foregoing sentence submitted by Lender to Borrower shall be conclusive in the absence of manifest error. This provision shall survive payment of the Note and the satisfaction of all other obligations of Borrower under this Agreement and the Loan Documents.

(h) Lender shall not be entitled to claim compensation pursuant to this Section 2.2.3 for any Foreign Taxes or other amounts incurred or which accrued more than ninety (90) days before the date Lender notified Borrower of the change in law or other circumstance on which such claim of compensation is based and delivered to Borrower a written statement setting forth in reasonable detail the basis for calculating the additional amounts owed

to Lender under this Section 2.2.3, which statement shall be conclusive and binding upon all parties hereto absent manifest error.

(i) For purposes of this Section 2.2.3, the term “Lender” shall be deemed to include each Noteholder and Lender’s (as well as each Noteholder’s) present and future participants in the Loan to the extent of Foreign Taxes imposed by reason of such Noteholder or participant’s interest in the Loan and each such Noteholder’s or participant’s increased costs or reduction in amount received or receivable hereunder or any reduced rate of return, in each case payable by Borrower under this Section 2.2.3.

**2.2.4 Additional Costs.** Lender will use reasonable efforts (consistent with legal and regulatory restrictions) to maintain the availability of the LIBOR Loan and to avoid or reduce any increased or additional costs payable by Borrower under Section 2.2.3, including, if requested by Borrower, a transfer or assignment of the Loan to a branch, office or Affiliate of Lender in another jurisdiction, or a redesignation of its lending office with respect to the Loan, in order to maintain the availability of the LIBOR Loan or to avoid or reduce such increased or additional costs, provided that the transfer or assignment or redesignation (a) would not result in any material additional costs, expenses or risk to Lender that are not reimbursed by Borrower and (b) would not be disadvantageous in any other material respect to Lender as determined by Lender in its sole, but reasonable discretion.

**2.2.5 Default Rate.** In the event that, and for so long as, any Event of Default shall have occurred and be continuing, the outstanding principal balance of the Loan and, to the extent permitted by law, all accrued and unpaid interest in respect of the Loan and any other amounts due pursuant to the Loan Documents, shall accrue interest at the Default Rate, calculated from the date such payment was due without regard to any grace or cure periods contained herein.

**2.2.6 Usury Savings.** This Agreement, the Note and the other Loan Documents are subject to the express condition that at no time shall Borrower be obligated or required to pay interest on the principal balance of the Loan at a rate which could subject Lender to either civil or criminal liability as a result of being in excess of the Maximum Legal Rate. If, by the terms of this Agreement or the other Loan Documents, Borrower is at any time required or obligated to pay interest on the principal balance due hereunder at a rate in excess of the Maximum Legal Rate, the Applicable Interest Rate or the Default Rate, as the case may be, shall be deemed to be immediately reduced to the Maximum Legal Rate and all previous payments in excess of the Maximum Legal Rate shall be deemed to have been payments in reduction of principal and not on account of the interest due hereunder. All sums paid or agreed to be paid to Lender for the use, forbearance, or detention of the sums due under the Loan, shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Loan until payment in full so that the rate or amount of interest on account of the Loan does not exceed the Maximum Legal Rate of interest from time to time in effect and applicable to the Loan for so long as the Loan is outstanding.

**2.2.7 Interest Rate Cap Agreement.** (a) On or prior to 5:00 p.m. (New York time) on the Closing Date, Borrower shall enter into an Interest Rate Cap Agreement with a LIBOR strike price equal to the required Strike Price. The Interest Rate Cap Agreement (i) shall

be in a form and substance reasonably acceptable to Lender, (ii) shall be with an Acceptable Counterparty, (iii) shall direct such Acceptable Counterparty to deposit directly with Lender (or into an account or otherwise as directed by Lender) any amounts due Borrower under such Interest Rate Cap Agreement unless and until otherwise instructed by Lender (it being agreed as between Lender and Borrower that Lender will so instruct the Counterparty at such time as the Debt shall not longer exist, provided that the Debt shall be deemed to exist if the Collateral is transferred by secured party sale or otherwise), (iv) shall be for a period equal to the initial term of the Loan and (v) shall have an initial notional amount equal to the principal balance of the Loan. Borrower shall collaterally assign to Lender, pursuant to the Collateral Assignment of Interest Rate Cap Agreement, all of its right, title and interest to receive any and all payments under the Interest Rate Cap Agreement, and shall deliver to Lender an executed counterpart of such Interest Rate Cap Agreement (which shall, by its terms, authorize the assignment to Lender and require that payments be paid directly into an account pledged to Lender as provided above in this Section 2.2.7). Provided no Event of Default has occurred and is continuing, amounts contained in the foregoing pledged account shall be released to Borrower on a monthly basis to the extent not applied toward debt service on the Loan.

(b) Borrower shall comply with all of its obligations under the terms and provisions of the Interest Rate Cap Agreement. All amounts paid by the Counterparty under the Interest Rate Cap Agreement to Borrower or Lender shall be paid to Lender (or into an account or otherwise as directed by Lender). Borrower shall take all actions reasonably requested by Lender to enforce Lender's rights under the Interest Rate Cap Agreement in the event of a default by the Counterparty and shall not waive, amend or otherwise modify any of its rights thereunder.

(c) In the event of any downgrade, withdrawal or qualification of the rating of the Counterparty by S&P or Moody's to below the ratings set forth in the definition of "Acceptable Counterparty", Borrower (i) shall replace the Interest Rate Cap Agreement with a Replacement Interest Rate Cap Agreement (or cause the Counterparty or an Affiliate thereof to post collateral acceptable to Lender and the Rating Agencies) not more than fifteen (15) Business Days following receipt of notice of such downgrade, withdrawal or qualification (and meeting the requirements set forth in this Section 2.2.7) from an Acceptable Counterparty, (ii) if a new cap is provided to Lender, then if requested by Lender shall provide to Lender an opinion of counsel to such Acceptable Counterparty in the form and containing the substance of the form of opinion set forth in Exhibit A to the Mortgage Loan Agreement (which such changes as shall be reasonably approved by Lender), and (iii) shall collaterally assign to Lender, pursuant to an assignment in the form of the Collateral Assignment of Interest Rate Cap Agreement, all of its right, title and interest to receive any and all payments under the Replacement Interest Rate Cap Agreement.

(d) In the event that Borrower fails to purchase and deliver to Lender the Interest Rate Cap Agreement or fails to maintain the Interest Rate Cap Agreement in accordance with the terms and provisions of this Agreement, Lender may purchase the Interest Rate Cap Agreement and the cost incurred by Lender in purchasing such Interest Rate Cap Agreement shall be paid by Borrower to Lender with interest thereon at the Default Rate from the date such cost was incurred by Lender until such cost is reimbursed by Borrower to Lender.

(e) In connection with any Interest Rate Cap Agreement provided to Lender as herein required, if requested by Lender, Borrower shall obtain and deliver to Lender an opinion from counsel (which counsel may be in-house counsel for the Counterparty) for the Counterparty (upon which Lender and its successors and assigns may rely) in the form and containing the substance of the form of opinion set forth in Exhibit A of the Mortgage Loan Agreement (which such changes as shall be reasonably approved by Lender).

(f) In connection with any prepayment of the Loan, Provided no Event of Default shall have occurred and be continuing, Borrower may reduce the amount of any Interest Rate Cap Agreement (so that the same shall be in an initial notional amount equal to the principal balance of the Loan following such prepayment), provided that such reduction shall not affect any of the other terms of the Interest Rate Cap Agreement or the Collateral Assignment of Interest Rate Cap Agreement (or Lender's rights in respect thereof).

### **Section 2.3. Loan Payment.**

**2.3.1 Payments Generally.** Borrower shall make a payment to Lender of interest only on the Closing Date for the initial Interest Period. On the date hereof, Borrower shall make a payment to Lender of interest accruing hereunder during the period from the Closing Date up to and including the initial Interest Period, calculated in the manner set forth herein, and on the Payment Date occurring in March 2008 and on each Payment Date thereafter to and including the Maturity Date, Borrower shall make a payment to Lender of interest accruing hereunder during the entire Interest Period in which such Payment Date occurs, calculated in the manner set forth herein. All amounts due pursuant to this Agreement and the other Loan Documents shall be payable without setoff, counterclaim, defense or any other deduction whatsoever. Each payment shall be applied *pro rata* and *pari passu* (a) first to accrued and unpaid interest on all of the Notes and (b) the balance shall be applied to principal of all the Notes.

**2.3.2 Payment on Maturity Date.** Borrower shall pay to Lender on the Maturity Date the outstanding principal balance of the Loan, all accrued and unpaid interest and all other amounts due hereunder and under the Note, the Pledge Agreement and the other Loan Documents, including, without limitation, all interest that would accrue on the outstanding principal balance of the Loan through and including the end of the Interest Period in which the Maturity Date occurs (even if such Interest Period extends beyond the Maturity Date).

**2.3.3 Late Payment Charge.** If any principal, interest or any other sums due under the Loan Documents, other than the payment of principal due on the Maturity Date, is not paid by Borrower by the date on which it is due, Borrower shall pay to Lender upon demand an amount equal to the lesser of one percent (1%) of such unpaid sum or the maximum amount permitted by applicable law in order to defray the expense incurred by Lender in handling and processing such delinquent payment and to compensate Lender for the loss of the use of such delinquent payment; provided, however, that, except with respect to the payment of any monthly Debt Service payments with respect to which no notice or demand shall be required, no such late payment charge shall be due unless such payment of principal, interest or other sum shall be delinquent for more than five (5) Business Days following the date of demand therefor. Any

such amount shall be secured by the Pledge Agreement and the other Loan Documents to the extent permitted by applicable law.

**2.3.4 Method and Place of Payment.** Except as otherwise specifically provided herein, all payments and prepayments under this Agreement and the Note shall be made to Lender not later than 3:00 p.m., New York City time, on the date when due and shall be made in lawful money of the United States of America in immediately available funds at Lender's office or as otherwise directed by Lender, and any funds received by Lender after such time shall, for all purposes hereof, be deemed to have been paid on the next succeeding Business Day.

**Section 2.4. Prepayments.**

**2.4.1 Voluntary Prepayments.** Borrower may, at its option, prepay the Debt in whole or in part, provided, the following conditions are satisfied:

(a) No Event of Default shall have occurred and be continuing (unless, in the case of a prepayment upon the release of an Individual Property, the Event of Default relates solely to such Individual Property and therefore would be fully cured by the release of such Individual Property);

(b) Borrower shall provide prior written notice to Lender specifying the date upon which the prepayment is to be made (the "**Prepayment Date**"), which notice shall be delivered to Lender not less than ten (10) days prior to such Prepayment Date, and which notice shall be irrevocable (or such shorter period of time as may be permitted by Lender in its sole discretion) (Lender hereby agreeing that Borrower may revoke any notice of prepayment up until the date that is one (1) Business Day prior to the proposed Prepayment Date (provided that Borrower shall be required to pay Lender, promptly upon demand, any actual, out-of-pocket expenses incurred by Lender resulting from any such revocation));

(c) each such prepayment, in the case of partial prepayments, shall be in an amount not less than Five Million and No/100 Dollars (\$5,000,000.00), unless the outstanding principal balance of the Loan (prior to such prepayment) shall be less than Five Million and No/100 Dollars (\$5,000,000.00), in which event the amount of the prepayment shall be in such amount as shall prepay the Debt and all other amounts due in connection therewith in full, as more fully provided herein;

(d) if such prepayment is made on or prior to the Payment Date occurring in the Interest Period in which such prepayment was made, then, in connection with such prepayment Borrower shall pay to Lender, simultaneously with such prepayment, all interest on the principal balance of the Note then being prepaid which would have accrued through the end of the Interest Period then in effect notwithstanding that such Interest Period extends beyond the Prepayment Date;

(e) if such prepayment is made after a Payment Date occurring in the Interest Period in which such prepayment was made, but prior to the last two (2) Business Days in such Interest Period, Borrower shall make such prepayment without paying any interest thereon (Borrower having already paid interest on such amount on the Payment Date occurring in such Interest Period);

(f) if such prepayment is made on either of the last two (2) Business Days in an Interest Period, Borrower will pay to Lender, simultaneously with such prepayment, interest on the principal amount of the Loan prepaid through the last day of the Interest Period immediately following the Interest Period in which such prepayment occurs, calculated at the Applicable Interest Rate;

(g) if such prepayment is a prepayment of the Loan in full, Lender shall have received a written consent to the repayment from the lender under each Other Mezzanine Loan (and, if any, a Permitted Mezzanine Loan) or receipt by Lender of other evidence satisfactory to Lender that all conditions imposed under the terms of each Other Mezzanine Loan and Permitted Mezzanine Loan shall have been complied with by the borrower thereunder or otherwise waived by the applicable lender, including the simultaneous pro rata prepayment of each Other Mezzanine Loan and Permitted Mezzanine Loan if required thereunder; and

(h) if such prepayment is made on or prior to the Spread Maintenance Outside Date, then in connection with any such prepayment, Borrower shall pay to Lender, simultaneously with such prepayment, the Spread Maintenance Premium in respect of such prepayment.

Any prepayment received by Lender on other than a Payment Date (but not any amount received between a Payment Date and the second to last Business Day in an Interest Period) shall be held by Lender in an interest-bearing account as collateral security for the Loan and shall be applied to the Debt on the next occurring Payment Date (with all interest and other income earned on such amount being for the account of Borrower and being remitted by Lender to Borrower promptly following such next Payment Date). Any prepayment made pursuant to this Section 2.4.1 shall be applied *pro rata* and *pari passu* (a) first to accrued and unpaid interest on all of the Notes and (b) the balance shall be applied to principal of all the Notes. Lender agrees that it shall provide a written consent to the repayment of the Loan upon satisfaction of the conditions set forth in clauses (a) through (f) and clause (h) of this Section 2.4.1.

**2.4.2 Mandatory Prepayments from Net Proceeds.** (a) On the next occurring Payment Date following the date on which Lender actually receives any Net Proceeds, if Lender is not obligated to make such Net Proceeds available to Borrower for the Restoration of any Individual Property, Borrower shall prepay, or authorize Lender to apply Net Proceeds as a prepayment of, the outstanding principal balance of the Note in an amount equal to, (x) if no Event of Default shall have occurred and be continuing, the product of (i) a fraction, the numerator of which is outstanding principal amount of the Loan and the denominator is the outstanding principal amount of the Mortgage Loan, the Loan and the Other Mezzanine Loans times (ii) the Net Proceeds, together with interest accruing on such amount calculated through and including the end of the Interest Period in which such Payment Date occurs (with the balance of the Net Proceeds to be paid over to the Fifth Mezzanine Lender, for application in accordance with the Fifth Mezzanine Loan Agreement), and (y) if an Event of Default shall have occurred and be continuing, 100% of the Net Proceeds. No Spread Maintenance Premium shall be due in connection with any prepayment made pursuant to this Section 2.4.2(a). Any prepayment received by Lender pursuant to this Section 2.4.2(a) on a date other than a Payment Date shall be held by Lender as collateral security for the Loan in an interest bearing account, with such interest accruing to the benefit of Borrower, and shall be applied by Lender on the next Payment

Date. Following the prepayment made as described in this Section 2.4.2(a), the Allocated Loan Amount for the affected Individual Property, as set forth in this Agreement, shall be reduced in an amount equal to such prepayment. Any prepayment of the Notes made pursuant to this Section 2.4.2(a) shall be applied *pro rata* and *pari passu* (a) first to accrued and unpaid interest on all of the Notes and (b) the balance shall be applied to principal of all the Notes.

(b) In the event of (i) a Transfer of any Individual Property or any Senior Mezzanine Collateral in connection with the realization thereon following a Mortgage Loan Default or a Senior Mezzanine Loan Default, as applicable, (ii) any refinancing of any Individual Property, any Senior Mezzanine Collateral, any Senior Mezzanine Loan or the Mortgage Loan, or (iii) the receipt by Mortgage Borrower of any excess proceeds realized under its owner's title insurance policy after application of such proceeds by Mortgage Borrower to cure any title defect (each, a "**Liquidation Event**"), Borrower shall cause the related Net Liquidation Proceeds After Debt Service to be remitted directly to Lender (or as directed by Lender). On each date on which Lender actually receives a distribution of Net Liquidation Proceeds After Debt Service, Borrower shall prepay the outstanding principal balance of the Note in an amount equal to one hundred percent (100%) of such Net Liquidation Proceeds After Debt Service, together with interest accruing on such amount calculated through and including the end of the Interest Period in which such payment occurs. Any amounts of Net Liquidation Proceeds After Debt Service in excess of the Debt shall be remitted to Fifth Mezzanine Lender (or to an account designated by Fifth Mezzanine Lender). Any prepayment received by Lender pursuant to this Section 2.4.2(b) on a date other than a Payment Date shall be held by Lender as collateral security for the Loan in an interest bearing account, with such interest accruing to the benefit of Borrower, and shall be applied by Lender on the next Payment Date. A Spread Maintenance Premium or fee may be due in connection with any prepayment made pursuant to this Section 2.4.2(b) if made prior to the Spread Maintenance Outside Date. Following the prepayment made as described in this Section 2.4.2(b), the Allocated Loan Amount for the affected Individual Property, as set forth in this Agreement, shall be reduced in an amount equal to such prepayment. Any prepayment of the Notes made pursuant to this Section 2.4.2(b) shall be applied *pro rata* and *pari passu* (a) first to accrued and unpaid interest on all of the Notes and (b) the balance shall be applied to principal of all the Notes.

(c) Borrower shall immediately notify Lender of any Liquidation Event once Borrower has knowledge of such event. Borrower shall be deemed to have knowledge of (i) a sale (other than a foreclosure sale) of any Individual Property on the date on which a contract of sale for such sale is entered into, and a foreclosure sale, on the date notice of such foreclosure sale is given, and (ii) a refinancing of any Individual Property, on the date on which a commitment for such refinancing has been entered into. The provisions of this Section 2.4.2(c) shall not be construed to contravene in any manner the restrictions and other provisions regarding refinancing of the Mortgage Loan or Transfer of any Individual Property set forth in this Agreement, the other Loan Documents and the Mortgage Loan Documents.

**2.4.3 Prepayments After Default.** If, following the occurrence and during the continuance of an Event of Default, payment of all or any part of the Debt is tendered by Borrower or any other Person and accepted by Lender or otherwise recovered by Lender (including through application of any Reserve Funds), Borrower shall pay to Lender, in addition to the outstanding principal balance, (a) all accrued and unpaid interest at the Default Rate

(including, without limitation, (i) in the event that such prepayment is received on a Payment Date or on any date in any Interest Period prior to a Payment Date, interest accruing (at the Default Rate) on such amount calculated through and including the end of the Interest Period in which such payment occurs, or (ii) in the event that such prepayment is received on a date after a Payment Date up to (and including) the last day of the Interest Period in which such Payment Date occurs, interest accruing (at the Default Rate) on such amount calculated through and including the end of the Interest Period in which the next Payment Date occurs, (b) the Spread Maintenance Premium, if such prepayment is made prior to the Spread Maintenance Outside Date, and (c) any and all other amounts payable under the Loan Documents. Any payment under this Section 2.4.3 shall be applied in such order, priority and proportions as Lender may direct in its sole and absolute discretion.

**Section 2.5. Release of Collateral.** Except as set forth in this Section 2.5, no repayment or prepayment of all or any portion of the Note shall cause, give rise to a right to require, or otherwise result in, the release or assignment of any Lien of the Pledge Agreement on the Collateral.

**2.5.1 Release of Individual Property.** Concurrently with the release of an Individual Property from the Lien of the Mortgage (and related Mortgage Loan Documents) pursuant to Section 2.5.1 of the Mortgage Loan Agreement (a “**Release**” and such Individual Property, a “**Release Property**”), Borrower may obtain the release of the related Individual Borrower with an indirect ownership interest in such Individual Property (a “**Release Borrower**”) and such Release Borrower’s obligations under the Loan Documents with respect to the Release Property (other than those expressly stated to survive), upon the satisfaction of each of the following conditions:

(a) No Event of Default shall have occurred and be continuing (unless, in the case of a prepayment upon the release of an Individual Property, the Event of Default relates solely to such Individual Property and therefore would be fully cured by the release of such Individual Property);

(b) Borrower shall submit to Lender, not less than ten (10) Business Days prior to the date of such release, a release of Lien of the Pledge Agreement (and related Loan Documents), only with respect to such Release Borrower, for execution by Lender. Such release shall contain standard provisions, if any, protecting the rights of the releasing lender;

(c) After giving effect to such release, the Debt Service Coverage Ratio for the Properties then remaining subject to the Liens of the Mortgages (including giving pro forma effect to the payment of the Release Price and any additional prepayment(s) made by Borrower in connection with such release) shall be equal to or greater than the greatest of (i) the Debt Service Coverage Ratio for the twelve (12) full calendar months immediately preceding the release of the Individual Property (assuming the contemplated release had not occurred, i.e., for all Properties subject to the Liens of the Mortgage prior to the proposed release), (ii) 90% of the Debt Service Coverage Ratio as of the Closing Date, and (iii) 1.0;

(d) (i) The Individual Property to be released shall be conveyed to a Person other than a Mortgage Borrower or Mezzanine Borrower, and other than to an Affiliate of

Mortgage Borrower unless, in the latter case, such Affiliate is refinancing the Loan with a construction or development loan (or repaying the Loan with equity contributions to such Affiliate) and (ii) it is such Affiliate's immediate intention to materially redevelop such Individual Property, which loan (or equity contribution) and intention shall be described in reasonable detail and represented to in an Officer's Certificate submitted to Lender concurrently with (or prior to) the materials described in clause (b) of this Section 2.5.1;

(e) Lender shall have received a wire transfer of immediately available federal funds in an amount equal to the Release Price for the applicable Individual Property, together with (i) all accrued and unpaid interest calculated at the Applicable Interest Rate on the amount of principal being prepaid as provided in Section 2.4.1(d) or (e), as applicable, (ii) the Spread Maintenance Premium, if applicable and (iii) all other sums due under this Agreement, the Note or the other Loan Documents in connection with a partial prepayment;

(f) Lender shall have received a written consent to the transfer from the lender under the Mortgage Loan and each of the Other Mezzanine Loans (and, if any, a Permitted Mezzanine Loan) or receipt by Lender of other evidence satisfactory to Lender that all conditions imposed under the terms of the Mortgage Loan, and each of the Other Mezzanine Loans and Permitted Mezzanine Loan shall have been complied with by the borrower thereunder or otherwise waived by the applicable lender, including the simultaneous pro rata prepayment of each Mortgage Loan, the Other Mezzanine Loans and Permitted Mezzanine Loan if required thereunder; and

(g) Lender shall have received payment of all Lender's reasonable out-of-pocket costs and expenses, including reasonable counsel fees and disbursements incurred in connection with the release of the Individual Property and or Release Borrower from the lien of the Pledge Agreement and the review and approval of the documents and information required to be delivered in connection therewith. Lender acknowledges that it shall not charge any fee (other than costs and expenses, as provided in the preceding sentence) in connection with the release of an Individual Property or Release Borrower.

Lender agrees that it shall provide a written consent to the transfer upon satisfaction of the conditions set forth in clauses (a) through (e) and clause (g) of this Section 2.5.1.

**2.5.2 Release of Convention Center Parcel; Property Swap.** At any time after the date hereof, Mortgage Borrower may obtain the release of the Convention Center Parcel pursuant to the Mortgage Loan Agreement, without the payment of a Release Price and upon the satisfaction by Borrower of each of the following conditions:

(a) No Event of Default shall have occurred and be continuing (unless, in the case of a release of the Convention Center Parcel, the Event of Default relates solely to such parcel and therefore would be fully cured by the release of the Convention Center Parcel);

(b) The Convention Center Parcel shall be conveyed to a Person other than a Mortgage Borrower or any Mezzanine Borrower;

(c) Mortgage Borrower will enter into a restrictive covenant agreement, restricting the use of the Convention Center Parcel to the development of a Convention Center

and ancillary uses which agreement shall be in form and substance reasonably satisfactory to Lender;

(d) Prior to the transfer and release of the Convention Center Parcel, each applicable municipal authority exercising jurisdiction over the Convention Center Parcel shall have approved, a lot-split ordinance or other applicable action under local law dividing the Convention Center Parcel from the remainder of the Harrah's Atlantic City Property, and a separate tax identification number has been issued for the Convention Center Parcel (with the result that, upon the transfer and release of the Convention Center Parcel, no part of the remaining Harrah's Atlantic City Property shall be part of a tax lot which includes any portion of the Convention Center Parcel);

(e) All requirements under all laws, statutes, rules and regulations (including, without limitation, all zoning and subdivision laws, setback requirements, sideline requirements, parking ratio requirements, use requirements, building and fire code requirements, environmental requirements and wetlands requirements) applicable to the Harrah's Atlantic City Property necessary to accomplish the lot split shall have been fulfilled, and all necessary variances, if any, shall have been obtained, and Borrower shall have delivered to Lender either (1) letters or other evidence from the appropriate municipal authorities confirming such compliance with laws, or (2) a zoning report or legal opinion confirming such compliance with laws, in each case in substance reasonably satisfactory to Lender;

(f) As a result of the lot split, the remaining Harrah's Atlantic City Property with all easements appurtenant and other Permitted Encumbrances thereto will not be in violation of any then applicable law, statute, rule or regulation (including, without limitation, all zoning and subdivision laws, setback requirements, sideline requirements, parking ratio requirements, use requirements, building and fire code requirements, environmental requirements and wetland requirements) and all necessary variances, if any, shall have been obtained and evidence thereof has been delivered to Lender which in form and substance is appropriate for the jurisdiction in which the Harrah's Atlantic City Property is located;

(g) If reasonably necessary, appropriate reciprocal easement agreements for the benefit and burden of the remaining Harrah's Atlantic City Property and the Convention Center Parcel requiring no cost or expense to Mortgage Borrower regarding the use of common facilities of such parcels, including, but not limited to, roadways, parking areas, utilities and community facilities, in a form and substance that would be reasonably acceptable to an ordinary prudent lender and which easements will not materially adversely affect the remaining Harrah's Atlantic City Property, shall be declared and recorded, and the remaining Harrah's Atlantic City Property and the Convention Center Parcel shall be in compliance with all applicable covenants under all easements and property agreements contained in the Permitted Encumbrances for the Harrah's Atlantic City Property;

(h) Borrower has delivered an Officer's Certificate to the effect that, to such officer's knowledge after diligent inquiry, the conditions in subsection (a)-(g) hereof have occurred or shall occur concurrently with the transfer and release of the Convention Center Parcel;

(i) Borrower shall execute such documents and instruments and obtain such opinions of counsel as are typical for similar transactions;

(j) Lender shall have received payment of all Lender's reasonable out-of-pocket costs and expenses, including reasonable counsel fees and disbursements incurred in connection with the review and approval of the documents and information required to be delivered in connection with the release of the Convention Center Parcel from the Lien of the related Mortgage. Lender acknowledges that it shall not charge any fee (other than costs and expenses, as provided in the preceding sentence) in connection with the release of the Convention Center Parcel;

(k) Lender shall have received evidence reasonably satisfactory to it that Mortgage Borrower and each Other Mezzanine Borrower shall have satisfied all of the conditions to the proposed Release set forth in the Mortgage Loan Agreement and each Other Mezzanine Loan Agreement, as applicable; and

(l) There shall be no release of any portion of the Lien of the Pledge Agreement in connection with this Section 2.5.2.

Borrower agrees that it shall promptly use all reasonable best efforts to substitute, and Lender agrees (subject to the terms set forth below in this paragraph) that it shall accept the substitution of, the properties commonly known as "Paris Las Vegas" and "Harrah's Laughlin" for the Individual Properties referred to as "Harrah's Lake Tahoe", "Harvey's Lake Tahoe", "Bill's Lake Tahoe", "Showboat Atlantic City" and O'Shea's in a reasonably satisfactory manner, provided that Lender's obligation to accept such substitution shall be conditioned on the following:

(i) that no Event of Default shall exist, either before or after giving effect to such substitution (unless such Event of Default would be fully cured by the substitution);

(ii) the satisfaction, with respect to both "Paris Las Vegas" and "Harrah's Laughlin", of the closing conditions set forth in Article III hereof and of the Mortgage Loan Agreement, except that references therein to the Closing Date shall be to the date of such substitution;

(iii) delivery of such agreements, instruments, title insurance policies, surveys, resolutions, certificates and opinions (including, without limitation, substitute notes, amendments to the Loan Documents (including amendments to adjust the Allocated Loan Amounts, the EBITDAR (Closing Date) and any other items that need to be adjusted to reflect the substitution), the Operating Lease, the Operating Lease Guaranty and the Windstorm Insurance Intercreditor Agreement, an appropriate subdivision and a reciprocal easement agreement in respect of "O'Shea's", written assurances that the substitution will have no negative effects on the existing Title Policies, updated "tie-in" endorsements for the Title Policies, an Additional True Lease Opinion and an Additional Insolvency Opinion), in each case as are reasonably required by Lender in connection with such substitution;

(iv) with respect to the release of O'Shea's, delivery of evidence reasonably satisfactory to Lender that such release will not have either an Individual Material Adverse Effect on the remainder of the Flamingo Las Vegas Property or an Aggregate Material Adverse Effect (it being understood that, for purposes of such determinations, O'Shea's shall be deemed to have closed as of the Closing Date and to have no value) and that the remainder of the Flamingo Las Vegas Property satisfies the conditions set forth in Sections 3.1.3(b), (c) and (f) of the Mortgage Loan Agreement and the representations and warranties set forth in Sections 4.1.4, 4.1.16, 4.1.22, 4.1.39 and 4.1.40 of the Mortgage Loan Agreement shall continue to be true and complete with respect to the remainder of the Flamingo Las Vegas Property, and satisfaction of conditions similar to those set forth in clauses (c), (d), (e), (f), (g) and (h) of Section 3.1.3 hereof, as applicable, with respect to O'Shea's;

(v) the satisfaction, with respect to "Harrah's Lake Tahoe", "Harvey's Lake Tahoe", "Bill's Lake Tahoe", "Showboat Atlantic City" and O'Shea's, of the conditions set forth above in Section 2.5.1(b) and (f) with respect to released Individual Properties to the extent applicable,

(vi) the conveyance of "Harrah's Lake Tahoe", "Harvey's Lake Tahoe", "Bill's Lake Tahoe", "Showboat Atlantic City" and O'Shea's to a Person other than a Mortgage Borrower or Mezzanine Borrower,

(vii) unless otherwise extended by Lender, the substitution shall be completed on or prior to May 28, 2008,

(viii) the payment by Borrower of all Lender's reasonable out-of-pocket costs and expenses in connection with the substitution contemplated by this paragraph, including reasonable counsel fees and disbursements, up to an aggregate amount of \$300,000, it being acknowledged that costs incurred to obtain title insurance and surveys in respect of the substituted properties shall be paid by Borrower directly and shall not be taken into account for purposes of the foregoing limitation on the reimbursement of Lender's expenses.

Lender acknowledges that it shall not charge any fee (other than costs and expenses, as provided in the preceding sentence) in connection with the release of an Individual Property in accordance with this paragraph. In addition, if all of "Harrah's Lake Tahoe", "Harvey's Lake Tahoe", "Bill's Lake Tahoe" and "Showboat Atlantic City" can be transferred from Mortgage Borrower as contemplated above, but O'Shea's cannot (including by reason of an inability to get a separate gaming license for O'Shea's independent of the "Flamingo Las Vegas"), then Borrower shall cause Mortgage Borrower to nevertheless proceed to consummate the swap without transferring O'Shea's (subject to Borrower's ongoing right to obtain the release of O'Shea's from the Lien of the Mortgage in accordance with the following sentence). Upon the satisfaction of such conditions set forth above in this paragraph (including clauses (i) through (viii) hereof), Borrower will have the right to choose between an immediate release of O'Shea's from the Lien of the Mortgage on the date of the swap or a free release subsequent to the date of the swap without conditions (in either case, subject to the conditions set forth above in this Section 2.5.2, except that the limitation on Borrower's payment of Lender's costs and expenses set forth in

clause (viii) above shall not apply to any such costs and expenses incurred by Lender in connection with such release) and, pending such release, EBITDAR shall be computed without regard to O'Shea's; provided further, the Operating Company in respect of the "Flamingo Las Vegas" Individual Property, both before and after such release, shall be permitted to provide management and other similar services for O'Shea's and shall be reimbursed for the allocable share of expenses attributable to O'Shea's.

**2.5.3 Release on Payment in Full.** Lender shall, upon the written request and at the expense of Borrower, upon payment in full of all principal and interest due on the Loan and all other amounts due and payable under the Loan Documents in accordance with the terms and provisions of the Note and this Agreement, release the Lien of the Pledge Agreement on the Collateral.

## **Section 2.6. Cash Management.**

### **2.6.1 Establishment of Collection Accounts.**

(a) In accordance with the provisions of the Operating Lease, (i) Operating Company will establish within thirty (30) days after the Closing Date) and will maintain for the benefit of Mortgage Borrower, as lessor under the Operating Lease, the Collection Accounts with Collection Banks throughout the term of the Mortgage Loan and (ii) the rights of Mortgage Borrower (as landlord) under the Operating Lease will be collaterally assigned to Mortgage Lender within such 30-day period. All Revenues, other than amounts retained on-site by each Operating Company as a Gaming Operating Reserve and amounts collected and maintained in Off-Shore Accounts, will be deposited in the Collection Accounts.

(b) Borrower hereby represents and warrants as follows: when established, the Collection Accounts will be the only accounts maintained by Operating Company in any jurisdiction that include funds arising out of, or are otherwise attributable to, the Properties or relate to the operation and management of any of the Properties other than accounts (collectively, the "OC Accounts") that contain amounts theretofore released from Collection Accounts in accordance herewith, and other than Off-Shore Accounts, which shall not be subject to this Agreement; and neither Borrower nor Mortgage Borrower maintains any accounts that include funds arising out of, or are otherwise attributable to, any of the Properties or relate to the operation and management of any of the Properties or otherwise (except for accounts containing funds released from the Collection Accounts as herein provided and the Off-Shore Accounts). None of Mortgage Borrower, Senior Mezzanine Borrower, Borrower or Operating Company may (and Borrower shall not permit Mortgage Borrower, Senior Mezzanine Borrower or Operating Company to), without the prior consent of Lender (not to be unreasonably withheld, conditioned or delayed), open any accounts or new accounts or in any way alter the flow of funds and payment into such Collection Accounts, including, without limitation, changing the source, type or currency of any payments currently deposited and maintained in any such account (it being understood that the foregoing restriction shall not preclude Operating Company, Mortgage Borrower, Senior Mezzanine Borrower or Borrower from accepting and depositing in any Collection Accounts any capital contributions, or any disbursements from any Collection Accounts in accordance with the provisions of the Mortgage Loan Agreement, this Agreement and the Senior Mezzanine Loan Agreements. None of Mortgage Borrower, Senior Mezzanine

Borrower, Borrower or Operating Company may (and Borrower shall not permit Mortgage Borrower, Senior Mezzanine Borrower, or Operating Company to), without the prior consent of Lender (not to be unreasonably withheld, conditioned or delayed), establish and maintain any accounts with financial institutions outside of the United States of America, other than the Off-Shore Accounts.

(c) Borrower shall cause Mortgage Borrower, Senior Mezzanine Borrower and Operating Company to comply with Section 2.6.1 of the Mortgage Loan Agreement and Senior Mezzanine Loan Agreement (as applicable) in all respects.

(d) Borrower hereby agrees that in the event that (i) the Mortgage Loan Documents require Mortgage Borrower and/or Operating Company to maintain the Collection Accounts, but (due to repayment of the Mortgage Loan, waiver of the requirement by Mortgage Lender, or otherwise) the Collection Accounts are not being maintained and (ii) the Collection Accounts are not being maintained under Section 2.6.1(d) of the Senior Mezzanine Loan Agreement, Borrower shall establish or cause the Operating Company to establish or cause the Operating Company to establish collection accounts substantially the same as that required under the Mortgage Loan Documents (and shall otherwise comply with the provisions of Section 2.6.1 of the Mortgage Loan Documents, and grant to Lender security interests in such accounts for the benefit of Lender, as if such provisions were incorporated herein for the benefit of Lender). In addition, if Borrower is required to deposit amounts with Lender pursuant to Article VII hereof but (due to repayment of the Mortgage Loan, waiver of the requirement by Mortgage Lender, or otherwise) the Collection Accounts and Cash Management Account are not being maintained, Borrower shall establish collection accounts and a cash management account and system with Lender substantially the same as that required under the Mortgage Loan Documents (and shall otherwise comply with the provisions of Sections 2.6.1 and 2.6.2 of the Mortgage Loan Documents, and grant to Lender security interests in such accounts for the benefit of Lender, as if such provisions were incorporated herein for the benefit of Lender). In addition, if Mortgage Borrower is required to provide security or other collateral to the Mortgage Lender pursuant to the terms of the Mortgage Loan Agreement (excluding any mortgage lien on the Properties or assignment of leases and rents with respect to the Properties) but (due to repayment of the Mortgage Loan, waiver of the requirement by Mortgage Lender, or otherwise) such security or other collateral was not provided to Mortgage Lender, Borrower shall provide such security or other collateral to Lender in substantially the same form and amount as that required under the Mortgage Loan Documents.

**2.6.2 Disbursements from, Security Interest in, Collection Accounts.** The Operating Lease provides, among other things, that all Revenues shall be collaterally assigned by Operating Company to Mortgage Borrower as additional security for Operating Company's obligations under the Operating Lease and that Mortgage Borrower shall have the right to collaterally assign and pledge such Revenues to Lender as additional security for the Loan. In furtherance thereof, Lender and Borrower agree as follows:

(a) Except as otherwise provided in subparagraphs (b) and (c) hereof, all amounts collected in the Collection Accounts shall be transferred on each Business Day to (or as directed by) Operating Company for use or distribution by the Operating Company in its discretion free of any rights or encumbrances of Lender.

(b) Upon the occurrence and during the continuance of an Event of Default hereunder, under the Mortgage Loan Documents or under any of the Other Mezzanine Loan Documents, and provided no Event of Default (as such term is defined in the Operating Lease) shall have occurred and be continuing under any Operating Lease, Borrower shall cause Mortgage Borrower to direct and cause Collection Bank to deposit directly into the Cash Management Account, all Rent payable under the Operating Lease for the next thirty (30) days (it being the intent and agreement that, during the continuance of an Event of Default, the Cash Management Account shall at all times contain such amounts sufficient to cover the ensuing 30-day period), including the Monthly Tax and Insurance Amount, the Monthly Ground Rent Amount and Monthly FF&E Reserve Amount (the amounts described in the preceding sentence, collectively, the “**Monthly Disbursements**”); provided that, notwithstanding the foregoing, Lender may not apply such Monthly Disbursements to the payment of amounts due hereunder in an amount in excess of the amounts owed by the Operating Company under the Operating Lease. In the event Borrower shall have failed to cause Mortgage Borrower to so instruct Collection Bank, Lender shall have the right to so direct the Collection Bank on behalf of Mortgage Borrower. Any amounts not required to be so deposited into the Cash Management Account shall be transferred on each Business Day thereafter to (or as directed by) Operating Company for use or distribution by the Operating Company in its discretion free of any rights or encumbrances of Lender. If no Event of Default has occurred and is continuing hereunder, to the extent Monthly Disbursements are not applied to the payment of amounts due hereunder, such excess shall be remitted to Fifth Mezzanine Lender (or to an account designated by Fifth Mezzanine Lender); provided that, notwithstanding the foregoing, Lender shall not remit any such amounts in excess of the amounts owed by the Operating Company under the Operating Lease. If an Event of Default has occurred and is continuing hereunder, to the extent Monthly Disbursements are not applied to the payment of amounts due hereunder, Lender shall have the right to retain the amount so remitted to the Collection Account as collateral for the Loan and/or apply such amount to the payment of the Debt.

(c) Upon the occurrence and during the continuance of an Event of Default (as such term is defined in the Operating Lease) under any Operating Lease, Borrower shall cause Mortgage Borrower to notify Collection Bank to transfer to the Cash Management Account on each Business Day in immediately available funds by federal wire transfer all amounts on deposit in each Collection Account and, in the event Mortgage Borrower shall have failed to do so, Mortgage Lender (or Lender in the event of Mortgage Lender’s failure to so instruct) shall have the right to so direct the Collection Bank on behalf of Mortgage Borrower. Lender shall have the right to retain all amounts to be paid into the Cash Management Account in accordance with the first sentence of this Section 2.6.2(c) as collateral for the Loan and/or apply such amount to the payment of the Debt.

(d) Borrower and its Affiliates shall (and Borrower shall cause Operating Company to) execute and deliver such documents, instruments, certificates, assignments and other writings, and do such other acts necessary or desirable, to evidence, preserve and/or protect, maintain and perfect Lender’s security interest in the Collection Accounts, if any.

**2.6.3 Cash Management Account.** (a) During the term of the Loan, Borrower shall cause Mortgage Borrower and Senior Mezzanine Borrower to comply with Section 2.6.3 of the Mortgage Loan Agreement and Senior Mezzanine Loan Agreement (as applicable) which

may require the establishment of the Cash Management Account to be held by and in trust for the benefit of Mortgage Lender. All costs and expenses for establishing and maintaining the Cash Management Account shall be paid by Mortgage Borrower.

(b) Borrower shall not cause or permit Mortgage Borrower or Operating Company to further pledge, assign or grant any security interest in the Cash Management Account or the monies deposited therein or permit any lien or encumbrance to attach thereto, or any levy to be made thereon, or any UCC-1 Financing Statements, except those naming Mortgage Lender as the secured party, to be filed with respect thereto.

(c) Borrower hereby agrees that in the event that (i) the Mortgage Loan Documents require Mortgage Borrower and/or Operating Company to maintain the Cash Management Account, but (due to repayment of the Mortgage Loan, waiver of the requirement by Mortgage Lender, or otherwise) the Cash Management Account is not being maintained and (ii) the Cash Management Account is not being maintained under Section 2.6.3 of the Senior Mezzanine Loan Agreement, Borrower shall establish a cash management account and system with Lender substantially the same as that required under the Mortgage Loan Documents. If Borrower is required to deposit amounts with Lender pursuant to Article VII hereof, Borrower shall establish a cash management account and system with Lender substantially the same as that required under the Mortgage Loan Documents (and shall otherwise comply with the provisions of Section 2.6.2 of the Mortgage Loan Documents, and grant to Lender security interests in such accounts for the benefit of Lender, as if such provisions were incorporated herein for the benefit of Lender).

**2.6.4 Mezzanine Collection Account.** (a) Lender or Servicer may establish and maintain, to collect all amounts distributed to Lender under Section 2.6.3 of the Mortgage Loan Agreement, a segregated Eligible Account (the “**Mezzanine Collection Account**”) to be held by Servicer in trust for the benefit of Lender, which Mezzanine Collection Account shall be under the sole dominion and control of Lender (which may be exercised through Servicer). Lender (and its agents, including Servicer) shall have the sole right to make withdrawals from the Mezzanine Collection Account in accordance with the terms and conditions of this Agreement and the other Loan Documents, except as otherwise expressly provided in this Agreement or the other Loan Documents. Borrower shall cause Senior Mezzanine Borrower to comply with Section 2.6.4 of the Senior Mezzanine Loan Agreements.

(b) Borrower hereby grants to Lender a first priority security interest in the Mezzanine Collection Account and all deposits at any time contained therein and the proceeds thereof and will take all actions necessary to maintain in favor of Lender a perfected first priority security interest in the Mezzanine Collection Account, including, without limitation, executing and filing UCC 1 Financing Statements and continuations thereof upon Lender’s request therefor. All costs and expenses for establishing and maintaining the Mezzanine Collection Account (and any sub account thereof) shall be at Borrower’s sole cost and expense.

(c) Borrower shall be responsible for payment of any federal, state or local income or other tax applicable to the interest or income earned on the Mezzanine Collection Account and any sub-account thereof. The Mezzanine Collection Account and any sub-account thereof shall be assigned the federal tax identification numbers of each Borrower set forth on

Schedule I attached hereto. Borrower shall provide Lender, at any time upon request of Lender, with a Form W-8 or W-9 to evidence that Borrower is not subject to any back-up withholding under the Code.

(d) Upon the occurrence and during the continuance of an Event of Default, all funds on deposit in the Mezzanine Collection Account shall be applied by Lender in such order and priority as Lender shall determine.

(e) The insufficiency of funds on deposit in the Mezzanine Collection Account shall not relieve Borrower from the obligation to make any payments, as and when due pursuant to this Agreement and the other Loan Documents, and such obligations shall be separate and independent, and not conditioned on any event or circumstance whatsoever.

**Section 2.7. Intentionally Omitted.**

**Section 2.8. Permitted Mezzanine Loan.** Borrower shall have the one-time right, upon thirty (30) days prior written notice to Lender (the “**Permitted Mezzanine Loan Election**”), to obtain a loan (“**Permitted Mezzanine Loan**”) secured by a pledge of the ownership interests in the indirect owners of Borrower (above the level of the Ninth Mezzanine Borrower) provided that the following conditions precedent are satisfied:

(a) no Default or Event of Default shall have occurred and remains uncured;

(b) as of the date the Permitted Mezzanine Loan is advanced, the Permitted Mezzanine Debt Loan-to-Value Ratio for the Properties subject to the Lien of the Mortgage is equal to or less than eighty percent (80%);

(c) as of the date the Permitted Mezzanine Loan is advanced, Permitted Mezzanine DSCR for the four-quarter period preceding such date for the Properties then subject to the Lien of the Mortgage(s) is equal to or greater than 1.2 to 1.0;

(d) the Permitted Mezzanine Loan shall be evidenced by one (1) Loan, that may be advanced in multiple draws provided that Borrower complies with the requirements set forth in this Section 2.8 with respect to each draw;

(e) the Permitted Mezzanine Loan shall be issued by one (1) lender (the “**Permitted Mezzanine Loan Lender**”) which shall be an Institutional Lender; provided, however, that such single Lender that is an Institutional Lender may grant participations in such Permitted Mezzanine Loan or syndicate the Permitted Mezzanine Loan to multiple lenders so long as at least fifty-one percent (51%) of such participants and syndicate lenders are Institutional Lenders and, in addition, so long a single lender serves as agent with respect to all approvals, consents and other matters relating to the Permitted Mezzanine Loan;

(f) the Permitted Mezzanine Loan shall have the same maturity date as the Maturity Date under the Loan, or a maturity date extending beyond the Maturity Date under the Loan;

(g) the Permitted Mezzanine Loan (including all of the terms, provisions and conditions of the Permitted Mezzanine Loan, including, without limitation, the loan documents evidencing and securing the Permitted Mezzanine Loan (“**Permitted Mezzanine Loan Documents**”)) shall be acceptable to Lender in its reasonable discretion (it being agreed that with respect (only) to Lender’s approval of the form of loan documents that loan documents in substantially the same form as the Ninth Mezzanine Loan Documents, appropriately modified to reflect subordination to the Mezzanine Loans still outstanding, shall be deemed to be acceptable);

(h) the Permitted Mezzanine Loan Lender shall enter into a co-lender or intercreditor agreement substantially on the standard CMSA form (or the form entered into by Lender, Other Mezzanine Lenders and Mortgage Lender in connection with the closing of the Loan) or in form and substance reasonably acceptable to Lender, acknowledging the subordination of the Permitted Mezzanine Loan in all respects to each of the Mezzanine Loans and the Mortgage Loan (and Lender agrees to enter into such co-lender or intercreditor agreement upon request);

(i) the Permitted Mezzanine Loan shall be a fixed rate loan, or a floating rate loan containing an interest rate that is capped at an amount that satisfies the debt service coverage ratio requirement set forth in subparagraph (c) above, with interest due and payable monthly (*i.e.*, interest does not accrue) and such interest rate shall not be subject to adjustment except after an event of default (Borrower agreeing to cause the purchase of an interest rate cap to reflect the foregoing);

(j) if requested by Lender, Borrower shall execute amendments to the Loan Documents reasonably requested by Lender, to reflect the existence of such Permitted Mezzanine Loan, provided that any such amendments or agreements will not alter the payment terms of the Loan set forth in this Agreement or the other Loan Documents or materially and adversely affect Borrower or impose additional material obligations or liabilities upon Borrower;

(k) if required by Lender, Borrower shall deliver (i) Additional Insolvency Opinions and, if the Loan Documents are amended pursuant to Section 2.8(k), opinions regarding due execution and enforceability with respect to the Properties, Mortgage Borrower, Mezzanine Borrowers, Holdings, Guarantor and their respective Affiliates and the Loan Documents, and such related matters as Lender shall reasonably require, and (ii) revised organizational documents for Borrower, which opinions and organizational documents shall be reasonably satisfactory to Lender;

(l) all necessary or appropriate governmental or other third party consents (including any approvals, notices, filings or other actions under or pursuant to the Gaming Laws or other Legal Requirements) required to be obtained or taken by Borrower, Mortgage Borrower, any Mezzanine Borrower or the Permitted Mezzanine Borrower for the execution, delivery and performance by the Permitted Mezzanine Borrower of the Permitted Mezzanine Loan shall have been obtained or taken; and

(m) all reasonable out-of-pocket costs and expenses (including reasonable attorneys' fees and expenses) incurred by Lender in connection with this Section 2.8 shall be paid by Borrower (but no approval or consent fees shall be payable in connection therewith).

### III. CONDITIONS PRECEDENT

**Section 3.1. Conditions Precedent to Closing.** The obligation of Lender to make the Loan hereunder is subject to the fulfillment by Borrower or waiver by Lender of the following conditions precedent no later than the Closing Date:

**3.1.1 Representations and Warranties; Compliance with Conditions.** The representations and warranties of Borrower contained in this Agreement and the other Loan Documents shall be true and correct in all material respects on and as of the Closing Date with the same effect as if made on and as of such date, and no Default or an Event of Default shall have occurred and be continuing; and Borrower shall be in compliance in all material respects with all terms and conditions set forth in this Agreement and in each other Loan Document on its part to be observed or performed.

**3.1.2 Loan Agreement and Note.** Lender shall have received a copy of this Agreement and the Note, in each case, duly executed and delivered on behalf of Borrower.

#### **3.1.3 Delivery of Loan Documents; Title Insurance; Reports; Leases.**

(a) **Pledge Agreement.** Lender shall have received from Borrower fully executed and acknowledged counterparts of the Pledge Agreement and delivery of the Pledged Company Interests, the UCC Financing Statements, and such other documents required pursuant to the Pledge Agreement, in the reasonable judgment of Lender, so as to effectively create valid and enforceable Liens upon the Collateral, of the requisite priority, in favor of Lender, subject only to the Permitted Encumbrances and such other Liens as are permitted pursuant to the Loan Documents. Lender shall have also received from Borrower fully executed counterparts of the other Loan Documents.

(b) **Title Insurance.** Lender shall have received a UCC Title Insurance Policy (the "**UCC Title Insurance Policy**") issued by a title company acceptable to Lender and dated as of the Closing Date, with reinsurance and direct access agreements acceptable to Lender. Such UCC Title Insurance Policy shall (i) provide coverage in amounts reasonably satisfactory to Lender, (ii) insure Lender that the Pledge Agreement and the documents executed and delivered in connection therewith create a valid lien on the Collateral of the requisite priority, free and clear of all exceptions from coverage other than Permitted Encumbrances and standard exceptions and exclusions from coverage (as modified by the terms of any endorsements), (iii) contain such endorsements and affirmative coverages as Lender may reasonably request, and (iv) name Lender as the insured. The UCC Title Insurance Policy shall be assignable. Lender also shall have received evidence that all premiums in respect of such UCC Title Insurance Policy have been paid. Lender shall have received each Owner's Title Policy in an amount equal to the value of the Property, together with an endorsement in favor of Lender and in form and substance reasonably satisfactory to Lender.

(c) **Survey.** Lender shall have received a current Survey for each Individual Property, certified to the title company and Lender and their successors and assigns, in form and content reasonably satisfactory to Lender and prepared by a professional and properly licensed land surveyor satisfactory to Lender in accordance with the Accuracy Standards for ALTA/ACSM Land Title Surveys as adopted by ALTA, American Congress on Surveying & Mapping and National Society of Professional Surveyors in 2005. Each such Survey shall reflect the same legal description contained in the Title Insurance Policies relating to such Individual Property and shall include, among other things, a metes and bounds description (or other description reasonably satisfactory to Lender) of the real property comprising part of such Individual Property reasonably satisfactory to Lender. The surveyor's seal shall be affixed to each Survey and the surveyor shall provide a certification for each Survey in form and substance reasonably acceptable to Lender.

(d) **Insurance.** Lender shall have received valid certificates of insurance for the Policies required hereunder, satisfactory to Lender in its reasonable discretion. Lender shall be included as an "additional insured" under such Policies and Lender shall have received evidence of the payment of all Insurance Premiums payable for the existing policy period.

(e) **Environmental Reports.** Lender shall have received a Phase I environmental report (and, if recommended by the Phase I environmental report, a Phase II environmental report) in respect of each Individual Property, in each case satisfactory in form and substance to Lender, Lender acknowledges that the foregoing condition has been satisfied, provided that the underground storage tank at Harrah's Las Vegas shall be registered if and to the extent the same is required under Legal Requirements and Lender shall have received and reasonably approved the O&M Plans contemplated pursuant to the above-referenced environmental reports in respect of Flamingo Las Vegas and Harrah's Las Vegas.

(f) **Zoning.** With respect to each Individual Property, Lender shall have received, at Lender's option, either (i) (A) letters or other evidence with respect to each Individual Property from the appropriate municipal authorities (or other Persons) concerning applicable zoning and building laws, and (B) an ALTA 3.1 zoning endorsement for the applicable Title Insurance Policy or (ii) a zoning report, in each case in substance reasonably satisfactory to Lender.

(g) **Encumbrances.** Borrower shall have taken or caused to be taken such actions in such a manner so that Lender has a valid and perfected first priority Lien as of the Closing Date on the Collateral and with respect to the Pledge Agreement and Lender shall have received satisfactory evidence thereof.

(h) **Senior Loan Documents.** The Mortgage Loan Documents and Senior Mezzanine Loan Documents shall have been duly authorized, executed and delivered by all parties thereto, the Mortgage Loan and Senior Mezzanine Loan shall have been contemporaneously funded and Lender shall have received and approved certified copies thereof. All of the conditions precedent set forth in Article III of the Mortgage Loan Agreement and Senior Mezzanine Loan Agreements shall have been satisfied and the Mortgage Loan and Senior Mezzanine Loans shall have closed and been fully advanced in accordance therewith.

**3.1.4 Related Documents.** Each additional document not specifically referenced herein, but relating to the transactions contemplated herein, shall be in form and substance reasonably satisfactory to Lender, and shall have been duly authorized, executed and delivered by all parties thereto and Lender shall have received and approved certified copies thereof.

**3.1.5 Delivery of Organizational Documents.** Borrower shall deliver or cause to be delivered to Lender copies certified by Borrower of all organizational documentation related to Borrower and each Loan Party and/or the formation, structure, existence, good standing and/or qualification to do business, as Lender may request in its sole discretion, including, without limitation, good standing certificates, qualifications to do business in the appropriate jurisdictions, resolutions authorizing the entering into of the Loan and incumbency certificates as may be requested by Lender.

**3.1.6 Opinions of Borrower's Counsel.** Lender shall have received opinions from Borrower's counsel with respect to non-consolidation and the due execution, authority, enforceability of the Loan Documents and such other matters as Lender may require, including True-Lease Opinions, an opinion with respect to the priority and perfection of the Collateral and all such opinions shall be in form, scope and substance satisfactory to Lender and Lender's counsel in their reasonable discretion.

**3.1.7 Budgets.** Borrower shall have delivered, and Lender shall have approved in its reasonable discretion, the Annual Budget for the current Fiscal Year.

**3.1.8 Basic Carrying Costs.** Borrower shall have caused Mortgage Borrower to have paid all Basic Carrying Costs relating to the Properties which are in arrears, including, without limitation, (a) accrued but unpaid Insurance Premiums, (b) currently due Taxes (including any in arrears) and (c) currently due Other Charges, which amounts shall be funded with proceeds of the Loan.

**3.1.9 Completion of Proceedings.** All corporate and other proceedings taken or to be taken in connection with the transactions contemplated by this Agreement and other Loan Documents and all documents incidental thereto shall be satisfactory in form and substance to Lender, and Lender shall have received all such counterpart originals or certified copies of such documents as Lender may reasonably request.

**3.1.10 Payments.** All payments, deposits or escrows required to be made or established by Borrower under this Agreement, the Note and the other Loan Documents on or before the Closing Date shall have been paid.

**3.1.11 Windstorm Insurance Intercreditor Agreement.** The Windstorm Insurance Intercreditor Agreement shall have been executed by all parties thereto and delivered to Lender.

**3.1.12 Transaction Costs.** Borrower shall have paid or reimbursed Lender for all UCC Title Insurance Policy premiums, all Owner's Title Policy premiums, costs of obtaining recording and filing fees, costs of environmental reports, Physical Conditions Reports, appraisals and other reports, the reasonable fees and costs of Lender's counsel and all other third party

out-of-pocket expenses reasonably incurred in connection with the origination of the Loan to the extent such costs and expenses relating to third party costs have not already been paid or reimbursed by Mortgage Borrower to Mortgage Lender.

**3.1.13 Material Adverse Change.** There shall have been no material adverse change in the financial condition or business condition of Borrower, any Loan Party, the Collateral, the Senior Mezzanine Collateral or the Properties since the date of the most recent financial statements delivered to Lender. The income and expenses of the Properties, the occupancy thereof, and all other features of the transaction shall be as represented to Lender without material adverse change. None of Borrower, any Loan Party, or any of their respective constituent Persons shall be the subject of any bankruptcy, reorganization, or insolvency proceeding.

**3.1.14 Leases and Rent Roll.** Lender shall have received copies of all Leases and certified copies of any Leases as requested by Lender. Lender shall have received a current certified rent roll of the Properties, reasonably satisfactory in form and substance to Lender.

**3.1.15 Tax Lot.** Lender shall have received evidence that each Individual Property constitutes one (1) or more separate tax lots, which evidence shall be reasonably satisfactory in form and substance to Lender.

**3.1.16 Physical Conditions Reports.** Lender shall have received Physical Conditions Reports with respect to each Individual Property, which reports shall be reasonably satisfactory in form and substance to Lender. Lender acknowledges that the foregoing condition has been satisfied.

**3.1.17 Operating Leases; Operating Lease Guaranty.** Lender shall have received copies of the Operating Leases, each Operating Lease Guaranty and the Gaming Equipment Facility Agreements, which shall be reasonably satisfactory in form and substance to Lender.

**3.1.18 Appraisal.** Lender shall have received an appraisal of each Individual Property, which shall be reasonably satisfactory in form and substance to Lender.

**3.1.19 Financial Statements.** Lender shall have received a balance sheet with respect to each Individual Property for the two most recent Fiscal Years and statements of income and statements of cash flows with respect to each Individual Property for the three most recent Fiscal Years, each in form and substance reasonably satisfactory to Lender.

**3.1.20 Further Documents.** Lender or its counsel shall have received a fully executed Interest Rate Cap Agreement and a Collateral Assignment of Interest Rate Cap Agreement, together with an opinion of counsel in form and substance satisfactory to it, or shall have received reasonably satisfactory evidence that same will be delivered promptly following the Closing Date.

**3.1.21 Gaming Authority Approvals.** Mortgage Borrower and Operating Company shall have obtained all Operating Permits from Gaming Authorities that are required in order to permit the closing of the Mortgage Loan and the Mezzanine Loans (if required), or in

connection with the Operating Lease or the Operating Lease Guaranty (if required), or to permit the conveyances of any of the Properties to Mortgage Borrower (effected immediately prior hereto) and the operation of the Properties as currently conducted.

#### IV. REPRESENTATIONS AND WARRANTIES

**Section 4.1. Borrower Representations.** Borrower represents and warrants as of the date hereof and as of the Closing Date, except as disclosed in Schedule XXIII, that:

**4.1.1 Organization.** (a) Borrower has been duly organized and is validly existing and in good standing with requisite power and authority to own the Individual Properties and to transact the businesses in which it is (or each of them is) now engaged. Borrower is duly qualified to do business and is in good standing in each jurisdiction where it is required to be so qualified in connection with its properties, businesses and operations. Borrower possesses all rights, licenses, permits and authorizations (governmental or otherwise) necessary to entitle it to own its properties and to transact the businesses in which it is now engaged and the failure to possess which would reasonably be expected to have an Individual Material Adverse Effect. The sole business of Borrower is the ownership of Senior Mezzanine Borrower. The ownership interests of Borrower are as set forth on the organizational chart attached hereto as Schedule VIII.

(b) Each Operating Company has been duly organized and is validly existing and in good standing with requisite power and authority to own its properties or assets, including the Gaming Equipment, and to transact the businesses in which it is now engaged. Each Operating Company is duly qualified to do business and is in good standing in each jurisdiction where it is required to be so qualified in connection with its properties, businesses and operations, including the operation of the Casino Components at each Individual Property. Each Operating Company possesses all rights, licenses, permits and authorizations (governmental or otherwise) necessary to entitle it to operate the Properties currently operated by each such Operating Company and to transact the businesses in which it is now engaged and the failure to possess which would reasonably be expected to have an Individual Material Adverse Effect. The sole business of each Operating Company is the management and operation of the Individual Property or Properties currently operated by each such Operating Company. The ownership interests of each Operating Company are as set forth on the organizational chart attached hereto as Schedule VIII.

(c) Borrower has the power and authority and the requisite ownership interests in Senior Mezzanine Borrower and Mortgage Borrower to control the actions of Senior Mezzanine Borrower and Mortgage Borrower, and upon the realization of the Collateral under the Pledge Agreement, Lender or any other party succeeding to the Borrower's interest in the Collateral described in the Pledge Agreement would have such control. Without limiting the foregoing, Borrower has sufficient control over Senior Mezzanine Borrower and Mortgage Borrower to cause Senior Mezzanine Borrower and Mortgage Borrower to (i) take any action on Senior Mezzanine Borrower's or Mortgage Borrower's part required by the Loan Documents and (ii) refrain from taking any action prohibited by the Loan Documents.

**4.1.2 Proceedings.** Borrower and Operating Company have taken all necessary action to authorize the execution, delivery and performance of this Agreement and the other Loan Documents. This Agreement and such other Loan Documents have been duly executed and delivered by or on behalf of Borrower and Operating Company and constitute legal, valid and binding obligations of Borrower and Operating Company enforceable against Borrower and Operating Company (as applicable) in accordance with their respective terms, subject only to applicable bankruptcy, insolvency and similar laws affecting rights of creditors generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

**4.1.3 No Conflicts; Approvals.** (a) The execution, delivery and performance of this Agreement and the other Loan Documents by Borrower and Operating Company will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance (other than pursuant to the Loan Documents) upon any of the property or assets of Borrower or Operating Company pursuant to the terms of any indenture, mortgage, deed of trust, loan agreement, partnership agreement, management agreement, material lease or other material agreement or instrument to which Borrower or Operating Company (as applicable) is a party or by which any of Borrower's or Operating Company's property or assets is or are subject, nor will such action result in any violation of the provisions of any statute or any order, rule or regulation of any Governmental Authority having jurisdiction over Borrower or Operating Company any of Borrower's or Operating Company's properties or assets, and any consent, approval, authorization, order, registration or qualification of or with any such Governmental Authority required for the execution, delivery and performance by Borrower and Operating Company of this Agreement or any other Loan Documents (and the execution by Lender of the remedies provided in the Loan Documents, subject to the limitations thereon pursuant to applicable Gaming Laws) has been obtained and is in full force and effect.

(b) Borrower, Senior Mezzanine Borrower, Mortgage Borrower and Operating Company have obtained all consents and approvals, including all approvals of Governmental Authorities including Gaming Authorities, if required, in connection with the execution, delivery and performance of the Loan Documents (including by Mortgage Lender and each Mezzanine Lender), the Operating Lease, the Operating Lease Guaranty and the operation of the business currently conducted at any of the Properties, and shall promptly execute any and all such instruments and documents, deliver any certificates and do all such other acts or things required by the Gaming Authorities to maintain or keep current such approvals.

**4.1.4 Litigation.** There are no actions, suits or proceedings at law or in equity by or before any Governmental Authority or other agency now pending or, to Borrower's knowledge, threatened against or affecting any Loan Party, any Affiliates of Borrower, including Holdings, Operating Company or any Individual Property, or any prior owner or other holder of any interest in any Individual Property, which actions, suits or proceedings, if determined against any Loan Party, Holdings, Operating Company, any other Affiliate or any Individual Property (taking into account the reasonably estimated damages payable in connection therewith), is reasonably likely to materially adversely affect the condition (financial or otherwise) or business of any Loan Party, any Affiliate of Borrower that is a direct or indirect owner of Mortgage Borrower, including Holdings and Operating Company, or the condition or ownership of any

Individual Property, or any of the material rights, interests and remedies of Lender under the Loan Documents (taken as a whole). None of the actions described on Schedule XXIV, if determined adversely to Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company and/or any of their respective Affiliates, as applicable, would result in the payment by Borrower, Mortgage Borrower, Operating Company or such Affiliate of an amount in excess of Ten Million and no/100 Dollars (\$10,000,000.00), except to the extent covered by insurance.

**4.1.5 Agreements.** None of Borrower, Senior Mezzanine Borrower, Mortgage Borrower or Operating Company is in default, in any material respect, in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any material agreement or instrument to which it is a party or by which Borrower, Senior Mezzanine Borrower, Mortgage Borrower, Operating Company, the Collateral, the Senior Mezzanine Collateral or any of the Properties are bound. None of Borrower, Senior Mezzanine Borrower, Mortgage Borrower or Operating Company has any material financial obligation under any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which Borrower, Senior Mezzanine Borrower, Mortgage Borrower or Operating Company is a party or by which Borrower, Senior Mezzanine Borrower, Mortgage Borrower, Operating Company, the Collateral, the Senior Mezzanine Collateral or the Properties is otherwise bound, other than (a) with respect to Mortgage Borrower, obligations incurred in the ordinary course of the operation of the Properties as permitted pursuant to clause (t) of the definition of "Special Purpose Entity" set forth in Section 1.1 of the Mortgage Loan Agreement, (b) with respect to Borrower, obligations under the Loan Documents, (c) with respect to Senior Mezzanine Borrower, obligations under the Senior Mezzanine Loan Documents, and (d) with respect to Operating Company, the Operating Lease and Permitted Indebtedness (Operating Company).

**4.1.6 Title.** (a) The Borrower (as pledgor under the Pledge Agreement) is the record and beneficial owner of, and Borrower has good and marketable title to the Collateral, free and clear of all Liens whatsoever except the Liens created by the Loan Documents. The Permitted Encumbrances in the aggregate do not materially and adversely affect the value, operation or use of any of the Properties (as currently used) or Borrower's ability to repay the Loan. The Pledge Agreement, together with the delivery of the certificates evidencing ownership of the Pledged Company Interests and the endorsement in blank, as being delivered concurrently herewith, will create a valid perfected, first priority lien on, and security interest in and to, the Collateral, all in accordance with the terms thereof. There are no claims for payment for work, labor or materials affecting any of the Properties which are or may become a Lien prior to, or of equal priority with, the Liens created by the Mortgage Loan Documents.

(b) Each Operating Company has good, marketable title to the Gaming Equipment, free and clear of all Liens whatsoever (except equipment financing and leasing arrangements entered into by Operating Company in the ordinary course of its business (subject to the limitations set forth in the definition of "Permitted Indebtedness (Operating Company)").

**4.1.7 Solvency.** Borrower has (a) not entered into the transaction or executed the Note, this Agreement or any other Loan Documents with the actual intent to hinder, delay or defraud any creditor and (b) received reasonably equivalent value in exchange for its obligations under such Loan Documents. The fair saleable value of Borrower's assets exceeds and will, immediately following the making of the Loan, exceed Borrower's total liabilities, including, without limitation, subordinated, unliquidated, disputed and contingent liabilities. The fair saleable value of Borrower's assets is and will, immediately following the making of the Loan, be greater than Borrower's probable liabilities, including the maximum amount of its contingent liabilities on its debts as such debts become absolute and matured. Borrower's assets do not and, immediately following the making of the Loan will not, constitute unreasonably small capital to carry out its business as conducted or as proposed to be conducted. Borrower does not intend to, and does not believe that it will, incur debt and liabilities (including contingent liabilities and other commitments) beyond its ability to pay such debt and liabilities as they mature (taking into account the timing and amounts of cash to be received by Borrower and the amounts to be payable on or in respect of obligations of Borrower). No petition in bankruptcy has been filed against Borrower, Operating Company, any Loan Party or any constituent Person, and none of Borrower, Operating Company, any Loan Party or any constituent Person has ever made an assignment for the benefit of creditors or taken advantage of any insolvency act for the benefit of debtors. None of Borrower, Operating Company, any Loan Party or any of their respective constituent Persons are contemplating either the filing of a petition by it under any state or federal bankruptcy or insolvency laws or the liquidation of all or a major portion of Borrower's, Operating Company's, or any Loan Party's assets or properties, and Borrower has no knowledge of any Person contemplating the filing of any such petition against it, Operating Company, any Loan Party or such constituent Persons.

**4.1.8 Full and Accurate Disclosure.** No statement of fact made by Borrower in this Agreement or in any of the other Loan Documents contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained herein or therein not misleading. There is no material fact presently known to Borrower which has not been disclosed to Lender which has, nor as far as Borrower can foresee, might reasonably be expected to have an Individual Material Adverse Effect or an Aggregate Material Adverse Effect.

**4.1.9 No Plan Assets.** Borrower is not an "employee benefit plan," as defined in Section 3(3) of ERISA, subject to Title I of ERISA, and none of the assets of Borrower constitutes or will constitute "plan assets" of one or more such plans within the meaning of 29 C.F.R. Section 2510.3-101. In addition, (a) Borrower is not a "governmental plan" within the meaning of Section 3(32) of ERISA and (b) transactions by or with Borrower are not subject to any state statute regulating investments of, or fiduciary obligations with respect to, governmental plans similar to the provisions of Section 406 of ERISA or Section 4975 of the Code currently in effect, which prohibit or otherwise restrict the transactions contemplated by this Loan Agreement.

**4.1.10 Compliance.** Except as disclosed in the zoning reports obtained by Lender in connection with the origination of the Loan, Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company and each Individual Property (including the use thereof) comply in all material respects with all applicable Legal Requirements, including,

without limitation, building and zoning ordinances and codes and Prescribed Laws. Borrower, Mortgage Borrower, Senior Mezzanine Borrower and Operating Company are not in default or violation of (i) any material order, writ, injunction, decree or demand of any Gaming Authority or (ii) any material order, writ, injunction, decree or demand of any other Governmental Authority. There has not been committed by Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any other Person in occupancy of or involved with the operation or use of the Properties any act or omission affording the federal government or any other Governmental Authority the right of forfeiture as against any Individual Property or any part thereof or any monies paid in performance of Borrower's obligations under any of the Loan Documents.

**4.1.11 Financial Information.** All financial data, including, without limitation, the statements of cash flow and income and operating expense, that have been delivered to Lender in connection with the Loan, the Collateral, the Senior Mezzanine Collateral, the Properties and each Loan Party (i) are true, complete and correct in all material respects, (ii) accurately represent in all material respects the financial condition of the Properties as of the date of such reports, and (iii) to the extent prepared or audited by an independent certified public accounting firm, have been prepared in accordance with GAAP throughout the periods covered, except as disclosed therein. Except for Permitted Encumbrances, Borrower does not have any contingent liabilities, liabilities for taxes, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments that are known to Borrower and reasonably likely to have a materially adverse effect on the Collateral, the Senior Mezzanine Collateral, Borrower, any Loan Party, any Individual Property or the operation thereof as mixed-use hotel and casino properties, except as referred to or reflected in said financial statements. Borrower has no Indebtedness other than the Loan. Except for Permitted Indebtedness (Operating Company), Operating Company does not have any Indebtedness or contingent liabilities, or due and unpaid liabilities for taxes, that are known to Borrower, Mortgage Borrower, Senior Mezzanine Borrower or Operating Company and reasonably likely to have a materially adverse effect on the Collateral, any Senior Mezzanine Collateral, Borrower, any Loan Party, any Individual Property or the operation thereof as mixed-use hotel and casino properties, except as referred to or reflected in said financial statements. Since the date of such financial statements, there has been no material adverse change in the financial condition, operation or business of Borrower or Operating Company from that set forth in said financial statements.

**4.1.12 Condemnation.** No Condemnation or other similar proceeding has been commenced or, to Borrower's best knowledge, is threatened or contemplated with respect to all or any portion of any Individual Property or for the relocation of roadways providing access to any Individual Property.

**4.1.13 Federal Reserve Regulations.** No part of the proceeds of the Loan will be used for the purpose of purchasing or acquiring any "margin stock" within the meaning of Regulation U of the Board of Governors of the Federal Reserve System or for any other purpose which would be inconsistent with such Regulation U or any other Regulations of such Board of Governors, or for any purposes prohibited by Legal Requirements or by the terms and conditions of this Agreement or the other Loan Documents.

**4.1.14 Utilities and Public Access.** Each Individual Property has rights of access to public ways and is served by water, sewer, sanitary sewer and storm drain facilities adequate to service such Individual Property for its respective intended uses. All public utilities necessary or convenient to the full use and enjoyment of each Individual Property are located either in the public right-of-way abutting such Individual Property (which are connected so as to serve such Individual Property without passing over other property) or in recorded easements serving such Individual Property and such easements are set forth in and insured by the Title Insurance Policies. All roads necessary for the use of each Individual Property for their current respective purposes have been completed and dedicated to public use and accepted by all Governmental Authorities.

**4.1.15 Not a Foreign Person.** Borrower is not a “foreign person” within the meaning of § 1445(f)(3) of the Code.

**4.1.16 Separate Lots.** Each Individual Property is comprised of one (1) or more parcels which constitute a separate tax lot or lots and does not constitute a portion of any other tax lot not a part of such Individual Property.

**4.1.17 Assessments.** There are no pending or, to Borrower’s knowledge, proposed special or other assessments for public improvements or otherwise affecting any Individual Property, nor are there any contemplated improvements to any Individual Property that may result in such special or other assessments.

**4.1.18 Enforceability.** The Loan Documents are not subject to any right of rescission, set-off, counterclaim or defense by Borrower, any Affiliates of Borrower including Holdings, Operating Company or Guarantor, including the defense of usury, nor would the operation of any of the terms of the Loan Documents, or the exercise of any right thereunder, render the Loan Documents unenforceable (subject to principles of equity and bankruptcy, insolvency and other laws generally affecting creditors’ rights and the enforcement of debtors’ obligations), and Borrower, any Affiliates of Borrower including Holdings, Operating Company and Guarantor have not asserted any right of rescission, set-off, counterclaim or defense with respect thereto.

**4.1.19 No Prior Assignment.** There are no prior assignments of the Leases (including the Operating Leases) or of the Rents (or any Revenue) due and payable or to become due and payable which are presently outstanding. There are no prior assignments of the Collateral which are presently outstanding except in accordance with the Loan Documents.

**4.1.20 Insurance.** Borrower (or Mortgage Borrower or Operating Company) has obtained and has delivered to Lender certified copies of all Policies reflecting the insurance coverages, amounts and other requirements set forth in this Agreement. No material claims have been made under any such Policies except such as have been disclosed to Lender, and no Person, including Borrower, Mortgage Borrower, Senior Mezzanine Borrower and Operating Company, has done, by act or omission, anything which would impair the coverage of any such Policies.

**4.1.21 Use of Property.** Each Individual Property is used exclusively as a mixed-use hotel and casino operation, and other appurtenant and related uses.

**4.1.22 Gaming Licenses and Operating Permits.** (a) Schedule IX contains a correct and complete list of all Gaming Licenses and other material licenses, certification and permits for each of the Properties (and the holder thereof).

(b) Borrower possesses all licenses, permits, franchises, authorizations, certificates, approvals and consents which are material to the ownership of the Collateral. Mortgage Borrower possesses all licenses, permits, franchises, authorizations, certificates, approvals and consents, including, without limitation, all certificates of occupancy, which are material to the ownership and use of each of the Properties, and Operating Company possesses all licenses, permits, franchises, authorizations, certificates, approvals and consents, including, without limitation, all environmental, liquor, Gaming Licenses, health and safety licenses of all Governmental Authorities which are material to the conduct of their business and the use, occupation and operation of each of the Properties and the failure to possess which would have an Individual Material Adverse Effect (collectively, **“Operating Permits”**); each such Operating Permit is and will be in full force and effect (unless, in the case of any Operating Permit, such Operating Permit is no longer necessary or advisable for the conduct of Borrower’s, Senior Mezzanine Borrower’s, Mortgage Borrower’s or Operating Company’s business); Borrower, Senior Mezzanine Borrower, Mortgage Borrower, Operating Company and each of its Affiliates are in compliance in all material respects with all such Operating Permits, and no event (including, without limitation, any material violation of any law, rule or regulation) has occurred which would be reasonably likely to lead to the revocation or termination of any such Operating Permit or the imposition of any material restriction thereon.

(c) Operating Company and each of its Affiliates possesses all Gaming Licenses which are material to the conduct of their business and the ownership, use, occupation and operation of each of the Properties. Further, Borrower hereby represents and warrants as follows:

(i) Each Gaming License is in full force and effect (except for such Gaming Licenses as are no longer necessary or advisable for the conduct of Borrower’s, Senior Mezzanine Borrower’s, Mortgage Borrower’s or Operating Company’s business); Operating Company and each of its Affiliates, respective directors, members, managers, officers, key personnel and Persons holding a five percent (5%) or greater equity or economic interests directly or indirectly in Operating Company is in compliance in all material respects with all such Gaming Licenses (to the extent required by Legal Requirements), and no event (including, without limitation, any material violation of any Legal Requirements) has occurred which would be reasonably likely to lead to the revocation or termination of any such Gaming Licenses or the imposition of any restriction thereon;

(ii) Borrower has no reason to believe Mortgage Borrower and Operating Company will not be able to maintain in effect all Gaming Licenses necessary for the lawful conduct of their respective businesses or operations wherever now conducted and as planned to be conducted, including the ownership and operation of the Casino Components, pursuant to all applicable Legal Requirements;

(iii) All Gaming Licenses are in full force and effect and have not been amended or otherwise modified, rescinded, revoked or assigned in any manner that would reasonably be expected to have an Individual Material Adverse Effect;

(iv) Neither Mortgage Borrower nor Operating Company is in default in any material respect under, or in violation in any material respect of, any Gaming License (and no event has occurred, and no condition exists, which, with the giving of notice or passage of time or both, would constitute a default thereunder or violation thereof that has caused or would reasonably be expected to cause the loss of any Gaming License) (unless, in the case of any Gaming License, such Gaming License is no longer necessary or advisable for the conduct of Borrower's or Operating Company's business);

(v) Neither Mortgage Borrower nor Operating Company has received any notice of any violation of Legal Requirements which has caused or would reasonably be expected to cause any Gaming License to be suspended, forfeited, modified in any manner that would have an Individual Material Adverse Effect, not renewed, rescinded or revoked (unless, in the case of any Gaming License, such Gaming License is no longer necessary or advisable for the conduct of Mortgage Borrower's or Operating Company's business);

(vi) No condition exists or event has occurred which would reasonably be expected to result in the suspension, revocation, impairment, forfeiture, rescission or non-renewal of any Gaming License (unless, in the case of any Gaming License, such Gaming License is no longer necessary or advisable for the conduct of Mortgage Borrower's or Operating Company's business); and

(vii) The continuation, validity and effectiveness of all Gaming Licenses will not be adversely affected by the transactions contemplated by this Agreement.

(d) There is no proceeding, investigation, or disciplinary action (including, without limitation, before any Gaming Authority, under any Gaming Law or under any Gaming License or other Operating Permit) pending or, to Borrower's knowledge, threatened against any of Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or, to Borrower's knowledge, any of their respective directors, members, managers, officers, key personnel or Persons holding a five percent (5%) or greater direct or indirect equity or economic interest in Mortgage Borrower, Senior Mezzanine Borrower or Operating Company and that could reasonably be expected to have an Individual Material Adverse Effect.

(e) There is no proceeding (including, without limitation, before any Gaming Authority, under any Gaming Law or under any Gaming License or other Operating Permit) pending or, to Borrower's knowledge, threatened either (a) in connection with, or that seeks to restrain, enjoin, prevent the consummation of or otherwise challenge, any of the Loan Documents or any of the transactions contemplated therein, or (b) that could reasonably be expected to have an Individual Material Adverse Effect.

(f) Neither the execution, delivery or performance of any of the Loan Documents (nor the Securitization or any participations in the Loan, or the creation or sale of any

of the Mortgage Loan or Mezzanine Loans) will (i) require the consent of any Gaming Authority not heretofore obtained or (ii) allow or result in the imposition of any material penalty under, or the revocation or termination of, any Gaming License or any material impairment of the rights of the holder of any Gaming License.

**4.1.23 Intentionally Omitted.**

**4.1.24 Intentionally Omitted.**

**4.1.25 Intentionally Omitted.**

**4.1.26 Leases.** (a) The Operating Leases (together with any certificates and notifications entered into in connection therewith) and the Operating Lease Guaranty provided to Lender on the Closing Date are true, correct, accurate and complete copies of such documents and constitute the entire agreement between the parties thereto with respect to the subject matter therein and there are no written agreements modifying, amending, supplementing or restating such documents. Except as set forth on Schedule X, the Properties are not subject to any space Leases other than the Operating Lease and space Leases providing for occupancy of less than one hundred (100) square feet. Each Operating Lease is a “true lease” for all purposes of the Bankruptcy Code (including Section 365(d) and 502(b)(6) thereof) and applicable Legal Requirements, and no Operating Lease constitutes a financing or conveys any interest in the Properties other than the leasehold interest therein demised thereby. Mortgage Borrower is the owner and lessor of landlord’s interest in the Operating Lease and the Operating Lease Guaranty. Currently, no Person has any possessory interest in any Individual Property or right to occupy the same except under and pursuant to the provisions of the Operating Lease, any other space Leases listed on Schedule X and, with respect to a right to occupancy only (and not a possessory interest), hotel guests. Each Operating Lease and Operating Lease Guaranty is in full force and effect and there are no material events of default thereunder by any party thereto and there are no conditions that, with the passage of time or the giving of notice, or both, would constitute a default thereunder. No Rent under any Operating Lease has been paid more than one (1) month in advance of its due date and no Rents or charges under the Operating Lease have been waived, released or otherwise discharged or compromised. There has been no prior sale, transfer or assignment, hypothecation or pledge of any Operating Lease, any Operating Lease Guaranty or of the Rents. No Operating Company has assigned the Operating Lease or sublet all or any portion of any Individual Property except pursuant to the Operating Lease and the terms hereof.

(b) The Properties are not subject to any space Leases other than the Leases described in Schedule X attached hereto. Operating Company is the owner and lessor of landlord’s interest in all such space Leases. No Person has any possessory interest in any Individual Property except under and pursuant to the provisions of the space Leases, and no Person has any right to occupy any portion of any Individual Property except under and pursuant to the provisions of the space Leases and hotel guests. The current space Leases are in full force and effect and, except as shown in Schedule X attached hereto, to Borrower’s knowledge, there are no material defaults thereunder by either party and there are no conditions that, with the passage of time or the giving of notice, or both, would constitute defaults thereunder. No Rent has been paid more than one (1) month in advance of its due date. Except as shown in Schedule X attached hereto, all work to be performed by Mortgage Borrower (or Operating

Company) under each space Lease has been performed as and to the extent required and has been accepted by the applicable tenant, and any payments, free rent, partial rent, rebate of rent or other payments, credits, allowances or abatements required to be given by Mortgage Borrower (or Operating Company) to any tenant has already been received by such tenant. There has been no prior sale, transfer or assignment, hypothecation or pledge of any space Lease or of the Rents received therein which is still in effect. To Borrower's knowledge, except as shown on Schedule X, no tenant listed on Schedule X has assigned its space Lease or sublet all or any portion of the premises demised thereby, no such tenant holds its leased premises under assignment or sublease, nor does anyone except such tenant and its employees occupy such leased premises. No tenant under any space Lease has a right or option pursuant to such Lease or otherwise to purchase all or any part of the leased premises or the building of which the leased premises are a part. No tenant under any space Lease has any right or option for additional space in the Improvements except pursuant to such tenant's space Lease.

**4.1.27 Intentionally Omitted.**

**4.1.28 Principal Place of Business; State of Organization.** (a) Borrower's principal place of business as of the date hereof is the address set forth in Schedule I. Each Borrower is organized under the laws of the State of Delaware.

(b) Operating Company's principal place of business as of the date hereof is the address set forth in Schedule I. Each Operating Company is organized under the laws of the state of Delaware.

**4.1.29 Filing and Recording Taxes.** All transfer taxes, deed stamps, intangible taxes or other amounts in the nature of transfer taxes required to be paid by any Person under applicable Legal Requirements currently in effect in connection with the transfer of the Collateral to Borrower have been paid. All recording, stamp, intangible or other similar tax required to be paid by any Person under applicable Legal Requirements currently in effect in connection with the execution, delivery, recordation, filing, registration, perfection or enforcement of any of the Loan Documents, including, without limitation, the Pledge Agreement, have been paid, and, under current Legal Requirements, the Pledge Agreement is enforceable in accordance with their respective terms by Lender (or any subsequent holder thereof), subject to principles of equity and bankruptcy, insolvency and other laws generally applicable to creditors' rights and the enforcement of debtors' obligations.

**4.1.30 Special Purpose Entity/Separateness.** (a) Until the Debt has been paid in full, Borrower hereby represents, warrants and covenants that Borrower and each SPE Party is, shall be and shall continue to be a Special Purpose Entity.

(b) The representations, warranties and covenants set forth in Section 4.1.30(a) shall survive for so long as any amount remains payable to Lender under this Agreement or any other Loan Document.

(c) All of the assumptions made in the Insolvency Opinion, including, but not limited to, any exhibits attached thereto, are true and correct and any assumptions made in any subsequent non-consolidation opinion required to be delivered in connection with the Loan

Documents (an “**Additional Insolvency Opinion**”), including, but not limited to, any exhibits attached thereto, will have been and shall be true and correct. Borrower has complied and will comply with, and Borrower shall cause each SPE Party and Operating Company to comply with, all of the assumptions made with respect to the SPE Parties and Operating Company in the Insolvency Opinion. The SPE Parties will have complied and will comply with all of the assumptions made with respect to the SPE Parties in any Additional Insolvency Opinion. Each entity with respect to which an assumption shall be made in any Additional Insolvency Opinion will have complied and will comply with all of the assumptions made with respect to it in any Additional Insolvency Opinion.

(d) All of the assumptions made in the True Lease Opinion, including, but not limited to, any exhibits attached thereto, are true and correct and any assumptions made in any subsequent true lease opinion required to be delivered in connection with the Loan Documents (an “**Additional True Lease Opinion**”), including, but not limited to, any exhibits attached thereto, will have been and shall be true and correct. Each SPE Party has complied and will comply with, and Borrower shall cause Operating Company to comply with, all of the assumptions made with respect to such SPE Parties and Operating Company in the True Lease Opinion. Each SPE Party will have complied and will comply with all of the assumptions made with respect to such SPE Parties in any Additional True Lease Opinion. Each entity with respect to which an assumption shall be made in any Additional True Lease Opinion will have complied and will comply with all of the assumptions made with respect to it in any Additional True Lease Opinion.

**4.1.31 Operating Leases; Operating Lease Guaranty.** The Operating Leases and the Operating Lease Guaranty are in full force and effect and there is no default thereunder by any party thereto and no event has occurred that, with the passage of time and/or the giving of notice would constitute a default thereunder.

**4.1.32 Illegal Activity.** No portion of any Individual Property or the Collateral has been or will be purchased with proceeds of any illegal activity.

**4.1.33 Intentionally Omitted.**

**4.1.34 Investment Company Act.** Borrower is not an “investment company” or a company “controlled” by an “investment company,” within the meaning of the Investment Company Act of 1940, as amended.

**4.1.35 Embargoed Person.** At all times throughout the term of the Loan, including after giving effect to any Transfers permitted pursuant to the Loan Documents, (a) none of the funds or other assets of Borrower, Senior Mezzanine Borrower, Mortgage Borrower, Holdings, Operating Company and Guarantor constitute property of, or are beneficially owned, directly or indirectly, by any person, entity or government subject to trade restrictions under U.S. law, including, but not limited to, the International Emergency Economic Powers Act, 50 U.S.C. § 1701 *et seq.*, The Trading with the Enemy Act, 50 U.S.C. App. 1 *et seq.*, and any Executive Orders or regulations promulgated thereunder with the result that the investment in any Loan Party or Operating Company, as applicable (whether directly or indirectly), is prohibited by law or the Loan made by the Lender is in violation of law

("Embargoed Person"); (b) no Embargoed Person has any interest of any nature whatsoever in any Loan Party, Holdings or Operating Company, as applicable, with the result that the investment in any Loan Party, Holdings or Operating Company, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law; and (c) none of the funds of any Loan Party, Holdings or Operating Company, as applicable, have been derived from any unlawful activity with the result that the investment in any Loan Party, Borrower, Holdings or Operating Company, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law.

**4.1.36 Operating Lease Subsidiary.** Tahoe Propco, LLC is the owner of one hundred percent (100%) of the equity interests of Ground Lease Subsidiary; Ground Lease Subsidiary does not own any assets other than its interests in the Ground Lease and does not have any liabilities other than liabilities under the Ground Lease; Ground Lease Subsidiary does not engage in any business other than that related to its ownership of interests in the Ground Lease.

**4.1.37 Taxes including Gaming Taxes and Fees.** Mortgage Borrower, Borrower and each of their respective Affiliates, and Operating Company and each of its Affiliates, have filed or caused to be filed all Federal, state, local and foreign tax returns (including, without limitation, all reports relating to gaming taxes and fees to the Gaming Authorities) which are required to be filed by them, on or prior to the date hereof, other than tax returns in respect of taxes that (i) are not franchise, capital or income taxes, (ii) in the aggregate are not material and (iii) would not, if unpaid, result in the imposition of any material Lien on any property or assets of Mortgage Borrower, Senior Mezzanine Borrower, Borrower or Operating Company or any of their respective Affiliates. All such filed tax returns were, to Borrower's knowledge, true, correct and complete when filed. Mortgage Borrower, Senior Mezzanine Borrower, Borrower, Operating Company and each of their respective Affiliates, have paid or caused to be paid all taxes shown to be due and payable on such filed returns or on any assessments received by them, other than any taxes or assessments the validity of which Mortgage Borrower, Senior Mezzanine Borrower, Borrower, Operating Company or such Affiliate, as applicable) is contesting in good faith by appropriate proceedings, and with respect to which Mortgage Borrower, Senior Mezzanine Borrower, Borrower, Operating Company or such Affiliate, as applicable, shall have set aside adequate reserves. None of Mortgage Borrower, Senior Mezzanine Borrower, Borrower, Operating Company or any of their respective Affiliates, has as of the date hereof requested or been granted any extension of time to file any Federal, state, local or foreign tax return. None of Mortgage Borrower, Senior Mezzanine Borrower, Borrower or Operating Company is party to (or has any obligation under) any tax sharing agreement.

**4.1.38 Intentionally Omitted.**

**4.1.39 Intentionally Omitted.**

**4.1.40 Operation of Property.**

(a) The operation, management and use of each Individual Property by Mortgage Borrower and Operating Company is in compliance in all material respects with

applicable Legal Requirements, including all applicable Gaming Laws, and all other federal, state, or local governmental authorities including, without limitation, those requirements relating to such Individual Property's physical structure and environment, except to the extent that non-compliance would not reasonably be expected to have an Individual Material Adverse Effect.

(b) The licenses, permits, and regulatory agreements, approvals and registrations relating to each Individual Property, including the Gaming Licenses, (i) may not be, and have not been, transferred to any location other than any Individual Property; have not been pledged as collateral security for any other loan or indebtedness; and are held free from restrictions or known conflicts that would materially impair the use or operation of any Individual Property as intended, (ii) are in full force and effect and in good standing and (iii) are not provisional, conditional or probationary in any manner.

(c) None of Mortgage Borrower, Senior Mezzanine Borrower, Borrower, Holdings, Guarantor or Operating Company is currently the subject of any proceeding by any Governmental Authority, and no notice of any violation has been received from a Governmental Authority that, in either case, would reasonably be expected to have an Individual Material Adverse Effect or an Aggregate Material Adverse Effect.

(d) None of Mortgage Borrower, Senior Mezzanine Borrower, Borrower or Operating Company has received a statement of charges or deficiencies and no penalty enforcement actions have been undertaken against any of them relating to any Individual Property by any Governmental Authority during the last three (3) calendar years which caused or could cause an Individual Material Adverse Effect or an Aggregate Material Adverse Effect.

(e) Each Operating Lease and Operating Lease Guaranty is in full force and effect and no party to either agreement has defaulted thereunder in any material respect.

(f) None of Mortgage Borrower or Operating Company has pledged its receivables relating to any of the Properties as collateral security for any other loan or indebtedness.

**4.1.41 Senior Loan Representations and Warranties.** All of the representations and warranties contained in the Mortgage Loan Documents and Senior Mezzanine Loan Documents are hereby incorporated into this Agreement and deemed made hereunder as and when made thereunder and shall remain incorporated without regard to any waiver, amendment or other modification thereof by the Mortgage Lender or Senior Mezzanine Lender or to whether the related Mortgage Loan Document or Senior Mezzanine Loan Document has been repaid or otherwise terminated, unless otherwise consented to in writing by Lender.

**4.1.42 Affiliates.** Effective as of the consummation of the transactions contemplated by this Agreement, the sole member of Borrower is Principal, which owns one hundred percent (100%) of the membership interests in Borrower. Borrower does not have any subsidiaries except as set forth in Schedule VIII.

**Section 4.2. Survival of Representations.** Borrower agrees that all of the representations and warranties of Borrower set forth in Section 4.1 and elsewhere in this

Agreement and in the other Loan Documents shall survive for so long as any amount remains owing to Lender under this Agreement or any of the other Loan Documents by Borrower. All representations, warranties, covenants and agreements made in this Agreement or in the other Loan Documents by Borrower shall be deemed to have been relied upon by Lender notwithstanding any investigation heretofore or hereafter made by Lender or on its behalf.

## V. BORROWER COVENANTS

**Section 5.1. Affirmative Covenants.** From the date hereof and until payment and performance in full of all obligations of Borrower under the Loan Documents or the earlier release of the Liens of the Pledge Agreement (and all related obligations) in accordance with the terms of this Agreement and the other Loan Documents, Borrower hereby covenants and agrees with Lender that:

**5.1.1 Existence; Compliance with Legal Requirements.** Borrower shall, and shall cause Mortgage Borrower, Senior Mezzanine Borrower and Operating Company to, do or cause to be done all things necessary to preserve, renew and keep in full force and effect their existence, rights, licenses, permits and franchises and comply with all Legal Requirements applicable to Borrower, Senior Mezzanine Borrower, Mortgage Borrower, the Collateral, the Senior Mezzanine Collateral, Operating Company and the Properties, including, without limitation, Prescribed Laws. There shall never be committed by Borrower and Borrower shall not permit Mortgage Borrower or Senior Mezzanine Borrower to permit any other Person in occupancy of or involved with the operation or use of the Properties, including Operating Company, to commit any act or omission affording the federal government or any state or local government the right of forfeiture against the Collateral, the Senior Mezzanine Collateral, any Individual Property or any part thereof or any monies paid in performance of Borrower's obligations under any of the Loan Documents. Borrower hereby covenants and agrees not to commit, permit or suffer to exist any act or omission affording such right of forfeiture. Borrower shall, and shall cause Mortgage Borrower to, at all times maintain, preserve and protect all franchises and trade names and preserve all the remainder of its property used or useful in the conduct of its business and shall keep the Properties in good working order and repair. Borrower shall cause Mortgage Borrower to keep the Properties insured at all times as (and in the amounts) provided elsewhere in this Agreement. Borrower shall cause Mortgage Borrower to operate any Individual Property that is the subject of the O&M Agreement in accordance with the terms and provisions thereof in all material respects. After prior notice to Lender, Borrower, at its own expense, may contest (or cause Mortgage Borrower to contest) by appropriate legal proceeding promptly initiated and conducted in good faith and with due diligence, the validity of any Legal Requirement, the applicability of any Legal Requirement to Borrower, Senior Mezzanine Borrower, Mortgage Borrower, the Collateral, the Senior Mezzanine Collateral or any Individual Property or any alleged violation of any Legal Requirement, provided that (i) no Event of Default has occurred and remains uncured; (ii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any applicable material instrument to which Borrower, Senior Mezzanine Borrower or Mortgage Borrower is subject and shall not constitute a default thereunder and such proceeding shall be conducted in accordance with all Legal Requirements; (iii) none of the Collateral, the Senior Mezzanine Collateral or any Individual Property nor any material part thereof or interest therein will be in imminent danger of being

sold, forfeited, terminated, cancelled or lost; (iv) Borrower shall promptly upon receipt of a final, non-appealable determination thereof comply with any such Legal Requirement determined to be valid or applicable or cure any violation of any such Legal Requirement; (v) such proceeding shall suspend the enforcement of the contested Legal Requirement against Borrower, Senior Mezzanine Borrower, Mortgage Borrower, the Collateral, the Senior Mezzanine Collateral and any Individual Property; and (vi) Borrower shall furnish such security as may be required in the proceeding, or as may be reasonably requested by Lender, to insure compliance with such Legal Requirement, together with all interest and penalties payable in connection therewith. Lender may apply any such security, as necessary to cause compliance with such Legal Requirement at any time when, in the reasonable judgment of Lender, the validity, applicability or violation of such Legal Requirement is finally established or the Collateral, the Senior Mezzanine Collateral or any Individual Property (or any part thereof or interest therein) shall be in imminent danger of being sold, forfeited, terminated, cancelled or lost.

**5.1.2 Taxes and Other Charges.** Borrower shall pay or shall cause Mortgage Borrower to pay or cause to be paid all Taxes and Other Charges now or hereafter levied or assessed or imposed against the Properties or any part thereof as the same become due and payable; provided, however, Borrower's obligation to cause Mortgage Borrower to directly pay or cause to be paid Taxes shall be suspended for so long as Borrower complies with the terms and provisions of Section 7.2 hereof. Borrower will deliver or cause to be delivered to Lender receipts for payment or other evidence satisfactory to Lender that the Taxes and Other Charges have been so paid or are not then delinquent no later than the date on which the Taxes and/or Other Charges would otherwise be delinquent if not paid. Borrower shall furnish or cause to be furnished to Lender receipts for the payment of the Taxes and the Other Charges prior to the date the same shall become delinquent provided, however, Borrower is not required to furnish such receipts for payment of Taxes in the event that such Taxes have been paid by Lender pursuant to Section 7.2 hereof. Borrower shall not suffer (and shall not permit Mortgage Borrower to suffer) and shall promptly pay or cause to be paid and discharged (or cause Mortgage Borrower to pay or cause to be paid and discharged any Lien or charge whatsoever which may be or become a Lien or charge against the Properties other than Permitted Encumbrances, and shall promptly pay or cause to be paid for all utility services provided to the Properties. After prior notice to Lender, Borrower, at its own expense, may contest (or cause Mortgage Borrower to contest) by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any Taxes or Other Charges, provided that (a) no Default or Event of Default has occurred and remains uncured; (b) such proceeding shall be permitted under and be conducted in accordance with the provisions of any applicable material other instrument to which Borrower or Mortgage Borrower is subject and shall not constitute a default thereunder and such proceeding shall be conducted in accordance with all Legal Requirements; (c) none of the Collateral, the Senior Mezzanine Collateral, any Individual Property or any part of either or interest in either will be in imminent danger of being sold, forfeited, terminated, cancelled or lost; (d) Borrower shall promptly upon receipt of a final, non-appealable determination thereof pay (or cause Mortgage Borrower to pay) the amount of any such Taxes or Other Charges, together with all costs, interest and penalties which may be payable in connection therewith; (e) such proceeding shall suspend the collection of such contested Taxes or Other Charges from the applicable Individual Property; and (f) Borrower shall furnish or cause Mortgage Borrower to furnish such security as may be required in the proceeding, or as may be reasonably requested by Lender, to insure the payment

of any such Taxes or Other Charges, together with all interest and penalties thereon. Lender may pay over any such cash deposit or part thereof held by Lender to the claimant entitled thereto at any time when, in the judgment of Lender, the entitlement of such claimant is established or any Individual Property (or part thereof or interest therein) shall be in danger of being sold, forfeited, terminated, cancelled or lost or there shall be any danger of the Lien of any Mortgage being primed by any related Lien.

**5.1.3 Litigation.** Borrower shall give prompt notice to Lender of any litigation or governmental proceedings pending or, to Borrower's knowledge, threatened against Borrower, Senior Mezzanine Borrower, Mortgage Borrower, the Collateral, Operating Company, Holdings or Guarantor which, in any such case, might materially adversely affect Borrower's, Senior Mezzanine Borrower's, Mortgage Borrower's, the Collateral's, Operating Company's, Holdings's or Guarantor's condition (financial or otherwise) or business or any Individual Property. Borrower shall not, without the prior written consent of Lender (which may be furnished or withheld at its sole and absolute discretion), give its consent or approval to the settlement of any claim against Borrower, other than a fully insured third party claim, in any amount greater than One Hundred Thousand and No/100 Dollars (\$100,000.00).

**5.1.4 Access to Properties.** Borrower shall cause Mortgage Borrower to permit agents, representatives and employees of Lender and any Noteholder, and prospective purchasers of any Note or any interest therein, to inspect the Properties or any part thereof at reasonable hours upon reasonable advance notice, and Borrower shall cause Operating Company to permit such access by Lender, in each case subject to the rights of tenants under Leases and Hotel guests.

**5.1.5 Notice of Default.** Borrower shall promptly advise Lender of any material Default or Event of Default of which Borrower has knowledge, including any Mortgage Loan Default, Senior Mezzanine Loan Default, Senior Mezzanine Loan Event of Default or Mortgage Loan Event of Default.

**5.1.6 Cooperate in Legal Proceedings.** Borrower shall cooperate fully with Lender with respect to any proceedings before any court, board or other Governmental Authority which may in any way affect the rights of Lender hereunder or any rights obtained by Lender under any of the other Loan Documents and, in connection therewith, permit Lender, at its election, to participate in any such proceedings.

**5.1.7 Perform Loan Documents.** Borrower shall observe, perform and satisfy all the terms, provisions, covenants and conditions of, and shall pay when due all costs, fees and expenses to the extent required under the Loan Documents executed and delivered by, or applicable to, Borrower.

**5.1.8 Award and Insurance Benefits.** Borrower shall cooperate with Lender in obtaining for Lender the benefits of any Awards or Insurance Proceeds lawfully or equitably payable in connection with any Individual Property, and Lender shall be reimbursed for any actual, reasonable out-of-pocket expenses incurred in connection therewith (including actual, reasonable out-of-pocket attorneys' fees and disbursements, and, if reasonably required, the payment by Borrower of the expense of an appraisal on behalf of Lender in case of Casualty or

Condemnation affecting any Individual Property or any part thereof) out of such Insurance Proceeds.

**5.1.9 Further Assurances.** Borrower shall and shall cause Mortgage Borrower, Senior Mezzanine Borrower, Guarantor and Operating Company to, at Borrower's sole cost and expense:

(a) furnish to Lender all instruments, documents, boundary surveys, footing or foundation surveys, certificates, plans and specifications, appraisals, title and other insurance reports and agreements, and each and every other document, certificate, agreement and instrument, in each case in such party's possession, not subject to confidentiality restrictions barring the delivery of such materials, and which are either required to be furnished by Borrower or Operating Company pursuant to the terms of the Loan Documents or which are reasonably requested by Lender in connection therewith;

(b) execute and deliver to Lender such documents, instruments, certificates, assignments and other writings, and do such other acts necessary or desirable, to evidence, preserve and/or protect the collateral at any time securing or intended to secure the obligations of Borrower under the Loan Documents, as Lender may reasonably require; and

(c) do and execute all and such further lawful and reasonable acts, conveyances and assurances for the better and more effective carrying out of the intents and purposes of this Agreement and the other Loan Documents, as Lender shall reasonably require from time to time.

**5.1.10 Mortgage Taxes.** Borrower represents that it has caused Mortgage Borrower to pay all state, county and municipal recording and all other taxes imposed upon the execution and recordation of the Mortgage.

**5.1.11 Financial Reporting.** (a) Borrower will keep or will cause to be kept and maintained on a Fiscal Year basis, in accordance with GAAP (or such other accounting basis acceptable to Lender), books, records and accounts reflecting all of the financial affairs of Borrower, Senior Mezzanine Borrower and Mortgage Borrower and all items of income and expense in connection with the operation on an individual basis of the Properties. Lender (at Lender's sole cost and expense) shall have the right from time to time at all times during normal business hours upon reasonable notice to examine the books, records and accounts of Borrower, Senior Mezzanine Borrower and Mortgage Borrower at the office of Borrower or any other Person maintaining such books, records and accounts and to make such copies or extracts thereof as Lender shall desire. After the occurrence and during the continuance of an Event of Default, Borrower shall pay any costs and expenses incurred by Lender to examine Borrower's, Senior Mezzanine Borrower's, Mortgage Borrower's or to the extent permitted under the Operating Lease, Operating Company's accounting records with respect to the Properties, as Lender shall determine to be necessary or appropriate in the protection of Lender's interest.

(b) Borrower will furnish or cause to be furnished to Lender annually, by no later than April 30, 2009, and thereafter within no more than one hundred twenty (120) days following the end of each Fiscal Year of Borrower, a complete copy of the annual financial

statements of the Operating Companies, Mortgage Borrower, Senior Mezzanine Borrower and Borrower (and of no other entity or Person), audited by a “Big Four” accounting firm or other independent certified public accountant acceptable to Lender in accordance with GAAP (or such other accounting basis acceptable to Lender) covering the Properties on a combined basis for such Fiscal Year (and no other Persons, Properties or assets) and containing statements of profit and loss for the Operating Companies, Borrower, Senior Mezzanine Borrower, Mortgage Borrower and the Properties (on a combined basis) and a balance sheet for the Operating Companies, Borrower, Senior Mezzanine Borrower, Mortgage Borrower and the Properties (on a combined basis), in each case showing no other assets than the Properties (and the interests of Operating Companies, Mortgage Borrower, Senior Mezzanine Borrower and Borrower therein). In addition, Borrower will furnish or cause to be furnished to Lender by no later than April 30, 2008 (i) a “balance sheet only audit” prepared by a “Big Four” accounting firm or other independent certified public accountant acceptable to Lender (for the Fiscal Year ending December 31, 2007) and (ii) a complete copy of annual financial statements for the Operating Company, Mortgage Borrower, Senior Mezzanine Borrower and Borrower prepared in accordance with GAAP (or such other accounting basis acceptable to Lender) covering the Operating Companies, Mortgage Borrower, Borrower, Senior Mezzanine Borrower, and the Properties on a combined basis for such Fiscal Year (ending December 31, 2007) and containing statements of profit and loss for the Operating Companies, Mortgage Borrower, Senior Mezzanine Borrower, Borrower and the Properties (in each case, on a combined basis), and a balance sheet for the Operating Companies, Mortgage Borrower, Senior Mezzanine Borrower, Borrower and the Properties (in each case on a combined basis). All such statements (including statements for the Fiscal Year ending December 31, 2007, and thereafter for all statements provided yearly to Lender) shall set forth the financial condition and the results of operations for the Properties for such Fiscal Year, and shall include, but not be limited to, amounts representing Borrower’s reasonable and good faith determination of aggregate annual EBITDAR from all of the Properties and capital expenditures (allocated between maintenance and growth) at the Properties (it being acknowledged that Borrower’s statement of EBITDAR pursuant to the above provisions of this sentence and the balance of this Section 5.1.11 shall not be binding on Lender and shall be subject to Lender’s reasonable review). All such statements (including statements for the Fiscal Year ending December 31, 2007, and thereafter for all statements provided yearly to Lender) shall also set forth unaudited schedules for each Individual Property, detailing the statements of profit and loss and a balance sheet for each Individual Property, as well as gross revenues, gross hotel and casino revenues, EBITDAR and capital expenditures (allocated between maintenance and growth). The annual financial statements, as described above, shall be accompanied by (1) a comparison of the budgeted income and expenses and the actual income and expenses for the prior Fiscal Year, (2) in the case of any financial statements for Fiscal Year 2008 and thereafter, an unqualified opinion of a “Big Four” accounting firm or other independent certified public accountant reasonably acceptable to Lender, (3) room rate reports and RevPAR calculations, and (4) an Officer’s Certificate certifying (A) that each annual financial statement presents fairly the financial condition and the results of operations of the Operating Companies, Borrower, Mortgage Borrower, Senior Mezzanine Borrower and the Properties being reported upon, (B) that such financial statements have been prepared in accordance with GAAP (or such other accounting basis acceptable to Lender) and (C) as of the date thereof whether there exists an event or circumstance which constitutes a Default or Event of Default, and if such Default or Event of Default exists, the nature thereof, the period of time it has existed and the action then

being taken to remedy the same. Any audits performed by Borrower (and any audited materials and other information provided to Lender, as required hereunder in order for Borrower to comply with the requirements of this subparagraph (b)) may be performed with respect to the Properties on a “combining basis” (so that a single audit of the Properties, rather than individual audits of each of the separate Properties, may be performed and provided).

(c) Borrower will furnish, or cause to be furnished, to Lender on or before sixty (60) days after the end of each fiscal quarter the following items, accompanied by an Officer’s Certificate stating that such items fairly present the financial condition and results of the Operating Companies, Mortgage Borrower, Senior Mezzanine Borrower, Borrower and the Properties, subject to normal year end adjustments, as applicable: (i) quarterly and year to date operating statements (including Capital Expenditures) noting such information as is necessary and sufficient to fairly represent the financial position and results of operation of the Properties during such quarter, and containing a comparison of budgeted income and expenses and the actual income and expenses together with a detailed explanation of any variances of ten percent (10%) or more between budgeted and actual amounts for such periods, all in form reasonably satisfactory to Lender; and (ii) a calculation reflecting the Debt Service Coverage Ratio, gross revenues, gross hotel and casino revenues, EBITDAR and capital expenditures (allocated between maintenance and growth, in the case for the immediately preceding twelve (12) month period as of the last day of such quarter (it being acknowledged that Borrower’s statement of EBITDAR pursuant to the above provisions of this sentence and the balance of this Section 5.1.11 shall not be binding on Lender and shall be subject to Lender’s reasonable review). Borrower shall provide the statements and calculations required hereunder on both a “combined basis” for all Properties and on an Individual Property-by-Individual Property basis. In addition, such Officer’s Certificate shall also state that the representations and warranties of Borrower set forth in Section 4.1.30 are true and correct as of the date of such certificate and that there are no trade payables outstanding for more than ninety (90) days. In addition, prior to a Securitization or Syndication, Borrower shall be obligated to provide the statements and calculations, as well as the Officer’s Certificate, described in this subparagraph (c) to Lender on a monthly basis (such requirements to be modified as appropriate to reflect the fact that the information shall be required to be provided monthly (*e.g.*, monthly rent rolls, monthly and year-to-date operating statements, a calculation reflecting the Debt Service Coverage Ratio for the immediately preceding twelve (12) month period as of the last day of such month), in each case within no more than thirty (30) days following the end of each calendar month.

(d) For the partial year period commencing on the date hereof, and for each Fiscal Year thereafter, Borrower shall submit to Lender for informational purposes only an Annual Budget not later than the commencement of such period or Fiscal Year in form reasonably satisfactory to Lender.

(e) Intentionally Omitted.

(f) If, at the time one or more Disclosure Documents are being prepared for a public Securitization, Lender expects that Borrower alone or Borrower and one or more Affiliates of Borrower collectively, or the Properties and Related Properties collectively, will be a “**Significant Obligor**”, as that term is defined in Item 1101(k) of Regulation AB (as defined below), Borrower shall furnish to Lender upon request (i) the selected financial data or, if

applicable, net operating income, required under Item 1112(b)(1) of Regulation AB, if Lender expects that the principal amount of the Loan together with any other loans made to an Affiliate of Borrower or secured by a Related Property, that is included in a Securitization with the Loan (each, a **“Related Loan”**) as of the cut-off date for such Securitization may, or if the principal amount of the Loan together with any Related Loans as of the cut-off date for such Securitization and at any time during which the Loan and any Related Loans are included in a Securitization does, equal or exceed ten percent (10%) (but less than twenty percent (20%)) of the aggregate principal amount of all loans included or expected to be included, as applicable, in the Securitization or (ii) the financial statements required under Item 1112(b)(2) of Regulation AB, if Lender expects that the principal amount of the Loan together with any Related Loans as of the cut-off date for such Securitization may, or if the principal amount of the Loan together with any Related Loans as of the cut-off date for such Securitization and at any time during which the Loan and any Related Loans are included in a Securitization does, equal or exceed twenty percent (20%) of the aggregate principal amount of all loans included or expected to be included, as applicable, in the Securitization. Such financial data or financial statements shall be furnished to Lender (A) within ten (10) Business Days after written notice from Lender in connection with the preparation of Disclosure Documents for the Securitization, (B) not later than thirty (30) days after the end of each fiscal quarter of Borrower and (C) not later than sixty (60) days after the end of each fiscal year of Borrower; provided, however, that Borrower shall not be obligated to furnish financial data or financial statements pursuant to clauses (B) or (C) of this sentence with respect to any period for which a filing pursuant to the Exchange Act in connection with or relating to the Securitization (an **“Exchange Act Filing”**) is not required. If requested by Lender, in writing, Borrower shall use commercially reasonable efforts to furnish to Lender financial data and/or financial statements for any tenant of any of the Properties (other than a tenant that is a reporting company under the Exchange Act) if, in connection with a Securitization, Lender expects there to be, with respect to such tenant or group of affiliated tenants, a concentration within all of the loans included or expected to be included, as applicable, in the Securitization such that such tenant or group of affiliated tenants would constitute a Significant Obligor. **“Related Property”** shall mean a parcel of real property, together with improvements thereon and personal property related thereto, that is “related”, within the meaning of the definition of Significant Obligor, to any of the Properties. **“Regulation AB”** shall mean Regulation AB under the Securities Act and the Exchange Act, as such Regulation may be amended from time to time.

(g) All financial data and financial statements provided by Borrower, Senior Mezzanine Borrower, Mortgage Borrower and Operating Company hereunder pursuant to Section 5.1.11(f) shall be prepared in accordance with GAAP, and all such financial statements shall meet the requirements of Regulation AB, Regulation S-X, Regulation S-K to the extent applicable and any other applicable legal requirements. All financial statements referred to in clause (ii) of Section 5.1.11(f) shall be audited by independent accountants of Borrower reasonably acceptable to Lender in accordance with Regulation AB, Regulation S-X, Regulation S-K to the extent applicable and all other applicable legal requirements, shall be accompanied by the manually executed report of the independent accountants thereon, which report shall meet the requirements of Regulation AB, Regulation S-X, Regulation S-K to the extent applicable and all other applicable legal requirements, and shall be further accompanied by a manually executed written consent of the independent accountants, in form and substance reasonably acceptable to Lender, to the inclusion of such financial statements in any Disclosure

Document and any Exchange Act Filing and to the use of the name of such independent accountants and the reference to such independent accountants as “experts” in any Disclosure Document and Exchange Act Filing, all of which shall be provided at the same time as the related financial statements are required to be provided, in each case if applicable (*i.e.*, in the case of a public securitization). All financial data and financial statements (audited or unaudited) provided by Borrower under this Section 5.1.11(g) shall be accompanied by an Officer’s Certificate which shall state that such financial statements meet the requirements set forth in the first sentence of this Section 5.1.11(g) to the extent applicable.

(h) If requested by Lender, Borrower shall provide Lender, promptly upon request, with any other or additional financial statements, or financial, statistical or operating information, as Lender shall reasonably determine to be required pursuant to Regulation AB, Regulation S-X, Regulation S-K or any amendment, modification or replacement thereto or other legal requirements in connection with any Disclosure Document or any Exchange Act Filing or as shall otherwise be reasonably requested by the Lender.

(i) In the event Lender reasonably determines, in connection with a Securitization, that the financial data and financial statements required in order to comply with Regulation AB, Regulation S-X, Regulation S-K or any amendment, modification or replacement thereto or other legal requirements are other than as provided herein, then notwithstanding the provisions of Sections 5.1.11(f) and (g), Lender may request, and Borrower shall promptly provide, such other financial statements as Lender determines to be necessary or appropriate for such compliance.

(j) Any reports, statements or other information required to be delivered under this Agreement shall be delivered (i) in paper form, and (ii) if requested by Lender and within the capabilities of Borrower’s data systems without change or modification thereto, in electronic form and prepared using a Microsoft Word for Windows or WordPerfect for Windows files (which files may be prepared using a spreadsheet program and saved as word processing files). Borrower agrees that Lender may disclose information regarding any of the Properties, the Collateral, the Senior Mezzanine Collateral, Mortgage Borrower, Senior Mezzanine Borrower, Borrower and Operating Company that is provided to Lender pursuant to this Section in connection with the Securitization to such parties reasonably requesting such information in connection with such Securitization.

**5.1.12 Business and Operations.** Borrower will, and will cause Mortgage Borrower and Operating Company to, continue to engage in the businesses presently conducted by it as and to the extent the same are necessary for the ownership, maintenance, management and operation of the Properties. Borrower will and will cause Senior Mezzanine Borrower, Mortgage Borrower and Operating Company to qualify to do business and will remain in good standing under the laws of each jurisdiction as and to the extent the same are required for the ownership, maintenance, management and operation of the Properties.

**5.1.13 Title to the Properties.** Borrower will cause Mortgage Borrower to warrant and defend (a) the title to each Individual Property and every part thereof, subject only to Liens permitted hereunder (including Permitted Encumbrances) and (b) the validity and priority of the Liens of the Mortgages and the Assignments of Leases, subject only to Liens permitted

hereunder (including Permitted Encumbrances), in each case against the claims of all Persons whomsoever. Borrower shall reimburse Lender for any actual out-of-pocket losses, costs, damages or expenses (including reasonable attorneys' fees and court costs) incurred by Lender if an interest in any Individual Property, other than as permitted hereunder, is claimed by another Person. Borrower will warrant and defend (a) the title to the Collateral and every part thereof, subject only to Liens permitted hereunder and (b) the validity and priority of the Liens of the Pledge Agreement, in each case against the claims of all Persons whomsoever. Borrower shall reimburse Lender for any actual out-of-pocket losses, costs, damages or expenses (including reasonable attorneys' fees and court costs) incurred by Lender if an interest in any part of the Collateral, other than as permitted hereunder, is claimed by another Person.

**5.1.14 Costs of Enforcement.** In the event (a) that any Mortgage encumbering any Individual Property or the Lien of the Pledge Agreement is foreclosed in whole or in part or that any such Mortgage or Pledge Agreement is put into the hands of an attorney for collection, suit, action or foreclosure, (b) of the foreclosure of any mortgage prior to or subsequent to any Mortgage or any Lien prior to or subsequent to the Lien of the Pledge Agreement in which proceeding Mortgage Lender or Lender is made a party or exercises any or all of its rights or remedies under such Mortgage or the Pledge Agreement or any other Loan Documents as and when permitted thereby, or (c) of the bankruptcy, insolvency, rehabilitation or other similar proceeding in respect of Borrower, Senior Mezzanine Borrower, Mortgage Borrower or Operating Company or an assignment by Borrower, Senior Mezzanine Borrower, Mortgage Borrower or Operating Company for the benefit of its creditors, Borrower, its successors or assigns, shall be chargeable with and agrees to pay all reasonable out-of-pocket costs of collection and defense, including reasonable out-of-pocket attorneys' fees and costs, incurred by Lender, Mortgage Borrower, Senior Mezzanine Borrower or Borrower in connection therewith and in connection with any appellate proceeding or post-judgment action involved therein, together with all required service or use taxes.

**5.1.15 Estoppel Statement.** (a) After request by Lender, Borrower shall within ten (10) Business Days (but, provided there exists no Default or Event of Default, no more often than twice during the course of each fiscal year of Borrower) furnish Lender with a statement, duly acknowledged and certified, (i) with respect to the Loan, setting forth (A) the original principal amount of the Note, (B) the unpaid principal amount of the Loan, (C) the Interest Rate of the Loan, (D) the date installments of interest and/or principal were last paid, (E) any offsets or defenses to the payment of the Debt, if any, and (F) that the Note, this Agreement, the Pledge Agreement and the other Loan Documents are valid, legal and binding obligations and have not been modified or if modified, giving particulars of such modification, (ii) with respect to any Senior Mezzanine Loan, setting forth (A) the original principal amount of the applicable Senior Mezzanine Loan, (B) the unpaid principal amount of the Senior Mezzanine Loan, (C) the interest rate of the Senior Mezzanine Loan, (D) the date installments of interest and/or principal were last paid, (E) any offsets or defenses to the payment of the debt, if any, and (F) that the Senior Mezzanine Note, the Senior Mezzanine Loan Agreement and the other Senior Mezzanine Loan Documents are valid, legal and binding obligations and have not been modified or if modified, giving particulars of such modification and (iii) with respect to the Mortgage Loan, setting forth (A) the original principal amount of the Mortgage Loan, (B) the unpaid principal amount of the Mortgage Loan, (C) the interest rate of the Mortgage Loan, (D) the date installments of interest and/or principal were last paid, (E) any offsets or defenses to the payment of the debt, if any, and

(F) that the Mortgage Note, the Mortgage Loan Agreement, the Security Instruments and the other Mortgage Loan Documents are valid, legal and binding obligations and have not been modified or if modified, giving particulars of such modification.

(b) Borrower shall exercise reasonable best efforts to deliver to Lender upon request, tenant estoppel certificates from each space tenant leasing space at the Properties, and shall exercise reasonable best efforts to deliver an estoppel certificate from each Ground Lessor, each in form and substance reasonably satisfactory to Lender provided that Borrower shall not be required to deliver such certificates more frequently than two (2) times in any calendar year.

(c) After request by Borrower, but not more than twice during the course of each year, Lender shall furnish Borrower with a statement setting forth (i) the original principal amount of the Loan, (ii) the unpaid principal amount of the Loan, (iii) the Interest Rate of the Loan, (iv) the date installments of interest and/or principal were last paid, and (v) that the Loan Documents have not been modified or if modified, giving particulars of such modification.

**5.1.16 Loan Proceeds.** Borrower shall use the proceeds of the Loan received by it on the Closing Date only for the purposes set forth in Section 2.1.4.

**5.1.17 Performance by Borrower.** Borrower shall in a timely manner observe, perform and fulfill each and every covenant, term and provision of each Loan Document executed and delivered by, or applicable to, Borrower, and shall not enter into or otherwise suffer or permit any amendment, waiver, supplement, termination or other modification of any Loan Document executed and delivered by, or applicable to, Borrower without the prior consent of Lender. Borrower shall cause Mortgage Borrower and Senior Mezzanine Borrower, in a timely manner, to observe, perform and fulfill each and every covenant, term and provision of each Mortgage Loan Document and Senior Mezzanine Loan Documents executed and delivered by, or applicable to, Mortgage Borrower and Senior Mezzanine Borrower, and shall not cause or permit Mortgage Borrower or Senior Mezzanine Borrower to enter into or otherwise suffer or permit any amendment, waiver, supplement, termination or other modification of any Mortgage Loan Document or Senior Mezzanine Loan Document executed and delivered by, or applicable to, Mortgage Borrower or Senior Mezzanine Borrower without the prior written consent of Lender.

**5.1.18 Confirmation of Representations.** Borrower shall deliver, in connection with any Securitization, (a) one or more Officer's Certificates certifying as to the accuracy of all representations made by Borrower in the Loan Documents as of the date of the closing of such Securitization in all relevant jurisdictions, and (b) certificates of the relevant Governmental Authorities in all relevant jurisdictions indicating the good standing and qualification of Mortgage Borrower, Senior Mezzanine Borrower, Borrower and Holdings as of the date of the Securitization.

**5.1.19 No Joint Assessment.** Borrower shall not, and shall not permit Mortgage Borrower to, suffer, permit or initiate the joint assessment of any Individual Property (a) with any other real property constituting a tax lot separate from such Individual Property, and (b) which constitutes real property with any portion of such Individual Property which may be deemed to constitute personal property, or any other procedure whereby the lien of any taxes

which may be levied against such personal property shall be assessed or levied or charged to such real property portion of the Individual Property, except as required by Legal Requirements.

**5.1.20 Leasing Matters.** (a) Borrower shall not (and shall cause Mortgage Borrower and Guarantor (Operating Lease) not to), without the prior written consent of Lender (and, if a Securitization shall have occurred, Borrower shall have obtained and delivered to Lender a Rating Agency Confirmation) restate, materially modify, materially amend or materially supplement (or permit the restatement, material modification, amendment or supplement of) any Operating Lease or Operating Lease Guaranty (provided, that any modification, amendment or supplement affecting any of the economic terms of any Operating Lease or any of the terms of the Operating Lease Guaranty shall be deemed to be material for purposes hereof), terminate or accept the surrender (or permit the termination or surrender) of any Operating Lease or Operating Lease Guaranty, or release or materially waive (or permit the release or material waiver of) the Operating Company or Guarantor (Operating Lease) from the performance or observance of any obligation or condition under the Operating Leases or Operating Lease Guaranty. In connection with a material modification, Lender may request, and in such event, Borrower shall not effect such modification without, an Additional True Lease Opinion in form and substance reasonably satisfactory to Lender issued by Borrower's counsel (at Borrower's expense). Borrower shall not permit (or cause or permit Mortgage Borrower to permit) the prepayment of any rents under the Operating Leases for more than one (1) month prior to the due date thereof. Notwithstanding the foregoing, Lender's consent shall not be required in connection with any modification, amendment or waiver of any provision of the Operating Lease as may be reasonably necessary to comply with the requirements of this Agreement or any other Loan Document or that makes the provisions of the Operating Lease consistent with the provisions of this Agreement or any other Loan Document. Notwithstanding anything contained in this Section 5.1.20(a) to the contrary, (x) Lender's consent to any amendment, modification or supplement of the Operating Lease (or any new Operating Lease) or the Operating Lease Guaranty may also be conditioned on the delivery by Borrower, upon the reasonable request of Lender, of an Additional Insolvency Opinion and/or an Additional True Lease Opinion acceptable to Lender (and, if a Securitization shall have occurred, acceptable to the Rating Agencies), and (y) Lender's consent to any assignment of any Operating Lease or Operating Lease Guaranty (or of any interest therein) or any material amendment, material modification or material supplement of any Operating Lease shall also be conditioned on the delivery by Borrower, upon the reasonable request of Lender, of an Additional Insolvency Opinion and an Additional True Lease Opinion acceptable to Lender (and, if a Securitization shall have occurred, acceptable to the Rating Agencies).

(b) Borrower shall not permit (or consent to) an assignment by any Operating Company of any such Operating Company's interest(s) under any Operating Lease or an assignment by any Mortgage Borrower of any such Mortgage Borrower's interest(s) under any Operating Lease Guaranty without, in each case, Lender's prior written consent (and, if a Securitization shall have occurred, at Lender's request, without Borrower providing to Lender a Rating Agency Confirmation and an Additional True Lease Opinion).

(c) All space Leases and all renewals of space Leases executed after the date hereof entered into by Operating Company shall (i) provide for rental rates, rent credits and free rent periods comparable to existing local market rates for comparable properties, (ii) be on

commercially reasonable terms, (iii) provide that such Lease is subordinate to the Mortgage encumbering the Individual Property in question and that the lessee will attorn to Mortgage Lender and any purchaser at a foreclosure sale; (iv) not contain any terms which would materially adversely affect Lender's rights under the Loan Documents; (v) not grant to the Tenants thereunder any option or right to purchase the applicable Individual Property (or any portion thereof); and (v) in the case of Major Leases, have initial terms less than twenty (20) consecutive years, in each case (unless otherwise consented to by Lender pursuant to clause (d) below).

(d) (i) Any Major Lease entered into by Operating Company with respect to an Individual Property executed after the date hereof (and any renewal of any Major Lease with respect to an Individual Property), and any space Lease or space Lease renewal proposed to be entered into by Operating Company after the date hereof and that does not meet the criteria set forth in Sections 5.1.20(a) and subparagraph (c) above, shall be subject to the prior written approval of Lender, which approval shall not be unreasonably withheld, conditioned or delayed. Borrower shall not terminate or accept the surrender of (and shall not permit Operating Company or Mortgage Borrower to terminate or accept the surrender of) a Major Lease (unless by reason of a tenant default) without the consent of Lender.

(ii) Every submission to Lender of any proposed Major Lease (or Major Lease renewal, amendment, modification or termination) for Lender's approval shall be forwarded to Lender together with a notice from Borrower (in bold typeface) that states "YOUR FAILURE TO RESPOND TO THIS NOTICE AND REQUEST FOR APPROVAL WITHIN TEN (10) BUSINESS DAYS OF YOUR RECEIPT OF THIS NOTICE SHALL CONSTITUTE YOUR DEEMED CONSENT TO THE MATTERS DESCRIBED IN OR THAT ARE THE SUBJECT OF THIS NOTICE". If Lender responds to Borrower's request by identifying missing documents or materials that are incomplete or inaccurate (and that are the subject of the request for approval), then Borrower shall re-submit such documents or materials to Lender for its approval together with a second notice from Borrower that complies with this section.

(iii) If Lender fails to approve or disapprove any such proposed request or submission attached to a first notice or request sent by Borrower (or the matters that are the subject of the re-submitted notice or request for approval) within ten (10) Business Days of receipt of same, Borrower shall re-submit such instruments or materials to Lender for Lender's approval and give Lender a second notice (in bold typeface) that states "SECOND NOTICE — YOUR FAILURE TO RESPOND TO THIS NOTICE AND REQUEST FOR APPROVAL WITHIN FIVE (5) BUSINESS DAYS OF YOUR RECEIPT OF THIS NOTICE SHALL CONSTITUTE YOUR DEEMED CONSENT TO THE MATTERS DESCRIBED IN OR THAT ARE THE SUBJECT OF THIS NOTICE". If Lender fails to respond to such second notice within five (5) Business Days of receipt of same, then Lender's consent to the proposed request or submission that is the subject of such notice shall be deemed granted.

(e) Borrower shall and shall cause Mortgage Borrower and Operating Company to (i) observe and perform the obligations imposed upon the lessor under the Leases in a commercially reasonable manner; (ii) enforce the terms, covenants and conditions contained in the Leases upon the part of the lessee thereunder to be observed or performed in a commercially reasonable manner and in a manner not to impair the value of the Individual Property involved;

(iii) not collect any of the rents more than one (1) month in advance (other than security deposits); (iv) not execute any other assignment of lessor's interest in the Leases or the Rents (except as contemplated by the Loan Documents); (v) not alter, modify or change the terms of the Leases in a manner inconsistent with the provisions of the Loan Documents; and (vi) execute and deliver at the request of Lender all such further assurances, confirmations and assignments in connection with the Leases as Lender shall from time to time reasonably require.

(f) Upon request, Borrower shall furnish Lender with executed copies of all new Leases or Lease renewals or amendments.

(g) Notwithstanding anything to the contrary contained herein, Borrower shall not enter into (or permit Operating Company or Mortgage Borrower to enter into) a lease of all or substantially all of any Individual Property without Lender's prior consent.

**5.1.21 Alterations.** (a) Borrower shall cause all Alterations with respect to any portion of any of the Properties to be conducted and performed with due diligence in a good and workmanlike manner, and all materials used and work done shall be in accordance with all applicable Legal Requirements. In addition, with respect to the Convention Center Project and the Tower Project, to the extent such projects are pursued, Borrower agrees to cause Mortgage Borrower to (i) diligently pursue each such project to completion in a timely manner, subject to delays arising from Force Majeure events, (ii) cause the work to be performed in connection with each such project in substantial conformance with the plans and specifications for such project, and otherwise in conformity with the Mortgage Loan Agreement, each Senior Mezzanine Loan Agreement and this Agreement, (iii) provide Lender with reasonably detailed monthly progress reports (and such information as Lender shall reasonably request from time to time) regarding the status of the Convention Center Project and the Tower Project, (iv) upon the substantial completion of each such project, provide Lender with evidence of the substantial completion of each such project, copies of final unconditional lien waivers from the general contractors, construction managers or subcontractors for such project (if requested by Lender) and evidence of the final payment of all amounts due in connection with each such project, and a title search for the affected Individual Property indicating that such Individual Property is free from all liens, claims and other encumbrances not previously approved by Lender, and (v) upon final completion of each such project, provide Lender with a final survey acceptable to Lender showing the "as-built" location of the completed Improvements and all easements appurtenant thereto, and "as-built" plans and specifications for Lender's file and a certificate of occupancy to the extent issued by the relevant Governmental Authority.

(b) Borrower shall obtain Lender's prior consent to (i) any Material Alterations (unless collateral or a completion guaranty is provided as set forth in subparagraph (c) below) or (ii) any Alterations to any of the Improvements (even if otherwise described in clause (i) above) that is reasonably likely to have an Individual Material Adverse Effect. Lender's consent shall not be required for any Alterations other than the Alterations described in the preceding sentence. Notwithstanding any provision hereof to the contrary, without Lender's consent, not to be unreasonably withheld or delayed, in no event shall Borrower close or shutter, or undertake or permit any Tenant or other Person to undertake, an Alteration that, alone or together with other work then being undertaken, closes or shutters, more than ten percent (10%) of the income-generating space in any Individual Property at any one time. Prior to undertaking

any Alteration with respect to an Individual Property in excess of five percent (5%) of the sum of the Allocated Loan Amount for such Individual Property and the "Allocated Loan Amounts" under (and as defined in each of) the Mortgage Loan Agreement and the Other Mezzanine Loan Agreements for such Individual Property, to afford Lender a prior and reasonable opportunity to determine whether or not the proposed Alteration would have an Individual Material Adverse Effect, Borrower will deliver such plans, specifications, project schedules, logistical plans, construction budgets (including a statement of sources and uses) and such other information as Lender may reasonably request in respect of such Alteration for review by Lender (and its consultants). All reasonable out-of-pocket costs and expenses incurred by Lender in connection with reviewing said Alterations proposal, including, without limitation, reasonable counsel fees and disbursements and Lender's consultants, shall be paid by Borrower. The above-referenced submission to Lender shall be delivered with a notice from Borrower (in bold typeface) that states "YOUR FAILURE TO RESPOND TO THIS NOTICE AND REQUEST FOR APPROVAL WITHIN TEN (10) BUSINESS DAYS OF YOUR RECEIPT OF THIS NOTICE SHALL CONSTITUTE YOUR DEEMED CONSENT TO THE MATTERS DESCRIBED IN OR THAT ARE THE SUBJECT OF THIS NOTICE". If Lender responds to Borrower's request by identifying missing documents or materials that are incomplete or inaccurate (and that are the subject of the request for approval), then Borrower shall re-submit such documents or materials to Lender for its approval together with a second notice from Borrower that complies with this Section. If Lender fails to approve or disapprove any such proposed request or submission attached to a first notice or request sent by Borrower (or the matters that are the subject of the re-submitted notice or request for approval) within ten (10) Business Days of receipt of same, Borrower shall re-submit such instruments or materials to Lender for Lender's approval and give Lender a second notice (in bold typeface) that states "SECOND NOTICE — YOUR FAILURE TO RESPOND TO THIS NOTICE AND REQUEST FOR APPROVAL WITHIN TEN (10) BUSINESS DAYS OF YOUR RECEIPT OF THIS NOTICE SHALL CONSTITUTE YOUR DEEMED CONSENT TO THE MATTERS DESCRIBED IN OR THAT ARE THE SUBJECT OF THIS NOTICE". If Lender fails to respond to such second notice within ten (10) Business Days of receipt of same, then Lender's consent to the proposed request or submission that is the subject of such notice shall be deemed granted.

(c) With respect to any Material Alteration, unless otherwise consented to by Lender, Borrower shall promptly deliver to Mortgage Lender as security for the payment of such amounts and as additional security for Borrower's obligations under the Loan Documents any of the following: (A) cash, (B) U.S. Obligations, (C) other securities having a rating acceptable to Lender and that the applicable Rating Agencies have confirmed in writing will not, in and of itself, result in a downgrade, withdrawal or qualification of the initial, or, if higher, then current ratings assigned to any Securities or any class thereof in connection with any Securitization, (D) a completion and performance bond or an irrevocable letter of credit (payable on sight draft only) issued by an Eligible Institution, or (E) a completion guaranty from an Approved Guarantor in the form attached hereto as Exhibit A (with such changes as Lender shall approve), together with evidence reasonably satisfactory to Lender that the Approved Guarantor has reasonable liquidity taking into account the nature and amount of the guaranteed obligations under such completion guaranty (it being agreed that, if the Approved Guarantor in question is Holdings, then the amounts available for repayment of such obligations under any revolving credit facility in effect at such time in favor of Harrah's Operating Company, Inc. will be taken into account in determining whether Holdings has reasonable liquidity), and with, if required by

applicable Rating Agency requirements, an Additional Insolvency Opinion. Such security, including the amount of the guaranteed obligations under any completion guaranty delivered as aforesaid, shall be in an amount equal to the sum of (i) the excess of the total unpaid amounts with respect to alterations to the Improvements on the applicable Individual Property (other than such amounts to be paid or reimbursed by tenants under the Leases) over the Threshold Amount and (ii) the costs of collection, and, upon the occurrence and during the continuance of an Event of Default, Lender may apply such security from time to time at the option of Lender to pay for such alterations.

**5.1.22 Operation of Properties.** (a) Borrower shall cause Mortgage Borrower to cause each of the Properties to be operated, in all material respects, in accordance with the Operating Leases and in accordance with all applicable Legal Requirements, including Gaming Laws, and all Gaming Licenses and other Operating Permits and in a manner consistent with their respective use as of the Closing Date. Borrower shall cause Operating Company to post all required bonds, if any, with any Gaming Authority as and in the amounts required under all applicable Legal Requirements (and shall, if Lender makes a request therefor, promptly provide Lender with copies of all such bonds).

(b) Borrower shall not, without Lender's prior written consent, permit Operating Company to assign or transfer, and Operating Company shall not, without Lender's prior written consent, assign or transfer, or delegate any responsibilities with respect to, any Gaming License or Operating Permit.

(c) Borrower shall cause Operating Company to make all filings required under the Gaming Laws, or in connection with any Gaming Licenses or Operating Permits, including in connection with the origination of the Mortgage Loan and the Mezzanine Loans, and shall deliver copies of such filings as Lender shall reasonably request to Lender, promptly upon request. Borrower will timely pay all fees, investigative fees and costs required by the Gaming Authorities with respect to any such approvals and licenses. Borrower will and will cause Mortgage Borrower to diligently and comprehensively respond to any inquiries and requests from the Gaming Authorities and promptly file or cause to be filed any additional information required in connection with any required filings as soon as practicable after receipt of requests therefor.

(d) Upon request of Lender, Borrower shall deliver to Lender (or cause Operating Company to deliver to Lender) such evidence of compliance (by Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company and each Individual Property) with all Legal Requirements, including Gaming Laws as shall be reasonably requested by Lender. Borrower shall immediately deliver to Lender (and shall cause Operating Company and Mortgage Borrower to deliver to Lender) any notice of material non-compliance or material violation of any Legal Requirement, or of any material inquiry or investigation commenced by the Gaming Authorities in connection with any of the Properties. Borrower shall immediately notify Lender if it, Senior Mezzanine Borrower, Mortgage Borrower or Operating Company believe that any material license, including any Gaming License, is being or could be revoked or suspended, or that any action is pending, being considered or being, or could be, taken to revoke or suspend Borrower's, Senior Mezzanine Borrower's, Mortgage Borrower's or Operating Company's material licenses, including the Gaming Licenses, or to fine, penalize or impose

remedies upon Borrower, Mortgage Borrower, Senior Mezzanine Borrower or Operating Company, or that any action is pending, being considered, or being, or could be, taken to discontinue, suspend, deny, decrease or recoup any payments due, made or coming due to Borrower, Senior Mezzanine Borrower, Mortgage Borrower or Operating Company, in each case if same might reasonably be expected to have an Individual Material Adverse Effect. Borrower shall immediately deliver to Lender any notice received by Borrower, Senior Mezzanine Borrower, Mortgage Borrower or Operating Company alleging or relating to the material non-compliance by Borrower, Senior Mezzanine Borrower, Mortgage Borrower or Operating Company with any Legal Requirements, including Gaming Laws.

(e) In the event that any of the Operating Leases expire or are terminated (without limiting any obligation of Borrower to obtain Lender's consent to any termination or modification of any of the Operating Leases in accordance with the terms and provisions of this Agreement), Borrower shall cause Mortgage Borrower to promptly enter into a replacement Operating Lease (in form and substance satisfactory to Lender) with Operating Company or another operating company reasonably satisfactory to Lender, provided Borrower will obtain a Rating Agency Confirmation as a condition to the effectiveness of such replacement Operating Lease and that Borrower will cause Guarantor (Operating Lease) to execute and deliver an operating lease guaranty in the same form and substance as the Operating Lease Guaranty.

(f) Borrower shall cause Mortgage Borrower to: (i) promptly perform and/or observe, in all material respects, all of the covenants and agreements required to be performed and observed by it under the Operating Lease and do all things necessary to preserve and to keep unimpaired its material rights thereunder; (ii) promptly notify Lender of any material default under any Operating Lease or Operating Lease Guaranty of which it is aware; (iii) promptly deliver to Lender a copy of each financial statement, business plan, capital expenditures plan, notice, report and estimate received by it under each Operating Lease; and (iv) enforce the performance and observance of all of the material covenants and agreements required to be performed and/or observed by each Operating Company under each Operating Lease and by each Guarantor (Operating Lease) under each Operating Lease Guaranty, in a commercially reasonable manner.

(g) Borrower shall cause Mortgage Borrower to cause the Hotel Components to be at all times open for business as a hotel and the Casino Components to be open for business as a casino, except to the extent necessary to undertake any alterations or repairs (subject to the provisions of this Agreement with respect to the performance of any such alterations or repairs). Borrower shall cause each Individual Property to be at all times operated, managed and maintained, at all times and in the manner and accordance with the standards required pursuant to the Operating Leases and all applicable Legal Requirements in all material respects.

(h) If Mortgage Borrower shall be in material default under any Operating Lease, then, subject to the terms of such Operating Lease, Borrower shall cause Mortgage Borrower (subject to any applicable Legal Requirements) to grant Lender the right (but not the obligation), to cause the default or defaults under such Operating Lease to be remedied and otherwise exercise any and all rights of Mortgage Borrower under such Operating Lease, as may be necessary to prevent or cure any default provided such actions are necessary to protect Lender's interest under the Loan Documents, and Lender shall have the right to enter all or any

portion of the affected Individual Property at such times and in such manner as Lender deems necessary, to prevent or to cure any such default. The actions or payments of Lender to cure any default by Mortgage Borrower under any Operating Lease shall not remove or waive, as between Borrower and Lender, any default that may occur or occurred under this Agreement by virtue of such default by Mortgage Borrower under such Operating Lease. All out-of-pocket sums reasonably expended by Lender to cure any such default shall be paid by Borrower to Lender, upon demand, with interest on such sum at the rate set forth in this Agreement from the date such sum is expended to and including the date the reimbursement payment is made to Lender. All such indebtedness shall be deemed to be secured by the Pledge Agreement and the Collateral.

(i) Borrower shall notify Lender promptly in writing of (i) the occurrence, to Borrower's knowledge, of any material default by any party to any Operating Lease or any Operating Lease Guaranty, (ii) the occurrence, to Borrower's knowledge, of any event that, with the passage of time or service of notice, or both, would constitute a material default by any party under any Operating Lease or any Operating Lease Guaranty, and (iii) the receipt by Borrower or its Affiliate of any notice (written or otherwise) from any party under any Operating Lease or any Operating Lease Guaranty noting or claiming the occurrence of any material default by Borrower under such Operating Lease or such Operating Lease Guaranty.

(j) Borrower shall (subject to any applicable Legal Requirements) promptly cause Mortgage Borrower to execute, acknowledge and deliver to Lender such instruments as may reasonably be required to permit Lender to cure any material default under any Operating Lease or permit Lender to take such other action required to enable Lender to cure or remedy the matter in default and preserve the value of the security interest of Lender under the Loan Documents with respect to the Collateral. Upon the occurrence and during the continuance of an Event of Default, Borrower irrevocably appoints Lender as its true and lawful attorney-in-fact to do, in its name or otherwise, any and all acts and to execute any and all documents that are necessary to preserve any rights of Mortgage Borrower under or with respect to any Operating Lease, including, without limitation, the right to effectuate any extension or renewal of any Operating Lease, or to preserve any rights of Mortgage Borrower whatsoever in respect of any part of any Operating Lease (and the above powers granted to Lender are coupled with an interest and shall be irrevocable).

(k) With respect to any Operating Lease or any Operating Lease Guaranty, Borrower shall, from time to time, upon ten (10) Business Days' prior written request from Lender, execute, acknowledge and deliver to Lender, a statement containing the following: (A) a statement that such Operating Lease or such Operating Lease Guaranty is unmodified and in full force and effect or, if there have been modifications, that the Operating Lease or the Operating Lease Guaranty is in full force and effect as modified and setting forth such modifications, (B) a statement that Mortgage Borrower is not in default thereunder beyond any applicable grace, cure or notice period or, if any such default shall exist thereunder, a description of such default and the steps being taken to cure such default, (C) a statement that, to Borrower's knowledge, either the other party thereto is not in default thereunder beyond any applicable grace, cure or notice period or, if any such default shall exist thereunder, a description of such default and the steps being taken to cure such default and (D) such other information with respect to the Operating Lease or the Operating Lease Guaranty as Lender shall reasonably request.

(l) With respect to any Operating Lease, Borrower shall, from time to time, upon ten (10) Business Days of Lender's prior written request from Lender, provide Lender with a statement from each Operating Company containing the following: (A) a statement that such Operating Lease is unmodified and in full force and effect or, if there have been modifications, that the Operating Lease is in full force and effect as modified and setting forth such modifications, (B) a statement that Operating Company is not in default thereunder beyond any applicable grace, cure or notice period or, if any such default shall exist thereunder, a description of such default and the steps being taken to cure such default, (C) a statement that, to Operating Company's knowledge, the Mortgage Borrower is not in default thereunder beyond any applicable grace, cure or notice period or, if any such default shall exist thereunder, a description of such default and the steps being taken to cure such default and (D) such other information with respect to Operating Company, any Operating Lease and/or any Operating Lease Guaranty as Lender shall reasonably request.

(m) With respect to any Operating Lease Guaranty, Borrower shall, from time to time, upon ten (10) Business Days of Lender's prior written request from Lender, provide Lender with a statement from Guarantor (Operating Lease) containing the following: (A) a statement that such Operating Lease Guaranty is unmodified and in full force and effect or, if there have been modifications, that the Operating Lease Guaranty is in full force and effect as modified and setting forth such modifications; (B) a statement that Guarantor (Operating Lease) is not in default thereunder beyond any applicable grace, cure or notice period or, if any such default shall exist thereunder, a description of such default and the steps being taken to cure such default; and (C) such other information with respect to such Guarantor (Operating Lease) and/or Operating Lease Guaranty as Lender shall reasonably request

**5.1.23 Ground Lease Estoppel.** Borrower shall, on or prior to May 28, 2008, either (i) effect the substitution of the Properties commonly known as "Paris Las Vegas" and "Harrah's Laughlin" for the Individual Properties referred to as "Harrah's Lake Tahoe", "Harvey's Lake Tahoe", "Bill's Lake Tahoe" and "Showboat Atlantic City" as described in Section 2.5.2 of this Agreement or (ii) (x) cause the occurrence of the events set forth in paragraph 1, clause (ii) of the Ground Lease Side Letter and (y) in connection therewith, deliver to Lender updates to its UCC Title Insurance Policy and any endorsements to the Mortgage Borrower's owner's policies delivered to Lender in connection with the closing of the Loan, together with such other documents, instruments and new or updated opinions (including as to enforceability, non-consolidation and true lease matters) as Lender may reasonably request. The failure by Borrower to cause the occurrence of the event described in clause (i) or of the events described in clause (ii) above, on or prior to May 28, 2008 shall constitute a "Ground Lease Estoppel Trigger Event" hereunder, but shall not constitute a Default or an Event of Default hereunder.

**5.1.24 Mortgage Loan Reserve Funds.** Borrower shall cause Mortgage Borrower and Senior Mezzanine Borrower to deposit and maintain each of the Mortgage Loan Reserve Funds and Senior Mezzanine Loan Reserve Funds (if any) as more particularly set forth in Article VII of the Mortgage Loan Agreement and Senior Mezzanine Loan Agreement and to perform and comply with all the terms and provisions relating thereto. Borrower grants to Lender a first-priority perfected security interest in Borrower's interest in each of the Mortgage Loan Reserve Funds and Senior Mezzanine Loan Reserve Funds, if any, subject to the prior

rights of Mortgage Lender and Senior Mezzanine Lender, and any and all monies now or hereafter deposited in each Mortgage Loan Reserve Fund and Senior Mezzanine Loan Reserve Funds as additional security for payment of the Debt to the extent Borrower has an interest in same. Subject to the qualifications regarding Mortgage Lender's and Senior Mezzanine Lender's interest in the Mortgage Loan Reserve Funds and Senior Mezzanine Loan Reserve Funds (as applicable), if any, until expended or applied in accordance with the Mortgage Loan Documents, Senior Mezzanine Loan Documents or the Loan Documents, Borrower's interest in the Mortgage Loan Reserve Funds and Senior Mezzanine Loan Reserve Funds shall constitute additional security for the Debt and upon the occurrence of an Event of Default, Lender may, in addition to any and all other remedies available to Lender, apply any sums then present in any or all of the Mortgage Loan Reserve Funds and Senior Mezzanine Loan Reserve Funds to the payment of the Debt in any order in its sole discretion and/or hold the same as Collateral for the Loan.

**5.1.25 Notices.** Borrower shall give notice, or cause notice to be given to Lender promptly upon the occurrence and during the continuance of an Event of Default and upon any of the following:

(a) any Mortgage Loan Event of Default or Senior Mezzanine Loan Event of Default;

(b) any default or event of default under any contractual obligation of Borrower, or, to the knowledge of Borrower, Senior Mezzanine Borrower, Mortgage Borrower, Operating Company, Principal or Guarantor that could reasonably be expected to have an Individual Material Adverse Affect or an Aggregate Material Adverse Affect;

(c) any litigation or proceeding affecting Borrower, or, to the knowledge of Borrower, affecting any of Mortgage Borrower, Senior Mezzanine Borrower, Operating Company, Principal or Guarantor, which could or could reasonably be expected to have an Individual Material Adverse Effect or an Aggregate Material Adverse Effect; or

(d) a change in the business, operations, property or financial or other condition or prospects of Borrower, or, to the knowledge of Borrower, Senior Mezzanine Borrower, Mortgage Borrower, Operating Company, Principal or Guarantor which could reasonably be expected to have an Individual Material Adverse Affect or an Aggregate Material Adverse Affect.

**5.1.26 Special Distributions.** On each date on which amounts are required to be paid to Lender under any of the Loan Documents (or required to be disbursed to the Mezzanine Collection Account, if applicable) Borrower shall exercise its rights under the First Mezzanine Borrower Company Agreement to cause Senior Mezzanine Borrower to make to Borrower a distribution in an aggregate amount such that Lender shall receive the amount required to be disbursed to the Mezzanine Collection Account or otherwise paid to Lender on such date.

**5.1.27 Curing.** Lender shall have the right, but shall not have the obligation, to exercise Borrower's rights under the First Mezzanine Borrower Company Agreement (a) to cure a Mortgage Loan Default, or Senior Mezzanine Loan Default, (b) to cure a Mortgage Loan Event

of Default, or Senior Mezzanine Loan Event of Default, (c) to satisfy any Liens, claims or judgments against the Properties (except for Liens permitted by the Mortgage Loan Documents or Senior Mezzanine Loan Documents), (d) to satisfy any Liens, claims or judgments against the Senior Mezzanine Collateral, in the case of either (a), (b) or (c), unless Borrower, Senior Mezzanine Borrower or Mortgage Borrower shall be diligently pursuing remedies to cure the Mortgage Loan Default, the Senior Mezzanine Loan Default, the Senior Mezzanine Loan Event of Default or Mortgage Loan Event of Default or to satisfy any such Liens, claims or judgments, in either case to Lender's sole satisfaction. Borrower shall reimburse Lender on demand for any and all costs incurred by Lender in connection with curing any such Mortgage Loan Default, Senior Mezzanine Loan Default, Mortgage Loan Event of Default or Senior Mezzanine Loan Event of Default or satisfying any Liens, claims or judgments against any of the Properties or the Senior Mezzanine Collateral.

**5.1.28 Senior Borrower Covenants.** Borrower shall cause Mortgage Borrower and Senior Mezzanine Borrower to comply with all obligations with which Mortgage Borrower and/or Senior Mezzanine Borrower have covenanted to comply under the Mortgage Loan Agreement, Senior Mezzanine Loan Agreement, all Senior Mezzanine Loan Documents and all other Mortgage Loan Documents, as applicable (including, without limitation, those certain affirmative and negative covenants set forth in Article V of the Mortgage Loan Agreement and Senior Mezzanine Loan Agreement), unless otherwise consented to in writing by Lender.

**Section 5.2. Negative Covenants.** From the date hereof until payment and performance in full of all obligations of Borrower under the Loan Documents or the earlier release of the Liens of the Collateral in accordance with the terms of this Agreement and the other Loan Documents, Borrower covenants and agrees with Lender that it will not do, directly or indirectly, any of the following (without, in each case, the prior written consent of Lender):

**5.2.1 Operation of Properties.** (a) Borrower shall not cause or permit Mortgage Borrower to, without Lender's prior consent: (i) surrender, terminate or cancel (or permit to be surrendered, terminated or canceled) any of the Operating Leases or any Operating Lease Guaranty; (ii) reduce or consent to the reduction of (or permit the reduction or the consent to the reduction) of the term of any of the Operating Leases; (iii) decrease or consent to any decrease (or permit to be decreased or the consent to the decrease) of the amount of any rent or other charges payable under any of the Operating Leases; (iv) Transfer, convey, assign, sell, mortgage, encumber, pledge, hypothecate, grant a security interest in, grant an option or options with respect to, or otherwise dispose of (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, whether or not for consideration) the Properties or any collateral for the Mortgage Loan (or permit Operating Company to do so), in each case without the prior written consent of Lender or except as expressly permitted in Section 5.2.10, or (v) otherwise modify, change, supplement, alter or amend, or waive or release (or permit to be modified, changed, supplemented, altered, amended, waived or released) any of the rights and remedies of Borrower, Mortgage Borrower or any Operating Company under any of the Operating Leases in any material respect or any Operating Lease Guaranty (provided that Lender shall not unreasonably withhold its consent to any modification, change, supplement, alteration, amendment, waiver or release of the Operating Lease as may be reasonably necessary to comply with the requirements of this Agreement or any other Loan Document).

(b) During the continuance of an Event of Default, Borrower shall not exercise (and shall not cause or permit Mortgage Borrower to exercise) any rights, make any decisions, grant any approvals or otherwise take any action under any Operating Lease, Operating Lease Guaranty or any management agreement without, in each instance, the prior written consent of Lender, which consent may be withheld in Lender's sole discretion.

**5.2.2 Liens.** (a) Borrower shall not create, incur, assume or suffer to exist any Lien on any of the Collateral, except Liens created by or permitted pursuant to the Loan Documents. Borrower shall not, and shall not cause or permit Mortgage Borrower or Senior Mezzanine Borrower to create, incur, assume or suffer to exist any Lien on any portion of any Individual Property or Senior Mezzanine Collateral or permit any such action to be taken, except:

(i) Permitted Encumbrances;

(ii) Liens created by or permitted pursuant to the Loan Documents, Senior Mezzanine Loan Documents or Mortgage Loan Documents; and

(iii) Liens for Taxes or Other Charges not yet due.

(b) Borrower shall not incur any Indebtedness other than the Loan, shall not permit Mortgage Borrower to incur any Indebtedness other than the Mortgage Loan and Permitted Indebtedness (as defined in the Mortgage Loan Agreement), and shall not permit Senior Mezzanine Borrower to incur any Indebtedness other than the Senior Mezzanine Loans. Borrower shall not permit any Operating Company to incur Indebtedness in excess or other than Permitted Indebtedness (Operating Company).

**5.2.3 Dissolution.** Borrower shall not, and shall not permit Mortgage Borrower, Senior Mezzanine Borrower or Operating Company to, (a) engage in any dissolution, liquidation or consolidation or merger with or into any other business entity, (b) engage in any business activity not related to (i) in the case of Borrower, the ownership of the Collateral, (ii) in the case of Senior Mezzanine Borrower, ownership of the Senior Mezzanine Collateral, (iii) in the case of Mortgage Borrower, the ownership and operation of the Properties and (iv) in the case of Operating Company, the leasing and operation of the Properties, (c) transfer, lease or sell, in one transaction or any combination of transactions, the assets or all or substantially all of the properties or assets of Borrower, Senior Mezzanine Borrower or Mortgage Borrower except to the extent permitted by the Loan Documents, (d) modify (in any material respect), amend (in any material respect), waive or terminate its organizational documents or its qualification and good standing in any jurisdiction or (e) cause Holdings to (i) dissolve, wind up or liquidate or take any action, or omit to take an action, as a result of which Holdings, Senior Mezzanine Borrower or Mortgage Borrower would be dissolved, wound up or liquidated in whole or in part, or (ii) amend (in any material respect), modify (in any material respect), waive or terminate the certificate of incorporation or bylaws of Holdings, Senior Mezzanine Borrower or Mortgage Borrower, in each case, without obtaining the prior consent of Lender.

**5.2.4 Change in Business.** Borrower shall not cause Mortgage Borrower to enter into any line of business other than the ownership and operation of any of the Properties

and other activities reasonably ancillary thereto, or make any material change in the scope or nature of its business objectives, purposes or operations, or undertake or participate in activities other than the continuance of its present business. In addition, Borrower shall not permit or cause Mortgage Borrower to cancel or otherwise forgive or release any material claim or debt (other than termination of Leases in accordance herewith) owed to Mortgage Borrower by any Person, except for adequate consideration and in the ordinary course of Mortgage Borrower's business. Borrower shall not enter into any line of business other than the ownership of the Collateral, or make any material change in the scope or nature of its business objectives, purposes or operations, or undertake or participate in activities other than the continuance of its present business. Borrower shall not allow Senior Mezzanine Borrower to enter into any line of business other than the direct or indirect ownership of the applicable Senior Mezzanine Collateral or make any material change in the scope or nature of its business objectives, purposes or operations, or undertake or participate in activities other than the continuance of its present business.

**5.2.5 Debt Cancellation.** Borrower shall not, and shall not permit Mortgage Borrower, Senior Mezzanine Borrower or Operating Company to, cancel or otherwise forgive or release any claim or debt (other than termination of Leases in accordance herewith) owed to Mortgage Borrower, Borrower or Senior Mezzanine Borrower by any Person, except for adequate consideration and in the ordinary course of Mortgage Borrower's, Borrower's or Senior Mezzanine Borrower's business. In addition, Borrower shall not permit or cause itself, Senior Mezzanine Borrower, or Mortgage Borrower to cancel or otherwise forgive or release any material claim or debt (other than termination of Leases in accordance herewith) owed to Senior Mezzanine Borrower, Borrower or Mortgage Borrower by any Person, except for adequate consideration and in the ordinary course of Mortgage Borrower's, Borrower's or Senior Mezzanine Borrower's business.

**5.2.6 Zoning.** Borrower shall not, and shall not permit Mortgage Borrower or Operating Company to, initiate or consent to any zoning reclassification of any portion of any Individual Property or seek any variance under any existing zoning ordinance or use or permit the use of any portion of any Individual Property in any manner that could result in such use becoming a non-conforming use under any zoning ordinance or any other applicable land use law, rule or regulation, without the prior consent of Lender.

**5.2.7 Ground Lease.** Borrower shall not (or shall not cause or permit Mortgage Borrower or Ground Lease Subsidiary, as applicable, to) (a) fail to pay any rent, additional rent or other charge mentioned in or made payable under any Ground Lease as and when such rent or other charge is due (unless waived in writing by the ground lessor under such Ground Lease), (b) permit to occur any event of default (beyond any applicable notice, grace or cure periods) by any Mortgage Borrower or Ground Lease Subsidiary, as applicable, as tenant under the related Ground Lease, in the observance or performance of any term, covenant or condition of such Ground Lease on the part of such Mortgage Borrower or Ground Lease Subsidiary, as applicable, to be observed or performed (unless waived in writing by the ground lessor under such Ground Lease), (c) permit any one or more of the events referred to in any Ground Lease to occur which would cause such Ground Lease to terminate without notice or action by the ground lessor under such Ground Lease or which would entitle such ground lessor to terminate such Ground Lease and the term thereof by giving notice to the related Mortgage Borrower or Ground Lease

Subsidiary, as applicable, as tenant thereunder (unless waived in writing by the ground lessor under such Ground Lease), (d) permit the leasehold estate created by any Ground Lease to be surrendered or any Ground Lease to be terminated or canceled for any reason or under any circumstances whatsoever or (e) permit any of the terms, covenants or conditions of any Ground Lease to be materially modified, materially changed, materially supplemented, materially altered, or materially amended without the consent of Lender except as otherwise may be permitted by this Agreement.

**5.2.8 Principal Place of Business and Organization.** Borrower shall not, nor shall Borrower permit Mortgage Borrower, Senior Mezzanine Borrower or Operating Company to, change the place of its organization as set forth in Section 4.1.28 without the consent of Lender, which consent shall not be unreasonably withheld. Upon Lender's request, Borrower shall (and shall cause Mortgage Borrower, Senior Mezzanine Borrower or Operating Company to) execute and deliver additional financing statements, security agreements and other instruments which may be necessary to effectively evidence or perfect Mortgage Lender's security interest in any of the Properties, any Senior Mezzanine Lender's Security Interest in the related Senior Mezzanine Collateral or Lender's security interest in the Collateral as a result of such change of place of organization.

**5.2.9 ERISA.** (a) Borrower shall not engage in any transaction which would cause any obligation, or action taken or to be taken, hereunder (or the exercise by Lender of any of its rights under the Note, this Agreement or the other Loan Documents) to be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under ERISA.

(b) Borrower further covenants and agrees to deliver to Lender such certifications or other evidence from time to time throughout the term of the Loan, as requested by Lender in its sole discretion, that (i) Borrower is not an "employee benefit plan" as defined in Section 3(3) of ERISA, which is subject to Title I of ERISA, or a "governmental plan" within the meaning of Section 3(32) of ERISA; (ii) Borrower is not subject to any state statute regulating investments of, or fiduciary obligations with respect to, governmental plans; and (iii) one or more of the following circumstances is true:

(A) Equity interests in Borrower are publicly offered securities, within the meaning of 29 C.F.R. § 2510.3-101(b)(2);

(B) Less than twenty-five percent (25%) of each outstanding class of equity interests in Borrower is held by "benefit plan investors" within the meaning of 29 C.F.R. § 2510.3-101(f)(2); or

(C) Borrower qualifies as an "operating company" or a "real estate operating company" within the meaning of 29 C.F.R. § 2510.3-101(c) or (e).

**5.2.10 Transfers.** (a) Without the prior consent of Lender and except to the extent otherwise set forth in this Section 5.2.10, Borrower shall not, and shall not permit any other Person holding any direct or indirect legal, economic, beneficial or other ownership interest in Borrower, the Collateral, the Senior Mezzanine Collateral or one or more of the Properties to, (1) Transfer all or any part of the Collateral, the Senior Mezzanine Collateral or one or more of

the Properties, (2) permit any Transfer (directly or indirectly) of any direct or indirect interest in Borrower, or (3) permit any Transfer (directly or indirectly) of any direct or indirect interest in Operating Company or any transfer or assignment or subletting (of all or substantially of any Individual Property) by any Operating Company under any Operating Lease.

(b) A Transfer of (but not a mortgage, pledge, hypothecation, encumbrance or grant of a security interest in) a direct or indirect beneficial interest in Borrower consisting of ownership interests in or at any level above the level of Ninth Mezzanine Borrower shall be permitted without Lender's consent (but subject to the last sentence of Section 5.2.10(d)), provided that (i) immediately prior to such Transfer, no Event of Default shall have occurred and be continuing, (ii) Borrower is at all times Controlled and at least fifty percent (50%) owned (directly or indirectly) by Qualified Transferees, (iii) subsequent to such Transfer, Borrower will continue to be a Special Purpose Entity, (iv) if (1) such Transfer causes the Transferee to own, in the aggregate with the ownership interests of its Affiliates, more than a forty nine percent (49%) interest in Borrower (and the Transferee (together with the ownership interests of its Affiliates) did not, prior to such Transfer, own more than a forty-nine percent (49%) interest in Borrower), or (2) such Transfer, together with all other Transfers by Borrower, whether in a single Transfer or in a series of Transfers and whether or not effected simultaneously, results in a Transfer of more than forty-nine percent (49%) of the aggregate interests in Borrower, then if required by applicable Rating Agency requirements, an acceptable non-consolidation opinion is delivered to the holder of the Loan and to each of the Rating Agencies concerning, as applicable, Borrower, the new Transferee and/or their respective owners, and (v) subsequent to such Transfer, the beneficial ownership of Borrower and Operating Company will be substantially identical. For purposes hereof, Control shall not be deemed absent solely because other parties have veto rights with respect to major decisions. Further, a Change in Control shall be deemed a Transfer hereunder and, unless clauses (ii) through (v) of this Section 5.2.10(b) shall be satisfied, the same shall be an Event of Default hereunder (and for the sake of clarity, nothing else contained in this Section 5.2.10 or this Agreement shall be deemed to limit or qualify the above terms of this sentence).

(c) A Transfer of (but not a mortgage, pledge, hypothecation, encumbrance or grant of a security interest in) a direct or indirect beneficial interest in Operating Company shall be permitted without Lender's consent (but subject to the last sentence of Section 5.2.10(d)), provided that (i) immediately prior to such Transfer, no Event of Default shall have occurred and be continuing, (ii) Operating Company is at all times Controlled and at least fifty percent (50%) owned (directly or indirectly) by Qualified Transferees, and (iii) subsequent to such Transfer, the beneficial ownership of Borrower and Operating Company will be substantially identical. For purposes hereof, Control shall not be deemed absent solely because other parties have veto rights with respect to major decisions.

(d) In the event that a permitted Transfer of more than a forty nine percent (49%) interest in Borrower is made pursuant to this Section 5.2.10, at Borrower's request, Lender shall release Guarantor from (i) the obligations and liabilities under any Guaranty for obligations and liabilities that occurred subsequent to such Transfer, provided that a replacement guarantor(s) reasonably satisfactory to Lender shall have executed and delivered to Lender replacement guarantees in form and substance substantially similar to the applicable Guaranty, pursuant to which such replacement guarantor(s) expressly assumes all of Guarantor's

obligations under the applicable Guaranty for obligations and liabilities arising from and after the date of such Transfer, and (ii) the obligations and liabilities under any Guaranty for obligations and liabilities that occurred either prior or subsequent to such Transfer, provided that a replacement guarantor(s) reasonably satisfactory to Lender shall have executed and delivered to Lender replacement guarantees in form and substance substantially similar to the applicable Guaranty, pursuant to which such replacement guarantor(s) expressly assumes all of Guarantor's obligations under the applicable Guaranty, including those which occurred prior to the Transfer. Notwithstanding the foregoing or anything else that may be construed to the contrary, in no event may Borrower effect a Transfer, or permit or suffer any Transfer, that would result in any loss or impairment of any Gaming License or in any similar event that would have an Individual Property Material Adverse Effect or Aggregate Property Material Adverse Effect.

(e) Notwithstanding the foregoing or anything herein to the contrary, but subject to the final sentence of Section 5.2.10(d), nothing contained in this Agreement or the other Loan Documents shall in any way restrict or prohibit, nor shall any notice to Lender or consent of Lender or Rating Agency Confirmation be required in connection with the Transfer or issuance in the ordinary course of any securities in any Person whose securities are publicly traded on a national exchange (except to the extent that the same would cause a Change of Control) or with an initial public offering of securities issued by Holdings or of subsidiary of Holdings (other than the Borrower and any Mezzanine Borrower (provided that, in the case of an issuance by a subsidiary, such issuance would not cause a Change in Control).

(f) Assumptions of the Loan shall be permitted, provided that the following conditions are satisfied and/or occur to Lender's satisfaction:

(i) such sale has been approved or deemed approved under the Mortgage Loan Documents and Senior Mezzanine Loan Documents and all conditions set forth in the Mortgage Loan Documents and Senior Mezzanine Loan Documents relating thereto have been satisfied;

(ii) an assumption of this Agreement, the Note, the Pledge Agreement and the other Loan Documents as so modified by the proposed transferee, subject to the provisions of Section 9.3 hereof;

(iii) payment of all of reasonable out-of-pocket costs and expenses incurred in connection with such Transfer including, without limitation, the cost of any legal fees and expenses, Rating Agency fees and expenses or required legal opinions;

(iv) the payment of a non-refundable assumption fee equal to Lender's Share of One Million and No/100 Dollars (\$1,000,000) per transaction (effecting an assumption of the Loan) or series of related transactions (effected to implement an assumption of the Loan);

(v) the delivery of an Additional Insolvency Opinion reflecting the proposed transfer satisfactory in form and substance to Lender; and the delivery of an Additional True-Lease Opinion in form and substance satisfactory to Lender;

(vi) the proposed Transferee being Controlled and at least 50% owned, directly or indirectly, by one or more Qualified Transferees;

(vii) the Operating Company being Controlled and at least 50% owned, directly or indirectly, by one or more Qualified Transferees, having sufficient experience (or having a manager that has sufficient experience) in the management of properties similar to the Properties, and such Operating Company or its manager not having materially less than the same level of experience in the operation of properties similar to the Properties as the current Operating Company under the Operating Lease and, in each case, Lender shall be provided with reasonable evidence thereof (and Lender reserves the right to approve the Transferee(s) without approving the substitution of the Operating Company) and the operating tenant shall be either the Operating Company or, if permitted by applicable Legal Requirements, a manager acceptable to Lender under a management agreement acceptable to Lender; provided that so long as the Operating Lease is in force and effect and the current Operating Company shall continue to be the tenant thereunder and owned and Controlled by the same Person(s) that currently own and Control the Operating Company, the condition with respect to the Operating Company set forth in this subclause (vi) shall be deemed to have been met in all respects;

(viii) the delivery of evidence reasonably satisfactory to Lender that the single purpose nature and bankruptcy remoteness of Borrower, its shareholders, partners or members, as the case may be, following such transfers are in accordance with the then current standards of Lender and the Rating Agencies; and the Transferee(s)' continued compliance with the representations and covenants set forth in Section 4.1.30 and Section 5.2.9 hereof;

(ix) Borrower's delivery to Lender of evidence reasonably satisfactory to Lender of any required approval or consent of any Governmental Authority, including the Gaming Authorities, that has direct or indirect authority or oversight over Borrower, Mortgage Borrower, Senior Mezzanine Borrower, the Properties, Operating Company or the operations conducted at the Properties to the change in ownership and/or operator of the Properties (or any part thereof);

(x) prior to any release of the Guarantor, a substitute guarantor reasonably acceptable to Lender shall have assumed all of the obligations of the Guarantor under the Guaranty (FF&E), the Guaranty (Recourse Carveouts), the Operating Lease Guaranty, the Guaranty (Ground Lease Estoppel), any completion guaranty provided under Section 5.1.21 and the Environmental Indemnity or executed replacement guaranties and an environmental indemnity reasonably satisfactory to Lender;

(xi) receipt of evidence satisfactory to Lender that all of the entities which own interests in the transferee similar to the interests in Borrower owned by the Fifth Mezzanine Borrower (1) shall assume the Fifth Mezzanine Loan (if still outstanding) and all the agreements of Fifth Mezzanine Borrower under the Fifth Mezzanine Loan Documents (and without limiting the foregoing, all of the ownership interests in Borrower, all payments thereon and all proceeds thereof shall be pledged to Lender on terms no less favorable than the pledge of the Collateral under the applicable Pledge

Agreement), (2) shall each be a bankruptcy-remote single purpose entity, and (3) shall otherwise have a legal, financial and ownership structure that is (a) substantially the same as the Fifth Mezzanine Borrower or (b) at least as favorable to the Fifth Mezzanine Lender, as determined by the Fifth Mezzanine Lender in its reasonable discretion, as the legal, financial and ownership structure of Fifth Mezzanine Borrower;

(xii) receipt of evidence satisfactory to Lender that all of the entities which own interests in the transferee similar to the interests in Fifth Mezzanine Borrower owned by the Sixth Mezzanine Borrower (1) shall assume the Sixth Mezzanine Loan (if still outstanding) and all the agreements of Sixth Mezzanine Borrower under the Sixth Mezzanine Loan Documents (and without limiting the foregoing, all of the ownership interests in Fifth Mezzanine Borrower, all payments thereon and all proceeds thereof shall be pledged to Lender on terms no less favorable than the pledge of the Collateral under the applicable Pledge Agreement), (2) shall each be a bankruptcy remote single purpose entity, and (3) shall otherwise have a legal, financial and ownership structure that is (a) substantially the same as the Sixth Mezzanine Borrower or (b) at least as favorable to the Sixth Mezzanine Lender, as determined by the Sixth Mezzanine Lender in its reasonable discretion, as the legal, financial and ownership structure of Sixth Mezzanine Borrower;

(xiii) receipt of evidence satisfactory to Lender that all of the entities which own interests in the transferee similar to the interests in Sixth Mezzanine Borrower owned by the Seventh Mezzanine Borrower (1) shall assume the Seventh Mezzanine Loan (if still outstanding) and all the agreements of Seventh Mezzanine Borrower under the Seventh Mezzanine Loan Documents (and without limiting the foregoing, all of the ownership interests in Sixth Mezzanine Borrower, all payments thereon and all proceeds thereof shall be pledged to Lender on terms no less favorable than the pledge of the Collateral under the applicable Pledge Agreement), (2) shall each be a bankruptcy remote single purpose entity, and (3) shall otherwise have a legal, financial and ownership structure that is (a) substantially the same as the Seventh Mezzanine Borrower or (b) at least as favorable to the Seventh Mezzanine Lender, as determined by the Seventh Mezzanine Lender in its reasonable discretion, as the legal, financial and ownership structure of Seventh Mezzanine Borrower;

(xiv) receipt of evidence satisfactory to Lender that all of the entities which own interests in the transferee similar to the interests in Seventh Mezzanine Borrower owned by the Eighth Mezzanine Borrower (1) shall assume the Eighth Mezzanine Loan (if still outstanding) and all the agreements of Eighth Mezzanine Borrower under the Eighth Mezzanine Loan Documents (and without limiting the foregoing, all of the ownership interests in Seventh Mezzanine Borrower, all payments thereon and all proceeds thereof shall be pledged to Lender on terms no less favorable than the pledge of the Collateral under the applicable Pledge Agreement), (2) shall each be a bankruptcy remote single purpose entity, and (3) shall otherwise have a legal, financial and ownership structure that is (a) substantially the same as the Eighth Mezzanine Borrower or (b) at least as favorable to the Eighth Mezzanine Lender, as determined by the Eighth Mezzanine Lender in its reasonable discretion, as the legal, financial and ownership structure of Eighth Mezzanine Borrower; and

(xv) receipt of evidence satisfactory to Lender that all of the entities which own interests in the transferee similar to the interests in Eighth Mezzanine Borrower owned by the Ninth Mezzanine Borrower (1) shall assume the Ninth Mezzanine Loan (if still outstanding) and all the agreements of Ninth Mezzanine Borrower under the Ninth Mezzanine Loan Documents (and without limiting the foregoing, all of the ownership interests in Eighth Mezzanine Borrower, all payments thereon and all proceeds thereof shall be pledged to Lender on terms no less favorable than the pledge of the Collateral under the applicable Pledge Agreement), (2) shall each be a bankruptcy remote single purpose entity, and (3) shall otherwise have a legal, financial and ownership structure that is (a) substantially the same as the Ninth Mezzanine Borrower or (b) at least as favorable to the Ninth Mezzanine Lender, as determined by the Ninth Mezzanine Lender in its reasonable discretion, as the legal, financial and ownership structure of Ninth Mezzanine Borrower.

(xvi) a written consent to the transfer from the lender under each Mezzanine Loan (and, if any, a Permitted Mezzanine Loan) or receipt by Lender of other evidence satisfactory to Lender that all conditions imposed under the terms of each Mezzanine Loan and Permitted Mezzanine Loan shall have been complied with by the borrower thereunder or otherwise waived by the applicable lender;

(xvii) subsequent to such assumption of the Loan, the beneficial ownership of Borrower and Operating Company will be substantially identical; and

(xviii) the delivery of a new Owner's Title Policy, in an amount equal to the value of the Properties, together with an endorsement to Lender in form and substance reasonably satisfactory to Lender.

Lender agrees to provide a written consent to a transfer pursuant to this Section 5.2.10(f) upon satisfaction of all of the conditions set forth in this Section 5.2.10(f) other than the condition set forth in clause (xvii) of this Section 5.2.10(f).

(g) Restrictions on Transfers set forth herein or in the Pledge Agreement shall not apply to (i) the pledge of the Collateral to Lender pursuant to the Pledge Agreement, (ii) the pledge by First Mezzanine Borrower of the ownership interests in Mortgage Borrower as security for the First Mezzanine Loan pursuant to the First Mezzanine Loan Agreement, (iii) the pledge by Second Mezzanine Borrower of the ownership interests in First Mezzanine Borrower as security for the Second Mezzanine Loan pursuant to the Second Mezzanine Loan Agreement, (iv) the pledge by Third Mezzanine Borrower of the ownership interests in Second Mezzanine Borrower as security for the Third Mezzanine Loan pursuant to the Third Mezzanine Loan Agreement, (v) the pledge by Fifth Mezzanine Borrower of the ownership interests in Borrower as security for the Fifth Mezzanine Loan pursuant to the Fifth Mezzanine Loan Agreement, (vi) the pledge by Sixth Mezzanine Borrower of the ownership interests in Fifth Mezzanine Borrower as security for the Sixth Mezzanine Loan pursuant to the Sixth Mezzanine Loan Agreement, (vii) the pledge by Seventh Mezzanine Borrower of the ownership interests in Sixth Mezzanine Borrower as security for the Seventh Mezzanine Loan pursuant to the Seventh Mezzanine Loan Agreement, (viii) the pledge by Eighth Mezzanine Borrower of the ownership interests in Seventh Mezzanine Borrower as security for the Eighth Mezzanine Loan pursuant to

the Eighth Mezzanine Loan Agreement, (ix) the pledge by Ninth Mezzanine Borrower of the ownership interests in Eighth Mezzanine Borrower as security for the Ninth Mezzanine Loan pursuant to the Ninth Mezzanine Loan Agreement, (x) any pledge pursuant to a New Mezzanine Loan or (xi) the Transfer or pledge of any direct or indirect interest in Holdings, provided that no Change in Control shall occur.

(h) Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Debt immediately due and payable upon a Transfer without Lender's consent. This provision shall apply to every Transfer regardless of whether voluntary or not, or whether or not Lender has consented to any previous Transfer.

**5.2.11 Operating Lease Subsidiary.** Borrower shall not cause or permit Mortgage Borrower to Transfer any of its interests in Ground Lease Subsidiary without the prior written consent of Lender; Borrower shall not permit Mortgage Borrower to cause or permit Ground Lease Subsidiary to own any assets other than its interests in the Ground Lease or to incur any liabilities other than liabilities under the Ground Lease; Borrower shall not permit Mortgage Borrower to cause or permit Ground Lease Subsidiary to engage in any business other than that related to its ownership of interests in the Ground Lease.

**5.2.12 Limitations on Distributions.** Following the occurrence and during the continuance of an Event of Default, Borrower shall not make any distributions to its members. If any Distributions shall be received by Borrower or any Affiliate of Borrower after the occurrence and during the continuance of an Event of Default, Borrower shall hold, or shall cause the same to be held, in trust for the benefit of Lender.

**5.2.13 Other Limitations.** Prior to the payment in full of the Debt, neither Borrower nor any of its Affiliates shall, without the prior written consent of Lender (which may be furnished or withheld at its sole and absolute discretion), give its consent or approval to any of the following actions or items: the distribution by Mortgage Borrower or Senior Mezzanine Borrower of property other than cash.

**5.2.14 Refinancing.** Borrower shall not consent to or permit a refinancing of the Mortgage Loan or Senior Mezzanine Loan unless it obtains the prior consent of Lender, unless the Loan shall be paid in full in connection with such refinancing in accordance with this Agreement. Borrower shall not consent to or permit a prepayment in full or in part of the Mortgage Loan or Senior Mezzanine Loan unless it obtains the prior consent of Lender, unless the Loan shall likewise be prepaid (in the same proportion, in the case of any partial prepayment) in accordance with this Agreement.

**Section 5.3. General.** For avoidance of doubt, all requirements contained in this Article V with respect to the Operating Company shall mean that it shall be a Default or Event of Default hereunder if Operating Company fails to perform in the specified manner, but Lender acknowledges that Operating Company is not a party to this Agreement and that Borrower does not control Operating Company.

## **VI. INSURANCE; CASUALTY; CONDEMNATION**

**Section 6.1. Insurance.** (a) Borrower shall cause Mortgage Borrower to maintain at all times during the term of the Loan the Policies required under Section 6.1 of the Mortgage Loan Agreement, including, without limitation, meeting all insurer requirements thereunder. In addition, Borrower shall cause Lender to be named “as their interest may appear”, under the Policies required under Sections 6.1(a)(i), (ii), (iii), (iv), (v), (vi), (vii), (viii), (ix), (x) and (xi) of the Mortgage Loan Agreement and as an “additional insured” with respect to liability coverages. Borrower shall also cause all insurance policies required under this Section 6.1 to provide for at least thirty (30) days’ prior notice to Lender in the event of policy cancellation or material changes. Borrower shall provide Lender with evidence of all such insurance required hereunder on or before the date on which Mortgage Borrower is required to provide such evidence to Mortgage Lender. For purposes of this Agreement, Lender shall have the same approval rights over the insurance referred to above and in the Mortgage Loan Agreement (including, without limitation, the insurers, deductibles and coverages thereunder, as well as the right to require other reasonable insurance pursuant to Section 6.1 of the Mortgage Loan Agreement) as are provided in favor of the Mortgage Lender in the Mortgage Loan Agreement.

(b) If at any time Lender is not in receipt of written evidence that all insurance required hereunder is in full force and effect, Lender shall have the right, without notice to Borrower, to take such action as Lender deems necessary to protect its interest in any of the Properties or the Collateral, including, without limitation, the obtaining of such insurance coverage as Lender in its sole discretion deems appropriate (but limited to the coverages and amounts required under the Mortgage Loan Agreement) and all premiums incurred by Lender in connection with such action or in obtaining such insurance and keeping it in effect shall be paid by Borrower to Lender upon demand and shall bear interest at the Default Rate.

**Section 6.2. Casualty.** If the Individual Property shall be materially damaged or destroyed, in whole or in part, by fire or other casualty (a “Casualty”), Borrower shall give prompt notice of such damage to Lender and shall cause Mortgage Borrower to promptly commence and diligently prosecute the completion of the Restoration of the Individual Property as nearly as possible to the condition the Individual Property was in immediately prior to such Casualty, with such alterations as may be reasonably approved by Lender and otherwise in accordance with Section 6.4 of the Mortgage Loan Agreement. Borrower shall cause Mortgage Borrower to pay all costs of such Restoration whether or not such costs are covered by insurance. Lender may, but shall not be obligated to make proof of loss if not made promptly by Borrower or Mortgage Borrower. In addition, Lender may participate in any settlement discussions with any insurance companies with respect to any Casualty in which the Net Proceeds or the costs of completing the Restoration are equal to or greater than, in the case of each Casualty, an amount equal to five percent (5%) of the sum of the Allocated Loan Amount for the affected Individual Property and the “Allocated Loan Amounts” under (and as defined in each of) the Mortgage

Loan Agreement and the Other Mezzanine Loan Agreements for the affected Individual Property, and Borrower shall deliver to Lender all instruments required by Lender to permit such participation.

**Section 6.3. Condemnation.** Borrower shall promptly give Lender notice of the actual or threatened commencement of any proceeding for the Condemnation of any Individual Property and shall cause Mortgage Borrower to deliver to Lender copies of any and all papers served in connection with such proceedings. Lender may participate in any such proceedings, and Borrower shall from time to time deliver to Lender all instruments requested by it to permit such participation. Borrower shall, at its expense, diligently prosecute any such proceedings, and shall consult with Lender, its attorneys and experts, and cooperate with them in the carrying on or defense of any such proceedings. Notwithstanding any taking by any public or quasi-public authority through Condemnation or otherwise (including, but not limited to, any transfer made in lieu of or in anticipation of the exercise of such taking), Borrower shall continue to pay the Debt at the time and in the manner provided for its payment in the Note and in this Agreement and the Debt shall not be reduced until any Award shall have been actually received and applied by Lender, after the deduction of expenses of collection, to the reduction or discharge of the Debt. Lender shall not be limited to the interest paid on the Award by the condemning authority but shall be entitled to receive out of the Award interest at the rate or rates provided herein or in the Note. If any Individual Property or any portion thereof is taken by a condemning authority, Borrower shall cause Mortgage Borrower to promptly commence and diligently prosecute the Restoration of the applicable Individual Property and otherwise comply with the provisions of Section 6.4 of the Mortgage Loan Agreement. If any Individual Property is sold, through foreclosure or otherwise, prior to the receipt by Lender of the Award, Lender shall have the right, whether or not a deficiency judgment on the Note shall have been sought, recovered or denied, to receive the Award, or a portion thereof sufficient to pay the Debt.

**Section 6.4. Restoration.** Borrower shall, or shall cause Mortgage Borrower to, deliver to Lender all reports, plans, specifications, documents and other materials that are delivered to Mortgage Lender under Section 6.4 of the Mortgage Loan Agreement in connection with the Restoration of any Individual Property after a Casualty or Condemnation.

## VII. RESERVE FUNDS

### Section 7.1. Intentionally Omitted.

**Section 7.2. Tax and Insurance Escrow Fund.** (a) If (and for so long as) a Trigger Event shall have occurred and shall not have been cured by a Trigger Event Cure, on each Payment Date during such period, Borrower shall pay to Lender (or Servicer, as directed by Lender) an amount equal to (i) one-twelfth of the Taxes that Lender estimates will be payable during the next ensuing twelve (12) months in order to accumulate with Lender sufficient funds to pay all such Taxes at least thirty (30) days prior to their respective due dates, and (ii) one-twelfth of the Insurance Premiums that Lender estimates will be payable for the renewal of the coverage afforded by the Policies upon the expiration thereof in order to accumulate with Lender sufficient funds to pay all such Insurance Premiums at least thirty (30) days prior to the expiration of the Policies (said amounts in (i) and (ii) above hereinafter called the “**Tax and Insurance Escrow Fund**”). Lender shall apply the Tax and Insurance Escrow Fund to payments

of Taxes and Insurance Premiums required to be made by Borrower pursuant to Section 5.1.2 hereof and under the Mortgage Loan Agreement. In making any payment relating to the Tax and Insurance Escrow Fund, Lender may do so according to any bill, statement or estimate procured from the appropriate public office (with respect to Taxes) or insurer or agent (with respect to Insurance Premiums), without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof. If the amount of the Tax and Insurance Escrow Fund shall exceed the amounts due for Taxes and Insurance Premiums pursuant to Section 5.1.2 hereof, provided no Event of Default shall have occurred and be continuing, then Lender shall return any excess to Borrower (or to Operating Company, if so directed by Borrower). In allocating such excess, Lender may deal with the Person shown on the records of Lender to be the owner of the Properties. If at any time Lender reasonably determines that the Tax and Insurance Escrow Fund is not or will not be sufficient to pay Taxes and Insurance Premiums by the dates set forth in (i) and (ii) above, Lender shall notify Borrower of such determination and Borrower shall increase its monthly payments to Lender by the amount that Lender estimates is sufficient to make up the deficiency at least thirty (30) days prior to the due date of the Taxes and/or thirty (30) days prior to expiration of the Policies, as the case may be.

(b) Notwithstanding the foregoing, Borrower shall not be required to make any deposits into the Tax and Insurance Escrow Fund on account of Insurance Premiums if (and for so long as) Borrower shall maintain a blanket insurance policy in respect of the Properties that is in accordance with the provisions of Section 6.1(a) and otherwise satisfactory to Lender in all material respects.

(c) Any amount remaining in the Tax and Insurance Escrow Fund following the occurrence of a Trigger Event Cure shall be returned to Borrower (or Operating Company, as directed by Borrower).

**7.2.1 Waiver of Tax Escrow.** Borrower shall be relieved of its obligation to make deposits of Tax and Insurance Escrow Fund under Section 7.2 above, provided that (a) Mortgage Borrower or Senior Mezzanine Borrower is required to and does make monthly deposits to a tax escrow account under the Mortgage Loan or Senior Mezzanine Loan, and (b) Lender receives evidence acceptable to it of the making of such deposits and of the payment of all such Taxes.

**7.2.2 Tax and Insurance Escrow Funds After Debt Paid.** Any Tax and Insurance Escrow Funds remaining after the Debt has been paid in full shall be remitted (i) if the Fifth Mezzanine Loan is outstanding, then to the Fifth Mezzanine Lender or (ii) if the Fifth Mezzanine Loan is no longer outstanding, then to the Sixth Mezzanine Lender in accordance with the Fifth Mezzanine Loan Agreement or (iii) if the Fifth Mezzanine Loan and the Sixth Mezzanine Loan are no longer outstanding, then to the Seventh Mezzanine Lender in accordance with the Sixth Mezzanine Loan Agreement or (iv) if the Fifth Mezzanine Loan, the Sixth Mezzanine Loan and the Seventh Mezzanine Loan are no longer outstanding, then to the Eighth Mezzanine Lender in accordance with the Seventh Mezzanine Loan Agreement or (v) if the Fifth Mezzanine Loan, the Sixth Mezzanine Loan, the Seventh Mezzanine Loan and the Eighth Mezzanine Loan are no longer outstanding, then to the Ninth Mezzanine Lender in accordance with the Eighth Mezzanine Loan Agreement or (vi) if the Fifth Mezzanine Loan, the Sixth

Mezzanine Loan, the Seventh Mezzanine Loan, the Eighth Mezzanine Loan and the Ninth Mezzanine Loan are no longer outstanding then to Borrower or, at Borrower's election, shall be credited against the Debt simultaneously with the satisfaction of the balance of the Loan.

**Section 7.3. FF&E Reserve Account.**

**7.3.1 FF&E Reserve Fund.** (a) Unless Borrower shall have delivered to Lender a Guaranty (FF&E), Borrower shall pay to Lender (or Servicer, as directed by Lender) on each Payment Date an amount equal to (i) one-twelfth of three percent (3%) of the amount of all Revenues for the full calendar year prior to the first (1st) day of the month in which such Payment Date occurs, less (ii) any amount spent during the previous calendar month by Borrower or Operating Company on behalf of Borrower in accordance with the Operating Lease on account of FF&E (other than from the FF&E Reserve Fund, it being understood that amounts expended on account of FF&E from the FF&E Reserve Fund shall not be included in any deductions required pursuant to the preceding subclause (i) and that any FF&E that is purchased through disbursements from the FF&E Reserve Fund may not be subsequently financed by Borrower or Operating Company). Notwithstanding anything to the contrary contained herein, in no event shall Borrower be required to maintain in the FF&E Reserve Account an amount in excess of the aggregate amount of all FF&E deposits required to be made in the preceding calendar year (as determined, for purposes of this sentence, utilizing the monthly formula set forth in the preceding sentence). In addition, notwithstanding anything to the contrary contained herein, for purposes of determining the amount of any required FF&E Reserve Fund deposits (and for purposes of calculating such amount, monthly, based on the formula set forth in the first sentence of this Section 7.3.1), Revenues shall include Revenue from the Hotel Component and the Casino Component but shall not include non-Hotel or Casino related Revenues (e.g., Rents from retail tenants).

(b) Amounts deposited by Borrower as described in this Section 7.3.1 shall hereinafter be referred to as the “**FF&E Reserve Fund**” and the account in which such amounts are held shall hereinafter be referred to as the “**FF&E Reserve Account**”.

**7.3.2 Disbursements from FF&E Reserve Account.** (a) All disbursements from the FF&E Reserve Account shall be made solely for the purpose of reimbursing Borrower (or Operating Company for FF&E bought on behalf and in the name of Borrower in accordance with the Operating Lease, as directed by Borrower) for its costs and expenses incurred, or for paying costs to be incurred, in connection with the repair, replacement and/or upgrade of FF&E at the Properties. Provided no Event of Default shall have occurred and be continuing, Lender shall, within ten (10) days following request by Borrower, make disbursements from the FF&E Reserve Fund no more frequently than once in any thirty (30) day period, in amounts no less than \$10,000 per disbursement (or a lesser amount if the total amount in the FF&E Reserve Account is less than \$10,000, in which case only one disbursement of the amount remaining in the account shall be made), and upon delivery by Borrower (or Operating Company) of Lender's standard form of draw request accompanied by copies of invoices for the amounts requested and, if required by Lender for requests in excess of \$50,000 for a single item, receipts and releases from all parties furnishing materials and/or services in connection with the requested payment.

(b) Disbursements may be made from the FF&E Reserve Account, at Borrower's election, directly to third parties (as directed by Borrower).

(c) In no event shall funds in the FF&E Reserve Account be utilized to pay (or reimburse any Person) for any Capital Expenditures or non-recurring work being performed at the Properties.

**7.3.3 Balance in the FF&E Reserve Account.** (a) The insufficiency of any balance in the FF&E Reserve Account shall not relieve Borrower from its obligation to fulfill all preservation and maintenance covenants in the Loan Documents.

**7.3.4 Waiver of FF&E Reserve.** Borrower shall be relieved of its obligation to make deposits of FF&E Reserve Fund under Section 7.3 above, provided that either (a)(i) Mortgage Borrower or Senior Mezzanine Borrower is required to and does make monthly deposits to a FF&E reserve account under the Mortgage Loan or Senior Mezzanine Loan, and (ii) Lender receives evidence acceptable to it of the making of such deposits or (b) an FF&E Guaranty is provided to Mortgage Lender.

**7.3.5 FF&E Reserve Funds After Debt Paid.** Any FF&E Reserve Funds remaining after the Debt has been paid in full shall be remitted (i) if the Fifth Mezzanine Loan is outstanding, then to the Fifth Mezzanine Lender or (ii) if the Fifth Mezzanine Loan is no longer outstanding, then to the Sixth Mezzanine Lender in accordance with the Fifth Mezzanine Loan Agreement or (iii) if the Fifth Mezzanine Loan and the Sixth Mezzanine Loan is no longer outstanding, then to the Seventh Mezzanine Lender in accordance with the Sixth Mezzanine Loan Agreement or (iv) if the Fifth Mezzanine Loan, the Sixth Mezzanine Loan and the Seventh Mezzanine Loan are no longer outstanding, then to the Eighth Mezzanine Lender in accordance with the Seventh Mezzanine Loan Agreement or (v) if the Fifth Mezzanine Loan, the Sixth Mezzanine Loan, the Seventh Mezzanine Loan and the Eighth Mezzanine Loan are no longer outstanding, then to the Ninth Mezzanine Lender in accordance with the Eighth Mezzanine Loan Agreement or (vi) if the Fifth Mezzanine Loan, the Sixth Mezzanine Loan, the Seventh Mezzanine Loan, the Eighth Mezzanine Loan and the Ninth Mezzanine Loan are no longer outstanding then to Borrower or, at Borrower's election, shall be credited against the Debt simultaneously with the satisfaction of the balance of the Loan.

#### **Section 7.4. Ground Rent Funds.**

**7.4.1 Deposits of Ground Rent Funds.** If (and for so long as) a Trigger Event shall have occurred and shall not have been cured by a Trigger Event Cure, Borrower shall deposit with Lender (or Servicer, as directed by Lender), at least ten (10) Business Days prior to each Payment Date during such period, an amount equal to the Ground Rent that will be payable under the Ground Lease for the month in which such Payment Date occurs. Amounts deposited by Borrower as described in this Section 7.4.1 shall hereinafter be referred to as the "**Ground Rent Reserve Fund**" and the account in which such amounts are held shall hereinafter be referred to as the "**Ground Rent Reserve Account**". Such deposit may be increased by Lender in the amount Lender deems is necessary in its reasonable discretion based on any increases in the Ground Rent.

**7.4.2 Release of Ground Rent Funds.** Provided no Event of Default has occurred and is continuing, Lender shall apply the Ground Rent Reserve Funds to payments of Ground Rent. In making any payment relating to Ground Rent, Lender may do so according to any bill or statement given by the Ground Lessor without inquiry into the accuracy of such bill or statement or into the validity of any rent, additional rent or other charge thereof. If the amount of the Ground Rent Reserve Funds shall exceed the amounts due for Ground Rent, Lender shall return any excess to Borrower.

**7.4.3 Waiver of Ground Rent Reserve.** Borrower shall be relieved of its obligation to make deposits of Ground Rent Reserve Funds under Section 7.4 above, provided that (a) Mortgage Borrower or Senior Mezzanine Borrower is required to and does make monthly deposits to a ground rent reserve account under the Mortgage Loan or Senior Mezzanine Loan, and (b) Lender receives evidence acceptable to it of the making of such deposits and of the payment of all Ground Rent.

**7.4.4 Ground Rent Reserve Funds After Debt Paid.** Any Ground Rent Reserve Funds remaining after the Debt has been paid in full shall be remitted (i) if the Fifth Mezzanine Loan is outstanding, then to the Fifth Mezzanine Lender or (ii) if the Fifth Mezzanine Loan is no longer outstanding, then to the Sixth Mezzanine Lender in accordance with the Fifth Mezzanine Loan Agreement or (iii) if the Fifth Mezzanine Loan and the Sixth Mezzanine Loan are no longer outstanding, then to the Seventh Mezzanine Lender in accordance with the Sixth Mezzanine Loan Agreement or (iv) if the Fifth Mezzanine Loan, the Sixth Mezzanine Loan and the Seventh Mezzanine Loan are no longer outstanding, then to the Eighth Mezzanine Lender in accordance with the Seventh Mezzanine Loan Agreement or (v) if the Fifth Mezzanine Loan, the Sixth Mezzanine Loan, the Seventh Mezzanine Loan and the Eighth Mezzanine Loan are no longer outstanding, then to the Ninth Mezzanine Lender in accordance with the Eighth Mezzanine Loan Agreement or (vi) if the Fifth Mezzanine Loan, the Sixth Mezzanine Loan, the Seventh Mezzanine Loan, the Eighth Mezzanine Loan and the Ninth Mezzanine Loan are no longer outstanding then to Borrower or, at Borrower's election, shall be credited against the Debt simultaneously with the satisfaction of the balance of the Loan.

**Section 7.5. Reserve Funds, Generally.** (a) Borrower grants to Lender a first-priority perfected security interest in each of the Reserve Funds and any and all monies now or hereafter deposited in each Reserve Fund as additional security for payment of the Debt. Until expended or applied in accordance herewith, the Reserve Funds shall constitute additional security for the Debt. Upon the occurrence and during the continuance of an Event of Default, Lender may, in addition to any and all other rights and remedies available to Lender, apply any sums then present in any or all of the Reserve Funds to the payment of the Debt in any order in its sole discretion. The Reserve Funds shall not constitute trust funds and may be commingled with other monies held by Lender.

(b) Borrower shall not, without obtaining the prior consent of Lender, further pledge, assign or grant any security interest in any Reserve Fund or the monies deposited therein or permit any lien or encumbrance to attach thereto, or any levy to be made thereon, or any UCC-1 Financing Statements, except those naming Lender as the secured party, to be filed with respect thereto.

(c) The Reserve Funds shall be held by Lender (or Servicer) and may be invested at Borrower's election and direction in Permitted Investments routinely offered by the Servicer of the Securitization for investment by Borrower. All interest or other earnings on a Reserve Fund shall be added to and become a part of such Reserve Fund for the benefit of Borrower and shall be disbursed in the same manner as other monies deposited in such Reserve Fund. Borrower shall have the right to direct Lender (or Servicer) to invest sums on deposit in the Eligible Account in Permitted Investments provided (a) such investments are permitted by applicable federal, state and local rules, regulations and laws, (b) the maturity date of the Permitted Investment is not later than the date on which the applicable Reserve Funds are required for payment of an obligation for which such Reserve Fund was created, and (c) no Event of Default shall have occurred and be continuing. Borrower shall be responsible for payment of any federal, state or local income or other tax applicable to the interest or income earned on the Reserve Funds. No other investments of the sums on deposit in the Reserve Funds shall be permitted except as set forth in this Section 7.5. Borrower shall bear all reasonable costs associated with the investment of the sums in the account in Permitted Investments. Such costs shall be deducted from the income or earnings on such investment, if any, and to the extent such income or earnings shall not be sufficient to pay such costs, such costs shall be paid by Borrower promptly on demand by Lender. Lender shall have no liability for the rate of return earned or losses incurred on the investment of the sums in Permitted Investments.

(d) Borrower shall indemnify Lender and hold Lender harmless from and against any and all actions, suits, claims, demands, liabilities, losses, damages, obligations and costs and expenses (including litigation costs and reasonable attorneys fees and expenses) arising from or in any way connected with the Reserve Funds or the performance of the obligations for which the Reserve Funds were established. Borrower shall assign to Lender all rights and claims Borrower may have against all Persons supplying labor, materials or other services which are to be paid from or secured by the Reserve Funds; provided, however, that Lender may not pursue any such right or claim unless an Event of Default has occurred and remains uncured.

**Section 7.6. Transfer of Reserve Funds Under Mortgage Loan and Senior Mezzanine Loan.** If Mortgage Lender or Senior Mezzanine Lender waives any reserves or escrow accounts required in accordance with the terms of the Mortgage Loan Agreement or Senior Mezzanine Loan Agreement which reserves or escrow accounts are also required in accordance with the terms of this Article VII, or if the Mortgage Loan or Senior Mezzanine Loan is refinanced or paid off in full (without a prepayment of the Loan) and Reserve Funds that are required hereunder are not required under the new mortgage loan, if any, then Borrower shall cause any amounts that would have been deposited into any reserves or escrow accounts in accordance with the terms of the Mortgage Loan Agreement or Senior Mezzanine Loan Agreement to be paid to and deposited with Lender in accordance with the terms of this Article VII (and Borrower shall enter into lockbox and cash management agreements for the benefit of Lender in form and substance acceptable to Lender).

## VIII. DEFAULTS

**Section 8.1. Event of Default.** (a) Each of the following events shall constitute an event of default hereunder (an “Event of Default”):

- (i) if (A) any portion of the Debt is not paid in full on the Maturity Date, (B) the Debt Service is not paid in full on or before the related Payment Date, or (C) any other portion of the Debt is not paid within five (5) days of when due;
- (ii) if any of the Taxes or Other Charges are not paid (with respect to each Individual Property) prior to Delinquency;
- (iii) if the Policies (with respect to each Individual Property) are not kept in full force and effect, or if certified copies of the Policies (for each Individual Property) are not delivered to Lender upon request (or certificates thereof, if a Policy shall be renewed and certified copies of the Policy are not immediately available upon such renewal (Borrower agreeing in such instance to provide copies of the Policies to Lender promptly thereafter));
- (iv) if Borrower Transfers or otherwise encumbers any portion of the Properties, or the Collateral or Senior Mezzanine Collateral, or there shall otherwise occur a Transfer, without Lender’s prior consent in violation of the provisions of this Agreement, the Pledge Agreement or any other Loan Document or any Transfer is made in violation of the provisions of Section 5.2.10;
- (v) if any representation or warranty made by Borrower or any other Loan Party herein or in any other Loan Document, or in any report, certificate, financial statement or other instrument, agreement or document furnished to Lender shall have been false or misleading in any material respect as of the date the representation or warranty was made (and, with respect to any such breach which is not the subject of any other subsection of this Section 8.1 and which is capable of being cured, Borrower fails to remedy such condition within ten (10) days following notice to Borrower from Lender, in the case of any such breach which can be cured by the payment of a sum of money, or within thirty (30) days following notice from Lender in the case of any other such breach);
- (vi) if Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Principal, Holdings, Operating Company or any Guarantor shall make an assignment for the benefit of creditors;
- (vii) if a receiver, liquidator or trustee shall be appointed for Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Principal, Holdings, Operating Company or Guarantor, or if Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Principal, Holdings, Operating Company or Guarantor shall be adjudicated a bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to federal bankruptcy law, or any similar federal or state law, shall be filed by or against, consented to, or acquiesced in by, Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Principal, Holdings, Operating Company or Guarantor, or if any

proceeding for the dissolution or liquidation of Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Principal, Holdings, Operating Company or Guarantor shall be instituted; provided, however, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Principal, Holdings, Operating Company or Guarantor, upon the same not being discharged, stayed or dismissed within ninety (90) days;

(viii) if Borrower attempts to assign its rights under this Agreement or any of the other Loan Documents or any interest herein or therein in contravention of the Loan Documents;

(ix) if Borrower breaches any of its respective negative covenants contained in Section 5.2 or any covenant contained in Section 4.1.30 or Section 5.1.11 hereof (and, with respect to any such breach of any covenant set forth in Section 5.1.11 which is not the subject of any other subsection of this Section 8.1, Borrower fails to remedy such condition within ten (10) days after notice to Borrower from Lender, in the case of any such Default under Section 5.1.11 which can be cured by the payment of a sum of money, or for thirty (30) days after notice from Lender in the case of any other such Default under Section 5.1.11);

(x) with respect to any term, covenant or provision set forth herein which specifically contains a notice requirement or grace period, if Borrower shall be in default under such term, covenant or condition after the giving of such notice or the expiration of such grace period;

(xi) if any of the assumptions contained in the Insolvency Opinion delivered to Lender in connection with the Loan, or in the Additional Insolvency Opinion delivered subsequent to the closing of the Loan, is or shall become untrue in any material respect; or if any of the assumptions contained in the True Lease Opinion delivered to Lender in connection with the Loan, or in the Additional True Lease Opinion delivered subsequent to the closing of the Loan, is or shall become untrue in any material respect;

(xii) if Mortgage Borrower, Operating Company or Guarantor (Operating Lease) is in default of any of its material obligations under the Operating Lease (or under another lease and/or management agreement in substitution for the Operating Lease in accordance herewith) or under the Operating Lease Guaranty (or under another operating lease guaranty in substitution for the Operating Lease Guaranty in accordance herewith) beyond any applicable notice and cure periods contained therein; or if any Operating Lease (or such other lease and/or management agreement) or any Operating Lease Guaranty (or such other operating lease guaranty) shall be surrendered or any Operating Lease or any Operating Lease Guaranty shall be terminated or canceled for any reason or under any circumstances whatsoever, except with the consent of Lender; or if any of the terms, covenants or conditions of the Operating Lease (or such other lease and/or management agreement) or the Operating Lease Guaranty (or such other operating lease guaranty) shall in any manner be modified, changed, supplemented, altered, restated or amended without the consent of Lender except as may otherwise expressly permitted in this Agreement;

(xiii) if any Affiliate of Borrower that is or becomes a party to the Windstorm Insurance Intercreditor Agreement is in default of any of its material obligations under the Windstorm Insurance Intercreditor Agreement beyond any applicable notice and cure periods contained therein; or if the Windstorm Insurance Intercreditor Agreement shall be surrendered, terminated or canceled for any reason or under any circumstances whatsoever, except with the consent of Lender; or if any of the terms, covenants or conditions of the Windstorm Insurance Intercreditor Agreement shall in any manner be modified, changed, supplemented, altered, restated or amended without the consent of Lender;

(xiv) if Borrower, Senior Mezzanine Borrower or Mortgage Borrower fails to comply with the covenants as to Prescribed Laws set forth in Section 5.1.1 hereof;

(xv) if (A) subject to any notice and cure periods contained in the applicable Ground Lease, Mortgage Borrower or Ground Lease Subsidiary, as applicable, shall fail in the payment of any rent, additional rent or other charge mentioned in or made payable by such Ground Lease as and when such rent or other charge is payable (unless waived by the landlord under such Ground Lease), (B) subject to any notice and cure periods contained in the applicable Ground Lease, there shall occur any default by Mortgage Borrower or Ground Lease Subsidiary, as applicable, as tenant under such Ground Lease, in the observance or performance of any term, covenant or condition of the Ground Lease on the part of Mortgage Borrower or Ground Lease Subsidiary, as applicable, to be observed or performed (unless waived by the landlord under the Ground Lease) (other than any such default being contested by Borrower in good faith by appropriate proceedings, provided that (i) no Event of Default has occurred and remains uncured, (ii) such proceeding shall be conducted in accordance with all applicable statutes, laws and ordinances, (iii) in Lender's reasonable determination, the Ground Lease is not in imminent danger of being forfeited, terminated, cancelled or lost and the Operating Company's use and operation of the ground leased premises in connection with the operation of Harrah's Lake Tahoe", "Harvey's Lake Tahoe" or "Bill's Lake Tahoe" is not in imminent danger of being denied, forfeited, terminated, cancelled or lost and (iv) Borrower shall furnish such security as may be reasonably requested by Lender), (C) any one or more of the events referred to in any Ground Lease shall occur which would cause the Ground Lease to terminate without notice or action by the landlord under the Ground Lease or which would entitle the landlord to terminate the Ground Lease and the term thereof by giving notice to Mortgage Borrower or Ground Lease Subsidiary, as applicable, as tenant thereunder (unless waived by the landlord under the Ground Lease), (D) the leasehold estate created by any Ground Lease shall be surrendered or the Ground Lease shall be terminated or canceled for any reason or under any circumstances whatsoever unless Mortgage Borrower or Ground Lease Subsidiary, as applicable, acquires the fee interest and mortgages same to Lender (unless Mortgage Borrower or Ground Lease Subsidiary, as applicable, acquires the fee interest, with Lender's prior reasonable approval, and mortgages same to Mortgage Lender) or (E) if any of the terms, covenants or conditions of any Ground Lease shall in any manner be modified, changed, supplemented, altered, or amended without the consent of Lender except as otherwise permitted by this Agreement;

(xvi) any Gaming License shall be refused, suspended, revoked, modified in a materially adverse manner or canceled or allowed to lapse or any proceeding is commenced by any Governmental Authority for the purpose of suspending, revoking or canceling any Gaming License in any materially adverse respect, or any Governmental Authority shall have appointed a conservator, supervisor or trustee to or for any of the Casino Components and, in each case of the foregoing, such action could reasonably be expected to (A) have an Individual Material Adverse Effect, (B) materially and adversely effect the continued operation of the Casino Components in the usual course of business and in substantially the same manner and to at least the same standard as was maintained prior to such action, or (C) result in any material decrease in the then expected cash flow and revenues to be derived from the Casino Components;

(xvii) if Borrower shall continue to be in Default under any of the other terms, covenants or conditions of this Agreement not specified in subsections (i) to (xv) above, for ten (10) days after notice to Borrower from Lender, in the case of any Default which can be cured by the payment of a sum of money, or for thirty (30) days after notice from Lender in the case of any other Default; provided, however, that if such non-monetary Default is susceptible of cure but cannot reasonably be cured within such thirty (30) day period and provided further that Borrower shall have commenced to cure such Default within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for such time as is reasonably necessary for Borrower in the exercise of due diligence to cure such Default, such additional period not to exceed one hundred twenty (120) days;

(xviii) if there shall be a default under any of the other Loan Documents beyond any applicable cure periods contained in such documents, whether as to Borrower, Mortgage Borrower, Senior Mezzanine Borrower, the Collateral or any Individual Property, or if any other such event shall occur or condition shall exist, if the effect of such event or condition is to accelerate the maturity of any portion of the Debt or to permit Lender to accelerate the maturity of all or any portion of the Debt;

(xix) if the Liens created pursuant to any Loan Document shall cease to be a fully protected enforceable first priority security interest in the Collateral, or any portion of the Collateral is Transferred without Lender's prior written consent except as permitted hereunder; or

(xx) if a Mortgage Loan Event of Default or Senior Mezzanine Loan Event of Default shall occur.

(b) Upon the occurrence of an Event of Default (other than an Event of Default described in clauses (vi) or (vii) above) and at any time thereafter, in addition to any other rights or remedies available to it pursuant to this Agreement and the other Loan Documents or at law or in equity, Lender may take such action, without notice or demand, that Lender deems advisable to protect and enforce its rights against Borrower and in and to all or any of the Collateral, including, without limitation, declaring the Debt to be immediately due and payable, and Lender may enforce or avail itself of any or all rights or remedies provided in the Loan Documents and may exercise all the rights and remedies of a secured party under the Uniform

Commercial Code, as adopted and enacted by the State or States where any of the Collateral is located against Borrower and any or all of the Collateral, including, without limitation, all rights or remedies available at law or in equity; and upon any Event of Default described in clauses (vi) or (vii) above, the Debt and all other obligations of Borrower hereunder and under the other Loan Documents shall immediately and automatically become due and payable, without notice or demand, and Borrower hereby expressly waives any such notice or demand, anything contained herein or in any other Loan Document to the contrary notwithstanding.

**Section 8.2. Remedies.** (a) Upon the occurrence of an Event of Default, but in compliance with applicable Gaming Laws, all or any one or more of the rights, powers, privileges and other remedies available to Lender against Borrower under this Agreement or any of the other Loan Documents executed and delivered by, or applicable to, Borrower or at law or in equity may be exercised by Lender at any time and from time to time, whether or not all or any of the Debt shall be declared due and payable, and whether or not Lender shall have commenced any foreclosure proceeding or other action for the enforcement of its rights and remedies under any of the Loan Documents with respect to all or any of the Collateral. Any such actions taken by Lender shall be cumulative and concurrent and may be pursued independently, singularly, successively, together or otherwise, at such time and in such order as Lender may determine in its sole discretion, to the fullest extent permitted by law, without impairing or otherwise affecting the other rights and remedies of Lender permitted by law, equity or contract or as set forth herein or in the other Loan Documents. Without limiting the generality of the foregoing, Borrower agrees that if an Event of Default is continuing (i) Lender is not subject to any "one action" or "election of remedies" law or rule, and (ii) all liens and other rights, remedies or privileges provided to Lender shall remain in full force and effect until Lender has exhausted all of its remedies against the Collateral and the Collateral has been foreclosed upon, sold and/or otherwise realized upon in satisfaction of the Debt or the Debt has been paid in full.

(b) With respect to Borrower and the Collateral, nothing contained herein or in any other Loan Document shall be construed as requiring Lender to resort to any portion of the Collateral for the satisfaction of any of the Debt in preference or priority to any other portion of the Collateral, and Lender may seek satisfaction out of all of the Collateral or any part thereof, in its absolute discretion in respect of the Debt. In addition, Lender shall have the right from time to time to partially foreclose upon the Collateral in any manner and for any amounts secured by the Pledge Agreement then due and payable as determined by Lender in its sole discretion including, without limitation, the following circumstances: (i) in the event Borrower defaults beyond any applicable grace period in the payment of one or more scheduled payments of principal and interest, Lender may foreclose upon the Collateral to recover such delinquent payments, or (ii) in the event Lender elects to accelerate less than the entire outstanding principal balance of the Loan, Lender may foreclose upon the Collateral to recover so much of the principal balance of the Loan as Lender may accelerate and such other sums secured by the Collateral as Lender may elect. Notwithstanding one or more partial foreclosures, the Collateral shall remain subject to the Pledge Agreement and the other Loan Documents to secure payment of sums secured by the Pledge Agreement and other Loan Documents and not previously recovered.

(c) Upon the occurrence and during the continuance of an Event of Default, Lender shall have the right from time to time to sever the Note and the other Loan Documents

into one or more separate notes, pledges and other security documents (the “**Severed Loan Documents**”) in such denominations as Lender shall determine in its sole discretion for purposes of evidencing and enforcing its rights and remedies provided hereunder. Borrower shall execute and deliver to Lender from time to time, promptly after the request of Lender, a severance agreement and such other documents as Lender shall request in order to effect the severance described in the preceding sentence, all in form and substance reasonably satisfactory to Lender. Borrower hereby absolutely and irrevocably appoints Lender as its true and lawful attorney, coupled with an interest, in its name and stead to make and execute all documents necessary or desirable to effect the aforesaid severance, Borrower ratifying all that its said attorney shall do by virtue thereof; provided, however, Lender shall not make or execute any such documents under such power until three (3) days after notice has been given to Borrower by Lender of Lender’s intent to exercise its rights under such power. Borrower shall be obligated to pay any costs or expenses incurred in connection with the preparation, execution, recording or filing of the Severed Loan Documents. The Severed Loan Documents shall not contain any representations, warranties or covenants not contained in the Loan Documents and any such representations and warranties contained in the Severed Loan Documents will be given by Borrower only as of the Closing Date. The Severed Loan Documents shall (a) not increase the aggregate stated principal amount of the Loan, (b) provide that the weighted average spread of the Loan on the date of such severance shall equal the weighted average spread which was applicable to the Loan immediately prior to such severance (Borrower acknowledging that such Severed Loan Document may, in connection with the application of principal to the amounts evidenced by such Severed Loan Documents, subsequently cause the weighted average spread of such new notes or modified notes to change), (c) not adversely affect the overall economics to Borrower of the Loan, taken as a whole, or (d) expose Borrower to any additional costs or increased risk of any liability (beyond that or greater than that existing in the Loan Documents in effect on the date hereof).

(d) The rights, powers and remedies of Lender under this Agreement shall be cumulative and not exclusive of any other right, power or remedy which Lender may have against Borrower pursuant to this Agreement or the other Loan Documents, or existing at law or in equity or otherwise. Lender’s rights, powers and remedies may be pursued singularly, concurrently or otherwise, at such time and in such order as Lender may determine in Lender’s sole discretion. No delay or omission to exercise any remedy, right or power accruing upon an Event of Default shall impair any such remedy, right or power or shall be construed as a waiver thereof, but any such remedy, right or power may be exercised from time to time and as often as may be deemed expedient. A waiver of one Default or Event of Default with respect to Borrower shall not be construed to be a waiver of any subsequent Default or Event of Default by Borrower or to impair any remedy, right or power consequent thereon.

(e) Any amounts recovered from the Collateral after an Event of Default may be applied by Lender toward the payment of any interest and/or principal of the Loan and/or any other amounts due under the Loan Documents in such order, priority and proportions as Lender in its sole discretion shall determine.

(f) Upon the occurrence and during the continuance of an Event of Default, Lender may, but without any obligation to do so and without notice to or demand on Borrower and without releasing Borrower from any obligation hereunder or being deemed to have cured

any Event of Default hereunder, make, do or perform any obligation of Borrower hereunder in such manner and to such extent as Lender may deem necessary. Borrower shall cause Mortgage Borrower to permit Lender to enter upon any Individual Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in any Individual Property for such purposes, and the cost and expense thereof (including reasonable attorneys' fees to the extent permitted by law), with interest as provided in this Section 8.2, shall constitute a portion of the Debt and shall be due and payable to Lender upon demand. All such costs and expenses incurred by Lender in remedying such Event of Default or such failed payment or act or in appearing in, defending, or bringing any action or proceeding shall bear interest at the Default Rate, for the period after such cost or expense was incurred into the date of payment to Lender. All such costs and expenses incurred by Lender together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and be secured by the liens, claims and security interests provided to Lender under the Loan Documents and shall be immediately due and payable upon demand by Lender therefor. Upon the occurrence and during the continuance of a Mortgage Loan Event of Default, Lender may, but without any obligation to do so and without notice to or demand on Borrower or Mortgage Borrower and without releasing Mortgage Borrower from any obligation under the Mortgage Loan Documents or being deemed to have cured any Mortgage Loan Event of Default, make, do or perform any obligation of Mortgage Borrower under Mortgage Loan Documents in such manner and to such extent as Lender may deem necessary. All such costs and expenses incurred by Lender in remedying such Mortgage Loan Event of Default or such failed payment or act shall bear interest at the Default Rate, for the period after such cost or expense was incurred into the date of payment to Lender. All such costs and expenses incurred by Lender together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and be secured by the liens, claims and security interests provided to Lender under the Loan Documents and shall be immediately due and payable upon demand by Lender therefor.

(g) For the purpose of carrying out the provisions and exercising the rights, powers and privileges granted in this Section 8.2, Borrower hereby irrevocably constitutes and appoints the Lender its true and lawful attorney-in-fact to execute, acknowledge and deliver any instruments and do and perform any acts such as are referred to in this subsection in the name and on behalf of Borrower upon the occurrence and during the continuance of an Event of Default. This power of attorney is a power coupled with an interest and cannot be revoked.

### **Section 8.3. Intentionally Omitted.**

**Section 8.4. Costs of Collection.** In the event that after an Event of Default and during the continuance thereof: (a) the Note or any of the Loan Documents is placed in the hands of an attorney for collection or enforcement or is collected or enforced through any legal proceeding; (b) an attorney is retained to represent Lender in any bankruptcy, reorganization, receivership, or other proceedings affecting creditors' rights and involving a claim under the Note or any of the Loan Documents or (c) an attorney is retained to protect or enforce the lien or any of the terms of this Agreement, the Pledge Agreement or any of the Loan Documents, then, in any such instance, Borrower shall pay to Lender all reasonable attorneys' fees, costs and expenses actually incurred in connection therewith, including costs of appeal, together with interest on any judgment obtained by Lender at the Default Rate.

## **IX. SPECIAL PROVISIONS**

**Section 9.1. Sale of Notes and Securitization.** Borrower acknowledges and agrees that the Lender may sell all or any portion of the Loan and the Loan Documents, or issue one or more participations therein, or consummate one or more private or public securitizations of rated single- or multi-class securities (the "**Securities**") secured by or evidencing ownership interests in all or any portion of the Loan and the Loan Documents or a pool of assets that include the Loan and the Loan Documents (such sales, participations and/or securitizations, collectively, a "**Securitization**"). At the request of Lender, and to the extent not already required to be provided by Borrower under this Agreement, Borrower shall use reasonable efforts to provide information not in the possession of Lender or which may be reasonably required by Lender in order to satisfy the market standards to which Lender customarily adheres or which may be reasonably required by prospective investors and/or the Rating Agencies in connection with any such Securitization including, without limitation, to:

(a) provide or cause Mortgage Borrower and Senior Mezzanine Borrower to provide additional and/or updated Provided Information, together with appropriate verification and/or consents related to the Provided Information through letters of auditors or opinions of counsel of independent attorneys reasonably acceptable to Lender and the Rating Agencies;

(b) cooperate in good faith in the preparation of descriptive materials for presentations to any or all of the Rating Agencies, and work with, and if requested, supervise, third-party service providers engaged by Borrower, Holdings and their respective affiliates to obtain, collect, and deliver information requested or required by Lender or the Rating Agencies;

(c) deliver, if required or requested by any Rating Agency, (i) updated opinions of counsel as to non-consolidation, due execution and enforceability with respect to the Properties, Borrower, Mortgage Borrower, Senior Mezzanine Borrower, the Collateral, the Senior Mezzanine Collateral, Principal, Holdings and their respective Affiliates and the Loan Documents, and (ii) revised organizational documents for Borrower, which counsel opinions and organizational documents shall be reasonably satisfactory to Lender and the Rating Agencies;

(d) if required by any Rating Agency, use commercially reasonable efforts to deliver such additional tenant estoppel letters, subordination agreements or other agreements

from parties to agreements that affect any of the Properties, which estoppel letters, subordination agreements or other agreements shall be reasonably satisfactory to Lender and the Rating Agencies;

(e) execute such amendments to the Loan Documents as may be requested by Lender or the Rating Agencies to effect the Securitization and/or deliver one or more new component notes to replace the original note or modify the original note to reflect multiple components of the Loan such that the pricing and marketability of the Securities and the size of each class of Securities and the rating assigned to each such class by the Rating Agencies shall provide the most favorable rating levels and achieve the optimum rating levels for the Loan, provided that, (i) the aggregate stated principal amount of the notes, following such amendments or delivery of new or component notes, shall equal the aggregate stated principal amount of the Loan immediately prior thereto, (ii) the weighted average spread of the Loan on the date of such amendment or delivery of new or component notes shall equal the weighted average spread which was applicable to the Loan immediately prior to such adjustment (Borrower acknowledging that such new notes or modified notes may, in connection with the application of principal to such new notes or modified note following the occurrence of an Event of Default, but not otherwise, subsequently cause the weighted average spread of such new notes or modified notes to change and (iii) the provisions of Section 2.1.5 otherwise shall apply to any such amendments and delivery of new or component notes (such provisions being incorporated herein by this reference);

(f) if requested by Lender, review any information regarding any of the Properties, Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Principal, the Collateral, the Senior Mezzanine Collateral, Holdings, the Operating Company and the Loan which is contained in a preliminary or final private placement memorandum, prospectus, prospectus supplement (including any amendment or supplement to either thereof), or other disclosure document to be used by Lender or any affiliate thereof; and

(g) supply to Lender such documentation, financial statements and reports in form and substance required in order to comply with any applicable securities laws (to the extent in Borrower's possession, or in the possession of Borrower's advisors, agents or employees), including, without limitation, if applicable, information necessary to comply with any applicable reporting or information requirements under Regulation D under the Securities Act of 1933 or Regulation S under the Securities Act of 1933.

Lender and Borrower each shall pay their respective costs and expenses incurred in connection with the foregoing, including, without limitation, legal fees in connection with any of the foregoing matters; except that all costs and expenses of Lender and Borrower associated with any restructuring of the Loan requested by Lender, including under Sections 2.1.5, 2.1.6 and 2.1.7, shall be paid solely by Lender.

**Section 9.2. Securitization Indemnification.** (a) Borrower understands that certain of the Provided Information may be included in Disclosure Documents in connection with the Securitization and may also be included in filings with the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended (the "**Securities Act**"), or the Securities and Exchange Act of 1934, as amended (the "**Exchange Act**"), or provided or made

available to investors or prospective investors in the Securities, the Rating Agencies, and service providers relating to the Securitization. In the event that the Disclosure Document is required to be revised prior to the sale of all Securities, Borrower will cooperate with the holder of the Note in updating the Disclosure Document by providing all current information necessary to keep the Disclosure Document accurate and complete in all material respects to the extent in Borrower's possession.

(b) Borrower agrees to provide, in connection with the Securitization, an indemnification agreement (i) certifying that (A) Borrower has carefully examined the Disclosure Documents, including, without limitation, the sections entitled "Risk Factors," "Special Considerations," "Description of the Collateral," "Description of the Mezzanine Loans," "The Operating Company," "The Borrower" and "Certain Legal Aspects of the Mezzanine Loans," and (B) such sections and such other information in the Disclosure Documents (to the extent such information relates to or includes any Provided Information or any information regarding the Properties, Borrower, Mortgage Borrower, the Collateral, the Senior Mezzanine Collateral and/or Operating Company) (collectively with the Provided Information, the "**Covered Disclosure Information**") do not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, (ii) indemnifying Lender, each Noteholder, JPM (whether or not it is the Lender), any Affiliate of JPM or a Noteholder that has filed any registration statement relating to the Securitization or has acted as the sponsor or depositor in connection with the Securitization, any Affiliate of JPM or a Noteholder that acts as an underwriter, placement agent or initial purchaser of Securities issued in the Securitization, any other co-underwriters, co-placement agents or co-initial purchasers of Securities issued in the Securitization, and each of their respective officers, directors, partners, employees, representatives, agents and Affiliates and each Person or entity who controls any such Person within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act (collectively, the "**Indemnified Persons**"), for any losses, claims, damages, liabilities, costs or expenses (including, without limitation, legal fees and expenses for enforcement of these obligations (collectively, the "**Liabilities**")) to which any such Indemnified Person may become subject insofar as the Liabilities arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in the Covered Disclosure Information or arise out of or are based upon the omission or alleged omission to state in the Covered Disclosure Information a material fact required to be stated therein or necessary in order to make the statements in the Covered Disclosure Information, in light of the circumstances under which they were made, not misleading and (iii) agreeing to reimburse each Indemnified Person for any legal or other expenses incurred by such Indemnified Person, as they are incurred, in connection with investigating or defending the Liabilities provided, however, that Borrower shall have liability with respect to Liabilities arising out of or based upon the Covered Disclosure Information only to the extent that such Liabilities arise out of or are based upon any such untrue statement or omission made in the Covered Disclosure Information in reliance upon and in conformity with information furnished to Lender or such Noteholder by or on behalf of Borrower in connection with the preparation of the Disclosure Documents or in connection with the underwriting or the closing of the Loan (including without limitation financial statements of Borrower and operating statements and rent rolls with respect to the Properties), and in no event shall Borrower be liable for Liabilities arising from information contained in a Disclosure Document that was not provided to Borrower for comment at least five (5) Business Days prior

to its dissemination or on which Borrower provided comments to Lender in writing and Lender failed to incorporate such comments (assuming such comments were accurate). This indemnity agreement will be in addition to any liability which Borrower may otherwise have. Moreover, the indemnification provided for in clauses (ii) and (iii) above shall be effective whether or not an indemnification agreement described in clause (i) above is provided.

(c) In connection with filings under the Exchange Act (if any), Borrower agrees to indemnify (i) the Indemnified Persons for Liabilities to which any such Indemnified Person may become subject insofar as the Liabilities arise out of or are based upon any untrue statement or alleged untrue statement of any material fact in the Covered Disclosure Information, or the omission or alleged omission to state in the Covered Disclosure Information a material fact required to be stated therein or necessary in order to make the statements in the Covered Disclosure Information, in light of the circumstances under which they were made, not misleading and (ii) reimburse each Indemnified Person for any legal or other expenses incurred by such Indemnified Persons, as they are incurred, in connection with defending or investigating the Liabilities.

(d) Promptly after receipt by an Indemnified Person of notice of any claim or the commencement of any action, the Indemnified Person shall, if a claim in respect thereof is to be made against Borrower, notify Borrower in writing of the claim or the commencement of that action; provided, however, that the failure to notify Borrower shall not relieve it from any liability which it may have under the indemnification provisions of this Section 9.2 except to the extent that it has been materially prejudiced by such failure and, provided, further, that the failure to notify Borrower shall not relieve it from any liability which it may have to an Indemnified Person otherwise than under the provisions of this Section 9.2. If any such claim or action shall be brought against an Indemnified Person, and it shall notify Borrower thereof, Borrower shall be entitled to participate therein and, to the extent that it wishes, assume the defense thereof with counsel reasonably satisfactory to the Indemnified Person. After notice from any Borrower to an Indemnified Person of its election to assume the defense of such claim or action, Borrower shall not be liable to the Indemnified Person for any legal or other expenses subsequently incurred by the Indemnified Person in connection with the defense thereof except as provided in the following sentence; provided, however, if the defendants in any such action include both Borrower, on the one hand, and one or more Indemnified Persons on the other hand, and an Indemnified Person shall have reasonably concluded that there are any legal defenses available to it and/or other Indemnified Persons that are different or in addition to those available to Borrower, the Indemnified Person or Persons shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on behalf of such Indemnified Person or Persons. The Indemnified Person shall instruct its counsel to maintain reasonably detailed billing records for fees and disbursements for which such Indemnified Person is seeking reimbursement hereunder and shall submit copies of such detailed billing records to substantiate that such counsel's fees and disbursements are solely related to the defense of a claim for which Borrower is required hereunder to indemnify such Indemnified Person. Borrower shall not be liable for the expenses of more than one (1) such separate counsel unless such Indemnified Person shall have reasonably concluded that there may be legal defenses available to it that are different from or additional to those available to another Indemnified Person.

(e) Without the prior consent of the Indemnified Person in question (which consent shall not be unreasonably withheld), Borrower shall not settle or compromise or consent to the entry of any judgment in any pending or threatened claim, action, suit or proceeding in respect of which indemnification may be sought hereunder (whether or not any Indemnified Person is an actual or potential party to such claim, action, suit or proceeding) unless Borrower shall have given such Indemnified Person reasonable prior notice thereof and shall have obtained an unconditional release of each Indemnified Person hereunder from all liability arising out of such claim, action, suit or proceedings. As long as Borrower has complied with its obligations to defend and indemnify hereunder, Borrower shall not be liable for any settlement made by any Indemnified Person without the consent of Borrower (which consent shall not be unreasonably withheld).

(f) Borrower agrees that if any indemnification or reimbursement sought pursuant to this Section 9.2 is finally judicially determined to be unavailable for any reason or is insufficient to hold any Indemnified Person harmless (with respect only to the Liabilities that are the subject of this Section 9.2), then Borrower, on the one hand, and such Indemnified Person, on the other hand, shall contribute to the Liabilities for which such indemnification or reimbursement is held unavailable or is insufficient: (x) in such proportion as is appropriate to reflect the relative benefits to Borrower, on the one hand, and such Indemnified Person, on the other hand, from the transactions to which such indemnification or reimbursement relates; or (y) if the allocation provided by clause (x) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (x) but also the relative faults of Borrower, on the one hand, and all Indemnified Persons, on the other hand, as well as any other equitable considerations. Notwithstanding the provisions of this Section 9.2, (A) no party found liable for a fraudulent misrepresentation shall be entitled to contribution from any other party who is not also found liable for such fraudulent misrepresentation, and (B) Borrower agrees that in no event shall the amount to be contributed by the Indemnified Persons collectively pursuant to this paragraph exceed the amount of the fees (by underwriting discount or otherwise) actually received by the Indemnified Persons in connection with the closing of the Loan or the Securitization.

(g) Borrower agrees that the indemnification, contribution and reimbursement obligations set forth in this Section 9.2 shall apply whether or not any Indemnified Person is a formal party to any lawsuits, claims or other proceedings. Borrower further agrees that the Indemnified Persons are intended third party beneficiaries under this Section 9.2.

(h) The liabilities and obligations of the Indemnified Persons and Borrower under this Section 9.2 shall survive the termination of this Agreement and the satisfaction and discharge of the Debt.

(i) Notwithstanding anything to the contrary contained herein, Borrower shall have no obligation to act as depositor with respect to the Loan or an issuer or registrant with respect to the Securities issued in any Securitization.

**Section 9.3. Exculpation.** (a) Subject to the qualifications below, Lender shall not enforce the liability and obligation of Borrower to perform and observe the obligations contained in the Note, this Agreement, the Pledge Agreement or the other Loan Documents by

any action or proceeding wherein a money judgment shall be sought against Borrower, except that Lender may bring a foreclosure action, an action for specific performance or any other appropriate action or proceeding to enable Lender and each Noteholder to enforce and realize upon its interest under the Note, this Agreement, the Pledge Agreement and the other Loan Documents, or in the Collateral, or any other collateral given to Lender pursuant to the Loan Documents; provided, however, that, except as specifically provided herein, any judgment in any such action or proceeding shall be enforceable against Borrower only to the extent of Borrower's interest in the Collateral and in any other collateral given to Lender, and Lender, by accepting the Note, this Agreement, the Pledge Agreement and the other Loan Documents, agrees that it shall not sue for, seek or demand any deficiency judgment against Borrower in any such action or proceeding under, or by reason of, or in connection with, the Note, this Agreement, the Pledge Agreement or the other Loan Documents. The provisions of this Section shall not, however, (a) constitute a waiver, release or impairment of any obligation evidenced or secured by any of the Loan Documents; (b) impair the right of Lender to name Borrower as a party defendant in any action or suit for foreclosure and sale under the Pledge Agreement; (c) affect the validity or enforceability of or any Guaranty made in connection with the Loan or any of the rights and remedies of Lender thereunder; (d) impair the right of Lender to obtain the appointment of a receiver; (e) intentionally omitted; (f) constitute a prohibition against Lender to seek a deficiency judgment against Borrower in order to fully realize the security granted by the Pledge Agreement or to commence any other appropriate action or proceeding in order for Lender to exercise its remedies against all of the Collateral; or (g) constitute a waiver of the right of Lender to enforce the liability and obligation of Borrower, by money judgment or otherwise, to the extent of any actual loss, damage, cost, expense, liability, claim or other obligation incurred by Lender (including attorneys' fees and costs reasonably incurred) arising out of or in connection with the following:

(i) fraud or intentional misrepresentation by Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor in connection with the execution and delivery of the Loan Documents and/or the Loan;

(ii) the misappropriation, conversion or misapplication in contravention of the Loan Documents by Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor of any funds of Borrower, Senior Mezzanine Borrower, Mortgage Borrower or Operating Company, including, without limitation, (A) any Revenues, (B) any Net Liquidation Proceeds or Insurance Proceeds, (C) any Awards received in connection with a Condemnation, (D) any Rents or security deposits (or any item of Revenue, from whatever source) following an Event of Default, or (E) any distribution or other payments made in connection with any part of the Collateral or Senior Mezzanine Collateral;

(iii) the misappropriation, conversion or misapplication by Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor of any security deposits or Rents paid more than one (1) month in advance;

(iv) any act of actual intentional physical waste by Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor;

(v) the breach of any representation, warranty, covenant or indemnification provision in the Environmental Indemnity Agreement concerning environmental laws, hazardous substances and asbestos and any indemnification of Lender with respect thereto in either document;

(vi) if Borrower, Mortgage Borrower, Senior Mezzanine Borrower or Operating Company fails to obtain Lender's prior consent to any voluntary intentional Transfer as required by this Loan Agreement, the Mortgage Loan Agreement or the Mortgages, as applicable;

(vii) any security deposits, advance deposits or any other deposits collected with respect to any of the Properties which are not delivered to Mortgage Lender upon a foreclosure of any of the Properties or action in lieu thereof, except to the extent any such security deposits were applied in accordance with the terms and conditions of any of the Leases prior to the occurrence of the Event of Default that gave rise to such foreclosure or action in lieu thereof;

(viii) in the event of: (A) Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor filing a voluntary petition under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (B) the filing of an involuntary petition against Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law by any Person in which Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor or any of their respective Affiliates, agents or employees colludes with or such other Person, or Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor soliciting or causing to be solicited petitioning creditors for any involuntary petition against Borrower, Operating Company or any Guarantor from any Person; (C) Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor filing an answer consenting to or otherwise acquiescing in or joining in any involuntary petition filed against it by any other Person, other than Lender, under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (D) Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor consenting to or acquiescing in or joining in an application for the appointment of a custodian, receiver, trustee, or examiner for Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor or any of the Properties, the Collateral, the Senior Mezzanine Collateral or any portion thereof, other than at the request of Lender; or (E) Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor making an assignment for the benefit of creditors (other than Lender), or admitting, in writing or in any legal proceeding, its insolvency or inability to pay its debts as they become due;

(ix) if Borrower, Senior Mezzanine Borrower or Mortgage Borrower fails to maintain its status as a Special Purpose Entity or breaches any material representation or warranty set forth in Section 4.1.30 of this Agreement; and

(x) if Borrower, Mortgage Borrower, Senior Mezzanine Borrower or Operating Company fails to obtain Lender's prior consent to any voluntary Indebtedness (other than (x) with respect to Mortgage Borrower, Permitted Indebtedness and (y) with respect to Operating Company, Permitted Indebtedness (Operating Company), as applicable) or voluntary Lien (other than Permitted Encumbrances) encumbering any of the Properties, Senior Mezzanine Collateral or Collateral as required by this Agreement, the Senior Mezzanine Loan Agreement, the Mortgage Loan Agreement, the Pledge Agreement or the Mortgages.

Notwithstanding anything to the contrary under this Agreement, neither any present or future Affiliate of Borrower (other than Guarantor, to the extent provided under the Guaranty) nor any present or future shareholder, officer, director, employee, trustee, beneficiary, advisor, partner, member, principal, participant or agent of or in any Borrower or of or in any person or entity that is or becomes an Affiliate of any Borrower shall have any personal liability, directly or indirectly, under or in connection with the Loan Documents. Neither the negative capital account of any Affiliate of Borrower in Borrower, or in any other Affiliate of Borrower in any other Affiliate of Borrower, nor any obligation of any Affiliate of Borrower in any Borrower to restore a negative capital account or to contribute or loan capital to any Borrower or to any other Affiliate of Borrower shall at any time be deemed to be the property or an asset of any Borrower (or any other Affiliate of Borrower) and neither Lender nor its successors or assigns shall have any right to collect, enforce or proceed against any such negative capital account or obligation to restore, contribute or loan capital.

(b) Notwithstanding anything to the contrary in this Agreement, the Note or any of the Loan Documents, Lender shall not be deemed to have waived any right which Lender may have under Section 506(a), 506(b), 1111(b) or any other provisions of the Bankruptcy Code to file a claim for the full amount of the Indebtedness or to require that all collateral shall continue to secure all of the Indebtedness owing to Lender in accordance with the Loan Documents.

**Section 9.4. Servicer.** (a) At the option of Lender, the Loan may be serviced by a servicer/trustee (the "**Servicer**") selected by Lender and Lender may delegate all or any portion of its responsibilities under this Agreement and the other Loan Documents to the Servicer pursuant to a servicing agreement (the "**Servicing Agreement**") between Lender and Servicer. Lender shall be responsible for any set-up fees or any other initial costs relating to or arising under the Servicing Agreement (arising in connection with the Securitization) and the payment of the monthly servicing fee due to Servicer under the Servicing Agreement, and, unless otherwise specifically set forth herein, Borrower shall be responsible for the payment of all fees and other reasonable out-of-pocket expenses incurred by Servicer resulting from any Borrower requests (for approvals or otherwise) to Servicer.

(b) In the event of a Securitization or syndication, the grant of participations in the Loan or any secondary marketing by Lender, Mortgage Borrower and the Mezzanine Borrowers, collectively may rely upon approvals or consents given by one (1) agent or representative in respect of the Mortgage Lender and the Mezzanine Lenders for the matter in question (which such parties shall designate, and pending further notice from Lender, such agent shall be JPM). Borrower shall only pay legal fees for the outside counsel of one Servicer.

**Section 9.5. Assignments and Participations.** (a) In addition to the rights Lender has under Section 9.1, Lender shall have the right, subject to this Section 9.5, to assign, sell, negotiate, pledge or hypothecate all or any portion of their rights and obligations hereunder (a “**Syndication**”). Except in connection with a Securitization, no Lender shall assign, sell, negotiate, pledge, hypothecate or otherwise transfer all or any portion of its rights in and to the Loan to any other Person (an “**Assignee**”) (a) other than in compliance with Section 9.9 hereof; and (b) unless such transaction shall be an assignment of a constant (and not varying), ratable percentage of such Lender’s interest in the Loan; provided, however, any Lender shall have the right at any time without the consent of or notice to any other Lender or other Person to grant a security interest in all or any portion of such Lender’s interest in the Loan to any Federal Reserve Bank or the central reserve bank or similar authority of any other country to secure any obligation of such Lender to such bank or similar authority (a “**Central Bank Pledge**”). Effective on any such assignment and assumption by the assignee and on compliance with Section 9.9 hereof, the assigning Lender shall have no further liability hereunder with respect to the interest of such Lender that was the subject of such transfer and such Assignee shall be a Lender with respect to such interest, and Borrower shall have the same rights as to such Assignee with respect to such interest from and after the date of such assignment as if such Lender were an original Lender hereunder. Except for a Central Bank Pledge or financing transaction under a repurchase agreement, a Lender making any such assignment shall notify Borrower of same, specifying the Assignee thereof and the amount of the assignment and shall provide such other detail as Borrower may reasonably request to substantiate compliance with the foregoing.

**Section 9.6. Participation.** Lender may, without the consent of the Borrower, in compliance with applicable law, sell participations to one or more banks or other entities (a “**Participant**”), in all or a portion of Lender’s rights and obligations under this Agreement (including all or a portion of the Loan owing to it); provided that (A) Lender’s obligations under this Agreement shall remain unchanged, (B) Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) the Borrower shall continue to deal solely and directly with Lender in connection with Lender’s rights and obligations under this Agreement. The Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.2.3 and 2.2.4 (subject to requirements and limitations therein) to the same extent as if it were a Noteholder and had acquired its interest by assignment pursuant to Section 9.5. Each Lender that sells a participation shall, acting solely for this purpose as an agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each participant’s interest in the Loans or other obligations under this Agreement (the “**Participant Register**”). The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each person whose name is recorded in the Participant Register as the owner of such Loan or other obligation hereunder as the owner thereof for all purposes of this Agreement notwithstanding any notice to the contrary.

**Section 9.7. Borrower’s Facilitation of Transfer.** In order to facilitate permitted assignments and other transfers to Assignees and sales to Participants, Borrower shall execute and deliver to Lender and shall cause Guarantor to execute and deliver to Lender such further documents, instruments or agreements as Lender may reasonably require, including, if required by Lender, supplemental notes in the principal amount of such Lender’s pro rata share of the Loan substantially in the form of such Lender’s Note against surrender of the prior notes, and such supplemental note shall (i) be payable to order of such Lender, (ii) be dated as of the

date hereof, and (iii) mature on the Maturity Date. Such supplemental note shall provide that it evidences a portion of the existing indebtedness hereunder and under the Notes and not any new or additional indebtedness of Borrower. The term “Note” as used in this Agreement and in all the other Loan Documents shall include all such supplemental notes but exclude any Note it replaces. Notwithstanding the foregoing, such documents, instruments or agreements shall not (a) increase the obligations or liabilities of any such Person hereunder or under the other Loan Documents in excess of the obligations or liabilities intended to be provided herein or in the other Loan Documents or (b) decrease such Person’s rights hereunder or under the other Loan Documents to less than what they were prior to the execution of such documents, instruments or agreements. In addition, Borrower agrees to reasonably cooperate with Lender, including providing such information and documentation regarding Borrower, Senior Mezzanine Borrower, Mortgage Borrower, Holdings, the Operating Company and any other Person as Lender or any potential Assignee or Participant may reasonably request and to meet with potential Assignees and Participants upon reasonable notice. Lender and Borrower each shall pay their respective costs and expenses incurred in connection with the foregoing, including, without limitation, legal fees in connection with any of the foregoing matters, except that all costs and expenses of Lender and Borrower associated with any restructuring of the Loan requested by Lender, including under Section 2.1.5, 2.1.6 and 2.1.7, shall be paid solely by Lender.

**Section 9.8. Notice; Registration Requirement.** No Syndication of any part of Lender’s interest in and to the Loan shall be effective or permitted under Section 9.5 until (a) an assignment and acceptance agreement in a form reasonably acceptable to Lender (an “**Assignment and Acceptance**”) with respect to such Syndication shall have been delivered to Lender, (b) Lender shall have registered such Assignee’s name and address in the Register which Lender maintains for the recordation of the names, addresses and interests of Noteholders, and (c) if such Assignee is not already a Lender hereunder, such Assignee shall deliver any tax forms required hereunder. The entries in the Register shall be conclusive, absent manifest error. This Section 9.8 shall not apply to any Central Bank Pledge.

**Section 9.9. Registry.** Borrower hereby designates Lender to serve as Borrower’s agent, solely for purposes of this Section 9.9, to maintain at one of its offices a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the names and addresses of each Assignee, and the principal amount of the Loan (or portions thereof) owing to, each Lender pursuant to the terms hereof from time to time (the “**Register**”). Failure to make any such recordation, or any error in such recordation shall not affect Borrower’s obligations in respect of the Loan. With respect to any Lender, the transfer of the rights to the principal of, and interest on, its interest in the Loan shall not be effective until such transfer is recorded on the Register maintained by Lender with respect to ownership of such Loan and prior to such recordation all amounts owing to the transferor with respect to such Note shall remain owing to the transferor. The registration of a transfer of all or part of the Loan shall be recorded by Lender on the Register only upon the acceptance by Lender of a properly executed and delivered Assignment and Acceptance by the assignor and assignee. At the assigning Lender’s option, concurrently with the delivery of an Assignment and Acceptance pursuant to which an interest of such Lender in the Loan was assigned to such Assignee, the assigning Lender shall surrender to Borrower its Note, if any, evidencing the portion of the Loan corresponding to the interest so transferred and Borrower shall deliver to Lender one or more new promissory notes in the same aggregate principal amount issued to the assigning Lender and/or the Assignee.

**Section 9.10. Cooperation in Syndication.** Borrower agrees to assist the Lender in completing a Syndication satisfactory to the Lender. Such assistance shall include (i) direct contact between senior management and advisors of Borrower and the proposed Assignees and/or Participants, (ii) assistance in the preparation of a confidential information memorandum and other marketing materials to be used in connection with the Syndication, (iii) the hosting, with the Lender, of one or more meetings of prospective Assignees and/or Participants, (iv) the delivery of appraisals satisfactory to the Lender if required. To assist the Lender in its Syndication efforts, Borrower agrees promptly to prepare and provide to the Lender all information with respect to Borrower, Senior Mezzanine Borrower, Mortgage Borrower, Holdings, the Operating Company, Guarantor, the Collateral, the Senior Mezzanine Collateral and the Properties contemplated hereby, including all financial information and projections (the “**Projections**”), as the Lender may reasonably request in connection with the Syndication of the Loan. If required in connection with the Syndication, Borrower hereby agrees to:

(a) deliver updated financial and operating statements and other information reasonably required by the Lender to facilitate the Syndication;

(b) use reasonable efforts to deliver reliance letters reasonably satisfactory to the Lender with respect to the environmental assessments and reports delivered to the Lender prior to the Closing Date, which will run to the Lender and its successors and assigns;

(c) execute modifications to the Loan Documents required by the Lender, provided that such modification will not (except as set forth in (d)) change any material or economic terms of the Loan Documents, or otherwise increase the obligations or decrease the rights of Borrower pursuant to the Loan Documents (except to a de minimis extent); and

(d) if the Lender elects, in its sole discretion, prior to or upon a Syndication, to exercise its rights under Section 2.1.5, Borrower agrees to cooperate with the Lender in connection with the foregoing and to execute the required modifications and amendments to the Notes, this Agreement and the Loan Documents and to use reasonable efforts to provide opinions necessary to effectuate the same. Such Notes or components may be assigned different interest rates, so long as the weighted average of such interest rates does not exceed the Applicable Interest Rate, except in connection with the application of principal to such Notes or components following the occurrence of an Event of Default.

Lender and Borrower each shall pay their respective costs and expenses incurred in connection with the foregoing, including, without limitation, legal fees in connection with any of the foregoing matters, except that all costs and expenses of Lender and Borrower associated with any restructuring of the Loan requested by Lender, including under Sections 2.1.5, 2.1.6 and 2.1.7, shall be paid solely by Lender.

## **X. MISCELLANEOUS**

**Section 10.1. Survival.** This Agreement and all covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the making by Lender of the Loan and the execution and delivery to Lender of the Note, and shall continue in full force and effect so long as all or any of the Debt is outstanding and

unpaid unless a longer period is expressly set forth herein or in the other Loan Documents. Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the legal representatives, successors and assigns of such party. All covenants, promises and agreements in this Agreement, by or on behalf of Borrower, shall inure to the benefit of the legal representatives, successors and assigns of Lender.

**Section 10.2. Lender's Discretion.** Whenever pursuant to this Agreement, Lender exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Lender, the decision of Lender to approve or disapprove or to decide whether arrangements or terms are satisfactory or not satisfactory shall (except as is otherwise specifically herein provided) be in the sole discretion of Lender and shall be final and conclusive. Whenever this Agreement expressly provides that Lender may not withhold or shall be reasonable in granting its consent or its approval of an arrangement or term, such provisions shall also be deemed to prohibit Lender from delaying or conditioning such consent or approval.

**Section 10.3. Governing Law.** (a) **THIS AGREEMENT WAS NEGOTIATED IN THE STATE OF NEW YORK, THE LOAN WAS MADE BY LENDER AND ACCEPTED BY BORROWER IN THE STATE OF NEW YORK, AND THE PROCEEDS OF THE LOAN DELIVERED PURSUANT HERETO WERE DISBURSED FROM THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS AND THE OBLIGATIONS ARISING HEREUNDER AND THEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA. TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER AND LENDER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVE ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS, AND THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.**

(b) **ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER OR BORROWER ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS MAY AT LENDER'S OPTION BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW AND BORROWER WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR**

PROCEEDING, AND BORROWER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. BORROWER DOES HEREBY DESIGNATE AND APPOINT:

Corporation Service Company  
2711 Centerville Road, Suite 400  
Wilmington, DE 19808

AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON ITS BEHALF SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY FEDERAL OR STATE COURT IN NEW YORK, NEW YORK, AND AGREES THAT SERVICE OF PROCESS UPON SAID AGENT AT SAID ADDRESS AND NOTICE OF SAID SERVICE MAILED OR DELIVERED TO BORROWER IN THE MANNER PROVIDED HEREIN SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON BORROWER IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE STATE OF NEW YORK. BORROWER (I) SHALL GIVE PROMPT NOTICE TO LENDER OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER, (II) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN NEW YORK, NEW YORK (WHICH SUBSTITUTE AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS), AND (III) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE IF ITS AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN NEW YORK, NEW YORK OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR.

**Section 10.4. Modification, Waiver in Writing.** No modification, amendment, extension, discharge, termination or waiver of any provision of this Agreement, or of the Note, or of any other Loan Document, nor consent to any departure by Borrower therefrom, shall in any event be effective unless the same shall be in a writing signed by the party against whom enforcement is sought, and then such waiver or consent shall be effective only in the specific instance, and for the purpose, for which given. Except as otherwise expressly provided herein, no notice to, or demand on Borrower, shall entitle Borrower to any other or future notice or demand in the same, similar or other circumstances. To the extent required by any Gaming Law, Borrower shall notify all relevant Gaming Authorities of any amendment to this Agreement or any Loan Document.

**Section 10.5. Delay Not a Waiver.** Except as expressly set forth herein, neither any failure nor any delay on the part of Lender in insisting upon strict performance of any term, condition, covenant or agreement, or exercising any right, power, remedy or privilege hereunder, or under the Note or under any other Loan Document, or any other instrument given as security therefor, shall operate as or constitute a waiver thereof, nor shall a single or partial exercise thereof preclude any other future exercise, or the exercise of any other right, power, remedy or privilege. In particular, and not by way of limitation, by accepting payment after the due date of any amount payable under this Agreement, the Note or any other Loan Document, Lender shall not be deemed to have waived any right either to require prompt payment when due of all other

amounts due under this Agreement, the Note or the other Loan Documents, or to declare a default for failure to effect prompt payment of any such other amount.

**Section 10.6. Notices.** All notices, consents, approvals and requests required or permitted hereunder or under any other Loan Document shall be given in writing and shall be effective for all purposes if hand delivered or sent by (a) certified or registered United States mail, postage prepaid, return receipt requested or (b) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery, and by telecopier (with answer back acknowledged), addressed as follows (or at such other address and Person as shall be designated from time to time by any party hereto, as the case may be, in a notice to the other parties hereto in the manner provided for in this Section 10.6):

If to Lender: JPMorgan Chase Bank, N.A.  
270 Park Avenue, 10th Floor  
New York, New York 10017  
Attention: Michael Mesard  
Facsimile No.: (212) 834-6592

with a copy to: Sullivan & Cromwell LLP  
125 Broad Street  
New York, New York 10004  
Attention: Arthur S. Adler  
Facsimile No.: 212-558-3588

Cadwalader, Wickersham & Taft LLP  
One World Financial Center  
New York, New York 10281  
Attention: Fredric L. Altschuler  
Facsimile No.: (212) 504-6666

If to Borrower: One Caesars Palace Drive  
Las Vegas, Nevada 89109  
Attention: Chief Financial Officer  
Facsimile No.: (702) 407-6081

With a copy to: One Caesars Palace Drive  
Las Vegas, Nevada 89109  
Attention: General Counsel  
Facsimile No.: (702) 407-6418

and

Cleary Gottlieb Steen & Hamilton LLP  
One Liberty Plaza  
New York, New York 10006  
Attention: Michael Weinberger  
Facsimile No.: (212) 225-3999

and

Pircher, Nichols & Meeks  
1925 Century Park East, Seventeenth Floor  
Los Angeles, California 90067  
Attention: David Packer  
Facsimile No.: (310) 201-8922

A notice shall be deemed to have been given: in the case of hand delivery, at the time of delivery; in the case of registered or certified mail, when delivered or the first attempted delivery on a Business Day; or in the case of expedited prepaid delivery and telecopy, upon the first attempted delivery on a Business Day; or in the case of telecopy, upon sender's receipt of a machine-generated confirmation of successful transmission after advice by telephone to recipient that a telecopy notice is forthcoming. Each Borrower hereby designates Tahoe Mezz 4, LLC, a Delaware limited liability company ("**Borrower Agent**"), as the party to give and receive notices on behalf of Borrower hereunder, and any notice received by Lender by a Borrower other than Borrower Agent shall not constitute effective notice to, or be binding upon Lender hereunder. Notwithstanding the foregoing, any notice by Lender to one or more Borrowers other than Borrower Agent shall be deemed to constitute effective notice to all of the Borrowers.

**Section 10.7. Trial by Jury. BORROWER AND LENDER HEREBY AGREE NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVE ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY BORROWER AND LENDER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. BORROWER AND LENDER ARE HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER.**

**Section 10.8. Headings.** The Article and/or Section headings and the Table of Contents in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

**Section 10.9. Severability.** Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

**Section 10.10. Preferences.** Lender shall have the continuing and exclusive right to apply or reverse and reapply any and all payments by Borrower to any portion of the obligations of Borrower hereunder (except that, unless there exists an Event of Default,

payments of principal shall be applied to components of the Note on a pro-rata basis). To the extent Borrower makes a payment or payments to Lender, which payment or proceeds or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable cause, then, to the extent of such payment or proceeds received, the obligations hereunder or part thereof intended to be satisfied shall be revived and continue in full force and effect, as if such payment or proceeds had not been received by Lender.

**Section 10.11. Waiver of Notice.** Borrower hereby expressly waives, and shall not be entitled to, any notices of any nature whatsoever from Lender except with respect to matters for which this Agreement or the other Loan Documents specifically and expressly provide for the giving of notice by Lender to Borrower and except with respect to matters for which Borrower is not, pursuant to applicable Legal Requirements, permitted to waive the giving of notice.

**Section 10.12. Remedies of Borrower.** In the event that a claim or adjudication is made that Lender or its agents have acted unreasonably or unreasonably delayed acting in any case where by law or under this Agreement or the other Loan Documents, Lender or such agent, as the case may be, has an obligation to act reasonably or promptly, Borrower agrees that neither Lender nor its agents shall be liable for any monetary damages, and Borrower's sole remedies shall be limited to commencing an action seeking injunctive relief or declaratory judgment (except in cases of bad faith, gross negligence or willful misconduct). The parties hereto agree that any action or proceeding to determine whether Lender has acted reasonably shall be determined by an action seeking declaratory judgment.

**Section 10.13. Expenses; Indemnity.** (a) Borrower covenants and agrees to pay or, if Borrower fails to pay, to reimburse, Lender and each Noteholder upon receipt of notice from such Person for all reasonable out-of-pocket costs and expenses (including reasonable attorneys' fees and disbursements) incurred by such Person in connection with (i) the preparation, negotiation, execution and delivery of this Agreement and the other Loan Documents and the consummation of the transactions contemplated hereby and thereby and all the costs of furnishing all opinions by counsel for Borrower (including, without limitation, any opinions requested by such Person as to any legal matters arising under this Agreement or the other Loan Documents with respect to the Properties); (ii) Borrower's ongoing performance of and compliance with Borrower's respective agreements and covenants contained in this Agreement and the other Loan Documents on its part to be performed or complied with after the Closing Date, including, without limitation, confirming compliance with environmental, gaming and insurance requirements if necessary or advisable due to reasonably suspected non-compliance; (iii) the negotiation, preparation, execution, delivery and administration of any consents, amendments, waivers or other modifications to this Agreement and the other Loan Documents and any other documents or matters requested by Borrower; (iv) securing Borrower's compliance with any requests made pursuant to the provisions of this Agreement, if Borrower defaults in its obligations hereunder; (v) the filing and recording fees and expenses, title insurance and reasonable fees and expenses of counsel for providing to Lender or any Noteholder all required legal opinions, and other similar expenses incurred in creating and perfecting the Liens in favor of Lender (or, as applicable, any Noteholder) pursuant to this

Agreement and the other Loan Documents; (vi) enforcing or preserving any rights, either in response to third party claims or in prosecuting or defending any action or proceeding or other litigation, in each case against, under or affecting Borrower, Senior Mezzanine Borrower, Mortgage Borrower, Operating Company, this Agreement, the other Loan Documents, the Properties, the Collateral or any other security given for the Loan; and (vii) enforcing any obligations of or collecting any payments due from Borrower under this Agreement, the other Loan Documents or with respect to the Properties, Operating Company or in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a “work-out” or of any insolvency or bankruptcy proceedings; provided, however, that Borrower shall not be liable for the payment of any such costs and expenses to any Person to the extent the same arise by reason of the gross negligence, illegal acts, fraud or willful misconduct of such Person. Any cost and expenses due and payable to Lender or any Noteholder may be paid from any amounts in the Mezzanine Collection Account upon the occurrence and during the continuance of an Event of Default.

(b) Borrower shall indemnify, defend and hold harmless Lender from and against any and all other actual liabilities, obligations, losses, damages (excluding, however, any punitive and consequential damages), penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel for Lender in connection with any investigative, administrative or judicial proceeding commenced or threatened, whether or not Lender shall be designated a party thereto), that may be imposed on, incurred by, or asserted against Lender in any manner relating to or arising out of (i) any breach by Borrower of its obligations under, or any material misrepresentation by Borrower contained in, this Agreement or the other Loan Documents, (ii) the use or intended use of the proceeds of the Loan, (iii) the Leases or any of the duties, responsibilities or obligations of Borrower or any Operating Company thereunder, (iv) the transactions contemplated in the Collection Account Agreements or (v) any third-party claims alleging that the Loan, the Senior Mezzanine Loan or the Mortgage Loan, the Operating Lease, the Operating Lease Guaranty or any of the Loan Documents violates any agreements or Legal Requirements binding on the Borrower or its Affiliates or their respective properties (collectively, the “**Indemnified Liabilities**”); provided, however, that Borrower shall not have any obligation to Lender hereunder to the extent that such Indemnified Liabilities arise from the gross negligence, illegal acts, fraud or willful misconduct of Lender. To the extent that the undertaking to indemnify, defend and hold harmless set forth in the preceding sentence may be unenforceable because it violates any law or public policy, Borrower shall pay the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by Lender.

(c) Borrower covenants and agrees to pay for or, if Borrower fails to pay, to reimburse Lender for, any fees and expenses incurred by any Rating Agency in connection with any request by Borrower that required Rating Agency Confirmation pursuant to the terms hereof.

**Section 10.14. Schedules Incorporated.** The Schedules annexed hereto are hereby incorporated herein as a part of this Agreement with the same effect as if set forth in the body hereof.

**Section 10.15. Offsets, Counterclaims and Defenses.** Any assignee of Lender's interest in and to this Agreement, the Note and the other Loan Documents shall take the same free and clear of all offsets, counterclaims or defenses which are unrelated to such documents which Borrower may otherwise have against any assignor of such documents, and no such unrelated counterclaim or defense shall be interposed or asserted by Borrower in any action or proceeding brought by any such assignee upon such documents and any such right to interpose or assert any such unrelated offset, counterclaim or defense in any such action or proceeding is hereby expressly waived by Borrower.

**Section 10.16. No Joint Venture or Partnership; No Third Party Beneficiaries.** (a) Borrower and Lender intend that the relationships created hereunder and under the other Loan Documents be solely that of borrower and lender. Nothing herein or therein is intended to create a joint venture, partnership, tenancy-in-common, or joint tenancy relationship between Borrower and Lender nor to grant Lender any interest in the Properties other than that of mortgagee, beneficiary or lender.

(b) Except as expressly provided herein, this Agreement and the other Loan Documents are solely for the benefit of Lender and Borrower and nothing contained in this Agreement or the other Loan Documents shall be deemed to confer upon anyone other than Lender and Borrower any right to insist upon or to enforce the performance or observance of any of the obligations contained herein or therein. Lender and Borrower acknowledge and agree that the Noteholders are intended third party beneficiaries of all rights and remedies of the Lender hereunder. All conditions to the obligations of Lender to make the Loan hereunder are imposed solely and exclusively for the benefit of Lender and no other Person shall have standing to require satisfaction of such conditions in accordance with their terms or be entitled to assume that Lender will refuse to make the Loan in the absence of strict compliance with any or all thereof and no other Person shall under any circumstances be deemed to be a beneficiary of such conditions, any or all of which may be freely waived in whole or in part by Lender if, in Lender's sole discretion, Lender deems it advisable or desirable to do so.

**Section 10.17. Intentionally Omitted.**

**Section 10.18. Waiver of Marshalling of Assets.** To the fullest extent permitted by law, Borrower, for itself and its successors and assigns, waives all rights to a marshalling of the assets of Borrower, Borrower's partners and others with interests in Borrower, and of the Properties, or to a sale in inverse order of alienation in the event of foreclosure of all or any of the Mortgages, and agrees not to assert any right under any laws pertaining to the marshalling of assets, the sale in inverse order of alienation, homestead exemption, the administration of estates of decedents, or any other matters whatsoever to defeat, reduce or affect the right of Lender under the Loan Documents to a sale of the Properties for the collection of the Debt without any prior or different resort for collection or of the right of Lender to the payment of the Debt out of the net proceeds of the Properties in preference to every other claimant whatsoever. In addition, Borrower, for itself and its successors and assigns, waives in the event of foreclosure of any or all of the Collateral, any equitable right otherwise available to Borrower which would require the separate sale of the Collateral with respect to each Mortgage Borrower or require Lender to exhaust its remedies against any Collateral with respect to each Mortgage Borrower or any combination of such Collateral before proceeding against any other Collateral

with respect to one or more Mortgage Borrowers; and further in the event of such foreclosure Borrower does hereby expressly consent to and authorize, at the option of Lender, the foreclosure and sale either separately or together of any combination of the Collateral.

**Section 10.19. Waiver of Counterclaim.** Borrower hereby waives the right to assert a counterclaim, other than a compulsory counterclaim, in any action or proceeding brought against it by Lender or its agents.

**Section 10.20. Conflict; Construction of Documents; Reliance.** In the event of any conflict between the provisions of this Loan Agreement and any of the other Loan Documents, the provisions of this Loan Agreement shall control. The parties hereto acknowledge that they were represented by competent counsel in connection with the negotiation, drafting and execution of the Loan Documents and that such Loan Documents shall not be subject to the principle of construing their meaning against the party which drafted same. Borrower acknowledges that, with respect to the Loan, Borrower shall rely solely on its own judgment and advisors in entering into the Loan without relying in any manner on any statements, representations or recommendations of Lender or any parent, subsidiary or Affiliate of Lender. Lender shall not be subject to any limitation whatsoever in the exercise of any rights or remedies available to it under any of the Loan Documents or any other agreements or instruments which govern the Loan by virtue of the ownership by it or any parent, subsidiary or Affiliate of Lender of any equity interest any of them may acquire in Borrower, and Borrower hereby irrevocably waives the right to raise any defense or take any action on the basis of the foregoing with respect to Lender's exercise of any such rights or remedies. Borrower acknowledges that Lender engages in the business of real estate financings and other real estate transactions and investments which may be viewed as adverse to or competitive with the business of Borrower or its Affiliates.

**Section 10.21. Brokers and Financial Advisors.** Borrower hereby represents that it has dealt with no financial advisors, brokers, underwriters, placement agents, agents or finders in connection with the transactions contemplated by this Agreement (other than those the fees and other claims of which shall be paid by Borrower). Borrower hereby agrees to indemnify, defend and hold Lender and each Noteholder harmless from and against any and all claims, liabilities, costs and expenses of any kind (including Lender's attorneys' fees and expenses) in any way relating to or arising from a claim by any Person that such Person acted on behalf of Borrower or Lender in connection with the transactions contemplated herein. Each of Lender and (by its acceptance of its respective Note) the Noteholders hereby represents that it has dealt with no financial advisors, brokers, underwriters, placement agents, agents or finders in connection with the transactions contemplated by this Agreement. The provisions of this Section 10.21 shall survive the expiration and termination of this Agreement and the payment of the Debt.

**Section 10.22. Prior Agreements.** This Agreement and the other Loan Documents contain the entire agreement of the parties hereto and thereto in respect of the transactions contemplated hereby and thereby, and all prior agreements among or between such parties, whether oral or written, including, without limitation, the Commitment Letter dated December 19, 2006 between Affiliates of Borrower and Lender are superseded by the terms of this Agreement and the other Loan Documents.

**Section 10.23. Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which counterparts together shall constitute one agreement with the same effect as if the parties had signed the same signature page.

**Section 10.24. Intentionally Omitted.**

**Section 10.25. Gaming Laws.** All rights, remedies and powers in or under this Agreement may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of the Gaming Laws.

**Section 10.26. Certain Additional Rights of Lender (VCOC).** Notwithstanding anything to the contrary contained in this Agreement, Lender shall have:

(a) the right to routinely consult with and advise Borrower's management regarding the significant business activities and business and financial developments of Borrower, Senior Mezzanine Borrower and Mortgage Borrower, provided that any such advice or consultation shall be completely nonbinding on Borrower, and; provided, however, that such consultations shall not include discussions of environmental compliance programs or disposal of hazardous substances;

(b) the right, in accordance with the terms of this Agreement, to examine the books and records of Borrower, Senior Mezzanine Borrower and Mortgage Borrower at any reasonable times upon reasonable notice;

(c) the right, in accordance with the terms of this Agreement, including, without limitation, Section 5.1.11 hereof, to receive monthly, quarterly and year end financial reports, including balance sheets, statements of income, shareholder's equity and cash flow, a management report and schedules of outstanding indebtedness, in each case to the extent explicitly set forth herein; and

(d) the right, without restricting any other rights of Lender under this Agreement (including any similar right), to reasonably approve any acquisition by Borrower, Senior Mezzanine Borrower or Mortgage Borrower of any other significant real property.

The rights described above in this Section 10.26 may be exercised by any entity which owns and controls, directly or indirectly, substantially all of the interests in Lender.

**XI. JOINT AND SEVERAL LIABILITY; WAIVERS**

**Section 11.1. Joint and Several Liability; Primary Obligors.** Each entity comprising Borrower (each, a "**Borrower Entity**") shall be a primary obligor with respect to payment of the Debt and performance of Borrower's obligations under the Loan Documents and all such Borrower Entities shall be jointly and severally liable for payment of the Debt and performance of such other obligations. As used in this Article, references to "**Other Borrowers**" shall mean all Borrower Entities other than the particular Borrower Entity referred to.

**Section 11.2. Waivers.** Without limiting the primary liability of each Borrower Entity as set forth above, to the extent any such Borrower Entity is determined to be secondarily liable with respect to any portion of the Debt or any other obligation hereunder, the following shall apply:

**11.2.1 No Duty to Pursue Others.** It shall not be necessary for Lender (and each Borrower Entity hereby waives any rights which such Borrower Entity may have to require Lender), in order to enforce the obligations of such Borrower Entity hereunder, first to (a) institute suit or exhaust its remedies against any Other Borrower or others liable on the Debt or any other person, (b) enforce Lender's rights against any collateral mortgaged, pledged or granted by any Other Borrower which shall ever have been given to secure the Debt ("**Other Borrower Collateral**"), (c) enforce Lender's rights against any other guarantors of the Debt, (d) join Borrower or any others liable on the Debt in any action against any Other Borrower seeking to enforce the Loan Documents, (e) exhaust any remedies available to Lender against any collateral which shall ever have been given to secure the Debt, or (f) resort to any other means of obtaining payment of the Loan by any Other Borrower. Lender shall not be required to mitigate damages or take any other action pertaining to any Other Borrower or any Other Borrower Collateral to reduce, collect or enforce the Debt from any Other Borrower.

**11.2.2 Waivers.** Such Borrower Entity agrees to the provisions of the Loan Documents, and hereby waives notice of (a) any loans or advances made by Lender to any Other Borrower, (b) acceptance of the Loan Documents, (c) any amendment or extension of the Note, the Loan Agreement or of any other Loan Documents entered into by any Other Borrower, (d) the execution and delivery by any Other Borrower and Lender of any other loan or credit agreement or of any Other Borrower's execution and delivery of any promissory notes or other documents arising under the Loan Documents or in connection with the Other Borrower Collateral, (e) the occurrence of any breach by any Other Borrower or an Event of Default with respect to any Other Borrower or Other Borrower Collateral, (f) Lender's transfer or disposition of the Debt, or any part thereof, (g) sale or foreclosure (or posting or advertising for sale or foreclosure) of any Other Borrower Collateral, (h) protest, proof of non-payment or default by any Other Borrower and (i) any other action at any time taken or omitted by Lender, and, generally, all demands and notices to any Other Borrower of every kind in connection with the Loan Documents, any documents or agreements evidencing, securing or relating to any of the Debt.

**11.2.3 Waiver of Subrogation, Reimbursement and Contribution.** Notwithstanding anything to the contrary contained in the Loan Documents, each Borrower hereby unconditionally and irrevocably waives, releases and abrogates, prior to the payment in full of the Loan and for a period of ninety-one (91) days thereafter any and all rights it may now or hereafter have under any agreement, at law or in equity (including any law subrogating such Borrower Entity to the rights of Lender), to assert any claim against or seek contribution, indemnification or any other form of reimbursement (other than pursuant to the express provisions of the Contribution Agreement) from any Other Borrower or any other party liable for payment of any or all of the Debt for any payment made by such Borrower Entity under or in connection with the Loan Documents or otherwise.

**11.2.4 Events and Circumstances Not Reducing or Discharging Guarantor's Obligations.** Each Borrower Entity hereby consents and agrees to each of the following, and agrees that such Borrower Entity's obligations under the Loan Documents shall not be released, diminished, impaired, reduced or adversely affected by any of the following, and waives any common law, equitable, statutory or other rights (including rights to notice) which such Borrower Entity might otherwise have as a result of or in connection with any of the following:

(a) Modifications. Any renewal, extension, increase, modification, alteration, restatement or rearrangement entered into by any Other Borrower of all or any part of the Debt, the Note, the Loan Agreement, the other Loan Documents, or any other document, instrument, contract or understanding between any Other Borrower and Lender, or any other parties, pertaining to the Debt or any failure of Lender to notify Borrower Entity of any such action.

(b) Adjustment. Any adjustment, indulgence, forbearance or compromise that might be granted or given by Lender to any Other Borrower.

(c) Condition of Borrower or Borrower Entity. The insolvency, bankruptcy, arrangement, adjustment, composition, liquidation, disability, dissolution or lack of power of any Other Borrower or any other party at any time liable for the payment of all or part of the Debt; or any dissolution of any Other Borrower, or any sale, lease or transfer of any or all of the assets of Borrower or of any Other Borrower, or any changes in the shareholders, partners or members of any Other Borrower; or any reorganization of any Other Borrower.

(d) Invalidity of Debt. The invalidity, illegality or unenforceability of all or any part of the Debt, or any document or agreement executed in connection with the Debt, for any reason whatsoever, including the fact that (a) the Debt, or any part thereof, exceeds the amount permitted by law, (b) the act of creating the Debt or any part thereof is ultra vires, (c) the officers or representatives executing the Note, the Loan Agreement or the other Loan Documents or otherwise creating the Debt acted in excess of their authority, (d) the Debt violate applicable usury laws, (e) any Other Borrower has valid defenses, claims or offsets (whether at law, in equity or by agreement) which render the Debt wholly or partially uncollectible from such Other Borrower, (f) the creation, performance or repayment of the Debt (or the execution, delivery and performance of any document or instrument by any Other Borrower representing part of the Debt or executed in connection with the Debt, or given to secure the repayment of the Debt) is illegal, uncollectible or unenforceable, or (g) the Note, the Loan Agreement or any of the other Loan Documents have been forged or otherwise are irregular or not genuine or authentic, it being agreed that such Borrower Entity shall remain liable hereon regardless of whether any Other Borrower or any other Person be found not liable on the Debt or any part thereof for any reason.

(e) Release of Obligors. Any full or partial release of the liability of any Other Borrower on the Debt, or any part thereof, or of any guarantor(s) thereof, or any other person or entity now or hereafter liable, whether directly or indirectly, jointly, severally, or jointly and severally, to pay, perform, guarantee or assure the payment of the Debt, or any part thereof, it being recognized, acknowledged and agreed by such Borrower Entity that such Borrower Entity may be required to pay the Debt in full without assistance or support of any other party, and such Borrower Entity has not been induced to enter into the Loan Documents on

the basis of a contemplation, belief, understanding or agreement that other Persons will be liable to pay or perform the Debt, or that Lender will look to other Persons to pay or perform the Debt.

(f) Other Collateral. The taking or accepting of any other security, collateral or guaranty, or other assurance of payment, for all or any part of the Debt.

(g) Release of Collateral. Any release, surrender, exchange, subordination, deterioration, waste, loss or impairment (including negligent, willful, unreasonable or unjustifiable impairment) of any collateral, property or security at any time existing in connection with, or assuring or securing payment of, all or any part of the Debt.

(h) Care and Diligence. The failure of Lender or any other party to exercise diligence or reasonable care in the preservation, protection, enforcement, sale or other handling or treatment of Other Borrower Collateral, all or any part of such collateral, property or security, including any neglect, delay, omission, failure or refusal of Lender (a) to take or prosecute any action for the collection of any of the Debt or (b) to foreclose, or initiate any action to foreclose, or, once commenced, prosecute to completion any action to foreclose upon Other Borrower Collateral, or (c) to take or prosecute any action in connection with any instrument or agreement evidencing or securing all or any part of the Debt.

(i) Unenforceability. The fact that any collateral, security, security interest or lien contemplated or intended to be given, created or granted as security for the repayment of the Debt, or any part thereof, shall not be properly perfected or created, or shall prove to be unenforceable or subordinate to any other security interest or lien, it being recognized and agreed by such Borrower Entity that such Borrower Entity is not entering into the Loan Documents in reliance on, or in contemplation of the benefits of, the validity, enforceability, collectibility or value of any of the collateral for the Debt.

(j) Offset. Any existing or future right of offset, claim or defense of Borrower against Lender, or any other Person, or against payment of the Debt by any Other Borrower, whether such right of offset, claim or defense arises in connection with the Debt (or the transactions creating the Debt) or otherwise.

(k) Merger. The reorganization, merger or consolidation of any Other Borrower into or with any other corporation or entity.

(l) Preference. Any payment by Borrower to Lender is held to constitute a preference under bankruptcy laws, or for any reason Lender is required to refund such payment or pay such amount to Borrower or someone else.

**Section 11.3. Other Actions Taken or Omitted**. Any other action taken or omitted to be taken with respect to the Loan Documents, the Debt, or Other Borrower Collateral, whether or not such action or omission prejudices such Borrower Entity or increases the likelihood that such Borrower Entity will be required to pay the Debt pursuant to the terms hereof, it is the unambiguous and unequivocal intention of such Borrower Entity that such Borrower Entity shall be obligated to pay the Debt when due, notwithstanding any occurrence, circumstance, event, action, or omission whatsoever pertaining to any Other Borrower or any Other Borrower Collateral, whether contemplated or not, and whether or not otherwise or

particularly described herein, which obligation shall be deemed satisfied only upon the full and final payment and satisfaction of the Debt.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed by their duly authorized representatives, all as of the day and year first above written.

**BORROWER:**

**HARRAH'S LAS VEGAS MEZZ 4, LLC,**  
a Delaware limited liability company

By: /s/ Jonathan S. Halkyard

Name: Jonathan S. Halkyard

Title: President and Treasurer

**HARRAH'S ATLANTIC CITY MEZZ 4, LLC,**  
a Delaware limited liability company

By: /s/ Jonathan S. Halkyard

Name: Jonathan S. Halkyard

Title: President and Treasurer

**TAHOE MEZZ 5, LLC,** a Delaware limited  
liability company

By: /s/ Jonathan S. Halkyard

Name: Jonathan S. Halkyard

Title: President and Treasurer

**RIO MEZZ 4, LLC,**  
a Delaware limited liability company

By: /s/ Jonathan S. Halkyard

Name: Jonathan S. Halkyard

Title: President and Treasurer

**FLAMINGO LAS VEGAS MEZZ 4, LLC,**  
a Delaware limited liability company

By: /s/ Jonathan S. Halkyard

Name: Jonathan S. Halkyard

Title: President and Treasurer

**SHOWBOAT ATLANTIC CITY MEZZ 4, LLC,**  
a Delaware limited liability company

By: /s/ Jonathan S. Halkyard

Name: Jonathan S. Halkyard

Title: President and Treasurer

**LENDER:**

**JPMORGAN CHASE BANK, N.A.**

By: /s/ Jennifer A. Loughrey

Name: Jennifer A. Loughrey

Title: Vice President

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**FIFTH MEZZANINE LOAN AGREEMENT**

Dated as of January 28, 2008

Between

**THE ENTITIES IDENTIFIED ON THE SIGNATURE PAGES  
HEREOF AS BORROWER,**  
collectively, as Borrower

and

**JPMORGAN CHASE BANK N.A.,**  
as Lender

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**FIFTH MEZZANINE LOAN AGREEMENT**

**THIS FIFTH MEZZANINE LOAN AGREEMENT**, dated as of January 28, 2008 (as amended, restated, replaced, supplemented or otherwise modified from time to time, this “**Agreement**”), between **JPMORGAN CHASE BANK, N.A.**, a banking association chartered under the laws of the United States of America, having an address at 270 Park Avenue, New York, New York 10017 (“**Lender**”), and **THE ENTITIES IDENTIFIED ON THE SIGNATURE PAGES HEREOF AS BORROWER**, each a Delaware limited liability company having its principal place of business at the addresses set forth on Schedule I attached hereto (collectively, “**Borrower**”).

**WITNESSETH:**

**WHEREAS**, JPMorgan Chase Bank, N.A., having an address at 270 Park Avenue, New York, New York 10017, as mortgage lender (“**Mortgage Lender**”), is making a loan in the principal amount of Four Billion and No/100 Dollars (\$4,000,000,000) (the “**Mortgage Loan**”) to Mortgage Borrower (as hereinafter defined) pursuant to that certain Loan Agreement, dated as of the date hereof (as the same may be amended, supplemented, replaced or otherwise modified from time to time, the “**Mortgage Loan Agreement**”), which Mortgage Loan is evidenced by the Mortgage Note (as hereinafter defined) made by Mortgage Borrower to Mortgage Lender and secured by, among other things, the Mortgage (as hereinafter defined) given by Mortgage Borrower in favor of Mortgage Lender pursuant to which Mortgage Borrower has granted Mortgage Lender a first priority mortgage on, among other things, the Properties and other collateral as more fully described in the Mortgage;

**WHEREAS**, JPMorgan Chase Bank, N.A., having an address at 270 Park Avenue, New York, New York 10017, as first mezzanine lender (“**First Mezzanine Lender**”), is making a loan in the principal amount of Three Hundred Million and No/100 Dollars (\$300,000,000) (the “**First Mezzanine Loan**”) to First Mezzanine Borrower (as hereinafter defined) pursuant to that certain First Mezzanine Loan Agreement, dated as of the date hereof (as the same may be amended, supplemented, replaced or otherwise modified from time to time, the “**First Mezzanine Loan Agreement**”), which First Mezzanine Loan is evidenced by the First Mezzanine Note (as hereinafter defined) made by First Mezzanine Borrower to First Mezzanine Lender and secured by, among other things, the First Mezzanine Pledge Agreement (as hereinafter defined) given by First Mezzanine Borrower in favor of First Mezzanine Lender pursuant to which First Mezzanine Borrower has granted First Mezzanine Lender a first priority security interest on, among other things, the Collateral (as defined in the First Mezzanine Pledge Agreement);

**WHEREAS**, JPMorgan Chase Bank, N.A., having an address at 270 Park Avenue, New York, New York 10017, as second mezzanine lender (“**Second Mezzanine Lender**”), is making a loan in the principal amount of Two Hundred Seventy Five Million and No/100 Dollars (\$275,000,000) (the “**Second Mezzanine Loan**”) to Second Mezzanine Borrower (as hereinafter defined) pursuant to that certain Second Mezzanine Loan Agreement, dated as of the date hereof (as the same may be amended, supplemented, replaced or otherwise

modified from time to time, the “**Second Mezzanine Loan Agreement**”), which Second Mezzanine Loan is evidenced by the Second Mezzanine Note (as hereinafter defined) made by Second Mezzanine Borrower to Second Mezzanine Lender and secured by, among other things, the Second Mezzanine Pledge Agreement (as hereinafter defined) given by Second Mezzanine Borrower in favor of Second Mezzanine Lender pursuant to which Second Mezzanine Borrower has granted Second Mezzanine Lender a first priority security interest on, among other things, the Collateral (as defined in the Second Mezzanine Pledge Agreement);

**WHEREAS**, JPMorgan Chase Bank, N.A., having an address at 270 Park Avenue, New York, New York 10017, as third mezzanine lender (“**Third Mezzanine Lender**”), is making a loan in the principal amount of Two Hundred Seventy Five Million and No/100 Dollars (\$275,000,000) (the “**Third Mezzanine Loan**”) to Third Mezzanine Borrower (as hereinafter defined) pursuant to that certain Third Mezzanine Loan Agreement, dated as of the date hereof (as the same may be amended, supplemented, replaced or otherwise modified from time to time, the “**Third Mezzanine Loan Agreement**”), which Third Mezzanine Loan is evidenced by the Third Mezzanine Note (as hereinafter defined) made by Third Mezzanine Borrower to Third Mezzanine Lender and secured by, among other things, the Third Mezzanine Pledge Agreement (as hereinafter defined) given by Third Mezzanine Borrower in favor of Third Mezzanine Lender pursuant to which Third Mezzanine Borrower has granted Third Mezzanine Lender a first priority security interest on, among other things, the Collateral (as defined in the Third Mezzanine Pledge Agreement);

**WHEREAS**, JPMorgan Chase Bank, N.A., having an address at 270 Park Avenue, New York, New York 10017, as fourth mezzanine lender (“**Fourth Mezzanine Lender**”), is making a loan in the principal amount of Two Hundred Seventy Five Million and No/100 Dollars (\$275,000,000) (the “**Fourth Mezzanine Loan**”) to Fourth Mezzanine Borrower (as hereinafter defined) pursuant to that certain Fourth Mezzanine Loan Agreement, dated as of the date hereof (as the same may be amended, supplemented, replaced or otherwise modified from time to time, the “**Fourth Mezzanine Loan Agreement**”), which Fourth Mezzanine Loan is evidenced by the Fourth Mezzanine Note (as hereinafter defined) made by Fourth Mezzanine Borrower to Fourth Mezzanine Lender and secured by, among other things, the Fourth Mezzanine Pledge Agreement (as hereinafter defined) given by Fourth Mezzanine Borrower in favor of Fourth Mezzanine Lender pursuant to which Fourth Mezzanine Borrower has granted Fourth Mezzanine Lender a first priority security interest on, among other things, the Collateral (as defined in the Fourth Mezzanine Pledge Agreement);

**WHEREAS**, First Mezzanine Borrower is the legal and beneficial owner of all of the interests in Mortgage Borrower;

**WHEREAS**, Second Mezzanine Borrower is the legal and beneficial owner of all of the interests in First Mezzanine Borrower;

**WHEREAS**, Third Mezzanine Borrower is the legal and beneficial owner of all of the interests in Second Mezzanine Borrower;

**WHEREAS**, Fourth Mezzanine Borrower is the legal and beneficial owner of all of the interests in Third Mezzanine Borrower;

**WHEREAS**, Borrower is the legal and beneficial owner of all of the interests in Fourth Mezzanine Borrower;

**WHEREAS**, Borrower desires to obtain the Loan (as hereinafter defined) from Lender;

**WHEREAS**, as a condition precedent to the obligation of Lender to make the Loan to Borrower, Borrower has entered into that certain Pledge and Security Agreement (Fifth Mezzanine Loan), dated as of the date hereof, in favor of Lender (as amended, supplemented or otherwise modified from time to time, the "**Pledge Agreement**"), pursuant to which Borrower has granted to Lender a first priority security interest in the Collateral (as defined in the Pledge Agreement) as collateral security for the Debt (as hereinafter defined); and

**WHEREAS**, Lender is willing to make the Loan to Borrower, subject to and in accordance with the terms of this Agreement and the other Loan Documents (as hereinafter defined).

**NOW THEREFORE**, in consideration of the making of the Loan by Lender and the covenants, agreements, representations and warranties set forth in this Agreement, the parties hereto hereby covenant, agree, represent and warrant as follows:

**I. DEFINITIONS; PRINCIPLES OF CONSTRUCTION**

**Section 1.1. Definitions.** For all purposes of this Agreement, except as otherwise expressly required or unless the context clearly indicates a contrary intent:

"**Acceptable Counterparty**" shall mean any counterparty to the Interest Rate Cap Agreement that has and shall maintain, until the expiration of the applicable Interest Rate Cap Agreement, a long-term unsecured debt rating of at least "A+" by S&P and "Aa3" from Moody's, which rating shall not include a "t" or otherwise reflect a termination risk and is otherwise reasonably acceptable to Lender.

"**Additional Insolvency Opinion**" shall have the meaning set forth in Section 4.1.30(c) hereof.

"**Additional True Lease Opinion**" shall have the meaning set forth in Section 4.1.30(d) hereof.

"**Affiliate**" shall mean, as to any Person, any other Person that, directly or indirectly, is in Control of, is Controlled by or is under common Control with such Person or is a director or officer of such Person or of an Affiliate of such Person.

“**Aggregate Debt Service**” shall mean, with respect to any particular period of time, the sum of (a) the Debt Service, (b) the Mortgage Debt Service and (c) the Other Mezzanine Debt Service.

“**Aggregate Material Adverse Effect**” shall mean any event or condition that, either singly or in the aggregate, could reasonably be expected to have or result in a material adverse effect upon (a) the business, operations, economic performance, prospects, assets or condition (financial or otherwise) of (i) Mortgage Borrower, Senior Mezzanine Borrower or Borrower (taken as a whole), (ii) Guarantor, (iii) Operating Company (taken as a whole), (iv) the Operating Lease or the Operating Lease Guaranty (taken as a whole) or (v) the Properties (taken as a whole), the Collateral, the Senior Mezzanine Collateral, the Hotel Components (taken as a whole) or the Casino Components (taken as a whole); (b) the ability of Mortgage Borrower (taken as a whole), Senior Mezzanine Borrower (taken as a whole), Borrower (taken as a whole) or Guarantor to perform, in all material respects, its obligations under the Loan Documents, Senior Mezzanine Loan Documents or Mortgage Loan Documents (taken as a whole) to which such entity is a party; (c) the ability of Operating Company (taken as a whole) to perform, in all material respects, the obligations under the Operating Leases (taken as a whole); or the ability of Guarantor (Operating Lease) (taken as a whole) to perform, in all material respects, the obligations under the Operating Lease Guaranty (taken as a whole); (d) the enforceability or validity of (i) the Operating Lease (taken as a whole) or the Operating Lease Guaranty (taken as a whole), (ii) the Loan Documents, Senior Mezzanine Loan Documents or Mortgage Loan Documents (taken as a whole) or the perfection or priority of the Liens created under the Loan Documents, Senior Mezzanine Loan Documents or Mortgage Loan Documents (taken as a whole); (e) the value of, or cash flow from, the Properties or the operations thereof (taken as a whole) or the Collateral; or (f) the material rights, interests and remedies of Lender under the Loan Documents (taken as a whole).

“**Allocated Loan Amount**” shall mean, for an Individual Property, the amount set forth on Schedule II attached hereto.

“**ALTA**” shall mean American Land Title Association, or any successor thereto.

“**Alteration**” shall mean, with respect to any Individual Property, any alteration, improvement, demolition, construction or removal of all or any portion of the Improvements at such Individual Property.

“**Annual Budget**” shall mean, individually and collectively as the context requires, (a) the Borrower Annual Budget and (b) the Operating Company Annual Budget.

“**Applicable Interest Rate**” shall mean the rate or rates at which the outstanding principal amount of the Loan bears interest from time to time in accordance with the provisions of Section 2.2.3 hereof.

“**Approved Guarantor**” means (x) Holdings, for so long Holdings meets the Minimum Value Test, or (y) any other guarantor that meets the Minimum Value Test and is otherwise reasonably satisfactory to Lender.

“**Assignee**” shall have the meaning set forth in Section 9.5 hereof.

“**Assignment and Acceptance**” shall have the meaning set forth in Section 9.8 hereof.

“**Award**” shall mean any compensation paid by any Governmental Authority in connection with a Condemnation with respect to all or any part of any Individual Property.

“**Bankruptcy Action**” shall mean with respect to any Person (a) such Person filing a voluntary petition under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (b) the filing of an involuntary petition against such Person under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law, or soliciting or causing to be solicited petitioning creditors for any involuntary petition against such Person; (c) such Person filing an answer consenting to or otherwise acquiescing in or joining in any involuntary petition filed against it, by any other Person under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law, or soliciting or causing to be solicited petitioning creditors for any involuntary petition from any Person; (d) such Person consenting to or acquiescing in or joining in an application for the appointment of a custodian, receiver, trustee, or examiner for such Person or any portion of its property; or (e) such Person making an assignment for the benefit of creditors, or admitting, in writing or in any legal proceeding, its insolvency or inability to pay its debts as they become due.

“**Bankruptcy Code**” shall mean Title 11 of the United States Code, 11 U.S.C. §101, et seq., as the same may be amended from time to time, and any successor statute or statutes and all rules and regulations from time to time promulgated thereunder, and any comparable foreign laws relating to bankruptcy, insolvency or creditors’ rights or any other Federal or state bankruptcy or insolvency law.

“**Basic Carrying Costs**” shall mean, for any period, with respect to each Individual Property, the sum of the following costs associated with such Individual Property for such period: (a) Taxes, (b) Insurance Premiums and (c) Ground Rent.

“**Bill’s Lake Tahoe Casino**” shall mean that certain property identified on Schedule II as “Bill’s Lake Tahoe” having a street address of 15 Highway 50, Stateline, Nevada.

“**Borrower**” shall have the meaning set forth in the introductory paragraph hereto, together with its successors and permitted assigns. As used herein, the term “Borrower” shall mean one of the Borrowers individually, or the Borrowers collectively, as the context shall require.

“**Borrower Agent**” shall have the meaning set forth in Section 10.6 hereof.

“**Borrower Annual Budget**” shall mean the operating budget of Mortgage Borrower, prepared by Mortgage Borrower for the applicable Fiscal Year or other period.

“**Borrower Entity**” shall have the meaning set forth in Section 11.1 hereof.

“**Business Day**” shall mean any day other than a Saturday, Sunday or any other day on which national banks in New York, New York are not open for business.

“**Capital Expenditures**” shall mean, for any period, the amount expended for items capitalized under GAAP (including expenditures for building improvements or major repairs, leasing commissions, tenant improvements and Fixtures).

“**Capitalized Software Expenditures**” shall mean, for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities) by a Person during such period in respect of licensed or purchased software or internally developed software and software enhancements that, in accordance with GAAP, are or are required to be reflected as capitalized costs on the consolidated balance sheet of such Person.

“**Cash Management Account**” shall have the meaning set forth in the Mortgage Loan Agreement.

“**Casino Components**” shall mean, collectively, those portions of each Individual Property devoted to the operation of casino gaming operations, including (without limitation) those areas devoted to the conduct of games of chance, facilities associated directly with gaming operations including, without limitation, casino support areas such as surveillance and security areas, cash cages, counting and accounting areas and gaming back-of-the-house areas in each case, to the extent the operation thereof requires a Gaming License under applicable Gaming Laws. The Casino Components are more particularly described and set forth in each Operating Lease, as appropriate.

“**Casualty**” shall have the meaning set forth in Section 6.2 hereof.

“**Change in Control**” shall mean (1) a “Change in Control” as defined in the Credit Agreement, dated the date hereof, among Hamlet Merger Inc., a Delaware corporation, Harrah’s Operating Company, Inc., a Delaware corporation, the Lenders party thereto from time to time, Bank of America, N.A., as administrative agent and collateral agent for the Lenders, and certain other parties thereto, or (2) a Change in Control as defined in clause (b) of said definition except that references therein to Borrower shall be deemed to refer to Holdings.

“**Closing Date**” shall mean the date of the funding of the Loan.

“**Code**” shall mean the Internal Revenue Code of 1986, as amended, as it may be further amended from time to time, and any successor statutes thereto, and applicable U.S. Department of Treasury regulations issued pursuant thereto in temporary or final form.

“**Collateral**” shall have the meaning set forth in the Pledge Agreement.

“**Collateral Assignment of Interest Rate Cap Agreement**” shall mean that certain Collateral Assignment of Interest Rate Cap Agreement, dated as of the date hereof, executed by Borrower in connection with the Loan for the benefit of the Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Collection Account**” shall have the meaning set forth in the Mortgage Loan Agreement.

**“Collection Banks”** shall mean (a) any Eligible Institution(s) designated by Mortgage Borrower as Collection Bank and reasonably approved by Lender from time to time in accordance with the terms hereof, or (b) any other financial institution otherwise reasonably approved by Lender and, if a Securitization has occurred, with respect to which a Rating Agency Confirmation has been obtained.

**“Condemnation”** shall mean a temporary or permanent taking by any Governmental Authority as the result or in lieu or in anticipation of the exercise of the right of condemnation or eminent domain, of all or any part of any Individual Property, or any interest therein or right accruing thereto, including any right of access thereto or any change of grade affecting such Individual Property or any part thereof.

**“Consolidated Net Income”** shall mean, with respect to any Person for any period, the aggregate of the Net Income of such Person for such period, on a consolidated basis; provided, however, that, without duplication,

(i) any net after-tax extraordinary, nonrecurring or unusual gains or losses or income or expense or charge (less all fees and expenses relating thereto), including, without limitation, any severance, relocation or other restructuring expenses, any expenses related to any reconstruction, decommissioning, recommissioning or reconfiguration of fixed assets for alternative uses, fees, expenses or charges relating to new product lines, curtailments or modifications to pension and post-retirement employee benefit plans, excess pension charges, acquisition integration costs, facilities opening costs, project start-up costs, business optimization costs, signing, retention or completion bonuses, shall be excluded,

(ii) any net after tax income or loss from disposed, abandoned, transferred, closed or discontinued operations and any net after tax gain or loss on disposal of disposed, abandoned, transferred, closed or discontinued operations shall be excluded,

(iii) any net after tax gain or loss (less all fees and expenses or charges relating thereto) attributable to business dispositions or asset dispositions other than in the ordinary course of business (as determined in good faith by the management of the Borrower) shall be excluded,

(iv) Consolidated Net Income for such period shall not include the cumulative effect of a change in accounting principles during such period,

(v) effects of purchase accounting adjustments (including the effects of such adjustments pushed down to such Person) in component amounts required or permitted by GAAP, resulting from the application of purchase accounting in relation to any consummated acquisition or the amortization or write-off of any amounts thereof, net of taxes, shall be excluded,

(vi) any impairment charges or asset write-offs, in each case pursuant to GAAP, and the amortization of intangibles arising pursuant to GAAP, shall be excluded,

(vii) any non cash compensation charge or expenses realized or resulting from stock option plans, employee benefit plans or post-employment benefit plans, or grants or sales of stock, stock appreciation or similar rights, stock options, restricted stock, preferred stock or other rights shall be excluded,

(viii) accruals and reserves that are established or adjusted within twelve months after the Closing Date and that are so required to be established or adjusted in accordance with GAAP or as a result of adoption or modification of accounting policies shall be excluded,

(ix) non-cash gains, losses, income and expenses resulting from fair value accounting required by the applicable standard under GAAP and related interpretations shall be excluded,

(x)(i) the non-cash portion of "straight-line" rent expense shall be excluded and (ii) the cash portion of "straight-line" rent expense which exceeds the amount expensed in respect of such rent expense shall be included,

(xi) to the extent covered by insurance and actually reimbursed, or, so long as such Person has made a determination that there exists reasonable evidence that such amount will in fact be reimbursed by the insurer and only to the extent that such amount is (i) not denied by the applicable carrier in writing within 180 days and (ii) in fact reimbursed within 365 days of the date of such evidence (with a deduction for any amount so added back to the extent not so reimbursed within 365 days), expenses with respect to liability or casualty events or business interruption shall be excluded, and

(xii) non-cash charges for deferred tax asset valuation allowances shall be excluded.

**"Contribution Agreement"** shall mean that certain Contribution Agreement, dated as of the date hereof, between Borrower and Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

**"Control"** shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management, policies or activities of a Person, whether through ownership of voting securities, by contract or otherwise. **"Controlled"** and **"Controlling"** shall have correlative meanings.

**"Convention Center Parcel"** shall mean the parcel shown on Schedule XXII and comprising a part of the Harrah's Atlantic City Property.

**"Convention Center Project"** shall mean that certain conference center currently contemplated to be constructed on the Convention Center Parcel by the Mortgage Borrower and/or the Operating Company owning the Harrah's Atlantic City Property, and more fully described in the schematic designs for the Convention Center Project provided by Mortgage Borrower to Mortgage Lender. The Convention Center Project will not be funded with the proceeds of the Loan (but will be funded by Mortgage Borrower, including with capital contributions).

“**Counterparty**” shall mean, with respect to the Interest Rate Cap Agreement and any Replacement Interest Rate Cap Agreement, any Acceptable Counterparty.

“**Covered Disclosure Information**” shall have the meaning set forth in Section 9.2(b) hereof.

“**Debt**” shall mean the outstanding principal amount set forth in, and evidenced by, this Agreement and the Notes together with all interest accrued and unpaid thereon (including any interest that would accrue on the outstanding principal amount of the Loan through and including the end of any applicable Interest Period, even if such Interest Period extends beyond any applicable Payment Date, prepayment date or the Maturity Date) and all other sums due to Lender in respect of the Loan under the Notes, this Agreement, the Pledge Agreement and the other Loan Documents.

“**Debt Service**” shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under this Agreement and the Notes.

“**Debt Service Coverage Ratio**” shall mean a ratio for the applicable period in which:

(a) the numerator is EBITDAR of the Operating Company for the four (4) quarter period preceding the date of determination, as set forth in the financial statements required hereunder; and

(b) the denominator is the sum of (i) the aggregate amount of Mortgage Debt Service which was due and payable for such preceding four (4) quarter period calculated, for these purposes, assuming that (A) the spread on the Mortgage Loan is the Spread (as defined in the Mortgage Loan Agreement) and (B) LIBOR is equal to the lesser of (y) LIBOR on the date of determination, or (z) the applicable Strike Price, (ii) the aggregate amount of Mezzanine Debt Service (including the Debt Service) which was due and payable for such preceding four (4) quarter period calculated, for these purposes, assuming that (A) the spread on the Mezzanine Loans is the “Spread” as defined in each Mezzanine Loan Agreement and (B) LIBOR is equal to the lesser of (y) LIBOR on the date of determination, or (z) the applicable Strike Price (as defined in the Mortgage Loan Agreement), and (iii) the aggregate amount of the Permitted Mezzanine Debt Service which was due and payable for such preceding four (4) quarter period (or the annualized amount, if the Permitted Mezzanine Loan were outstanding for less than 12 calendar months) calculated, for these purposes, assuming that (A) the spread on the Permitted Mezzanine Loan is the “Spread” (as defined in the documents evidencing the Permitted Mezzanine Loan Documents and (B) LIBOR is equal to the lesser of (y) LIBOR on the date of determination, or (z) the strike price under the related interest rate cap purchased in connection with the Permitted Mezzanine Loan);

provided, however, that, solely for the purpose of Section 2.5, the Debt Service Coverage Ratio shall be determined as described in Section 2.5.1(c).

**“Default”** shall mean the occurrence of any event hereunder or under any other Loan Document which, but for the giving of notice or passage of time, or both, would be an Event of Default.

**“Default Rate”** shall mean a rate per annum equal to the lesser of (a) the Maximum Legal Rate and (b) two percent (2%) above the Applicable Interest Rate.

**“Delinquency”** shall mean, with respect to each Individual Property, the latest date on which Taxes or Other Charges may be paid (with respect to such Individual Property) without the payment of a premium, penalty or interest.

**“Determination Date”** shall mean, with respect to any Interest Period, the date that is two (2) London Business Days prior to the fifteenth (15<sup>th</sup>) day of the calendar month in which such Interest Period commences.

**“Disclosure Document”** shall mean a prospectus, prospectus supplement, private placement memorandum, offering memorandum, offering circular, term sheet, road show presentation materials or other offering documents or marketing materials, in each case in preliminary or final form, used to offer Securities in connection with a Securitization.

**“EBITDAR”** shall mean, with respect to any Person for any period, the Consolidated Net Income of such Person plus the sum of (in each case without duplication and to the extent the respective amounts described in subclauses (i) through (vi) below reduced such Consolidated Net Income (and were not excluded therefrom) for the respective period for which EBITDAR is being determined):

(i) provision for Taxes based on income, profits or capital for such period, including, without limitation, state, franchise and similar taxes and foreign withholding taxes (including penalties and interest related to taxes or arising from tax examinations);

(ii) Interest Expense for such period (net of interest income for such period);

(iii) depreciation and amortization expenses for such period including, but not exclusively, the amortization of intangible assets, deferred financing fees and Capitalized Software Expenditures and amortization of unrecognized prior service costs and actuarial gains and losses related to pensions and other post-employment benefits;

(iv) any expenses or charges (other than depreciation or amortization expense as described in the preceding clause (iii)) related to any acquisition, disposition, recapitalization or the incurrence, modification or repayment of Indebtedness permitted to be incurred by this Agreement (including a refinancing thereof) (whether or not successful), including (y) any amendment or other modification of such Indebtedness, and (z) commissions, discounts, yield and other fees and charges (including any interest expense) related to any such Indebtedness;

(v) restructuring charges or reserves (which, for the avoidance of doubt, shall include, without limitation, the effect of inventory optimization programs, retention, severance, systems establishment costs, contract termination costs, future lease

commitments and excess pension charges), to the extent that such expenses, charges or reserves are considered to be extraordinary expenses under GAAP;

(vi) any costs or expense incurred pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement or any stock subscription or shareholder agreement, to the extent that such cost or expenses are funded with cash proceeds contributed to the capital of such Person;

(vii) with respect to the Operating Company, the Fixed Rent payable under the Operating Lease; and

(viii) if the Captive Insurance Company shall be utilized to provide terrorism coverage hereunder, the amount of the premiums expended by Mortgage Borrower to obtain such terrorism coverage to the extent such amount exceeds the Terrorism Premium Limit and such excess is retained by the Captive Insurance Company;

provided that EBITDAR shall be reduced by the sum of the following for the respective period for which EBITDAR is being determined:

(A) management fees equal to the greater of (x) 3 percent per annum of gross revenues at the Properties and (y) the actual management fees payable under any management agreement (provided the foregoing shall not be construed as Lender's approval of any management agreement except in accordance with the terms hereof), without double counting actual amounts incurred and otherwise reflected in the calculation of EBITDAR, and

(B) FF&E reserves equal to 3 percent per annum of gross hotel and casino revenues at the Properties without double counting actual amounts incurred and otherwise reflected in the calculation of EBITDAR.

**"EBITDAR (Closing Date)"** shall mean EBITDAR for calendar year 2007, as agreed upon between Borrower and Lender.

**"Eighth Mezzanine Borrower"** shall mean, collectively, the entities set forth on Schedule XX hereto, each a Delaware limited liability company, together with their respective successors and permitted assigns. As used herein, the term "Eighth Mezzanine Borrower" shall mean one of the Eighth Mezzanine Borrowers individually, or the Eighth Mezzanine Borrowers collectively, as the context shall require.

**"Eighth Mezzanine Debt Service"** shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Eighth Mezzanine Notes.

**"Eighth Mezzanine Lender"** shall mean JPMorgan Chase Bank, N.A., in its capacity as the holder of the Eighth Mezzanine Loan, together with its successors and assigns.

**“Eighth Mezzanine Loan”** shall mean that certain loan in the original principal amount of Two Hundred Seventy Five Million and No/100 Dollars (\$275,000,000) of even date herewith made by Eighth Mezzanine Lender to Eighth Mezzanine Borrower.

**“Eighth Mezzanine Loan Agreement”** shall mean that certain Eighth Mezzanine Loan Agreement, dated as of the date hereof, between Eighth Mezzanine Borrower and Eighth Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**“Eighth Mezzanine Loan Documents”** shall mean the Eighth Mezzanine Loan Agreement, the Eighth Mezzanine Notes and all other documents and instruments executed and delivered in connection with the Eighth Mezzanine Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

**“Eighth Mezzanine Notes”** shall mean the “Notes” as defined in the Eighth Mezzanine Loan Agreement.

**“Eligibility Requirements”** means, with respect to any Person, that such Person (a) has total assets (in name or under management) in excess of \$4,000,000,000 and (except with respect to a pension advisory firm or similar fiduciary) capital/statutory surplus or shareholder’s equity of \$1,000,000,000, (b) is regularly engaged in the business of owning and operating commercial real estate properties, (c) is not currently, and its principals are not currently, subject to a Bankruptcy Action and for the immediately preceding 10 years, neither it nor any material subsidiary has been subject to a Bankruptcy Action, and (d) has not been, and its principals have not been, convicted and is not under current indictment for a felony or crime involving moral turpitude, has not been found by a court of competent jurisdiction to have violated federal or state securities laws, and is not an organized crime figure.

**“Eligible Account”** shall mean a separate and identifiable account from all other funds held by the holding institution that is either (a) an account or accounts maintained with a federal or state-chartered depository institution or trust company which complies with the definition of Eligible Institution or (b) a segregated trust account or accounts maintained with a federal or state chartered depository institution or trust company acting in its fiduciary capacity which, in the case of a state chartered depository institution or trust company, is subject to regulations substantially similar to 12 C.F.R. § 9.10(b), having in either case a combined capital and surplus of at least \$50,000,000 and subject to supervision or examination by federal and state authority. An Eligible Account will not be evidenced by a certificate of deposit, passbook or other instrument.

**“Eligible Institution”** shall mean a depository institution or trust company, the short term unsecured debt obligations or commercial paper of which are rated at least “A-1” by S&P, “P-1” by Moody’s and “F-1” by Fitch in the case of accounts in which funds are held for thirty (30) days or less (or, in the case of accounts in which funds are held for more than thirty (30) days, the long term unsecured debt obligations of which are rated at least “A” by Fitch and S&P and “A2” by Moody’s). After a Securitization of all or any portion of the Loan, only the ratings of those Rating Agencies rating the Securities shall be taken into account in determining whether institutions or trust companies constitute Eligible Institutions.

“**Embargoed Person**” shall have the meaning set forth in Section 4.1.35 hereof.

“**Environmental Indemnity**” shall mean that certain Environmental Indemnity Agreement, dated as of the date hereof, executed by Borrower and Guarantor in connection with the Loan for the benefit of Lender and the Noteholders, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Equipment**” shall mean, with respect to each Individual Property, any equipment now owned or hereafter acquired by Mortgage Borrower or Operating Company, which is used at or in connection with the Improvements or such Individual Property or is located thereon or therein, including (without limitation) all Gaming Equipment, all machinery, equipment, furnishings, and electronic data-processing and other office equipment now owned or hereafter acquired by or on behalf of Mortgage Borrower or Operating Company and any and all additions, substitutions and replacements of any of the foregoing), together with all attachments, components, parts, equipment and accessories installed thereon or affixed thereto.

“**ERISA**” shall mean the Employee Retirement Income Security Act of 1974, as amended.

“**Event of Default**” shall have the meaning set forth in Section 8.1(a) hereof.

“**Exchange Act**” shall have the meaning set forth in Section 9.2(a) hereof.

“**Exchange Act Filing**” shall have the meaning set forth in Section 5.1.11(f) hereof.

“**FF&E**” shall mean, with respect to each Individual Property, collectively, furnishings, fixtures (other than Fixtures) and Equipment located in the guest rooms, hallways, lobbies, restaurants, lounges, meeting and banquet rooms, parking facilities, public areas or otherwise in any portion of such Individual Property, including (without limitation) all fixed asset supplies (including, but not limited to, linen, china, glassware, tableware, uniforms, other hotel inventory and similar items, whether used in connection with public space or guest rooms), beds, chairs, bookcases, tables, carpeting, drapes, couches, luggage carts, luggage racks, bars, bar fixtures, radios, television sets, intercom and paging equipment, electric and electronic equipment, heating, lighting and plumbing fixtures, fire prevention and extinguishing apparatus, cooling and air-conditioning systems, elevators, escalators, stoves, ranges, refrigerators, laundry machines, tools, machinery, boilers, incinerators, switchboards, conduits, compressors, vacuum cleaning systems, floor cleaning, waxing and polishing equipment, cabinets, lockers, shelving, dishwashers, garbage disposals, washer and dryers, gaming equipment and other casino equipment and all other customary hotel and casino resort equipment and other tangible property owned by Mortgage Borrower or Operating Company, or in which Mortgage Borrower or Operating Company has or shall have an interest, now or hereafter located at such Individual Property and useable in connection with the present or future operation and occupancy of such Individual Property; provided, however, that FF&E shall not include items owned by tenants under space Leases (other than the Operating Lease) or by third party operators (other than Operating Company).

“**FF&E Reserve Account**” shall have the meaning set forth in Section 7.3 hereof.

“**FF&E Reserve Fund**” shall have the meaning set forth in Section 7.3 hereof.

“**First Mezzanine Borrower**” shall mean, collectively, the entities set forth on Schedule XIV hereto, each a Delaware limited liability company, together with their respective successors and permitted assigns. As used herein, the term “First Mezzanine Borrower” shall mean one of the First Mezzanine Borrowers individually, or the First Mezzanine Borrowers collectively, as the context shall require.

“**First Mezzanine Borrower Company Agreements**” shall mean, collectively, the Limited Liability Company Agreements of First Mezzanine Borrower, by each Borrower, as sole member, dated as of the date hereof.

“**First Mezzanine Debt Service**” shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the First Mezzanine Notes.

“**First Mezzanine Lender**” shall have the meaning set forth in the Recitals.

“**First Mezzanine Loan**” shall have the meaning set forth in the Recitals.

“**First Mezzanine Loan Agreement**” shall have the meaning set forth in the Recitals.

“**First Mezzanine Loan Documents**” shall mean the First Mezzanine Loan Agreement, the First Mezzanine Notes, and all other documents and instruments executed and delivered in connection with the First Mezzanine Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

“**First Mezzanine Note**” shall mean the “Notes” as defined in the First Mezzanine Loan Agreement.

“**First Mezzanine Pledge Agreement**” shall mean that certain Pledge and Security Agreement (First Mezzanine Loan), dated as of the date hereof, between First Mezzanine Borrower and First Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Fiscal Year**” shall mean each twelve (12) month period commencing on January 1 and ending on December 31 during each year of the term of the Loan.

“**Fitch**” shall mean Fitch, Inc.

“**Fixed Rent**” shall mean the Base Rent (as defined in the Operating Lease) payable under the Operating Lease.

“**Fixtures**” shall mean, with respect to each Individual Property, all Equipment now owned, or the ownership of which is hereafter acquired, by Mortgage Borrower which is so related to the Land and the Improvements forming part of the Individual Property in question that it is deemed fixtures or real property under applicable Legal Requirements, including, without limitation, all building or construction materials intended for construction,

reconstruction, alteration, decoration or repair of or installation on the applicable Individual Property, construction equipment, appliances, machinery, plant equipment, fittings, apparatuses, fixtures and other items now or hereafter attached to, installed in or used in connection with (temporarily or permanently) any of the Improvements or the Land, including, but not limited to, engines, devices for the operation of pumps, pipes, plumbing, call and sprinkler systems, fire extinguishing apparatuses and equipment, heating, ventilating, incinerating, electrical, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances and equipment, pollution control equipment, security systems, disposals, dishwashers, refrigerators and ranges, recreational equipment and facilities of all kinds, and water, electrical, storm and sanitary sewer facilities, utility lines and equipment (whether owned individually or jointly with others, and, if owned jointly, to the extent of Mortgage Borrower's interest therein) and all other utilities whether or not situated in easements, all water tanks, water supply, water power sites, fuel stations, fuel tanks, fuel supply, and all other structures, together with all accessions, appurtenances, additions, replacements, betterments and substitutions or any of the foregoing and the proceeds thereof.

**"Flamingo Las Vegas"** shall mean that certain Individual Property identified on Schedule II as the "Flamingo Las Vegas" and having a street address of 3555 Las Vegas Boulevard South, Las Vegas, Nevada.

**"Force Majeure"** shall mean any delay caused by reason of strike, lock-out or other labor trouble, casualty, governmental preemption of priorities or other controls in connection with a national or other public emergency or shortages of fuel, supplies or labor resulting therefrom or other causes beyond Borrower's reasonable control.

**"Foreign Taxes"** shall have the meaning set forth in Section 2.2.3(e) hereof.

**"Fourth Mezzanine Borrower"** shall mean, collectively, the entities set forth on Schedule XVI hereto, each a Delaware limited liability company, together with their respective successors and permitted assigns. As used herein, the term "Fourth Mezzanine Borrower" shall mean one of the Fourth Mezzanine Borrowers individually, or the Fourth Mezzanine Borrowers collectively, as the context shall require.

**"Fourth Mezzanine Debt Service"** shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Fourth Mezzanine Notes.

**"Fourth Mezzanine Lender"** shall mean JPMorgan Chase Bank, N.A., in its capacity as the holder of the Fourth Mezzanine Loan, together with its successors and assigns.

**"Fourth Mezzanine Loan"** shall mean that certain loan in the original principal amount of Two Hundred Seventy Five Million and No/100 Dollars (\$275,000,000) of even date herewith made by Fourth Mezzanine Lender to Fourth Mezzanine Borrower.

**"Fourth Mezzanine Loan Agreement"** shall mean that certain Fourth Mezzanine Loan Agreement, dated as of the date hereof, between Fourth Mezzanine Borrower and Fourth Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**“Fourth Mezzanine Loan Documents”** shall mean the Fourth Mezzanine Loan Agreement, the Fourth Mezzanine Notes and all other documents and instruments executed and delivered in connection with the Fourth Mezzanine Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

**“Fourth Mezzanine Notes”** shall mean the “Notes” as defined in the Fourth Mezzanine Loan Agreement.

**“Fourth Mezzanine Pledge Agreement”** shall mean that certain Pledge and Security Agreement (Fourth Mezzanine Loan), dated as of the date hereof, between Fourth Mezzanine Borrower and Fourth Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**“GAAP”** shall mean generally accepted accounting principles in the United States of America as of the date of the applicable financial report.

**“Gaming Authorities”** shall mean, in any jurisdiction in which Borrower, Senior Mezzanine Borrower, Mortgage Borrower, Operating Company or any of their respective subsidiaries manages or conducts any casino, gaming business or activities, the applicable gaming board, commission, or other governmental gaming regulatory authority, body or agency which (a) has, or may at any time after the Closing Date have, jurisdiction over the gaming activities at any of the Properties or any successor to such authority or (b) is, or may at any time after the Closing Date be, responsible for interpreting, administering and enforcing the Gaming Laws.

**“Gaming Equipment”** shall mean any and all gaming devices, gaming device parts inventory and other related gaming equipment and supplies used in connection with the operation of a casino, including (without limitation), slot machines, gaming tables, cards, dice, chips, tokens, player tracking systems, cashless wagering systems, electronic betting systems, mobile gaming systems and associated equipment which are located at the Casino Components, owned or leased by Operating Company or Mortgage Borrower and used or useable exclusively in the present or future operation of slot machines and live games at the Casino Component, together with all improvements and/or additions thereto.

**“Gaming Laws”** or **“Gaming Regulations”** shall mean all applicable constitutions, treaties, laws, statutes and municipal ordinances pursuant to which any Gaming Authority possesses regulatory, licensing or permitting authority over gaming, gambling or casino or casino-related activities and all rules, rulings, orders, ordinances and regulations of any Gaming Authority applicable to the gambling, casino, gaming businesses or casino or casino-related activities of Borrower, Senior Mezzanine Borrower, Mortgage Borrower or the Operating Companies or any of their respective subsidiaries in any jurisdiction, as in effect from time to time, including the policies, interpretations and administration thereof by the Gaming Authorities.

**“Gaming License”** shall mean, in any jurisdiction in which Borrower, Senior Mezzanine Borrower, Mortgage Borrower, Operating Company or any of their respective subsidiaries conducts any casino and gaming business or activities, any license, qualification,

franchise, accreditation, approval, registration, permit, finding of suitability or other authorization relating to gaming, the gaming business or the operation of a casino under the Gaming Laws or required by the Gaming Authorities or otherwise necessary for the operation of gaming, the gaming business or a resort casino.

“**Gaming Liquidity Requirement**” shall mean the minimum bankroll requirements for cash and cash equivalents required to be maintained by each Operating Company pursuant to Gaming Laws in an amount no greater than is mandated by applicable law, which requirements may be subject to (a) adjustment in an amount equal to any incremental increase or decrease in the amount of the Gaming Liquidity Requirement that is required to be maintained by Operating Company under applicable Gaming Laws as a result of any increase or decrease in gaming business at the applicable Casino Component, or (b) subject to increase or decrease due to any change in the applicable requirements under Gaming Laws generally.

“**Gaming Operating Reserve**” shall mean, with respect to the Casino Component, such cash funds and reserves that are held and maintained on-site at each Individual Property by Operating Company, in its capacity as the duly licensed operator of the Casino Component, including (without limitation) casino chips, tokens, checks and markers; provided, however, that all such Gaming Operating Reserves (a) are established and maintained in compliance with all applicable Gaming Liquidity Requirements, (b) are solely for use in the day-to-day operation and management of each Casino Component in the ordinary course of business, and (c) in the case of each Individual Property, are in amounts customary and generally comparable for casinos comparable to the Individual Property in question.

“**Governmental Authority**” shall mean any court, board, agency, commission, office or other authority of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence, including, without limitation, all Gaming Authorities having jurisdiction over the Properties (and any operations conducted thereat), Mortgage Borrower, Borrower and Operating Company. For the avoidance of doubt, the term “Governmental Authority” shall include, and be deemed to include, all Gaming Authorities.

“**Ground Lease**” shall mean, individually and collectively, as the context requires, those certain ground leases listed in Schedule IV, as the same may be amended, supplemented, replaced or otherwise modified from time to time in accordance with the provisions hereof.

“**Ground Lease Estoppel Reserve Amount**” shall have the meaning set forth in the Ground Lease Side Letter.

“**Ground Lease Estoppel Trigger Event**” shall have the meaning set forth in Section 5.1.23 hereof.

“**Ground Lease Estoppel Trigger Spread**” shall have the meaning set forth in the Ground Lease Side Letter.

“**Ground Lease Side Letter**” shall have the meaning assigned to such term in the Mortgage Loan Agreement.

**“Ground Lease Subsidiary”** shall have the meaning assigned to such term in the Mortgage Loan Agreement.

**“Ground Rent”** shall mean any rent, additional rent or other charge payable by the tenant under the Ground Lease.

**“Ground Rent Reserve Account”** shall have the meaning set forth in Section 7.4 hereof.

**“Ground Rent Reserve Funds”** shall have the meaning set forth in Section 7.4.

**“Guarantor”** shall mean, collectively, Guarantor (FF&E), Guarantor (Recourse Carveouts), Guarantor (Operating Lease) and any guarantor under any completion guaranty provided under Section 5.1.21.

**“Guarantor (FF&E)”** shall mean any Approved Guarantor. Initially, Guarantor (FF&E) shall mean Holdings, and its successors. If Holdings fails to meet the Minimum Value Test, then Borrower shall replace Holdings, as the guarantor under the Guaranty (FF&E), with an Approved Guarantor.

**“Guarantor (Ground Lease Estoppel)”** shall mean Holdings, and its successors.

**“Guarantor (Operating Lease)”** shall mean Holdings, and its successors.

**“Guarantor (Recourse Carveouts)”** shall mean Holdings, and its successors.

**“Guaranty”** shall mean, collectively, the Guaranty (FF&E), the Guaranty (Recourse Carveouts), the Operating Lease Guaranty and any completion guaranty provided under Section 5.1.21.

**“Guaranty (FF&E)”** shall mean that certain Guaranty (FF&E) (Fifth Mezzanine Loan), dated as of the date hereof, from Guarantor (FF&E) to Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

**“Guaranty (Ground Lease Estoppel)”** shall mean that certain Guaranty (Harvey’s - Payment) (Fifth Mezzanine), dated as of the date hereof, from Guarantor (Ground Lease Estoppel) to Lender, as the same may be amended, restated, supplemented or modified from time to time.

**“Guaranty (Recourse Carveouts)”** shall mean that certain Guaranty (Recourse Carveouts) (Fifth Mezzanine Loan), dated as of the date hereof, from Guarantor (Recourse Carveouts) to Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

**“Harrah’s Atlantic City Property”** shall mean that certain Individual Property identified on Schedule II as “Harrah’s Atlantic City” and having a street address of 777 Harrah’s Boulevard, Atlantic City, New Jersey.

“**Holdings**” shall mean Harrah’s Entertainment, Inc., and its successors.

“**Hotel Components**” shall mean, collectively, those portions of each Individual Property devoted to the operation of a hotel and related facilities, excluding the Casino Component, but including (without limitation) (a) all guest rooms and suites, hotel amenities, restaurants, conference centers, meeting, banquet and other public rooms, spa, parking spaces and other facilities of the hotel portion of such Individual Property, and (b) any theaters or performing arts spaces in the Individual Property in question. The Hotel Components are more particularly described and set forth in each Operating Lease, as applicable.

“**Improvements**” shall have the meaning set forth in the granting clause of the related Mortgage with respect to each Individual Property.

“**Indebtedness**” of a Person, at a particular date, means the sum (without duplication) at such date of (a) all indebtedness of such Person (including, without limitation, amounts for borrowed money and indebtedness in the form of mezzanine debt and preferred equity); (b) obligations evidenced by bonds, debentures, notes, or other similar instruments; (c) obligations for the deferred purchase price of property or services (including trade obligations); (d) obligations under letters of credit; (e) obligations under acceptance facilities; (f) all guaranties, endorsements (other than for collection or deposit in the ordinary course of business) and other contingent obligations to purchase, to provide funds for payment, to supply funds, to invest in any Person or entity, or otherwise to assure a creditor against loss; and (g) obligations secured by any Liens, whether or not the obligations have been assumed.

“**Indemnified Liabilities**” shall have the meaning set forth in Section 10.13 hereof.

“**Indemnified Person**” shall have the meaning set forth in Section 9.2(b) hereof.

“**Independent Director**” or “**Independent Manager**” shall mean a natural person who is not and will not be while serving and has not been during the five years preceding his or her initial appointment to such position any of the following: (a) a stockholder (other than a stockholder who owns a *de minimis* amount of shares and receive *de minimis* income therefrom, or who indirectly owns stock through its interest in one or more mutual funds), member (other than as a Special Member or Springing Member of Borrower), director, manager (except in his or her capacity as an Independent Manager on the Board of Managers of Borrower), officer, employee, partner, attorney, trustee or counsel of Borrower or any Affiliate of Borrower or any direct or indirect parent of either of them, including Holdings, (b) a creditor, customer (other than a retail customer of an Individual Property), supplier or other Person who derives any of its purchases or revenues from its activities with Borrower or any Affiliate of Borrower, including Holdings, (c) a Person or other entity controlling or under common control with any such stockholder, partner, member, director, manager or officer, customer, supplier or other Person excluded from serving as Independent Director or Independent Manager described in the foregoing subclause (a) or subclause (b), or (d) a member of the immediate family by blood or marriage of any such stockholder, member, manager, director, officer, employee, partner, attorney, customer, supplier or other Person excluded from serving as Independent Director or Independent Manager in subclause (a) or subclause (b). A natural person who

satisfies the foregoing definition other than subclause (b) above shall not be disqualified from serving as an Independent Manager, if such individual is an independent director provided by a nationally recognized company that provides professional independent directors and managers, it being hereby acknowledged and agreed that Corporation Service Company satisfies such criteria. Further, a natural person who otherwise satisfies the foregoing definition except for subclause (a) by reason of being the independent director of a "special purpose entity" affiliated with the Borrower shall not be disqualified from serving as an Independent Director of the Borrower if such individual is either (i) a Professional Independent Director or (ii) the fees and other income that such individual earns from serving as independent director of affiliates of the Borrower in any given year constitute in the aggregate less than five percent (5%) of such individual's annual income for that year. Notwithstanding the immediately preceding sentence, an Independent Director may not simultaneously serve as Independent Director of the Borrower and independent director of a special purpose entity that owns a direct or indirect equity interest in the Borrower or a direct or indirect interest in any co-borrower with the Borrower. For purposes of this paragraph, a "special purpose entity" is an entity, whose organizational documents contain restrictions on its activities and impose requirements intended to preserve such entity's separateness that are substantially similar to the "special purpose entity" provisions of this Agreement. Notwithstanding anything herein to the contrary, an Independent Director may not simultaneously serve as Independent Director of a Borrower and an independent director of a special purpose entity that owns a direct or indirect equity interest in any Borrower; provided, however, that one Independent Director of Borrower (but not both Independent Directors simultaneously) may serve as an independent director of each Other Mezzanine Borrower.

**"Individual Material Adverse Effect"** shall mean any event or condition that, either singly or in the aggregate, could reasonably be expected to have or result in a material adverse effect upon (a) the business, operations, economic performance, prospects, assets or condition (financial or otherwise) of (i) any Borrower, any Senior Mezzanine Borrower or any Mortgage Borrower, (ii) Guarantor, (iii) any Operating Company, (iv) any Operating Lease or Operating Lease Guaranty or (v) the Collateral, the Senior Mezzanine Collateral or any Individual Property or any Hotel Component or Casino Component thereon; (b) the ability of any Borrower, any Senior Mezzanine Borrower, any Mortgage Borrower or Guarantor to perform, in all material respects, its obligations under each of the Loan Documents, Senior Mezzanine Loan Documents or Mortgage Loan Documents to which it is a party; (c) the ability of any Operating Company to perform, in all material respects, its obligations under its Lease; (d) the enforceability or validity of (i) any Operating Lease or Operating Lease Guaranty, or (ii) any Loan Document, Senior Mezzanine Loan Document, Mortgage Loan Document or the perfection or priority of any Lien created under any Loan Document, Senior Mezzanine Loan Document or Mortgage Loan Document; (e) the value of, or cash flow from, any Individual Property, the Collateral, the Senior Mezzanine Collateral or the operations thereof; or (f) the material rights, interests and remedies of Lender under any of the Loan Documents.

**"Individual Property"** shall mean, individually, any one of the properties identified on Schedule II (it being the Improvements thereon and all Fixtures and all Equipment, FF&E and personal property owned by Mortgage Borrower and encumbered by a Mortgage, together with all rights pertaining to such property and Improvements, as more particularly described in the Granting Clauses of each Mortgage and referred to therein as the "Property"). For all purposes herein and in the other Loan Documents and to the extent not prohibited by the

Ground Lease, the premises leased by Ground Lease Subsidiary or Borrower, as applicable, under the Ground Lease shall constitute a part of the Individual Property known as “Harvey’s Lake Tahoe”, “Harrah’s Lake Tahoe” and “Bill’s Lake Tahoe”, except that such ground leased premises shall not be subject to a lien of a Mortgage or an Operating Lease unless and until required pursuant hereto, the Mortgage Loan Agreement or pursuant to the Ground Lease Side Letter.

“**Insolvency Opinion**” shall mean that certain non-consolidation opinion letter dated the date hereof delivered by Cleary Gottlieb Steen & Hamilton LLP in connection with the Loan.

“**Institutional Lender**” shall mean any Person reasonably acceptable to Lender in all respects that is either (a) a real estate investment trust, bank, saving and loan association, investment bank, insurance company, trust company, commercial credit corporation, pension plan, pension fund or pension advisory firm, mutual fund, government entity or plan, provided that any such Person referred to in this clause (a) satisfies the Eligibility Requirements; (b) an investment company, money management firm or “qualified institutional buyer” within the meaning of Rule 144A under the Securities Act of 1933, as amended, or an institutional “accredited investor” within the meaning of Regulation D under the Securities Act of 1933, as amended, provided that any such Person referred to in this clause (b) satisfies the Eligibility Requirements; (c) an institution substantially similar to any of the foregoing entities described in clauses (a) or (b) that satisfies the Eligibility Requirements; (d) any entity controlled by any of the entities described in clauses (a) or (c) above; or (e) an investment fund, limited liability company, limited partnership or general partnership where a Permitted Fund Manager or an entity that is otherwise an Institutional Lender under clauses (a), (b), (c) or (d) of this definition acts as the general partner, managing member or fund manager and at least fifty percent (50%) of the equity interests in such investment fund are owned, directly or indirectly, by one or more entities that are otherwise Institutional Lenders under clauses (a), (b), (c) or (d) of this definition.

“**Insurance Premiums**” shall have the meaning set forth in the Mortgage Loan Agreement.

“**Insurance Proceeds**” shall have the meaning set forth in the Mortgage Loan Agreement.

“**Interest Expense**” shall mean, with respect to any Person for any period, the sum of (a) gross interest expense of such Person for such period on a consolidated basis, including (i) the amortization of debt discounts, (ii) the amortization of all fees payable in connection with the incurrence of Indebtedness to the extent included in interest expense and (iii) the portion of any payments or accruals with respect to equipment financing and equipment leases allocable to interest expense, (b) capitalized interest of such Person, and (c) commissions, discounts, yield and other fees and charges incurred in connection with any indebtedness which are payable to any Person other than Borrower. For purposes of the foregoing, interest on equipment financing or equipment leases shall be deemed to accrue at an interest rate reasonably determined by the Borrower to be the rate of interest implicit in such equipment financing or equipment lease in accordance with GAAP.

**“Interest Period”** shall mean (a) for the first interest period hereunder, (i) if the Closing Date occurs on or before the fourteenth (14<sup>th</sup>) day of a calendar month, the period commencing on the Closing Date and ending on (and including) the fourteenth (14<sup>th</sup>) day of the calendar month in which the Closing Date occurs, and (ii) if the Closing Date occurs on or after the fifteenth (15<sup>th</sup>) day of a calendar month, the period commencing on the Closing Date and ending on (and including) the fourteenth (14<sup>th</sup>) day of the following calendar month and (b) for each interest period thereafter commencing February 15, 2008, the period commencing on the fifteenth (15<sup>th</sup>) day of each calendar month and ending on (and including) the fourteenth (14<sup>th</sup>) day of the following calendar month. Each Interest Period as set forth in clause (b) above shall be a full month and shall not be shortened by reason of any payment of the Loan prior to the expiration of such Interest Period. Notwithstanding the foregoing, Lender shall have the right, in connection with a Securitization, to change the Interest Period and Payment Date, provided that in doing so, Lender shall not increase Borrower’s costs hereunder (other than the direct costs of implementing such change, such as legal fees, which Borrower hereby agrees to pay).

**“Interest Rate Cap Agreement”** shall mean, as applicable, an Interest Rate Cap Agreement (together with the confirmation and schedules relating thereto) in form and substance reasonably satisfactory to Lender between Borrower and an Acceptable Counterparty or a Replacement Interest Rate Cap Agreement.

**“JPM”** shall mean JPMorgan Chase Bank, N.A. and its successors in interest.

**“Lease”** shall mean any lease (including the Operating Lease), sublease or subsublease, letting, license, concession or other agreement (whether written or oral and whether now or hereafter in effect) pursuant to which any Person is granted a possessory interest in, or right to use or occupy all or any portion of any space in any Individual Property (other than short term arrangements with transient hotel guests entered into in the usual course of business), and (a) every modification, amendment or other agreement relating to such lease, sublease, subsublease, or other agreement entered into in connection with such lease, sublease, subsublease, or other agreement and (b) every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto (including the Operating Lease Guaranty).

**“Legal Requirements”** shall mean, with respect to each Individual Property and the Collateral, all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions of Governmental Authorities affecting such Individual Property, the Senior Mezzanine Collateral, the Collateral or any part thereof (including, without limitation, all Gaming Laws), or affecting the construction, use, alteration or operation thereof, or any part thereof, whether now or hereafter enacted and in force, and all permits, licenses and authorizations and regulations relating thereto (including, without limitation, all Gaming Licenses and Operating Permits), and all covenants, agreements, restrictions and encumbrances contained in any instruments, either of record or known to Borrower, Mortgage Borrower or Operating Company, at any time in force affecting such Individual Property or any part thereof, including, without limitation, any which may (a) require repairs, modifications or alterations in or to such Individual Property or any part thereof, or (b) in any way limit the use and enjoyment thereof. Legal Requirements shall include any (x) judicial, administrative or other governmental or quasi governmental order, injunction, writ, judgment,

decree, ruling, interpretation, finding or other directive, whether domestic or foreign; (y) arbitrator's, mediator's or referee's decision, finding, award or recommendation; or (z) charter, rule, regulation or other organizational or governance document of any self-regulatory or governing body or organization. For the avoidance of doubt, the term "Legal Requirements" shall include, and be deemed to include, all applicable Gaming Laws and Gaming Regulations.

"**Lender**" shall have the meaning set forth in the introductory paragraph hereto, together with its successors and assigns.

"**Lender's Share**" shall mean a fraction, the numerator of which is the outstanding principal amount of the Loan and the denominator of which is the sum of the outstanding principal amounts of the Mortgage Loan, the Loan and the Other Mezzanine Loans (in each case, as of the date of determination).

"**Liabilities**" shall have the meaning set forth in Section 9.2(b) hereof.

"**LIBOR**" shall mean, with respect to each Interest Period, the rate (expressed as a percentage per annum and rounded to the next nearest 1/100 of 1%) for deposits in U.S. dollars, for a one-month period, that appears on Reuters Screen LIBOR01 Page (or the successor thereto) as of 11:00 a.m., London time, on the related Determination Date. If such rate does not appear on Reuters Screen LIBOR01 Page as of 11:00 a.m., London time, on such Determination Date, LIBOR shall be the arithmetic mean of the offered rates (expressed as a percentage per annum) for deposits in U.S. dollars for a one-month period that appear on the Reuters Screen Libor Page as of 11:00 a.m., London time, on such Determination Date, if at least two such offered rates so appear. If fewer than two such offered rates appear on the Reuters Screen Libor Page as of 11:00 a.m., London time, on such Determination Date, Lender shall request the principal London office of any four major reference banks in the London interbank market selected by Lender to provide such bank's offered quotation (expressed as a percentage per annum) to prime banks in the London interbank market for deposits in U.S. dollars for a one-month period as of 11:00 a.m., London time, on such Determination Date for the amounts of not less than U.S. \$1,000,000. If at least two such offered quotations are so provided, LIBOR shall be the arithmetic mean of such quotations. If fewer than two such quotations are so provided, Lender shall request any three major banks in New York City selected by Lender to provide such bank's rate (expressed as a percentage per annum) for loans in U.S. dollars to leading European banks for a one-month period as of approximately 11:00 a.m., New York City time on the applicable Determination Date for amounts of not less than U.S. \$1,000,000. If at least two such rates are so provided, LIBOR shall be the arithmetic mean of such rates. LIBOR shall be determined conclusively by Lender or its agent. Notwithstanding the foregoing, for the Interest Period ending February 14, 2008, LIBOR is 3.31%.

"**LIBOR Loan**" shall mean the Loan at such time as interest thereon accrues at a rate of interest based upon LIBOR.

"**Lien**" shall mean, with respect to each Individual Property, the Senior Mezzanine Collateral and the Collateral, any mortgage, deed of trust, lien, pledge, hypothecation, assignment, security interest, or any other encumbrance, charge or restriction on transfer of, on

or affecting Borrower, Senior Mezzanine Borrower, Mortgage Borrower, any Individual Property, the Senior Mezzanine Collateral or the Collateral, any portion of either or any interest therein, including, without limitation, any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, the filing of any financing statement, and mechanic's, materialmen's and other similar liens and encumbrances, in each case whether arising by contract, operation of law, or otherwise.

“**Liquidation Event**” shall have the meaning set forth in Section 2.4.2 hereof.

“**Loan**” shall mean the loan made by Lender to Borrower pursuant to this Agreement.

“**Loan Adjustment**” shall have the meaning set forth in Section 2.1.6 hereof.

“**Loan Amount**” shall mean, as determined from time to time, the outstanding principal amount of the Loan.

“**Loan Documents**” shall mean, collectively, this Agreement, the Note, the Pledge Agreement, the Environmental Indemnity, the O&M Agreement, the Guaranty (Recourse Carveouts), the Guaranty (FF&E), the Guaranty (Ground Lease Estoppel), the Collateral Assignment of Interest Rate Cap Agreement, the Contribution Agreement and all other documents executed and/or delivered in connection with the Loan.

“**Loan Party**” shall mean, collectively, Mortgage Borrower, Borrower, Senior Mezzanine Borrower, Principal and Guarantor.

“**London Business Day**” shall mean any day other than a Saturday, Sunday or any other day on which commercial banks in London, England are not open for business.

“**Major Lease**” shall mean any of the following: (a) with respect to any Individual Property, any Lease (i) covering in excess of forty thousand (40,000) net rentable square feet at such Individual Property or (ii) made with a Tenant that is a Tenant under another Lease at such Individual Property (or with a Tenant that is an Affiliate of a Tenant under another Lease at such Individual Property) if any such Leases, together, cover in excess of forty thousand (40,000) net rentable square feet or more at such Individual Property, (b) any Lease of space at any Individual Property with an Affiliate of Mortgage Borrower, or (c) any Lease that is not the result of arm's length negotiations; provided, however, that the Operating Lease shall not constitute a Major Lease for purposes of this Agreement.

“**Material Alteration**” shall mean any Alteration with respect to all or a portion of any Individual Property that (i) when aggregated with all other Alterations at such Individual Property then being conducted involve an estimated total cost in excess of an amount equal to ten percent (10%) of the sum of the Allocated Loan Amount for such Individual Property and the “Allocated Loan Amounts” under (and as defined in each of) the Mortgage Loan Agreement and the Other Mezzanine Loan Agreements for such Individual Property or (ii) when aggregated with all other Alterations at the Properties, including such Individual Property, then being conducted, involve an estimated total cost in excess of an amount equal to five percent (5%) of the sum of the Loan Amount, the Mortgage Loan Amount and the Other Mezzanine Loan Amount (and, as

used herein, “**Threshold Amount**” shall mean whichever of said 5% or 10% amount shall have been exceeded, provided that if both shall have been exceeded, then the lower of such two amounts shall be the “Threshold Amount”); provided, that, in determining whether one or more Alterations comprise a Material Alteration, there shall not be included (a) merely decorative work such as painting, wall papering, carpeting and replacement of FF&E to the extent the same are of a routine and recurring nature, performed in the ordinary course of business; (b) tenant improvement work performed by a tenant pursuant to the terms of any Lease (other than the Operating Lease) entered into in accordance with the terms hereof, so long as such work does not adversely affect any structural component of any Improvements, any utility or HVAC system contained in any Improvements or the exterior of any building constituting a part of any Improvements, (c) any Alterations which are performed in connection with the Restoration of any portion of any Individual Property after the occurrence of a Casualty or Condemnation in accordance with the terms and provisions of this Agreement, or (d) the Tower Project or the Convention Center Project.

“**Maturity Date**” shall mean the Scheduled Maturity Date or such other date on which the final payment of principal of the Notes becomes due and payable as therein or herein provided, whether at such Scheduled Maturity, by declaration of acceleration, or otherwise.

“**Maximum Legal Rate**” shall mean the maximum nonusurious interest rate, if any, that at any time or from time to time may be contracted for, taken, reserved, charged or received on the indebtedness evidenced by the Note and as provided for herein or the other Loan Documents, under the laws of such state or states whose laws are held by any court of competent jurisdiction to govern the interest rate provisions of the Loan.

“**Mezzanine Borrowers**” shall mean, collectively, Borrower, First Mezzanine Borrower, Second Mezzanine Borrower, Third Mezzanine Borrower, Fourth Mezzanine Borrower, Sixth Mezzanine Borrower, Seventh Mezzanine Borrower, Eighth Mezzanine Borrower, Ninth Mezzanine Borrower and any New Mezzanine Borrower.

“**Mezzanine Collection Account**” shall have the meaning set forth in Section 2.6.4 hereof.

“**Mezzanine Debt Service**” shall mean, with respect to any particular period of time, the sum of (a) the Debt Service, (b) the First Mezzanine Debt Service, (c) the Second Mezzanine Debt Service, (d) the Third Mezzanine Debt Service, (e) the Fourth Mezzanine Debt Service, (f) the Sixth Mezzanine Debt Service, (g) the Seventh Mezzanine Debt Service, (h) the Eighth Mezzanine Debt Service, (i) the Ninth Mezzanine Debt Service, and (j) debt service on any New Mezzanine Loan.

“**Mezzanine Lenders**” shall mean, collectively, Lender, First Mezzanine Lender, Second Mezzanine Lender, Third Mezzanine Lender, Fourth Mezzanine Lender, Sixth Mezzanine Lender, Seventh Mezzanine Lender, Eighth Mezzanine Lender, Ninth Mezzanine Lender and Lender, as lender under any New Mezzanine Loan.

“**Mezzanine Loan Agreements**” shall mean, collectively, this Agreement, the First Mezzanine Loan Agreement, the Second Mezzanine Loan Agreement, the Third Mezzanine

Loan Agreement, the Fourth Mezzanine Loan Agreement, the Sixth Mezzanine Loan Agreement, the Seventh Mezzanine Loan Agreement, the Eighth Mezzanine Loan Agreement, the Ninth Mezzanine Loan Agreement and any New Mezzanine Loan Agreement.

“**Mezzanine Loan Amount**” shall mean, as determined from time to time, the outstanding principal amount of the Mezzanine Loans.

“**Mezzanine Loan Documents**” shall mean, collectively, the Loan Documents, the First Mezzanine Loan Documents, the Second Mezzanine Loan Documents, the Third Mezzanine Loan Documents, the Fourth Mezzanine Loan Documents, the Sixth Mezzanine Loan Documents, the Seventh Mezzanine Loan Documents, the Eighth Mezzanine Loan Documents, the Ninth Mezzanine Loan Documents and any loan documents entered into in connection with any New Mezzanine Loan.

“**Mezzanine Loans**” shall mean, collectively, this Loan, the First Mezzanine Loan, the Second Mezzanine Loan, the Third Mezzanine Loan, the Fourth Mezzanine Loan, the Sixth Mezzanine Loan, the Seventh Mezzanine Loan, the Eighth Mezzanine Loan, the Ninth Mezzanine Loan and any New Mezzanine Loan.

“**Minimum Value Test**” shall mean, with respect to any Person, that the greater of the book value or the fair market value of the assets of such Person (excluding, for purposes of making such determination, the value of the Properties) exceeds Five Billion and No/100 Dollars (\$5,000,000,000.00) in the aggregate, as certified to Lender in an Officer’s Certificate prepared in good faith based on the most recent financial statements of such Person.

“**Monthly Disbursements**” shall have the meaning provided in Section 2.6.2.

“**Monthly FF&E Reserve Amount**” means the monthly deposit for FF&E required pursuant to Section 7.3 of this Agreement.

“**Monthly Ground Rent Reserve Amount**” means the monthly deposit for Ground Rent required pursuant to Section 7.4 of this Agreement.

“**Monthly Tax and Insurance Amount**” means the monthly deposit for Taxes and Insurance required pursuant to Section 7.2 of this Agreement.

“**Moody’s**” shall mean Moody’s Investors Service, Inc.

“**Mortgage**” shall mean, with respect to each Individual Property, that certain first priority Mortgage (or Deed of Trust or Deed to Secure Debt) and Security Agreement, dated the date hereof, executed and delivered by Mortgage Borrower as security for the Mortgage Loan and encumbering such Individual Property and any first priority Mortgage (Deed of Trust or Deed to Secure Debt) and Security Agreement delivered pursuant to the Ground Lease Side Letter, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Mortgage Borrower**” shall mean, collectively, the entities set forth on Schedule XIII hereto, each a Delaware limited liability company, together with their respective

successors and permitted designs. As used herein the term “Mortgage Borrower” shall mean one of the Mortgage Borrowers individually or the Mortgage Borrowers collectively, as the context shall require.

“**Mortgage Debt Service**” shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Mortgage Note and the Mortgage Loan Agreement.

“**Mortgage Lender**” shall have the meaning set forth in the Recitals.

“**Mortgage Loan**” shall have the meaning set forth in the Recitals.

“**Mortgage Loan Agreement**” shall have the meaning set forth in the Recitals.

“**Mortgage Loan Amount**” shall mean, as determined from time to time, the outstanding principal amount of the Mortgage Loan.

“**Mortgage Loan Default**” shall mean a “Default” as defined in the Mortgage Loan Agreement.

“**Mortgage Loan Documents**” shall mean the Mortgage Loan Agreement, the Mortgage Note, the Mortgage and all other documents and instruments executed and delivered in connection with the Mortgage Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

“**Mortgage Loan Event of Default**” shall mean an “Event of Default” as defined in the Mortgage Loan Agreement.

“**Mortgage Loan Reserve Funds**” shall mean the “Reserve Funds” as defined in the Mortgage Loan Agreement.

“**Mortgage Note**” shall mean the “Note” as defined in the Mortgage Loan Agreement.

“**Net Income**” shall mean, with respect to any Person, the net income (loss) of such Person, determined in accordance with GAAP and before any reduction in respect of preferred stock dividends.

“**Net Liquidation Proceeds After Debt Service**” shall mean, with respect to any Liquidation Event, all amounts paid to or received by or on behalf of Borrower, Senior Mezzanine Borrower or Mortgage Borrower in connection with such Liquidation Event, including, without limitation, proceeds of any sale, refinancing or other disposition or liquidation, less (a) Lender’s, Senior Mezzanine Lender’s and/or Mortgage Lender’s reasonable costs incurred in connection with the recovery thereof, (b) amounts required or permitted to be deducted therefrom and amounts paid pursuant to the Mortgage Loan Documents and Senior Mezzanine Loan Documents to Mortgage Lender and/or Senior Mezzanine Lender (as applicable), (c) in the case of a foreclosure sale, disposition or Transfer of the Property in connection with realization thereon following a Mortgage Loan Event of Default, such

reasonable and customary costs and expenses of sale or other disposition (including attorneys' fees and brokerage commissions), (d) in the case of a foreclosure sale, disposition or Transfer of any Senior Mezzanine Collateral in connection with realization thereon following a Senior Mezzanine Loan Default under any Senior Mezzanine Loan Documents, such reasonable and customary costs and expenses of sale or other disposition (including attorneys' fees and brokerage commissions), (e) in the case of a foreclosure sale, such costs and expenses incurred by Mortgage Lender under the Mortgage Loan Documents as Mortgage Lender shall be entitled to receive reimbursement for under the terms of the Mortgage Loan Documents, (f) in the case of a foreclosure sale, such costs and expenses incurred by Senior Mezzanine Lender under the Senior Mezzanine Loan Documents as Senior Mezzanine Lender shall be entitled to receive reimbursement for under the terms of the Senior Mezzanine Loan Documents, (g) in the case of a refinancing of the Mortgage Loan and/or Senior Mezzanine Loan, such costs and expenses (including attorneys' fees) of such refinancing as shall be reasonably approved by Mortgage Lender and/or Senior Mezzanine Lender, as the case may be, and (h) the amount of any prepayments required pursuant to the Mortgage Loan Documents, Senior Mezzanine Loan Documents, and/or the Loan Documents, in connection with any such Liquidation Event.

“**Net Proceeds**” shall have the meaning set forth in Section 6.4 hereof.

“**New Mezzanine Borrower**” shall have the meaning set forth in Section 2.1.7.

“**New Mezzanine Loan**” shall have the meaning set forth in Section 2.1.7.

“**Ninth Mezzanine Borrower**” shall mean, collectively, the entities set forth on Schedule XXI hereto, each a Delaware limited liability company, together with their respective successors and permitted assigns. As used herein, the term “Ninth Mezzanine Borrower” shall mean one of the Ninth Mezzanine Borrowers individually, or the Ninth Mezzanine Borrowers collectively, as the context shall require.

“**Ninth Mezzanine Debt Service**” shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Ninth Mezzanine Note.

“**Ninth Mezzanine Lender**” shall mean JPMorgan Chase Bank, N.A., in its capacity as the holder of the Ninth Mezzanine Loan, together with its successors and assigns.

“**Ninth Mezzanine Loan**” shall mean that certain loan in the original principal amount of Two Hundred Seventy Five Million and No/100 Dollars (\$275,000,000) of even date herewith made by Ninth Mezzanine Lender to Ninth Mezzanine Borrower.

“**Ninth Mezzanine Loan Agreement**” shall mean that certain Ninth Mezzanine Loan Agreement, dated as of the date hereof, between Ninth Mezzanine Borrower and Ninth Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Ninth Mezzanine Loan Documents**” shall mean the Ninth Mezzanine Loan Agreement, the Ninth Mezzanine Note and all other documents and instruments executed and

delivered in connection with the Ninth Mezzanine Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

“**Ninth Mezzanine Notes**” shall mean the “Notes” as defined in the Ninth Mezzanine Loan Agreement.

“**Note**” or “**Notes**” shall mean, collectively, Note A-1, Note A-2, Note A-3, Note A-4, Note A-5, Note A-6, Note A-7, Note A-8 and Note A-9.

“**Note A-1**” shall mean that certain Promissory Note A-1 (Fifth Mezzanine Loan), dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of Forty One Million Two Hundred Fifty Four Thousand Five Hundred Eighty Three and 33/100 Dollars (\$41,254,583.33), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Note A-2**” shall mean that certain Promissory Note A-2 (Fifth Mezzanine Loan), dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of Forty One Million Two Hundred Fifty Four Thousand Five Hundred Eighty Three and 33/100 Dollars (\$41,254,583.33), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Note A-3**” shall mean that certain Promissory Note A-3 (Fifth Mezzanine Loan), dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of Forty One Million Two Hundred Fifty Four Thousand Five Hundred Eighty Three and 34/100 Dollars (\$41,254,583.34), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Note A-4**” shall mean that certain Promissory Note A-4 (Fifth Mezzanine Loan), dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of Forty One Million Two Hundred Fifty Four Thousand Five Hundred Eighty Three and 34/100 Dollars (\$41,254,583.34), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Note A-5**” shall mean that certain Promissory Note A-5 (Fifth Mezzanine Loan), dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of Forty One Million Two Hundred Fifty Four Thousand Five Hundred Eighty Three and 33/100 Dollars (\$41,254,583.33), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Note A-6**” shall mean that certain Promissory Note A-6 (Fifth Mezzanine Loan), dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of Forty One Million Two Hundred Fifty Four Thousand Five Hundred Eighty Three and 33/100 Dollars (\$41,254,583.33), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Note A-7**” shall mean that certain Promissory Note A-7 (Fifth Mezzanine Loan), dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of Nine Million One Hundred Fifty Seven Thousand Five Hundred and No/100 Dollars

(\$9,157,500.00), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Note A-8**” shall mean that certain Promissory Note A-8 (Fifth Mezzanine Loan), dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of Nine Million One Hundred Fifty Seven Thousand Five Hundred and No/100 Dollars (\$9,157,500.00), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Note A-9**” shall mean that certain Promissory Note A-9 (Fifth Mezzanine Loan), dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of Nine Million One Hundred Fifty Seven Thousand Five Hundred and No/100 Dollars (\$9,157,500.00), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Noteholders**” shall mean, collectively, the holders of the Notes from time to time and a “**Noteholder**” shall mean any holder of a Note from time to time (provided that the transfer of a Note shall not result in any prior Noteholder’s loss of any indemnification provided for hereunder to a Noteholder).

“**OC Accounts**” shall have the meaning set forth in Section 2.6.1(c).

“**O&M Agreement**” shall mean, with respect to each Individual Property (to the extent required by the environmental reports referenced in Section 3.1.3(e) hereof, that certain Operations and Maintenance Agreement (Fifth Mezzanine Loan), dated as of the date hereof, between Borrower and Lender given in connection with the Loan, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Officer’s Certificate**” shall mean a certificate delivered to Lender by Borrower which is signed by an authorized senior officer of Borrower or the general partner or managing member of Borrower, as applicable.

“**Off-Shore Accounts**” shall mean the accounts more particularly described on Schedule V.

“**Operating Company**” shall mean, collectively, the tenants under the Operating Leases, and their successors and permitted assigns.

“**Operating Company Annual Budget**” shall mean, individually and collectively as the context requires, with respect to each Operating Company, the operating budget of such Operating Company, including all planned Capital Expenditures, prepared by such Operating Company for the applicable Fiscal Year or other period.

“**Operating Lease**” shall mean, collectively, those certain Lease Agreements listed on Schedule VI, dated as of the date hereof, having a term of fifteen (15) years commencing on the Closing Date, and any similar Lease Agreement executed and delivered pursuant to the Ground Lease Side Letter, as the same may be amended, supplemented, replaced or otherwise modified from time to time in accordance with the provisions hereof.

**“Operating Lease Guaranty”** shall mean, collectively, those certain Lease Guaranty Agreements listed on Schedule VIA, executed and delivered by Guarantor (Operating Lease), dated as of the date hereof, unconditionally guaranteeing the payment and performance by the Operating Company of all of its obligations under the Operating Lease, and any similar Lease Guaranty Agreement executed and delivered pursuant to the Ground Lease Side Letter, as such Lease Guaranty Agreements may be amended, supplemented, replaced or otherwise modified from time to time in accordance with the provisions hereof.

**“Operating Permits”** shall have the meaning set forth in Section 4.1.22 hereof.

**“O’Shea’s”** shall have the meaning ascribed to such term in the Mortgage Loan Agreement.

**“Other Borrower Collateral”** shall have the meaning set forth in Section 11.2.1 hereof.

**“Other Borrowers”** shall have the meaning set forth in Section 11.1 hereof.

**“Other Charges”** shall mean all ground rents, maintenance charges, impositions other than Taxes, and any other charges, including, without limitation, vault charges and license fees for the use of vaults, chutes and similar areas adjoining any Individual Property, now or hereafter levied or assessed or imposed against such Individual Property or any part thereof.

**“Other Mezzanine Borrowers”** shall mean, individually or collectively as the context may require, all of the Mezzanine Borrowers other than Borrower.

**“Other Mezzanine Debt Service”** shall mean, individually or collectively as the context may require, all of the Mezzanine Debt Service other than the Debt Service.

**“Other Mezzanine Lenders”** shall mean, individually or collectively as the context may require, all of the Mezzanine Lenders other than Lender.

**“Other Mezzanine Loans”** shall mean, individually or collectively as the context may require, all of the Mezzanine Loans other than the Loan.

**“Other Mezzanine Loan Agreements”** shall mean, individually or collectively as the context may require, all of the Mezzanine Loan Agreements other than this Agreement.

**“Other Mezzanine Loan Amounts”** shall mean, as determined from time to time, the outstanding principal amounts of all of the Mezzanine Loans other than the Loan.

**“Owner’s Title Policy”** shall mean those certain ALTA extended coverage owner’s policies of title insurance issued in connection with the closing of the Mortgage Loan insuring the Mortgage Borrower as the owner of the Property.

**“Participant”** shall have the meaning set forth in Section 9.6 hereof.

**“Participant Register”** shall have the meaning set forth in Section 9.6 hereof.

**“Payment Date”** shall mean the ninth (9<sup>th</sup>) calendar day of each calendar month during the term of the Loan, and if such day is not a Business Day, then the Business Day immediately preceding such day, commencing on March 9, 2008 and continuing to and including the Maturity Date. Notwithstanding the foregoing, the Payment Date in the final Interest Period shall be the Maturity Date (*i.e.*, the second to last Business Day in such Interest Period rather than the ninth calendar day of such month).

**“Permitted Encumbrances”** shall mean, with respect to an Individual Property, collectively (a) the Liens and security interests created by the Mortgage Loan Documents; (b) all Liens, encumbrances and other matters disclosed in the Title Insurance Policies relating to such Individual Property or any part thereof; (c) Liens, if any, for Taxes and Other Charges imposed by any Governmental Authority not yet due or delinquent; (d) the Operating Lease; (e) such other title and survey exceptions as Lender has approved or may approve in writing in Lender’s reasonable discretion; (f) any Lien being contested by Borrower in good faith by appropriate proceedings, provided that (i) no Default or Event of Default has occurred and remains uncured, (ii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any applicable material instrument to which Mortgage Borrower is subject and shall not constitute a default thereunder and such proceeding shall be conducted in accordance with all applicable statutes, laws and ordinances, (iii) no Individual Property nor any part thereof or interest therein will be in imminent danger of being sold, forfeited, terminated, cancelled or lost, (iv) such proceeding shall suspend the enforcement of the contested Lien against Mortgage Borrower and any Individual Property, and (v) Borrower shall furnish such security as may be required by GAAP or as may be reasonably requested by Lender; (g) statutory Liens for amounts not yet due and payable, provided that no Individual Property nor any part thereof or interest therein will be in imminent danger of being sold, forfeited, terminated, cancelled or lost; (h) Liens incurred in the ordinary course of business in connection with workers’ compensation, unemployment insurance and other types of social security; (i) any Lien securing the financing of FF&E (including equipment leases) entered into by Mortgage Borrower or Operating Company in the ordinary course of business, subject to the limitations specified in the definitions of “Permitted Indebtedness” and “Permitted Indebtedness (Operating Company)”, as applicable; (j) rights of tenants under Leases, as tenants only; (k) rights of hotel guests at the Hotel Components of the Properties; (l) zoning restrictions, easements, rights-of-way, restrictions on use of real property and other similar encumbrances incurred or entered into in the ordinary course of business which do not, in each case, have an Individual Material Adverse Effect; and (m) liens granted by Operating Company securing equipment financing leases and/or equipment acquisition financings permitted hereunder as “Permitted Indebtedness (Operating Company),” subject to the final sentence of said definition, or as “Permitted Indebtedness”.

**“Permitted Fund Manager”** means any Person that on the date of determination (a) is one of the entities listed on Schedule VII or any other nationally-recognized manager of investment funds investing in debt or equity interests relating to commercial real estate, (b) is investing through a fund with committed capital of at least \$1,000,000,000, (c) is not subject to a Bankruptcy Action, (d) has not been, and none of its material subsidiaries has been, subject to a Bankruptcy Action for the preceding 5 years, (e) has not been convicted and is not under current indictment for a felony or crime involving moral turpitude, (f) has not been found by a court of competent jurisdiction to have violated federal or state securities laws, and (g) is not an organized crime figure (as determined by Lender in its reasonable discretion).

“**Permitted Indebtedness**” shall have the meaning assigned to such term in the Mortgage Loan Agreement.

“**Permitted Indebtedness (Operating Company)**” shall mean, collectively, (a) trade and operational debt (including equipment financing leases, such as leases with providers of Gaming Equipment) relating to the operation of the Properties and the routine administration of Operating Company incurred in the ordinary course of business with trade creditors and in amounts as are normal and reasonable under the circumstances, are not evidenced by a note, are required to be paid within ninety (90) days after same are incurred (except in the case of operating leases) and are paid when due, (b) accrued and unpaid payroll, benefits and payroll taxes with respect to employees of Operating Company or its Affiliates engaged with respect to the Properties incurred in the ordinary course of business and paid when due, (c) debt owed to affiliates, provided such debt is made subject to an intercreditor and standstill agreement in favor of Lender in form and substance reasonably satisfactory to Lender, and (d) such other Indebtedness specifically permitted pursuant to the Operating Lease (including the Gaming Equipment Facility Agreements (as defined in the Mortgage Loan Agreement)). In no event shall Permitted Indebtedness (Operating Company) and Permitted Indebtedness of each Operating Company and Mortgage Borrower on an aggregate basis, excluding for purposes of this sentence the Indebtedness described in subclause (b) of the preceding sentence, exceed five percent (5%) of the sum of the Loan Amount, the Mortgage Loan Amount and the Other Mezzanine Loan Amounts in the aggregate (each as determined from time to time).

“**Permitted Investments**” shall have the meaning set forth in the Mortgage Loan Agreement.

“**Permitted Mezzanine Debt Loan-to-Value Ratio**” shall mean the ratio, as of a particular date, in which (a) the numerator is equal to the sum of (i) the outstanding principal amount of the Mortgage Loan, (ii) the outstanding principal amount of the Mezzanine Loans, and any New Mezzanine Loan, plus (iii) the amount of the Permitted Mezzanine Loan, and (b) the denominator is equal to the appraised value of the Properties subject to the Lien of the Mortgage as determined by Lender based on Appraisals obtained by Lender (at Borrower’s sole cost and expense) and satisfactory to Lender and dated no earlier than ninety (90) days prior to the date of determination or such other Appraisals as are approved by Lender in its sole discretion.

“**Permitted Mezzanine Debt Service**” shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Permitted Mezzanine Loan Documents.

“**Permitted Mezzanine DSCR**” shall mean, for the applicable period, the ratio of (a) EBITDAR for such period from the Properties to (b) the sum of (i) the Mortgage Debt Service and Mezzanine Debt Service for such period, plus (ii) principal and/or interest due and payable (or, for purposes of the calculation to be made pursuant to Section 2.8(d), that would have been due and payable had the Permitted Mezzanine Loan then been in place) for such period on the Permitted Mezzanine Loan at the interest rate set forth in the Permitted Mezzanine Loan Documents or, if the Permitted Mezzanine Loan is a floating rate loan, assuming that (A) the spread on the Permitted Mezzanine Loan is the “Spread” as defined in the documents

evidencing the Permitted Mezzanine Loan and (B) LIBOR is equal to the lesser of (y) LIBOR on the date of determination, or (z) the strike price under the related interest rate cap purchased in connection with the Permitted Mezzanine Loan.

“**Permitted Mezzanine Loan**” shall have the meaning set forth in Section 2.8 hereof.

“**Permitted Mezzanine Loan Documents**” shall have the meaning set forth in Section 2.8(g) hereof.

“**Permitted Mezzanine Loan Election**” shall have the meaning set forth in Section 2.8 hereof.

“**Permitted Mezzanine Loan Lender**” shall have the meaning set forth in Section 2.8 hereof.

“**Person**” shall mean any individual, corporation, partnership, joint venture, limited liability company, estate, trust, unincorporated association, any federal, state, county or municipal government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

“**Physical Conditions Report**” shall mean, with respect to each Individual Property, a report prepared by a company satisfactory to Lender regarding the physical condition of such Individual Property, satisfactory in form and substance to Lender in its sole discretion.

“**Pledge Agreement**” shall mean that certain Pledge and Security Agreement (Loan), dated as of the date hereof, between Borrower and Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Pledged Company Interests**” shall have the meaning set forth in the Pledge Agreement.

“**Policies**” shall have the meaning specified in Section 6.1(b) hereof.

“**Prepayment Date**” shall have the meaning specified in Section 2.4.1 hereof.

“**Prescribed Laws**” shall mean, collectively, (a) the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56) (The USA PATRIOT Act), as amended, (b) Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, and relating to Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, (c) the International Emergency Economic Power Act, 50 U.S.C. §1701 *et seq.* and (d) all other Legal Requirements relating to money laundering or terrorism.

“**Prime Rate**” shall mean the annual rate of interest publicly announced by Citibank, N.A. in New York, New York, as its base rate, as such rate shall change from time to time. If Citibank, N.A. ceases to announce a base rate, Prime Rate shall mean the rate of interest published in The Wall Street Journal from time to time as the “Prime Rate.” If more than one

“Prime Rate” is published in The Wall Street Journal for a day, the average of such “Prime Rates” shall be used, and such average shall be rounded up to the nearest one-eighth of one percent (0.125%). If The Wall Street Journal ceases to publish the “Prime Rate,” Lender shall select an equivalent publication that publishes such “Prime Rate,” and if such “Prime Rates” are no longer generally published or are limited, regulated or administered by a governmental or quasi-governmental body, then Lender shall select a comparable interest rate index.

“**Prime Rate Loan**” shall mean the Loan at such time as interest thereon accrues at a rate of interest based upon the Prime Rate.

“**Prime Rate Spread**” shall mean the difference (expressed as the number of basis points) between (a) LIBOR plus the Spread on the date LIBOR was last applicable to the Loan and (b) the Prime Rate on the date that LIBOR was last applicable to the Loan; provided, however, in no event shall such difference be a negative number.

“**Principal**” shall mean Sixth Mezzanine Borrower.

“**Projections**” shall have the meaning set forth in Section 9.10 hereof.

“**Properties**” shall mean, collectively, each and every Individual Property which is subject to the terms of this Agreement.

“**Provided Information**” shall mean any and all financial and other information provided at any time by, or on behalf of, Borrower, Senior Mezzanine Borrower, or Mortgage Borrower with respect to the Properties, Borrower, any Affiliates of Borrower, including Holdings, Guarantor and/or Operating Company.

“**Qualified Transferee**” means (a) any of the Mezzanine Lenders, (b) Apollo Management, L.P., TPG Capital, L.P. f/k/a Texas Pacific Group, their respective Affiliates and senior or executive principals of Apollo Management, L.P. or TPG Capital, L.P. who are the holders from time to time of voting interests in Holdings, and investment funds Controlled by either of them (but excluding for purposes of this clause (b) “portfolio companies” of the foregoing), or (c) one or more of the following:

(i) a real estate investment trust, bank, saving and loan association, investment bank, insurance company, trust company, commercial credit corporation, pension plan, pension fund or pension advisory firm, mutual fund, government entity or plan, provided that any such Person referred to in this clause (i) satisfies the Eligibility Requirements;

(ii) an investment company, money management firm or “qualified institutional buyer” within the meaning of Rule 144A under the Securities Act of 1933, as amended, or an institutional “accredited investor” within the meaning of Regulation D under the Securities Act of 1933, as amended, provided that any such Person referred to in this clause (ii) satisfies the Eligibility Requirements;

(iii) an institution substantially similar to any of the foregoing entities described in clauses (c)(i) or (c)(ii) that satisfies the Eligibility Requirements;

(iv) any entity Controlled by any of the entities described in clause (a) or clauses (c)(i) or (c)(iii) above, or Holdings or any entity Controlled by Holdings (provided in each case there shall have occurred no Change in Control);

(v) a Qualified Trustee in connection with a securitization of, the creation of collateralized debt obligations (“CDO”) secured by or financing through an “owner trust” of, any Mezzanine Loan (collectively, “**Securitization Vehicles**”), so long as (A) the special servicer or manager of such Securitization Vehicle has the Required Special Servicer Rating and (B) the entire “controlling class” of such Securitization Vehicle, other than with respect to a CDO Securitization Vehicle, is held by one or more entities that are otherwise Qualified Transferees under clauses (c)(i), (ii), (iii) or (iv) of this definition; provided that the operative documents of the related Securitization Vehicle require that (1) in the case of a CDO Securitization Vehicle, the “equity interest” in such Securitization Vehicle is owned by one or more entities that are Qualified Transferees under clauses (c)(i), (ii), (iii) or (iv) of this definition and (2) if any of the relevant trustee, special servicer, manager fails to meet the requirements of this clause (v), such Person must be replaced by a Person meeting the requirements of this clause (v) within thirty (30) days; or

(vi) an investment fund, limited liability company, limited partnership or general partnership where a Permitted Fund Manager or an entity that is otherwise a Qualified Transferee under clauses (c)(i), (ii), (iii) or (iv) of this definition acts as the general partner, managing member or fund manager and at least 50% of the equity interests in such investment vehicle are owned, directly or indirectly, by one or more entities that are otherwise Qualified Transferees under clauses (c)(i), (ii), (iii) or (iv) of this definition;

provided, however, that no Transferee shall be a Qualified Transferee if (and for so long as) such Transferee is, or is Controlled by, an Embargoed Person or a Person that has been found “unsuitable,” for any reason, by a Gaming Authority.

“**Qualified Trustee**” means (a) a corporation, national bank, national banking association or a trust company, organized and doing business under the laws of any state or the United States of America, authorized under such laws to exercise corporate trust powers and to accept the trust conferred, having a combined capital and surplus of at least \$100,000,000 and subject to supervision or examination by federal or state authority, (b) an institution insured by the Federal Deposit Insurance Corporation or (c) an institution whose long-term senior unsecured debt is rated either of the then in effect top two rating categories of each of the Rating Agencies.

“**Rating Agencies**” shall mean each of S&P, Moody’s and Fitch, or any other nationally recognized statistical rating agency which has been approved by Lender and that rates a Securitization of the Loan (or any component thereof).

“**Rating Agency Confirmation**” means, collectively, a written affirmation from each of the Rating Agencies that the credit rating of the Securities given by such Rating Agency of such Securities immediately prior to the occurrence of the event with respect to which such Rating Agency Confirmation is sought will not be qualified, downgraded or withdrawn as a

result of the occurrence of such event, which affirmation may be granted or withheld in such Rating Agency's sole and absolute discretion. In the event that, at any given time, no such Securities shall have been issued and are then outstanding, then the term Rating Agency Confirmation shall be deemed instead to require the written approval of Lender based on its good faith determination of whether the Rating Agencies would issue a Rating Agency Confirmation if any such Securities were outstanding.

**"Regulation AB"** shall have the meaning set forth in Section 5.1.11(f) hereof.

**"Regulation S-K"** shall mean Regulation S-K under the Securities Act of 1933 and the Securities Exchange Act of 1934, as amended.

**"Regulation S-X"** shall mean Regulation S-X under the Securities Act of 1933 and the Securities Exchange Act of 1934, as amended.

**"Related Loan"** shall have the meaning set forth in Section 5.1.11(f) hereof.

**"Related Property"** shall have the meaning set forth in Section 5.1.11(f) hereof.

**"Release"** shall have the meaning set forth in Section 2.5.1 hereof.

**"Release Borrower"** shall have the meaning set forth in Section 2.5.1 hereof.

**"Release Price"** shall mean, in connection with a release of an Individual Property from the Lien of a Mortgage as provided in Section 2.5, an amount equal to one hundred ten percent (110%) of the applicable Allocated Loan Amount for the first and second Individual Properties released, 115% of the applicable Allocated Loan Amount for the third and fourth Individual Properties released and (110%) of the applicable Allocated Loan Amount for any Individual Property thereafter released; provided if the Paris Las Vegas property becomes an Individual Property as contemplated by the last paragraph of Section 2.5.2, then such Individual Property shall have a Release Price of 120% of its Allocated Loan Amount and each other Individual Property shall have a Release Price of 110% of its Allocated Loan Amount.

**"Rents"** shall mean, with respect to each Individual Property, and without duplication, all rents, rent equivalents, moneys payable as damages or in lieu of rent or rent equivalents, royalties (including, without limitation, all oil and gas or other mineral royalties and bonuses), income, receivables, receipts, revenues, deposits (including, without limitation, security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, and other consideration of whatever form or nature received by or paid to or for the account of or benefit of Mortgage Borrower or the Operating Company (or employees of Mortgage Borrower or the Operating Company) from any and all sources arising from or attributable to such Individual Property, and proceeds, if any, from business interruption or other loss of income or insurance, including, without limitation, all hotel receipts, revenues and credit card receipts collected from guest rooms, restaurants, bars, meeting rooms, banquet rooms and recreational facilities, all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of property or rendering of services by Mortgage Borrower or any operator or manager of the Hotel Components or the

commercial spaces located in the Improvements or acquired from others (including, without limitation, from the rental of any office space, retail space, guest rooms or other space, halls, stores and offices, and deposits securing reservations of such space), license, lease, sublease and concession fees and rentals, health club membership fees, food and beverage wholesale and retail sales, service charges, vending machine sales and proceeds, if any, from business interruption or other loss of income insurance.

“**Replacement Interest Rate Cap Agreement**” means an interest rate cap agreement from an Acceptable Counterparty with terms identical to the Interest Rate Cap Agreement except that the same shall be effective in connection with replacement of the Interest Rate Cap Agreement following a downgrade, withdrawal or qualification of the long-term unsecured debt rating of the Counterparty; provided that to the extent any such interest rate cap agreement does not meet the foregoing requirements, a “Replacement Interest Rate Cap Agreement” shall be such interest rate cap agreement approved in writing by each of the Rating Agencies and Lender with respect thereto.

“**Reserve Account**” shall mean any one of the Tax and Insurance Escrow Account, the FF&E Reserve Account, the Ground Rent Reserve Account and any other escrow fund or reserve account established pursuant to the Loan Documents.

“**Reserve Funds**” shall mean, collectively, the Tax and Insurance Escrow Fund, the FF&E Reserve Fund, the Ground Rent Reserve Fund, the Ground Lease Estoppel Reserve Amount and any other escrow fund established pursuant to the Loan Documents.

“**Restoration**” shall mean the repair and restoration of an Individual Property after a Casualty or Condemnation as nearly as possible to the condition the Individual Property was in immediately prior to such Casualty or Condemnation, with such alterations as may be reasonably approved by Lender.

“**Revenue**” shall mean all Rents and items of income or revenue (of any kind) collected by Mortgage Borrower or Operating Company.

“**S&P**” shall mean Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc.

“**Sale or Pledge**” shall mean a voluntary or involuntary sale, conveyance, assignment, transfer, encumbrance or pledge of a legal or beneficial interest.

“**Scheduled Maturity Date**” shall mean February 13, 2013.

“**Second Mezzanine Borrower**” shall mean, collectively, the entities set forth on Schedule XV hereto, each a Delaware limited liability company, together with their respective successors and permitted assigns. As used herein, the term “Second Mezzanine Borrower” shall mean one of the Second Mezzanine Borrowers individually, or the Second Mezzanine Borrowers collectively, as the context shall require.

“**Second Mezzanine Debt Service**” shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Second Mezzanine Note.

“**Second Mezzanine Lender**” shall mean JPMorgan Chase Bank, N.A., in its capacity as the holder of the Second Mezzanine Loan, together with its successors and assigns.

“**Second Mezzanine Loan**” shall mean that certain loan in the original principal amount of Two Hundred Seventy Five Million and No/100 Dollars (\$275,000,000) of even date herewith made by Second Mezzanine Lender to Second Mezzanine Borrower.

“**Second Mezzanine Loan Agreement**” shall mean that certain Second Mezzanine Loan Agreement, dated as of the date hereof, between Second Mezzanine Borrower and Second Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Second Mezzanine Loan Documents**” shall mean the Second Mezzanine Loan Agreement, the Second Mezzanine Note, the Second Mezzanine Pledge Agreement and all other documents and instruments executed and delivered in connection with the Second Mezzanine Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

“**Second Mezzanine Notes**” shall mean the “Notes” as defined in the Second Mezzanine Loan Agreement.

“**Second Mezzanine Pledge Agreement**” shall mean that certain Pledge and Security Agreement (Second Mezzanine Loan), dated as of the date hereof, between Second Mezzanine Borrower and Second Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Securities**” shall have the meaning set forth in Section 9.1 hereof.

“**Securities Act**” shall have the meaning set forth in Section 9.2(a) hereof.

“**Securitization**” shall have the meaning set forth in Section 9.1 hereof.

“**Senior Mezzanine Borrower**” shall mean, collectively, First Mezzanine Borrower, the Second Mezzanine Borrower, the Third Mezzanine Borrower and the Fourth Mezzanine Borrower.

“**Senior Mezzanine Collateral**” shall mean, collectively, the “Collateral” as defined in each Senior Mezzanine Loan Agreement.

“**Senior Mezzanine Lender**” shall mean First Mezzanine Lender, Second Mezzanine Lender, Third Mezzanine Lender and Fourth Mezzanine Lender.

“**Senior Mezzanine Loan**” shall mean the First Mezzanine Loan, the Second Mezzanine Loan, the Third Mezzanine Loan and the Fourth Mezzanine Loan.

“**Senior Mezzanine Loan Agreement**” shall mean the First Mezzanine Loan Agreement, the Second Mezzanine Loan Agreement, the Third Mezzanine Loan Agreement and the Fourth Mezzanine Loan Agreement.

“**Senior Mezzanine Loan Documents**” shall mean, collectively, the First Mezzanine Loan Documents, the Second Mezzanine Loan Documents, the Third Mezzanine Loan Documents and the Fourth Mezzanine Loan Documents.

“**Senior Mezzanine Loan Event of Default**” shall mean, collectively, an “Event of Default” under any of the Senior Mezzanine Loan Documents.

“**Senior Mezzanine Loan Reserve Funds**” shall mean, collectively, the “Reserve Funds” as defined in the Senior Mezzanine Loan Agreement.

“**Servicer**” shall have the meaning set forth in Section 9.4 hereof.

“**Servicing Agreement**” shall have the meaning set forth in Section 9.4 hereof.

“**Seventh Mezzanine Borrower**” shall mean, collectively, the entities set forth on Schedule XIX hereto, each a Delaware limited liability company, together with their respective successors and permitted assigns. As used herein, the term “Seventh Mezzanine Borrower” shall mean one of the Seventh Mezzanine Borrowers individually, or the Seventh Mezzanine Borrowers collectively, as the context shall require.

“**Seventh Mezzanine Debt Service**” shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Seventh Mezzanine Note.

“**Seventh Mezzanine Lender**” shall mean JPMorgan Chase Bank, N.A., in its capacity as the holder of the Seventh Mezzanine Loan, together with its successors and assigns.

“**Seventh Mezzanine Loan**” shall mean that certain loan in the original principal amount of Two Hundred Seventy Five Million and No/100 Dollars (\$275,000,000) of even date herewith made by Seventh Mezzanine Lender to Seventh Mezzanine Borrower.

“**Seventh Mezzanine Loan Agreement**” shall mean that certain Seventh Mezzanine Loan Agreement, dated as of the date hereof, between Seventh Mezzanine Borrower and Seventh Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Seventh Mezzanine Loan Documents**” shall mean the Seventh Mezzanine Loan Agreement, the Seventh Mezzanine Note and all other documents and instruments executed and delivered in connection with the Seventh Mezzanine Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

“**Seventh Mezzanine Notes**” shall mean the “Notes” as defined in the Seventh Mezzanine Loan Agreement.

“**Severed Loan Documents**” shall have the meaning set forth in Section 8.2(c) hereof.

“**Significant Obligor**” shall have the meaning set forth in Section 5.1.11(f) hereof.

“**Sixth Mezzanine Borrower**” shall mean, collectively, the entities set forth on Schedule XVIII hereto, each a Delaware limited liability company, together with their respective successors and permitted assigns. As used herein, the term “Sixth Mezzanine Borrower” shall mean one of the Sixth Mezzanine Borrowers individually, or the Sixth Mezzanine Borrowers collectively, as the context shall require.

“**Sixth Mezzanine Debt Service**” shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Sixth Mezzanine Notes.

“**Sixth Mezzanine Lender**” shall mean JPMorgan Chase Bank, N.A., in its capacity as the holder of the Sixth Mezzanine Loan, together with its successors and assigns.

“**Sixth Mezzanine Loan**” shall mean that certain loan in the original principal amount of Two Hundred Seventy Five Million and No/100 Dollars (\$275,000,000) of even date herewith made by Sixth Mezzanine Lender to Sixth Mezzanine Borrower.

“**Sixth Mezzanine Loan Agreement**” shall mean that certain Sixth Mezzanine Loan Agreement, dated as of the date hereof, between Sixth Mezzanine Borrower and Sixth Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Sixth Mezzanine Loan Documents**” shall mean the Sixth Mezzanine Loan Agreement, the Sixth Mezzanine Notes and all other documents and instruments executed and delivered in connection with the Sixth Mezzanine Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

“**Sixth Mezzanine Notes**” shall mean the “Notes” as defined in the Sixth Mezzanine Loan Agreement.

“**Special Member**” shall mean a Springing Member in a given Delaware limited liability company who has become a member in such limited liability company to the extent so provided in such limited liability company’s operating agreement.

“**Special Purpose Entity**” shall mean a corporation, limited partnership or limited liability company which at all times on and after the date hereof:

(a) is organized solely for the purpose of (i) owning, holding, selling, transferring, exchanging, managing and operating the Collateral, entering into this Agreement with the Lender, refinancing the Collateral in connection with a permitted repayment of the Loan, and transacting lawful business that is incident, necessary and appropriate to accomplish the foregoing; or (ii) acting as a general partner of the limited

partnership that owns the Collateral or member of the limited liability company that owns the Collateral;

(b) is not engaged and will not engage in any business unrelated to (i) the ownership of the Collateral, (ii) acting as general partner of the limited partnership that owns the Collateral or (iii) acting as a member of the limited liability company that owns the Collateral, as applicable;

(c) does not have and will not have any assets other than those related to the Collateral or its partnership interest in the limited partnership or the member interest in the limited liability company that owns the Collateral or acts as the general partner or managing member thereof, as applicable;

(d) has not engaged, sought or consented to and will not engage in, seek or consent to any dissolution, winding up, liquidation, consolidation, merger, sale of all or substantially all of its assets, transfer of partnership or membership interests (if such entity is a general partner in a limited partnership or a member in a limited liability company) or amendment of its limited partnership agreement, articles of incorporation, articles of organization, certificate of formation or operating agreement (as applicable) with respect to the matters set forth in this definition;

(e) if such entity is a limited partnership, has, as its only general partners, Special Purpose Entities that are corporations, limited partnerships or limited liability companies;

(f) if such entity is a corporation, has at least two (2) Independent Directors, and has not caused or allowed and will not cause or allow the board of directors of such entity to take any action requiring the unanimous affirmative vote of one hundred percent (100%) of the members of its board of directors unless two (2) Independent Directors shall have participated in such vote;

(g) if such entity is a limited liability company with more than one member, has at least one member that is a Special Purpose Entity that is a Delaware corporation or limited liability company that has at least two (2) Independent Directors;

(h) if such entity is a limited liability company with only one member, is a limited liability company organized in the State of Delaware that has (i) as its only member a non-managing member, (ii) at least two (2) Independent Managers and has not caused or allowed and will not cause or allow the board of managers of such entity to take any action requiring the unanimous affirmative vote of one hundred percent (100%) of the managers unless two (2) Independent Managers shall have participated in such vote and (iii) at least one springing member that will become the non-managing member of such entity upon the dissolution of the existing non-managing member;

(i) if such entity is (i) a limited liability company, has articles of organization, a certificate of formation and/or an operating agreement, as applicable, (ii) a limited partnership, has a limited partnership agreement, or (iii) a corporation, has a certificate of incorporation or articles that, in each case, provide that such entity will not, while any

obligations remain outstanding under the Loan Documents: (A) dissolve, merge, liquidate, consolidate; (B) sell all or substantially all of its assets or the assets of the Borrower (as applicable), except as permitted in connection with the release of an Individual Property as provided in Section 2.5.1; (C) engage in any other business activity, or amend its organizational documents with respect to the matters set forth in this definition without the consent of the Lender; or (D) without the affirmative vote of two (2) Independent Directors and of all other directors of the corporation (that is such entity or the general partner or managing or co-managing member of such entity), file a bankruptcy or insolvency petition or otherwise institute insolvency proceedings with respect to itself or to any other entity in which it has a direct or indirect legal or beneficial ownership interest;

(j) is and will remain solvent and pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from and to the extent of its assets as the same shall become due, and is maintaining and will maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations; provided, however, that the foregoing shall not require the Member to make additional capital contributions to the company;

(k) has not failed and will not fail to correct any known misunderstanding regarding the separate identity of such entity;

(l) has maintained and will maintain its bank accounts, books and records separate from any other Person and will file its own tax returns separate from those of any other Person, except to the extent the company is treated as a "disregarded entity" for tax purposes and is not required to file tax returns under applicable law;

(m) has maintained and will maintain its own records, books, resolutions and agreements;

(n) has not commingled and will not commingle its funds or assets with assets of any other Person;

(o) has held and will hold its assets in its own name;

(p) has conducted and will conduct its business in its own name;

(q) has maintained and will maintain its financial statements, accounting records and other entity documents separate and apart from any other Person and will have its assets listed on the financial statement of any other Person; provided, however, that the company's assets may be included in a consolidated financial statement of its Affiliate, provided, that, (i) appropriate notation shall be made on such consolidated financial statements to indicate the separateness of the company from such Affiliate and to indicate the company's assets and credit are not available to satisfy the debts and other obligations of such Affiliate or any other Person and (ii) such assets shall also be listed on the company's own separate balance sheet;

(r) has paid and will pay its own liabilities and expenses, including the salaries of its own employees (if any), out of its own funds and assets, and has maintained and will maintain a sufficient number of employees (if any) in light of its contemplated business operations;

(s) has observed and will observe all partnership, corporate or limited liability company formalities necessary to maintain its separate existence;

(t) has and will not incur, create, or assume any Indebtedness other than (i) the Loan and (ii) certain Indebtedness to Affiliates that was incurred in connection with the formation of Borrower and Operating Company and the transfer of the Properties to Mortgage Borrower and was satisfied and/or released in full prior to the funding of the Loan hereunder;

(u) has not and will not assume or guarantee or become obligated for the debts of any other Person or hold out its credit as being available to satisfy the obligations of any other Person except as co-borrowers of the Loan;

(v) has not and will not acquire obligations or securities of its partners, members or shareholders or any Affiliate (other than Mortgage Borrower);

(w) has allocated and will allocate fairly and reasonably any overhead expenses that are shared with any Affiliate, including, but not limited to, paying for shared office space and services performed by any employee of an Affiliate;

(x) maintains and uses and will maintain and use separate stationery, invoices and checks, if any, bearing its name. The stationery, invoices, and checks, if any, utilized by the Special Purpose Entity or utilized to collect its funds or pay its expenses shall bear its own name and shall not bear the name of any other entity unless such entity is clearly designated as being the Special Purpose Entity's agent;

(y) has not pledged and will not pledge its assets for the benefit of any Person except as co-borrowers of the Loan;

(z) has held itself out and identified itself and will hold itself out to the public and all other Persons and identify itself as a separate and distinct entity under its own name or in a name franchised or licensed to it by an entity other than an Affiliate of Borrower and not as a division or part of any other Person;

(aa) has maintained and will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;

(bb) has not made and will not make loans to any Person or hold evidence of indebtedness issued by any other Person or entity (other than cash and investment-grade securities issued by an entity that is not an Affiliate of or subject to common ownership with such entity);

(cc) correct any known misunderstanding regarding its separate identity and has not identified and will not identify its partners, members or shareholders, or any Affiliate of any of them, as a division or part of it, and has not identified itself and shall not identify itself as a division of any other Person;

(dd) except for capital contributions or capital distributions permitted under the terms and conditions of this Agreement and properly reflected on the books and records of this company, has not entered into or been a party to, and will not enter into or be a party to, any transaction with its partners, members, shareholders or Affiliates except in the ordinary course of its business and on terms which are commercially reasonable and are no less favorable to it than would be obtained in a comparable arm's-length transaction with an unrelated third party (including an appropriate shared services agreement with Affiliates);

(ee) has not and will not have any obligation to, and will not, indemnify its partners, officers, directors or members, as the case may be, unless such an obligation is fully subordinated to the Debt and will not constitute a claim against it in the event that cash flow in excess of the amount required to pay the Debt is insufficient to pay such obligation;

(ff) if such entity is a corporation, it shall consider the interests of its creditors in connection with all corporate actions;

(gg) does not and will not have any of its obligations guaranteed by any Affiliate (except each Borrower as a co-borrower under the Loan);

(hh) has complied and will comply with all of the terms and provisions contained in its organizational documents. The statement of facts contained in its organizational documents are true and correct and will remain true and correct; and

(ii) form, acquire, or hold any subsidiary (whether corporate, partnership, limited liability company, or other) or own any equity interest in any other entity (other than, with respect to Borrower, its interest in Fourth Mezzanine Borrower, and with respect to Principal, its interest in Borrower).

**"SPE Party"** shall mean Borrower and any other Person that is required to be a "Special Purpose Entity" under applicable Rating Agency criteria so as to make Borrower a Special Purpose Entity.

**"Spread"** shall mean (i) unless and until a Ground Lease Estoppel Trigger Event exists, 3.00% and (ii) upon the occurrence of a Ground Lease Estoppel Trigger Event, the Ground Lease Estoppel Trigger Spread.

**"Spread Maintenance Outside Date"** shall mean February 10, 2009.

**"Spread Maintenance Premium"** shall mean, in connection with any repayment of any of the outstanding principal amount of the Loan prior to and including the Spread Maintenance Outside Date (whether a voluntary or mandatory prepayment), an amount equal to

the product of (a) the principal amount of such prepayment, (b) the Spread and (c) a fraction, the numerator of which shall be the actual number of days from (but excluding) the date of such prepayment (or, if later, the last date of the Interest Period during which interest on the amount of such payment shall have been paid by Borrower, as required in this Agreement) through (and including) the Spread Maintenance Outside Date and the denominator of which is three hundred sixty (360).

“**Springing Member**” shall mean a Person who has signed the limited liability company agreement of a given Delaware limited liability company, which agreement provides that, upon the withdrawal, dissolution or disassociation of the last remaining member of such limited liability company (subject to applicable Gaming Laws), such Person shall become a member of such limited liability company having no economic interest therein.

“**State**” shall mean, with respect to an Individual Property, the State or Commonwealth in which such Individual Property or any part thereof is located.

“**Survey**” shall mean a survey of the Individual Property in question prepared pursuant to the requirements contained in Section 3.1.3(c) hereof.

“**Syndication**” shall have the meaning set forth in Section 9.5 hereof.

“**Tax and Insurance Escrow Fund**” shall have the meaning set forth in Section 7.2 hereof.

“**Taxes**” shall mean all real estate and personal property taxes, assessments, water rates or sewer rents, now or hereafter levied or assessed or imposed against any Individual Property or part thereof.

“**Third Mezzanine Borrower**” shall mean, collectively, the entities set forth on Schedule XV hereto, each a Delaware limited liability company, together with their respective successors and permitted assigns. As used herein, the term “Third Mezzanine Borrower” shall mean one of the Third Mezzanine Borrowers individually, or the Third Mezzanine Borrowers collectively, as the context shall require.

“**Third Mezzanine Debt Service**” shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Third Mezzanine Notes.

“**Third Mezzanine Lender**” shall mean JPMorgan Chase Bank, N.A., in its capacity as the holder of the Third Mezzanine Loan, together with its successors and assigns.

“**Third Mezzanine Loan**” shall mean that certain loan in the original principal amount of Two Hundred Seventy Five Million and No/100 Dollars (\$275,000,000) of even date herewith made by Third Mezzanine Lender to Third Mezzanine Borrower.

“**Third Mezzanine Loan Agreement**” shall mean that certain Third Mezzanine Loan Agreement, dated as of the date hereof, between Third Mezzanine Borrower and Third

Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Third Mezzanine Loan Documents**” shall mean the Third Mezzanine Loan Agreement, the Third Mezzanine Notes and all other documents and instruments executed and delivered in connection with the Third Mezzanine Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

“**Third Mezzanine Notes**” shall mean the “Notes” as defined in the Third Mezzanine Loan Agreement.

“**Third Mezzanine Pledge Agreement**” shall mean that certain Pledge and Security Agreement (Third Mezzanine Loan), dated as of the date hereof, between Third Mezzanine Borrower and Third Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Threshold Amount**” shall have the meaning set forth in the definition of Material Alteration.

“**Title Insurance Policies**” shall mean, with respect to each Individual Property, an ALTA mortgagee title insurance policy in a form acceptable to Lender (or, if an Individual Property is in a State which does not permit the issuance of such ALTA policy, such form as shall be permitted in such State and acceptable to Lender) issued with respect to such Individual Property and insuring the lien of the Mortgage encumbering such Individual Property.

“**Tower Project**” shall mean that certain “New Atlantic City Tower Project” more fully described in (a) the Site, Design and Floor Plans, dated October 5, 2005, and prepared by Paul Steelman Design Group, and (b) Harrah’s Hotel/Podium/Garage Expansion: Summary of Project Costs, each delivered to Lender. The Tower Project will include a podium (of approximately 175,000 square feet) connecting the current Bayview Tower to a new approximately nine hundred (900) room tower to be built. The Tower Project will not be funded with the proceeds of the Loan (but will be funded by Mortgage Borrower or Operating Company, including with capital contributions).

“**Transfer**” shall mean to, directly or indirectly, sell, assign, convey, mortgage, transfer, pledge, hypothecate, encumber, grant a security interest in, exchange or otherwise dispose of any beneficial interest or grant any option or warrant with respect to, or where used as a noun, a direct or indirect sale, assignment, conveyance, transfer, pledge or other disposition of any beneficial interest by any means whatsoever whether voluntary, involuntary, by operation of law or otherwise. A Transfer shall include, but not be limited to, (a) an installment sales agreement wherein Mortgage Borrower agrees to sell an Individual Property or any part thereof or Borrower agrees to sell the Collateral, in each case, for a price to be paid in installments; (b) an agreement by Mortgage Borrower leasing all or a substantial part of an Individual Property for other than actual occupancy by a space tenant thereunder or a sale, assignment or other transfer of, or the grant of a security interest in, Mortgage Borrower’s right, title and interest in and to any Leases or any Rents; (c) if a Person restricted or affected by the provisions of this Agreement is a corporation, any merger, consolidation or sale or pledge of such

corporation's stock or the creation or issuance of new stock; (d) if a Person restricted or affected by the provisions of this Agreement is a limited or general partnership or joint venture, any merger or consolidation or the change, removal, resignation or addition of a general partner or the sale or pledge of the partnership interest of any general partner or any profits or proceeds relating to such partnership interest, or the sale or pledge of limited partnership interests or any profits or proceeds relating to such limited partnership interest or the creation or issuance of new limited partnership interests; (e) if a Person restricted or affected by the provisions of this Agreement is a limited liability company, any merger or consolidation or the change, removal, resignation or addition of a managing member or non-member manager (or if no managing member, any member) or the sale or pledge of the membership interest of a managing member (or if no managing member, any member) or any profits or proceeds relating to such membership interest, or the sale or pledge of non-managing membership interests or the creation or issuance of new non-managing membership interests; (f) if a Person restricted or affected by the provisions of this Agreement is a trust or nominee trust, any merger, consolidation or the sale or pledge of the legal or beneficial interest in such Person or the creation or issuance of new legal or beneficial interests; or (g) any direct or indirect sale, assignment, conveyance, transfer, pledge or other disposition (by any means whatsoever whether voluntary, involuntary, by operation of law or otherwise) of the Collateral, the Senior Mezzanine Collateral or any part thereof or any legal or beneficial interest therein.

“**Transferee**” shall mean the Person to whom a Transfer is being effected.

“**Trigger Event**” shall mean, as of the end of any calendar quarter, any period of time during which EBITDAR from the Properties, calculated for the trailing twelve (12) month period immediately prior to the applicable calculation date, is less than eighty-five percent (85%) of the EBITDAR (Closing Date), as determined by Lender.

“**Trigger Event Cure**” shall mean that EBITDAR (excluding, in making such calculation, any capital contributions made to or for the benefit of Borrower, Mortgage Borrower or Operating Company, or payments made on the account of Borrower, Mortgage Borrower or Operating Company by any Affiliate of Borrower, Mortgage Borrower or Operating Company) from the Properties, calculated for the trailing twelve (12) month period immediately prior to the applicable calculation date, is equal to or greater than eighty-five percent (85%) of the EBITDAR (Closing Date) for two (2) consecutive calendar quarters.

“**True-Lease Opinion**” shall mean that certain true lease opinion letter dated the date hereof delivered by Cleary Gottlieb Steen & Hamilton LLP in connection with the Loan.

“**UCC**” or “**Uniform Commercial Code**” shall mean the Uniform Commercial Code as in effect in the applicable State in which an Individual Property is located.

“**UCC Title Insurance Policy**” shall have the meaning set forth in [Section 3.13\(b\)](#) hereof.

“**U.S. Obligations**” shall mean non-redeemable securities evidencing an obligation to timely pay principal and/or interest in a full and timely manner that are direct obligations of the United States of America for the payment of which its full faith and credit is

pledged or other “government securities” within the meaning of Section 2(a)(16) of the Investment Company Act of 1940, as amended.

“**Windstorm Insurance Intercreditor Agreement**” means that certain Windstorm Insurance Intercreditor Agreement, dated as of the date hereof, by and among Lender, the Mortgage Lender, the Other Mezzanine Lenders, each of the “Other Owners” named therein and made a party thereto, Holdings, Bank of America, N.A., and the “Other Secured Parties” named therein and made a party thereto, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**Section 1.2. Principles of Construction.** All references to sections and schedules are to sections and schedules in or to this Agreement unless otherwise specified. All uses of the word “including” shall mean “including, without limitation” unless the context shall indicate otherwise. Unless otherwise specified, the words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. Unless otherwise specified, all meanings attributed to defined terms herein shall be equally applicable to both the singular and plural forms of the terms so defined. With respect to cross-references contained herein to the Mortgage Loan Documents or to the Other Mezzanine Loan Documents (including with respect to any cross-references to defined terms therein), unless otherwise specifically provided herein, such cross-references shall be with respect to the Mortgage Loan Documents or the Other Mezzanine Loan Documents as the case may be, in existence as of the date hereof, and no modification or amendment to such cross-referenced sections of the Mortgage Loan Documents or the Other Mezzanine Loan Documents shall be binding upon Lender unless Lender shall have expressly agreed in writing to be bound by such modification or amendment. Terms used herein and not otherwise defined herein (but defined in the Mortgage Loan Agreement) shall have the meaning set forth in the Mortgage Loan Agreement as of the Closing Date, notwithstanding any subsequent amendment of the Mortgage Loan Agreement to such defined terms unless Lender shall have consented to such amendment. The words “Borrower shall cause Mortgage Borrower to”, “Borrower shall not permit Mortgage Borrower to”, “Borrower shall cause Senior Mezzanine Borrower to”, “Borrower shall not permit Senior Mezzanine Borrower to”, “Borrower shall cause Operating Company to” or “Borrower shall not permit Operating Company to” (or words of similar meaning) shall mean Borrower shall cause Mortgage Borrower, Senior Mezzanine Borrower or Operating Company (subject to the provisions of Section 5.3), as applicable, to so act or not to so act, as applicable.

**Section 1.3. Direction of Mortgage Borrower or with Respect to the Properties.** Borrower and Lender hereby acknowledge and agree that, as to any clauses or provisions contained in this Agreement or any of the other Loan Documents to the effect that (i) Borrower shall cause Mortgage Borrower and/or Senior Mezzanine Borrower to act or to refrain from acting in any manner or (ii) Borrower shall cause to occur or not to occur, or otherwise be obligated in any manner with respect to, any matters pertaining to Mortgage Borrower, Senior Mezzanine Borrower or any of the Properties, such clause or provision, in each case, is intended to mean, and shall be construed as meaning, that Borrower has undertaken to act and is obligated to act only in Borrower’s capacity as the sole member of Senior Mezzanine Borrower but not directly with respect to Senior Mezzanine Borrower, Mortgage Borrower or any of the Properties or in any other manner which would violate any of the covenants contained

in Section 4.1.30 (Special Purpose Entity) hereof or other similar covenants contained in Borrower's organizational documents.

## II. GENERAL TERMS

### Section 2.1. Loan Commitment; Disbursement to Borrower.

**2.1.1 Agreement to Lend and Borrow.** Subject to and upon the terms and conditions set forth herein, Lender hereby agrees to make and Borrower hereby agrees to accept the Loan on the Closing Date.

**2.1.2 Single Disbursement to Borrower.** Borrower may request and receive only one borrowing hereunder in respect of the Loan and any amount borrowed and repaid hereunder in respect of the Loan may not be reborrowed.

**2.1.3 The Note, the Pledge Agreement and Loan Documents.** The Loan shall be evidenced by the Note (in the aggregate principal amount of Two Hundred Seventy Five Million and No/100 Dollars (\$275,000,000)) and secured by the Pledge Agreement and the other Loan Documents.

**2.1.4 Use of Proceeds.** Borrower shall use the proceeds of the Loan solely to (a) make an equity contribution to Mortgage Borrower (through each Senior Mezzanine Borrower) in order to cause Mortgage Borrower to use such amounts for any use permitted pursuant to Section 2.1.4 of the Mortgage Loan Agreement, (b) pay costs and expenses incurred in connection with the closing of the Loan, as approved by Lender, and (c) distribute the balance, if any, to Borrower.

**2.1.5 Component Notes.** Lender shall have the right at any time to modify the Loan in order to create an additional note or additional notes, adjust the interest rate spread on the Notes or notes, reduce the number of notes, reallocate the principal balances of the Notes or notes or eliminate the component note structure of the Loan provided that (a) the aggregate stated principal amount of the Loan on the date of each such adjustment shall equal the aggregate stated principal amount of the Loan immediately prior to such adjustment, and (b) the weighted average spread of the Loan on the date of such adjustment shall equal the weighted average spread which was applicable to the Loan immediately prior to such adjustment (Borrower acknowledging that such new notes or modified notes may, in connection with the application of principal to such new notes or modified note following the occurrence of an Event of Default, but not otherwise, subsequently cause the weighted average spread of such new notes or modified notes to change). In connection with any such modification of the Note and notes, or the creation of additional note(s), (i) Borrower shall cooperate with all reasonable requests of Lender and shall execute and deliver such documents as shall reasonably be requested by Lender in connection therewith, all in form and substance reasonably satisfactory to Lender and, to the extent applicable, the Rating Agencies, including, without limitation, (y) revised title insurance policies and Interest Rate Protection Agreements, and (z) such amendments to the Loan Documents as are reasonably requested; (ii) Lender shall have received opinions of legal counsel with respect to due execution, authority and enforceability of the amended Loan Documents, and additional or updated nonconsolidation opinions for the Loan, each in form reasonably

acceptable to Lender and prospective investors and in form acceptable to the Rating Agencies; and (iii) Lender shall pay the actual, reasonable out-of-pocket costs and expenses incurred by Borrower in connection with the foregoing, including, without limitation, the actual, reasonable out-of-pocket legal fees incurred by Borrower in connection with any of the foregoing matters. For the avoidance of doubt, and notwithstanding anything to the contrary contained herein, such modifications and any modifications under Sections 2.1.6 and 2.1.7 below shall not, absent an Event of Default, adversely affect the overall economics to Borrower of the Loan, taken as a whole, or expose Borrower to any additional costs (other than as set forth above) or increased risk of any liability (beyond that or greater than that existing in the Loan Documents in effect on the date hereof), and Borrower shall not be required to execute any document or agreement which would materially decrease its rights or materially increase its obligations relative to those set forth herein and in the other Loan Documents.

**2.1.6 Adjustment of Mortgage Loan and Mezzanine Loans.** Lender shall have the right at any time to adjust the respective principal amounts of the Mortgage Loan and the Mezzanine Loans (or either one of them) and/or to adjust the interest rate spread on the Mortgage Loan and the Mezzanine Loans (or either one of them) (such adjustment, a “**Loan Adjustment**”), provided that (a) the aggregate stated principal amount of the Mortgage Loan and the Mezzanine Loans on the date of each such Loan Adjustment shall equal the aggregate stated principal amount of the Mortgage Loan and the Mezzanine Loans immediately prior to such Loan Adjustment, and (b) Lender shall have the right to adjust the interest rate spread on the Mortgage Loan and the Mezzanine Loans, provided that the weighted average spread of the Mortgage Loan and the Mezzanine Loans on the date of each such Loan Adjustment shall equal the weighted average spread which was applicable to the Mortgage Loan and the Mezzanine Loans immediately prior to such Loan Adjustment (it being acknowledged that the weighted average spread will remain constant except in connection with the application of principal to such new notes or modified notes following the occurrence of an Event of Default). In connection with any Loan Adjustment, (i) Mortgage Borrower and Mezzanine Borrowers shall cooperate with all reasonable requests of Lender and shall execute and deliver such documents as shall reasonably be requested by Lender in connection therewith, all in form and substance reasonably satisfactory to Lender and, to the extent applicable, the Rating Agencies, including, without limitation, (y) revised title insurance policies, mezzanine endorsements, UCC policies and Interest Rate Protection Agreements, and (z) such amendments to the Mortgage Loan Documents and the Mezzanine Loan Documents as are reasonably requested in connection with the Loan Adjustment (provided that such amendments do not or would not (i) materially decrease the rights of the Mortgage Borrower or Mezzanine Borrowers, or, absent an Event of Default, materially increase the obligations of the Mortgage Borrower or the Mezzanine Borrowers, as the case may be, under the Mortgage Loan Documents or the Mezzanine Loan Documents (as applicable) or (ii) absent an Event of Default, expose the Mortgage Borrower or any of the Mezzanine Borrowers to additional costs or increased risk of any liability under the Mortgage Loan Documents or the Mezzanine Loan Documents (as applicable) (beyond that or greater than that existing in the Mortgage Loan Documents, or the Mezzanine Loan Documents, as applicable, on the date hereof); (ii) Lender shall have received opinions of legal counsel with respect to due execution, authority and enforceability of the amended Mortgage Loan Documents or Mezzanine Loan Documents, as appropriate, and additional or updated nonconsolidation opinions for the Mortgage Loan and the Mezzanine Loans, each in form reasonably acceptable to Lender and prospective investors and in form acceptable to the Rating Agencies; and (iii) Lender

shall pay the actual, reasonable out-of-pocket costs and expenses incurred by Borrower in connection with the foregoing, including, without limitation, the actual, reasonable out-of-pocket legal fees incurred by Borrower in connection with any of the foregoing matters.

**2.1.7 Creation of New Mezzanine Loans.** Lender shall at all times have the right to create one or more additional mezzanine loans (each, a “**New Mezzanine Loan**”), adjust the respective principal amounts of the Mortgage Loan and the Mezzanine Loans (or any one of them) upon the creation of the New Mezzanine Loan and/or to adjust the interest rate spread on the Mortgage Loan and the Mezzanine Loans (or any one of them) upon the creation of the New Mezzanine Loan, and to reallocate the principal balance and the interest rate spreads of the Mortgage Loan, the Mezzanine Loans and any New Mezzanine Loan amongst each other (or any one of them), provided that (a) the aggregate stated principal amount of the Mortgage Loan, the Mezzanine Loans and the New Mezzanine Loans on the date of such adjustment (and the creation of the New Mezzanine Loan) shall equal the aggregate stated principal amount of the Mortgage Loan, the Mezzanine Loans and the New Mezzanine Loan(s) immediately prior to such adjustment, (b) Lender shall have the right to adjust the interest rate spread on the Mortgage Loan, the Mezzanine Loans and the New Mezzanine Loan(s), provided that the weighted average spread of the Mortgage Loan, the Mezzanine Loans and the New Mezzanine Loan(s) on the date of such adjustment shall equal the weighted average spread which was applicable to the Mortgage Loan and the Mezzanine Loans (and the New Mezzanine Loans, if applicable) immediately prior to such adjustment (it being acknowledged that the weighted average spread will remain constant except in connection with the application of principal to such new notes or modified notes following the occurrence of an Event of Default), and (c) the terms and provisions of each of the Mortgage Loan and the Mezzanine Loans (and the New Mezzanine Loans, if applicable) shall otherwise remain unchanged. In connection with any New Mezzanine Loan, (i) Borrower shall cause the formation of one or more special purpose, bankruptcy remote entities as required by Lender in order to serve as the borrower under any New Mezzanine Loan (each, a “**New Mezzanine Borrower**”) and the applicable organizational documents of Mortgage Borrower and each Mezzanine Borrower (and of each previously created New Mezzanine Borrower, if applicable) shall be amended and modified as necessary or required in the formation of any New Mezzanine Borrower; (ii) Mortgage Borrower and Mezzanine Borrowers (and each previously created New Mezzanine Borrower, if applicable) shall cooperate with all reasonable requests of Lender and shall execute and deliver such documents as shall reasonably be requested by Lender in connection therewith, all in form and substance reasonably satisfactory to Lender and, to the extent applicable, the Rating Agencies, including, without limitation, (x) revised title insurance policies, mezzanine endorsements, UCC policies and Interest Rate Protection Agreements, (y) in connection with the creation of any New Mezzanine Loan, a promissory note and loan documents necessary to evidence such New Mezzanine Loan, and (z) such amendments to the Mortgage Loan Documents and the Mezzanine Loan Documents (and the loan documents of any previously created New Mezzanine Borrower, if applicable) as are reasonably necessary in connection with the creation of such New Mezzanine Loan (provided that such amendments do not or would not (i) materially decrease the rights of the Mortgage Borrower or Mezzanine Borrowers (and any previously created New Mezzanine Borrowers, if applicable), or, absent an Event of Default, materially increase the obligations of the Mortgage Borrower or the Mezzanine Borrowers (and any previously created New Mezzanine Borrowers, if applicable), as the case may be, under such borrower’s applicable loan documents, or (ii) absent an Event of Default, expose the Mortgage Borrower or any of the Mezzanine

Borrowers (or any previously created New Mezzanine Borrowers, if applicable) to additional costs or increased risk of any liability under such borrower's applicable loan documents (beyond that or greater than that existing in the existing loan documents on the date hereof)); (iii) Lender shall have received opinions of legal counsel with respect to due execution, authority and enforceability of the amended Mortgage Loan Documents, the amended Mezzanine Loan Documents and the loan documents for the New Mezzanine Loan, as appropriate, and additional or updated nonconsolidation opinions for the Mortgage Loan, the Mezzanine Loans and each such New Mezzanine Loan, as appropriate, each in form reasonably acceptable to Lender and prospective investors and in form acceptable to the Rating Agencies; and (iv) Lender shall pay the actual, reasonable out-of-pocket costs and expenses incurred by Borrower in connection with the foregoing, including, without limitation, the actual, reasonable out-of-pocket legal fees incurred by Borrower in connection with any of the foregoing matters.

**Section 2.2. Interest Rate.**

**2.2.1 Interest Generally.** Except as herein provided with respect to interest accruing at the Default Rate, interest on the principal balance of the Loan outstanding from time to time shall accrue from the Closing Date up to and including the Maturity Date (including, without limitation, all interest that would accrue on the outstanding principal balance of the Loan through the end of the Interest Period during which the Maturity Date occurs (even if such period extends beyond the Maturity Date)) at the Applicable Interest Rate. Interest on the outstanding principal balance of the Loan existing on the commencement of an Interest Period shall accrue for the entire Interest Period and shall be owed by Borrower for the entire Interest Period regardless of whether any principal portion of the Loan is repaid prior to the expiration of such Interest Period.

**2.2.2 Interest Calculation.** Interest on the outstanding principal balance of the Loan shall be calculated by multiplying (a) the actual number of days elapsed in the period for which the calculation is being made by (b) a daily rate based on a three hundred sixty (360) day year (that is, the Applicable Interest Rate or the Default Rate, as then applicable, expressed as an annual rate divided by 360) by (c) the outstanding principal balance.

**2.2.3 Determination of Interest Rate.** (a) The Applicable Interest Rate with respect to the Loan shall be: (i) LIBOR plus the Spread with respect to the applicable Interest Period for a LIBOR Loan or (ii) the Prime Rate plus the Prime Rate Spread for a Prime Rate Loan if the Loan is converted to a Prime Rate Loan pursuant to the provisions of Section 2.2.3(c) or Section 2.2.3(f).

(b) Subject to the terms and conditions of this Section 2.2.3, the Loan shall be a LIBOR Loan and Borrower shall pay interest on the outstanding principal amount of the Loan at LIBOR plus the Spread for the applicable Interest Period. Any change in the rate of interest hereunder due to a change in the Applicable Interest Rate shall become effective as of the opening of business on the first day on which such change in the Applicable Interest Rate shall become effective. Each determination by Lender of the Applicable Interest Rate shall be conclusive and binding for all purposes, absent manifest error.

(c) In the event that Lender shall have determined (which determination shall be conclusive and binding upon Borrower absent manifest error) that by reason of circumstances affecting the interbank eurodollar market, adequate and reasonable means do not exist for ascertaining LIBOR, then Lender shall forthwith give notice by telephone of such determination, confirmed in writing, to Borrower at least one (1) Business Day prior to the last day of the related Interest Period. If such notice is given, the related outstanding LIBOR Loan shall be converted, on the last day of the then current Interest Period, to a Prime Rate Loan.

(d) If, pursuant to the terms of this Agreement, any portion of the Loan has been converted to a Prime Rate Loan and Lender shall determine (which determination shall be conclusive and binding upon Borrower absent manifest error) that the event(s) or circumstance(s) which resulted in such conversion shall no longer be applicable, Lender shall give notice by telephone of such determination, confirmed in writing, to Borrower at least one (1) Business Day prior to the last day of the related Interest Period. If such notice is given, the related outstanding Prime Rate Loan shall be converted to a LIBOR Loan on the last day of the then current Interest Period.

(e) With respect to a LIBOR Loan, all payments made by Borrower hereunder shall be made free and clear of, and without reduction for or on account of, income, stamp or other taxes, levies, imposts, duties, charges, fees, deductions, reserves or withholdings imposed, levied, collected, withheld or assessed by any Governmental Authority and imposed on any non-U.S. Lender due to a change in U.S. law after the date such non-U.S. Lender acquired its interest in the Loan (such non-excluded taxes, levies, imposts, duties, charges, fees, deductions, reserves or withholdings being referred to collectively as “**Foreign Taxes**”), excluding (i) income and franchise taxes, (ii) any Taxes imposed by reason of any connection between the non-U.S. Lender and the taxing jurisdiction other than entering into this Agreement and receiving payments hereunder, and (iii) any Taxes imposed by reason of the non-U.S. Lender’s failure to complete and deliver to the Borrower, prior to the date on which the first payment to such Lender is due hereunder and (so long as it remains eligible to do so) from time to time thereafter, (x) (i) an Internal Revenue Service Form W-9 (or successor form) establishing that the Lender is not subject to U.S. backup withholding tax, (ii) an Internal Revenue Service Form W-8BEN (or successor form) certifying that such Lender is entitled to benefits under an income tax treaty to which the United States is a party that reduces the rate of withholding tax on payments of interest to zero, or (iii) an Internal Revenue Service Form W-8ECI certifying that the income receivable pursuant to this Agreement is effectively connected with the conduct of a trade or business in the United States, as appropriate; and (y) any successor or additional form required by the Internal Revenue Service or any taxing authority reasonably requested by the Borrower in order to secure an exemption from, or reduction in the rate of, Foreign Taxes. If any Foreign Taxes are required to be withheld from any amounts payable to Lender hereunder, the amounts so payable to Lender shall be increased to the extent necessary to yield to Lender (after payment of all Foreign Taxes) interest or any such other amounts payable hereunder at the rate or in the amounts specified hereunder. Whenever any Foreign Tax is payable pursuant to applicable law by Borrower, as promptly as possible thereafter, Borrower shall send to Lender an original official receipt, if available, or certified copy thereof showing payment of such Foreign Tax. Borrower hereby indemnifies Lender for any incremental Foreign Taxes, interest or penalties that may become payable by Lender which may result from any failure by Borrower to pay any such Foreign Tax when due to the appropriate taxing authority or any failure by Borrower to remit to Lender the

required receipts or other required documentary evidence thereof (provided such documents are reasonably available to the Borrower).

(f) If any requirement of law or any change therein or in the interpretation or application thereof, shall hereafter make it unlawful for Lender to make or maintain a LIBOR Loan as contemplated hereunder and the events giving rise thereto affect similarly situated banks or financial institutions generally, (i) the obligation of Lender hereunder to make a LIBOR Loan or to convert a Prime Rate Loan to a LIBOR Loan shall be canceled forthwith and (ii) any outstanding LIBOR Loan shall be converted automatically to a Prime Rate Loan on the next succeeding Payment Date or within such earlier period as required by law.

(g) In the event that any change in any requirement of law or in the interpretation or application thereof, or compliance by Lender with any request or directive (whether or not having the force of law) hereafter issued from any central bank or other Governmental Authority and the events giving rise thereto affect similarly situated banks or financial institutions generally:

(i) shall hereafter impose, modify or hold applicable any reserve, special deposit, compulsory loan or similar requirement against assets held by, or deposits or other liabilities in or for the account of, advances or loans by, or other credit extended by, or any other acquisition of funds by, the office of Lender that holds the Loan which is not otherwise included in the determination of LIBOR hereunder;

(ii) shall hereafter require the Lender to hold additional capital against the Loan in excess of that currently required by Governmental Authorities to be held against loans similar in nature to the Loan; or

(iii) shall hereafter impose on Lender any other condition affecting loans to borrowers subject to LIBOR-based interest rates and Lender determines that, by reason thereof, the cost to Lender of making or maintaining the Loan to Borrower is increased, or any amount received by Lender hereunder in respect of any portion of the Loan is reduced, in each case by an amount deemed by Lender in good faith to be material;

then, in any such case, Borrower shall promptly pay Lender, upon demand, any additional amounts necessary to compensate Lender for such additional cost or reduced amount receivable which Lender deems to be material as determined in good faith by Lender. If Lender becomes entitled to claim any additional amounts pursuant to this Section 2.2.3(g), Lender shall provide Borrower with not less than ninety (90) days notice specifying in reasonable detail the event by reason of which it has become so entitled and the additional amount required to fully compensate Lender for such additional cost or reduced amount. A certificate as to any additional costs or amounts payable pursuant to the foregoing sentence submitted by Lender to Borrower shall be conclusive in the absence of manifest error. This provision shall survive payment of the Note and the satisfaction of all other obligations of Borrower under this Agreement and the Loan Documents.

(h) Lender shall not be entitled to claim compensation pursuant to this Section 2.2.3 for any Foreign Taxes or other amounts incurred or which accrued more than

ninety (90) days before the date Lender notified Borrower of the change in law or other circumstance on which such claim of compensation is based and delivered to Borrower a written statement setting forth in reasonable detail the basis for calculating the additional amounts owed to Lender under this Section 2.2.3, which statement shall be conclusive and binding upon all parties hereto absent manifest error.

(i) For purposes of this Section 2.2.3, the term “Lender” shall be deemed to include each Noteholder and Lender’s (as well as each Noteholder’s) present and future participants in the Loan to the extent of Foreign Taxes imposed by reason of such Noteholder or participant’s interest in the Loan and each such Noteholder’s or participant’s increased costs or reduction in amount received or receivable hereunder or any reduced rate of return, in each case payable by Borrower under this Section 2.2.3.

**2.2.4 Additional Costs.** Lender will use reasonable efforts (consistent with legal and regulatory restrictions) to maintain the availability of the LIBOR Loan and to avoid or reduce any increased or additional costs payable by Borrower under Section 2.2.3, including, if requested by Borrower, a transfer or assignment of the Loan to a branch, office or Affiliate of Lender in another jurisdiction, or a redesignation of its lending office with respect to the Loan, in order to maintain the availability of the LIBOR Loan or to avoid or reduce such increased or additional costs, provided that the transfer or assignment or redesignation (a) would not result in any material additional costs, expenses or risk to Lender that are not reimbursed by Borrower and (b) would not be disadvantageous in any other material respect to Lender as determined by Lender in its sole, but reasonable discretion.

**2.2.5 Default Rate.** In the event that, and for so long as, any Event of Default shall have occurred and be continuing, the outstanding principal balance of the Loan and, to the extent permitted by law, all accrued and unpaid interest in respect of the Loan and any other amounts due pursuant to the Loan Documents, shall accrue interest at the Default Rate, calculated from the date such payment was due without regard to any grace or cure periods contained herein.

**2.2.6 Usury Savings.** This Agreement, the Note and the other Loan Documents are subject to the express condition that at no time shall Borrower be obligated or required to pay interest on the principal balance of the Loan at a rate which could subject Lender to either civil or criminal liability as a result of being in excess of the Maximum Legal Rate. If, by the terms of this Agreement or the other Loan Documents, Borrower is at any time required or obligated to pay interest on the principal balance due hereunder at a rate in excess of the Maximum Legal Rate, the Applicable Interest Rate or the Default Rate, as the case may be, shall be deemed to be immediately reduced to the Maximum Legal Rate and all previous payments in excess of the Maximum Legal Rate shall be deemed to have been payments in reduction of principal and not on account of the interest due hereunder. All sums paid or agreed to be paid to Lender for the use, forbearance, or detention of the sums due under the Loan, shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Loan until payment in full so that the rate or amount of interest on account of the Loan does not exceed the Maximum Legal Rate of interest from time to time in effect and applicable to the Loan for so long as the Loan is outstanding.

**2.2.7 Interest Rate Cap Agreement.** (a) On or prior to 5:00 p.m. (New York time) on the Closing Date, Borrower shall enter into an Interest Rate Cap Agreement with a LIBOR strike price equal to the required Strike Price. The Interest Rate Cap Agreement (i) shall be in a form and substance reasonably acceptable to Lender, (ii) shall be with an Acceptable Counterparty, (iii) shall direct such Acceptable Counterparty to deposit directly with Lender (or into an account or otherwise as directed by Lender) any amounts due Borrower under such Interest Rate Cap Agreement unless and until otherwise instructed by Lender (it being agreed as between Lender and Borrower that Lender will so instruct the Counterparty at such time as the Debt shall not longer exist, provided that the Debt shall be deemed to exist if the Collateral is transferred by secured party sale or otherwise), (iv) shall be for a period equal to the initial term of the Loan and (v) shall have an initial notional amount equal to the principal balance of the Loan. Borrower shall collaterally assign to Lender, pursuant to the Collateral Assignment of Interest Rate Cap Agreement, all of its right, title and interest to receive any and all payments under the Interest Rate Cap Agreement, and shall deliver to Lender an executed counterpart of such Interest Rate Cap Agreement (which shall, by its terms, authorize the assignment to Lender and require that payments be paid directly into an account pledged to Lender as provided above in this Section 2.2.7). Provided no Event of Default has occurred and is continuing, amounts contained in the foregoing pledged account shall be released to Borrower on a monthly basis to the extent not applied toward debt service on the Loan.

(b) Borrower shall comply with all of its obligations under the terms and provisions of the Interest Rate Cap Agreement. All amounts paid by the Counterparty under the Interest Rate Cap Agreement to Borrower or Lender shall be paid to Lender (or into an account or otherwise as directed by Lender). Borrower shall take all actions reasonably requested by Lender to enforce Lender's rights under the Interest Rate Cap Agreement in the event of a default by the Counterparty and shall not waive, amend or otherwise modify any of its rights thereunder.

(c) In the event of any downgrade, withdrawal or qualification of the rating of the Counterparty by S&P or Moody's to below the ratings set forth in the definition of "Acceptable Counterparty", Borrower (i) shall replace the Interest Rate Cap Agreement with a Replacement Interest Rate Cap Agreement (or cause the Counterparty or an Affiliate thereof to post collateral acceptable to Lender and the Rating Agencies) not more than fifteen (15) Business Days following receipt of notice of such downgrade, withdrawal or qualification (and meeting the requirements set forth in this Section 2.2.7) from an Acceptable Counterparty, (ii) if a new cap is provided to Lender, then if requested by Lender shall provide to Lender an opinion of counsel to such Acceptable Counterparty in the form and containing the substance of the form of opinion set forth in Exhibit A to the Mortgage Loan Agreement (which such changes as shall be reasonably approved by Lender), and (iii) shall collaterally assign to Lender, pursuant to an assignment in the form of the Collateral Assignment of Interest Rate Cap Agreement, all of its right, title and interest to receive any and all payments under the Replacement Interest Rate Cap Agreement.

(d) In the event that Borrower fails to purchase and deliver to Lender the Interest Rate Cap Agreement or fails to maintain the Interest Rate Cap Agreement in accordance with the terms and provisions of this Agreement, Lender may purchase the Interest Rate Cap Agreement and the cost incurred by Lender in purchasing such Interest Rate Cap Agreement

shall be paid by Borrower to Lender with interest thereon at the Default Rate from the date such cost was incurred by Lender until such cost is reimbursed by Borrower to Lender.

(e) In connection with any Interest Rate Cap Agreement provided to Lender as herein required, if requested by Lender, Borrower shall obtain and deliver to Lender an opinion from counsel (which counsel may be in-house counsel for the Counterparty) for the Counterparty (upon which Lender and its successors and assigns may rely) in the form and containing the substance of the form of opinion set forth in Exhibit A of the Mortgage Loan Agreement (which such changes as shall be reasonably approved by Lender).

(f) In connection with any prepayment of the Loan, provided no Event of Default shall have occurred and be continuing, Borrower may reduce the amount of any Interest Rate Cap Agreement (so that the same shall be in an initial notional amount equal to the principal balance of the Loan following such prepayment), provided that such reduction shall not affect any of the other terms of the Interest Rate Cap Agreement or the Collateral Assignment of Interest Rate Cap Agreement (or Lender's rights in respect thereof).

### **Section 2.3. Loan Payment.**

**2.3.1 Payments Generally.** Borrower shall make a payment to Lender of interest only on the Closing Date for the initial Interest Period. On the date hereof, Borrower shall make a payment to Lender of interest accruing hereunder during the period from the Closing Date up to and including the initial Interest Period, calculated in the manner set forth herein, and on the Payment Date occurring in March 2008 and on each Payment Date thereafter to and including the Maturity Date, Borrower shall make a payment to Lender of interest accruing hereunder during the entire Interest Period in which such Payment Date occurs, calculated in the manner set forth herein. All amounts due pursuant to this Agreement and the other Loan Documents shall be payable without setoff, counterclaim, defense or any other deduction whatsoever. Each payment shall be applied *pro rata* and *pari passu* (a) first to accrued and unpaid interest on all of the Notes and (b) the balance shall be applied to principal of all the Notes.

**2.3.2 Payment on Maturity Date.** Borrower shall pay to Lender on the Maturity Date the outstanding principal balance of the Loan, all accrued and unpaid interest and all other amounts due hereunder and under the Note, the Pledge Agreement and the other Loan Documents, including, without limitation, all interest that would accrue on the outstanding principal balance of the Loan through and including the end of the Interest Period in which the Maturity Date occurs (even if such Interest Period extends beyond the Maturity Date).

**2.3.3 Late Payment Charge.** If any principal, interest or any other sums due under the Loan Documents, other than the payment of principal due on the Maturity Date, is not paid by Borrower by the date on which it is due, Borrower shall pay to Lender upon demand an amount equal to the lesser of one percent (1%) of such unpaid sum or the maximum amount permitted by applicable law in order to defray the expense incurred by Lender in handling and processing such delinquent payment and to compensate Lender for the loss of the use of such delinquent payment; provided, however, that, except with respect to the payment of any monthly Debt Service payments with respect to which no notice or demand shall be required, no such late

payment charge shall be due unless such payment of principal, interest or other sum shall be delinquent for more than five (5) Business Days following the date of demand therefor. Any such amount shall be secured by the Pledge Agreement and the other Loan Documents to the extent permitted by applicable law.

**2.3.4 Method and Place of Payment.** Except as otherwise specifically provided herein, all payments and prepayments under this Agreement and the Note shall be made to Lender not later than 3:00 p.m., New York City time, on the date when due and shall be made in lawful money of the United States of America in immediately available funds at Lender's office or as otherwise directed by Lender, and any funds received by Lender after such time shall, for all purposes hereof, be deemed to have been paid on the next succeeding Business Day.

**Section 2.4. Prepayments.**

**2.4.1 Voluntary Prepayments.** Borrower may, at its option, prepay the Debt in whole or in part, provided, the following conditions are satisfied:

(a) No Event of Default shall have occurred and be continuing (unless, in the case of a prepayment upon the release of an Individual Property, the Event of Default relates solely to such Individual Property and therefore would be fully cured by the release of such Individual Property);

(b) Borrower shall provide prior written notice to Lender specifying the date upon which the prepayment is to be made (the "**Prepayment Date**"), which notice shall be delivered to Lender not less than ten (10) days prior to such Prepayment Date, and which notice shall be irrevocable (or such shorter period of time as may be permitted by Lender in its sole discretion) (Lender hereby agreeing that Borrower may revoke any notice of prepayment up until the date that is one (1) Business Day prior to the proposed Prepayment Date (provided that Borrower shall be required to pay Lender, promptly upon demand, any actual, out-of-pocket expenses incurred by Lender resulting from any such revocation));

(c) each such prepayment, in the case of partial prepayments, shall be in an amount not less than Five Million and No/100 Dollars (\$5,000,000.00), unless the outstanding principal balance of the Loan (prior to such prepayment) shall be less than Five Million and No/100 Dollars (\$5,000,000.00), in which event the amount of the prepayment shall be in such amount as shall prepay the Debt and all other amounts due in connection therewith in full, as more fully provided herein;

(d) if such prepayment is made on or prior to the Payment Date occurring in the Interest Period in which such prepayment was made, then, in connection with such prepayment Borrower shall pay to Lender, simultaneously with such prepayment, all interest on the principal balance of the Note then being prepaid which would have accrued through the end of the Interest Period then in effect notwithstanding that such Interest Period extends beyond the Prepayment Date;

(e) if such prepayment is made after a Payment Date occurring in the Interest Period in which such prepayment was made, but prior to the last two (2) Business Days in such Interest Period, Borrower shall make such prepayment without paying any interest thereon

(Borrower having already paid interest on such amount on the Payment Date occurring in such Interest Period);

(f) if such prepayment is made on either of the last two (2) Business Days in an Interest Period, Borrower will pay to Lender, simultaneously with such prepayment, interest on the principal amount of the Loan prepaid through the last day of the Interest Period immediately following the Interest Period in which such prepayment occurs, calculated at the Applicable Interest Rate;

(g) if such prepayment is a prepayment of the Loan in full, Lender shall have received a written consent to the repayment from the lender under each Other Mezzanine Loan (and, if any, a Permitted Mezzanine Loan) or receipt by Lender of other evidence satisfactory to Lender that all conditions imposed under the terms of each Other Mezzanine Loan and Permitted Mezzanine Loan shall have been complied with by the borrower thereunder or otherwise waived by the applicable lender, including the simultaneous pro rata prepayment of each Other Mezzanine Loan and Permitted Mezzanine Loan if required thereunder; and

(h) if such prepayment is made on or prior to the Spread Maintenance Outside Date, then in connection with any such prepayment, Borrower shall pay to Lender, simultaneously with such prepayment, the Spread Maintenance Premium in respect of such prepayment.

Any prepayment received by Lender on other than a Payment Date (but not any amount received between a Payment Date and the second to last Business Day in an Interest Period) shall be held by Lender in an interest-bearing account as collateral security for the Loan and shall be applied to the Debt on the next occurring Payment Date (with all interest and other income earned on such amount being for the account of Borrower and being remitted by Lender to Borrower promptly following such next Payment Date). Any prepayment made pursuant to this Section 2.4.1 shall be applied *pro rata* and *pari passu* (a) first to accrued and unpaid interest on all of the Notes and (b) the balance shall be applied to principal of all the Notes. Lender agrees that it shall provide a written consent to the repayment of the Loan upon satisfaction of the conditions set forth in clauses (a) through (f) and clause (h) of this Section 2.4.1.

**2.4.2 Mandatory Prepayments from Net Proceeds.** (a) On the next occurring Payment Date following the date on which Lender actually receives any Net Proceeds, if Lender is not obligated to make such Net Proceeds available to Borrower for the Restoration of any Individual Property, Borrower shall prepay, or authorize Lender to apply Net Proceeds as a prepayment of, the outstanding principal balance of the Note in an amount equal to, (x) if no Event of Default shall have occurred and be continuing, the product of (i) a fraction, the numerator of which is outstanding principal amount of the Loan and the denominator is the outstanding principal amount of the Mortgage Loan, the Loan and the Other Mezzanine Loans times (ii) the Net Proceeds, together with interest accruing on such amount calculated through and including the end of the Interest Period in which such Payment Date occurs (with the balance of the Net Proceeds to be paid over to the Sixth Mezzanine Lender, for application in accordance with the Sixth Mezzanine Loan Agreement), and (y) if an Event of Default shall have occurred and be continuing, 100% of the Net Proceeds. No Spread Maintenance Premium shall be due in connection with any prepayment made pursuant to this Section 2.4.2(a). Any prepayment

received by Lender pursuant to this Section 2.4.2(a) on a date other than a Payment Date shall be held by Lender as collateral security for the Loan in an interest bearing account, with such interest accruing to the benefit of Borrower, and shall be applied by Lender on the next Payment Date. Following the prepayment made as described in this Section 2.4.2(a), the Allocated Loan Amount for the affected Individual Property, as set forth in this Agreement, shall be reduced in an amount equal to such prepayment. Any prepayment of the Notes made pursuant to this Section 2.4.2(a) shall be applied *pro rata* and *pari passu* (a) first to accrued and unpaid interest on all of the Notes and (b) the balance shall be applied to principal of all the Notes.

(b) In the event of (i) a Transfer of any Individual Property or any Senior Mezzanine Collateral in connection with the realization thereon following a Mortgage Loan Default or a Senior Mezzanine Loan Default, as applicable, (ii) any refinancing of any Individual Property, any Senior Mezzanine Collateral, any Senior Mezzanine Loan or the Mortgage Loan, or (iii) the receipt by Mortgage Borrower of any excess proceeds realized under its owner's title insurance policy after application of such proceeds by Mortgage Borrower to cure any title defect (each, a "**Liquidation Event**"), Borrower shall cause the related Net Liquidation Proceeds After Debt Service to be remitted directly to Lender (or as directed by Lender). On each date on which Lender actually receives a distribution of Net Liquidation Proceeds After Debt Service, Borrower shall prepay the outstanding principal balance of the Note in an amount equal to one hundred percent (100%) of such Net Liquidation Proceeds After Debt Service, together with interest accruing on such amount calculated through and including the end of the Interest Period in which such payment occurs. Any amounts of Net Liquidation Proceeds After Debt Service in excess of the Debt shall be remitted to Sixth Mezzanine Lender (or to an account designated by Sixth Mezzanine Lender). Any prepayment received by Lender pursuant to this Section 2.4.2(b) on a date other than a Payment Date shall be held by Lender as collateral security for the Loan in an interest bearing account, with such interest accruing to the benefit of Borrower, and shall be applied by Lender on the next Payment Date. A Spread Maintenance Premium or fee may be due in connection with any prepayment made pursuant to this Section 2.4.2(b) if made prior to the Spread Maintenance Outside Date. Following the prepayment made as described in this Section 2.4.2(b), the Allocated Loan Amount for the affected Individual Property, as set forth in this Agreement, shall be reduced in an amount equal to such prepayment. Any prepayment of the Notes made pursuant to this Section 2.4.2(b) shall be applied *pro rata* and *pari passu* (a) first to accrued and unpaid interest on all of the Notes and (b) the balance shall be applied to principal of all the Notes.

(c) Borrower shall immediately notify Lender of any Liquidation Event once Borrower has knowledge of such event. Borrower shall be deemed to have knowledge of (i) a sale (other than a foreclosure sale) of any Individual Property on the date on which a contract of sale for such sale is entered into, and a foreclosure sale, on the date notice of such foreclosure sale is given, and (ii) a refinancing of any Individual Property, on the date on which a commitment for such refinancing has been entered into. The provisions of this Section 2.4.2(c) shall not be construed to contravene in any manner the restrictions and other provisions regarding refinancing of the Mortgage Loan or Transfer of any Individual Property set forth in this Agreement, the other Loan Documents and the Mortgage Loan Documents.

**2.4.3 Prepayments After Default.** If, following the occurrence and during the continuance of an Event of Default, payment of all or any part of the Debt is tendered by

Borrower or any other Person and accepted by Lender or otherwise recovered by Lender (including through application of any Reserve Funds), Borrower shall pay to Lender, in addition to the outstanding principal balance, (a) all accrued and unpaid interest at the Default Rate (including, without limitation, (i) in the event that such prepayment is received on a Payment Date or on any date in any Interest Period prior to a Payment Date, interest accruing (at the Default Rate) on such amount calculated through and including the end of the Interest Period in which such payment occurs, or (ii) in the event that such prepayment is received on a date after a Payment Date up to (and including) the last day of the Interest Period in which such Payment Date occurs, interest accruing (at the Default Rate) on such amount calculated through and including the end of the Interest Period in which the next Payment Date occurs, (b) the Spread Maintenance Premium, if such prepayment is made prior to the Spread Maintenance Outside Date, and (c) any and all other amounts payable under the Loan Documents. Any payment under this Section 2.4.3 shall be applied in such order, priority and proportions as Lender may direct in its sole and absolute discretion.

**Section 2.5. Release of Collateral.** Except as set forth in this Section 2.5, no repayment or prepayment of all or any portion of the Note shall cause, give rise to a right to require, or otherwise result in, the release or assignment of any Lien of the Pledge Agreement on the Collateral.

**2.5.1 Release of Individual Property.** Concurrently with the release of an Individual Property from the Lien of the Mortgage (and related Mortgage Loan Documents) pursuant to Section 2.5.1 of the Mortgage Loan Agreement (a “**Release**” and such Individual Property, a “**Release Property**”), Borrower may obtain the release of the related Individual Borrower with an indirect ownership interest in such Individual Property (a “**Release Borrower**”) and such Release Borrower’s obligations under the Loan Documents with respect to the Release Property (other than those expressly stated to survive), upon the satisfaction of each of the following conditions:

(a) No Event of Default shall have occurred and be continuing (unless, in the case of a prepayment upon the release of an Individual Property, the Event of Default relates solely to such Individual Property and therefore would be fully cured by the release of such Individual Property);

(b) Borrower shall submit to Lender, not less than ten (10) Business Days prior to the date of such release, a release of Lien of the Pledge Agreement (and related Loan Documents), only with respect to such Release Borrower, for execution by Lender. Such release shall contain standard provisions, if any, protecting the rights of the releasing lender;

(c) After giving effect to such release, the Debt Service Coverage Ratio for the Properties then remaining subject to the Liens of the Mortgages (including giving pro forma effect to the payment of the Release Price and any additional prepayment(s) made by Borrower in connection with such release) shall be equal to or greater than the greatest of (i) the Debt Service Coverage Ratio for the twelve (12) full calendar months immediately preceding the release of the Individual Property (assuming the contemplated release had not occurred, i.e., for all Properties subject to the Liens of the Mortgage prior to the proposed release), (ii) 90% of the Debt Service Coverage Ratio as of the Closing Date, and (iii) 1.0;

(d) (i) The Individual Property to be released shall be conveyed to a Person other than a Mortgage Borrower or Mezzanine Borrower, and other than to an Affiliate of Mortgage Borrower unless, in the latter case, such Affiliate is refinancing the Loan with a construction or development loan (or repaying the Loan with equity contributions to such Affiliate) and (ii) it is such Affiliate's immediate intention to materially redevelop such Individual Property, which loan (or equity contribution) and intention shall be described in reasonable detail and represented to in an Officer's Certificate submitted to Lender concurrently with (or prior to) the materials described in clause (b) of this Section 2.5.1;

(e) Lender shall have received a wire transfer of immediately available federal funds in an amount equal to the Release Price for the applicable Individual Property, together with (i) all accrued and unpaid interest calculated at the Applicable Interest Rate on the amount of principal being prepaid as provided in Sections 2.4.1(d) or (e), as applicable, (ii) the Spread Maintenance Premium, if applicable and (iii) all other sums due under this Agreement, the Note or the other Loan Documents in connection with a partial prepayment;

(f) Lender shall have received a written consent to the transfer from the lender under the Mortgage Loan and each of the Other Mezzanine Loans (and, if any, a Permitted Mezzanine Loan) or receipt by Lender of other evidence satisfactory to Lender that all conditions imposed under the terms of the Mortgage Loan, and each of the Other Mezzanine Loans and Permitted Mezzanine Loan shall have been complied with by the borrower thereunder or otherwise waived by the applicable lender, including the simultaneous pro rata prepayment of each Mortgage Loan, the Other Mezzanine Loans and Permitted Mezzanine Loan if required thereunder; and

(g) Lender shall have received payment of all Lender's reasonable out-of-pocket costs and expenses, including reasonable counsel fees and disbursements incurred in connection with the release of the Individual Property and or Release Borrower from the lien of the Pledge Agreement and the review and approval of the documents and information required to be delivered in connection therewith. Lender acknowledges that it shall not charge any fee (other than costs and expenses, as provided in the preceding sentence) in connection with the release of an Individual Property or Release Borrower.

Lender agrees that it shall provide a written consent to the transfer upon satisfaction of the conditions set forth in clauses (a) through (e) and clause (g) of this Section 2.5.1.

**2.5.2 Release of Convention Center Parcel; Property Swap.** At any time after the date hereof, Mortgage Borrower may obtain the release of the Convention Center Parcel pursuant to the Mortgage Loan Agreement, without the payment of a Release Price and upon the satisfaction by Borrower of each of the following conditions:

(a) No Event of Default shall have occurred and be continuing (unless, in the case of a release of the Convention Center Parcel, the Event of Default relates solely to such parcel and therefore would be fully cured by the release of the Convention Center Parcel);

(b) The Convention Center Parcel shall be conveyed to a Person other than a Mortgage Borrower or any Mezzanine Borrower;

(c) Mortgage Borrower will enter into a restrictive covenant agreement, restricting the use of the Convention Center Parcel to the development of a Convention Center and ancillary uses which agreement shall be in form and substance reasonably satisfactory to Lender;

(d) Prior to the transfer and release of the Convention Center Parcel, each applicable municipal authority exercising jurisdiction over the Convention Center Parcel shall have approved, a lot-split ordinance or other applicable action under local law dividing the Convention Center Parcel from the remainder of the Harrah's Atlantic City Property, and a separate tax identification number has been issued for the Convention Center Parcel (with the result that, upon the transfer and release of the Convention Center Parcel, no part of the remaining Harrah's Atlantic City Property shall be part of a tax lot which includes any portion of the Convention Center Parcel);

(e) All requirements under all laws, statutes, rules and regulations (including, without limitation, all zoning and subdivision laws, setback requirements, sideline requirements, parking ratio requirements, use requirements, building and fire code requirements, environmental requirements and wetlands requirements) applicable to the Harrah's Atlantic City Property necessary to accomplish the lot split shall have been fulfilled, and all necessary variances, if any, shall have been obtained, and Borrower shall have delivered to Lender either (1) letters or other evidence from the appropriate municipal authorities confirming such compliance with laws, or (2) a zoning report or legal opinion confirming such compliance with laws, in each case in substance reasonably satisfactory to Lender;

(f) As a result of the lot split, the remaining Harrah's Atlantic City Property with all easements appurtenant and other Permitted Encumbrances thereto will not be in violation of any then applicable law, statute, rule or regulation (including, without limitation, all zoning and subdivision laws, setback requirements, sideline requirements, parking ratio requirements, use requirements, building and fire code requirements, environmental requirements and wetland requirements) and all necessary variances, if any, shall have been obtained and evidence thereof has been delivered to Lender which in form and substance is appropriate for the jurisdiction in which the Harrah's Atlantic City Property is located;

(g) If reasonably necessary, appropriate reciprocal easement agreements for the benefit and burden of the remaining Harrah's Atlantic City Property and the Convention Center Parcel requiring no cost or expense to Mortgage Borrower regarding the use of common facilities of such parcels, including, but not limited to, roadways, parking areas, utilities and community facilities, in a form and substance that would be reasonably acceptable to an ordinary prudent lender and which easements will not materially adversely affect the remaining Harrah's Atlantic City Property, shall be declared and recorded, and the remaining Harrah's Atlantic City Property and the Convention Center Parcel shall be in compliance with all applicable covenants under all easements and property agreements contained in the Permitted Encumbrances for the Harrah's Atlantic City Property;

(h) Borrower has delivered an Officer's Certificate to the effect that, to such officer's knowledge after diligent inquiry, the conditions in subsection (a)-(g) hereof have

occurred or shall occur concurrently with the transfer and release of the Convention Center Parcel;

(i) Borrower shall execute such documents and instruments and obtain such opinions of counsel as are typical for similar transactions;

(j) Lender shall have received payment of all Lender's reasonable out-of-pocket costs and expenses, including reasonable counsel fees and disbursements incurred in connection with the review and approval of the documents and information required to be delivered in connection with the release of the Convention Center Parcel from the Lien of the related Mortgage. Lender acknowledges that it shall not charge any fee (other than costs and expenses, as provided in the preceding sentence) in connection with the release of the Convention Center Parcel;

(k) Lender shall have received evidence reasonably satisfactory to it that Mortgage Borrower and each Other Mezzanine Borrower shall have satisfied all of the conditions to the proposed Release set forth in the Mortgage Loan Agreement and each Other Mezzanine Loan Agreement, as applicable; and

(l) There shall be no release of any portion of the Lien of the Pledge Agreement in connection with this Section 2.5.2.

Borrower agrees that it shall promptly use all reasonable best efforts to substitute, and Lender agrees (subject to the terms set forth below in this paragraph) that it shall accept the substitution of, the properties commonly known as "Paris Las Vegas" and "Harrah's Laughlin" for the Individual Properties referred to as "Harrah's Lake Tahoe", "Harvey's Lake Tahoe", "Bill's Lake Tahoe", "Showboat Atlantic City" and O'Shea's in a reasonably satisfactory manner, provided that Lender's obligation to accept such substitution shall be conditioned on the following:

(i) that no Event of Default shall exist, either before or after giving effect to such substitution (unless such Event of Default would be fully cured by the substitution);

(ii) the satisfaction, with respect to both "Paris Las Vegas" and "Harrah's Laughlin", of the closing conditions set forth in Article III hereof and of the Mortgage Loan Agreement, except that references therein to the Closing Date shall be to the date of such substitution;

(iii) delivery of such agreements, instruments, title insurance policies, surveys, resolutions, certificates and opinions (including, without limitation, substitute notes, amendments to the Loan Documents (including amendments to adjust the Allocated Loan Amounts, the EBITDAR (Closing Date) and any other items that need to be adjusted to reflect the substitution), the Operating Lease, the Operating Lease Guaranty and the Windstorm Insurance Intercreditor Agreement, an appropriate subdivision and a reciprocal easement agreement in respect of "O'Shea's", written assurances that the substitution will have no negative effects on the existing Title Policies, updated "tie-in" endorsements for the Title Policies, an Additional True Lease Opinion and an Additional

Insolvency Opinion), in each case as are reasonably required by Lender in connection with such substitution;

(iv) with respect to the release of O'Shea's, delivery of evidence reasonably satisfactory to Lender that such release will not have either an Individual Material Adverse Effect on the remainder of the Flamingo Las Vegas Property or an Aggregate Material Adverse Effect (it being understood that, for purposes of such determinations, O'Shea's shall be deemed to have closed as of the Closing Date and to have no value) and that the remainder of the Flamingo Las Vegas Property satisfies the conditions set forth in Sections 3.1.3(b), (c) and (f) of the Mortgage Loan Agreement and the representations and warranties set forth in Sections 4.1.4, 4.1.16, 4.1.22, 4.1.39 and 4.1.40 of the Mortgage Loan Agreement shall continue to be true and complete with respect to the remainder of the Flamingo Las Vegas Property, and satisfaction of conditions similar to those set forth in clauses (c), (d), (e), (f), (g) and (h) of Section 3.1.3 hereof, as applicable, with respect to O'Shea's;

(v) the satisfaction, with respect to "Harrah's Lake Tahoe", "Harvey's Lake Tahoe", "Bill's Lake Tahoe", "Showboat Atlantic City" and O'Shea's, of the conditions set forth above in Section 2.5.1(b) and (f) with respect to released Individual Properties to the extent applicable,

(vi) the conveyance of "Harrah's Lake Tahoe", "Harvey's Lake Tahoe", "Bill's Lake Tahoe", "Showboat Atlantic City" and O'Shea's to a Person other than a Mortgage Borrower or Mezzanine Borrower,

(vii) unless otherwise extended by Lender, the substitution shall be completed on or prior to May 28, 2008;

(viii) the payment by Borrower of all Lender's reasonable out-of-pocket costs and expenses in connection with the substitution contemplated by this paragraph, including reasonable counsel fees and disbursements, up to an aggregate amount of \$300,000, it being acknowledged that costs incurred to obtain title insurance and surveys in respect of the substituted properties shall be paid by Borrower directly and shall not be taken into account for purposes of the foregoing limitation on the reimbursement of Lender's expenses.

Lender acknowledges that it shall not charge any fee (other than costs and expenses, as provided in the preceding sentence) in connection with the release of an Individual Property in accordance with this paragraph. In addition, if all of "Harrah's Lake Tahoe", "Harvey's Lake Tahoe", "Bill's Lake Tahoe" and "Showboat Atlantic City" can be transferred from Mortgage Borrower as contemplated above, but O'Shea's cannot (including by reason of an inability to get a separate gaming license for O'Shea's independent of the "Flamingo Las Vegas"), then Borrower shall cause Mortgage Borrower to nevertheless proceed to consummate the swap without transferring O'Shea's (subject to Borrower's ongoing right to obtain the release of O'Shea's from the Lien of the Mortgage in accordance with the following sentence). Upon the satisfaction of such conditions set forth above in this paragraph (including clauses (i) through (viii) hereof), Borrower will have the right to choose between an immediate release of O'Shea's from the Lien

of the Mortgage on the date of the swap or a free release subsequent to the date of the swap without conditions (in either case, subject to the conditions set forth above in this Section 2.5.2, except that the limitation on Borrower's payment of Lender's costs and expenses set forth in clause (viii) above shall not apply to any such costs and expenses incurred by Lender in connection with such release) and, pending such release, EBITDAR shall be computed without regard to O'Shea's; provided further, the Operating Company in respect of the "Flamingo Las Vegas" Individual Property, both before and after such release, shall be permitted to provide management and other similar services for O'Shea's and shall be reimbursed for the allocable share of expenses attributable to O'Shea's.

**2.5.3 Release on Payment in Full.** Lender shall, upon the written request and at the expense of Borrower, upon payment in full of all principal and interest due on the Loan and all other amounts due and payable under the Loan Documents in accordance with the terms and provisions of the Note and this Agreement, release the Lien of the Pledge Agreement on the Collateral.

**Section 2.6. Cash Management.**

**2.6.1 Establishment of Collection Accounts.**

(a) In accordance with the provisions of the Operating Lease, (i) Operating Company will establish within thirty (30) days after the Closing Date) and will maintain for the benefit of Mortgage Borrower, as lessor under the Operating Lease, the Collection Accounts with Collection Banks throughout the term of the Mortgage Loan and (ii) the rights of Mortgage Borrower (as landlord) under the Operating Lease will be collaterally assigned to Mortgage Lender within such 30-day period. All Revenues, other than amounts retained on-site by each Operating Company as a Gaming Operating Reserve and amounts collected and maintained in Off-Shore Accounts, will be deposited in the Collection Accounts.

(b) Borrower hereby represents and warrants as follows: when established, the Collection Accounts will be the only accounts maintained by Operating Company in any jurisdiction that include funds arising out of, or are otherwise attributable to, the Properties or relate to the operation and management of any of the Properties other than accounts (collectively, the "OC Accounts") that contain amounts theretofore released from Collection Accounts in accordance herewith, and other than Off-Shore Accounts, which shall not be subject to this Agreement; and neither Borrower nor Mortgage Borrower maintains any accounts that include funds arising out of, or are otherwise attributable to, any of the Properties or relate to the operation and management of any of the Properties or otherwise (except for accounts containing funds released from the Collection Accounts as herein provided and the Off-Shore Accounts). None of Mortgage Borrower, Senior Mezzanine Borrower, Borrower or Operating Company may (and Borrower shall not permit Mortgage Borrower, Senior Mezzanine Borrower or Operating Company to), without the prior consent of Lender (not to be unreasonably withheld, conditioned or delayed), open any accounts or new accounts or in any way alter the flow of funds and payment into such Collection Accounts, including, without limitation, changing the source, type or currency of any payments currently deposited and maintained in any such account (it being understood that the foregoing restriction shall not preclude Operating Company, Mortgage Borrower, Senior Mezzanine Borrower or Borrower from accepting and depositing in any

Collection Accounts any capital contributions, or any disbursements from any Collection Accounts in accordance with the provisions of the Mortgage Loan Agreement, this Agreement and the Senior Mezzanine Loan Agreements. None of Mortgage Borrower, Senior Mezzanine Borrower, Borrower or Operating Company may (and Borrower shall not permit Mortgage Borrower, Senior Mezzanine Borrower, or Operating Company to), without the prior consent of Lender (not to be unreasonably withheld, conditioned or delayed), establish and maintain any accounts with financial institutions outside of the United States of America, other than the Off-Shore Accounts.

(c) Borrower shall cause Mortgage Borrower, Senior Mezzanine Borrower, Senior Mezzanine Borrower and Operating Company to comply with Section 2.6.1 of the Mortgage Loan Agreement and Senior Mezzanine Loan Agreement (as applicable) in all respects.

(d) Borrower hereby agrees that in the event that (i) the Mortgage Loan Documents require Mortgage Borrower and/or Operating Company to maintain the Collection Accounts, but (due to repayment of the Mortgage Loan, waiver of the requirement by Mortgage Lender, or otherwise) the Collection Accounts are not being maintained and (ii) the Collection Accounts are not being maintained under Section 2.6.1(d) of the Senior Mezzanine Loan Agreement, Borrower shall establish or cause the Operating Company to establish or cause the Operating Company to establish collection accounts substantially the same as that required under the Mortgage Loan Documents (and shall otherwise comply with the provisions of Section 2.6.1 of the Mortgage Loan Documents, and grant to Lender security interests in such accounts for the benefit of Lender, as if such provisions were incorporated herein for the benefit of Lender). In addition, if Borrower is required to deposit amounts with Lender pursuant to Article VII hereof but (due to repayment of the Mortgage Loan, waiver of the requirement by Mortgage Lender, or otherwise) the Collection Accounts and Cash Management Account are not being maintained, Borrower shall establish collection accounts and a cash management account and system with Lender substantially the same as that required under the Mortgage Loan Documents (and shall otherwise comply with the provisions of Sections 2.6.1 and 2.6.2 of the Mortgage Loan Documents, and grant to Lender security interests in such accounts for the benefit of Lender, as if such provisions were incorporated herein for the benefit of Lender). In addition, if Mortgage Borrower is required to provide security or other collateral to the Mortgage Lender pursuant to the terms of the Mortgage Loan Agreement (excluding any mortgage lien on the Properties or assignment of leases and rents with respect to the Properties) but (due to repayment of the Mortgage Loan, waiver of the requirement by Mortgage Lender, or otherwise) such security or other collateral was not provided to Mortgage Lender, Borrower shall provide such security or other collateral to Lender in substantially the same form and amount as that required under the Mortgage Loan Documents.

**2.6.2 Disbursements from, Security Interest in, Collection Accounts.** The Operating Lease provides, among other things, that all Revenues shall be collaterally assigned by Operating Company to Mortgage Borrower as additional security for Operating Company's obligations under the Operating Lease and that Mortgage Borrower shall have the right to collaterally assign and pledge such Revenues to Lender as additional security for the Loan. In furtherance thereof, Lender and Borrower agree as follows:

(a) Except as otherwise provided in subparagraphs (b) and (c) hereof, all amounts collected in the Collection Accounts shall be transferred on each Business Day to (or as directed by) Operating Company for use or distribution by the Operating Company in its discretion free of any rights or encumbrances of Lender.

(b) Upon the occurrence and during the continuance of an Event of Default hereunder, under the Mortgage Loan Documents or under any of the Other Mezzanine Loan Documents, and provided no Event of Default (as such term is defined in the Operating Lease) shall have occurred and be continuing under any Operating Lease, Borrower shall cause Mortgage Borrower to direct and cause Collection Bank to deposit directly into the Cash Management Account, all Rent payable under the Operating Lease for the next thirty (30) days (it being the intent and agreement that, during the continuance of an Event of Default, the Cash Management Account shall at all times contain such amounts sufficient to cover the ensuing 30-day period), including the Monthly Tax and Insurance Amount, the Monthly Ground Rent Amount and Monthly FF&E Reserve Amount (the amounts described in the preceding sentence, collectively, the “**Monthly Disbursements**”); provided that, notwithstanding the foregoing, Lender may not apply such Monthly Disbursements to the payment of amounts due hereunder in an amount in excess of the amounts owed by the Operating Company under the Operating Lease. In the event Borrower shall have failed to cause Mortgage Borrower to so instruct Collection Bank, Lender shall have the right to so direct the Collection Bank on behalf of Mortgage Borrower. Any amounts not required to be so deposited into the Cash Management Account shall be transferred on each Business Day thereafter to (or as directed by) Operating Company for use or distribution by the Operating Company in its discretion free of any rights or encumbrances of Lender. If no Event of Default has occurred and is continuing hereunder, to the extent Monthly Disbursements are not applied to the payment of amounts due hereunder, such excess shall be remitted to Sixth Mezzanine Lender (or to an account designated by Sixth Mezzanine Lender); provided that, notwithstanding the foregoing, Lender shall not remit any such amounts in excess of the amounts owed by the Operating Company under the Operating Lease. If an Event of Default has occurred and is continuing hereunder, to the extent Monthly Disbursements are not applied to the payment of amounts due hereunder, Lender shall have the right to retain the amount so remitted to the Collection Account as collateral for the Loan and/or apply such amount to the payment of the Debt.

(c) Upon the occurrence and during the continuance of an Event of Default (as such term is defined in the Operating Lease) under any Operating Lease, Borrower shall cause Mortgage Borrower to notify Collection Bank to transfer to the Cash Management Account on each Business Day in immediately available funds by federal wire transfer all amounts on deposit in each Collection Account and, in the event Mortgage Borrower shall have failed to do so, Mortgage Lender (or Lender in the event of Mortgage Lender’s failure to so instruct) shall have the right to so direct the Collection Bank on behalf of Mortgage Borrower. Lender shall have the right to retain all amounts to be paid into the Cash Management Account in accordance with the first sentence of this Section 2.6.2(c) as collateral for the Loan and/or apply such amount to the payment of the Debt.

(d) Borrower and its Affiliates shall (and Borrower shall cause Operating Company to) execute and deliver such documents, instruments, certificates, assignments and

other writings, and do such other acts necessary or desirable, to evidence, preserve and/or protect, maintain and perfect Lender's security interest in the Collection Accounts, if any.

**2.6.3 Cash Management Account.** (a) During the term of the Loan, Borrower shall cause Mortgage Borrower and Senior Mezzanine Borrower to comply with Section 2.6.3 of the Mortgage Loan Agreement and Senior Mezzanine Loan Agreement (as applicable) which may require the establishment of the Cash Management Account to be held by and in trust for the benefit of Mortgage Lender. All costs and expenses for establishing and maintaining the Cash Management Account shall be paid by Mortgage Borrower.

(b) Borrower shall not cause or permit Mortgage Borrower or Operating Company to further pledge, assign or grant any security interest in the Cash Management Account or the monies deposited therein or permit any lien or encumbrance to attach thereto, or any levy to be made thereon, or any UCC-1 Financing Statements, except those naming Mortgage Lender as the secured party, to be filed with respect thereto.

(c) Borrower hereby agrees that in the event that (i) the Mortgage Loan Documents require Mortgage Borrower and/or Operating Company to maintain the Cash Management Account, but (due to repayment of the Mortgage Loan, waiver of the requirement by Mortgage Lender, or otherwise) the Cash Management Account is not being maintained and (ii) the Cash Management Account is not being maintained under Section 2.6.3 of the Senior Mezzanine Loan Agreement, Borrower shall establish a cash management account and system with Lender substantially the same as that required under the Mortgage Loan Documents. If Borrower is required to deposit amounts with Lender pursuant to Article VII hereof, Borrower shall establish a cash management account and system with Lender substantially the same as that required under the Mortgage Loan Documents (and shall otherwise comply with the provisions of Section 2.6.2 of the Mortgage Loan Documents, and grant to Lender security interests in such accounts for the benefit of Lender, as if such provisions were incorporated herein for the benefit of Lender).

**2.6.4 Mezzanine Collection Account.** (a) Lender or Servicer may establish and maintain, to collect all amounts distributed to Lender under Section 2.6.3 of the Mortgage Loan Agreement, a segregated Eligible Account (the "**Mezzanine Collection Account**") to be held by Servicer in trust for the benefit of Lender, which Mezzanine Collection Account shall be under the sole dominion and control of Lender (which may be exercised through Servicer). Lender (and its agents, including Servicer) shall have the sole right to make withdrawals from the Mezzanine Collection Account in accordance with the terms and conditions of this Agreement and the other Loan Documents, except as otherwise expressly provided in this Agreement or the other Loan Documents. Borrower shall cause Senior Mezzanine Borrower to comply with Section 2.6.4 of the Senior Mezzanine Loan Agreements.

(b) Borrower hereby grants to Lender a first priority security interest in the Mezzanine Collection Account and all deposits at any time contained therein and the proceeds thereof and will take all actions necessary to maintain in favor of Lender a perfected first priority security interest in the Mezzanine Collection Account, including, without limitation, executing and filing UCC 1 Financing Statements and continuations thereof upon Lender's request

therefor. All costs and expenses for establishing and maintaining the Mezzanine Collection Account (and any sub account thereof) shall be at Borrower's sole cost and expense.

(c) Borrower shall be responsible for payment of any federal, state or local income or other tax applicable to the interest or income earned on the Mezzanine Collection Account and any sub-account thereof. The Mezzanine Collection Account and any sub-account thereof shall be assigned the federal tax identification numbers of each Borrower set forth on Schedule I attached hereto. Borrower shall provide Lender, at any time upon request of Lender, with a Form W-8 or W-9 to evidence that Borrower is not subject to any back-up withholding under the Code.

(d) Upon the occurrence and during the continuance of an Event of Default, all funds on deposit in the Mezzanine Collection Account shall be applied by Lender in such order and priority as Lender shall determine.

(e) The insufficiency of funds on deposit in the Mezzanine Collection Account shall not relieve Borrower from the obligation to make any payments, as and when due pursuant to this Agreement and the other Loan Documents, and such obligations shall be separate and independent, and not conditioned on any event or circumstance whatsoever.

**Section 2.7. Intentionally Omitted.**

**Section 2.8. Permitted Mezzanine Loan.** Borrower shall have the one-time right, upon thirty (30) days prior written notice to Lender (the "**Permitted Mezzanine Loan Election**"), to obtain a loan ("**Permitted Mezzanine Loan**") secured by a pledge of the ownership interests in the indirect owners of Borrower (above the level of the Ninth Mezzanine Borrower) provided that the following conditions precedent are satisfied:

(a) no Default or Event of Default shall have occurred and remains uncured;

(b) as of the date the Permitted Mezzanine Loan is advanced, the Permitted Mezzanine Debt Loan-to-Value Ratio for the Properties subject to the Lien of the Mortgage is equal to or less than eighty percent (80%);

(c) as of the date the Permitted Mezzanine Loan is advanced, Permitted Mezzanine DSCR for the four-quarter period preceding such date for the Properties then subject to the Lien of the Mortgage(s) is equal to or greater than 1.2 to 1.0;

(d) the Permitted Mezzanine Loan shall be evidenced by one (1) Loan, that may be advanced in multiple draws provided that Borrower complies with the requirements set forth in this Section 2.8 with respect to each draw;

(e) the Permitted Mezzanine Loan shall be issued by one (1) lender (the "**Permitted Mezzanine Loan Lender**") which shall be an Institutional Lender; provided, however, that such single Lender that is an Institutional Lender may grant participations in such Permitted Mezzanine Loan or syndicate the Permitted Mezzanine Loan to multiple lenders so long as at least fifty-one percent (51%) of such participants and syndicate lenders are

Institutional Lenders and, in addition, so long a single lender serves as agent with respect to all approvals, consents and other matters relating to the Permitted Mezzanine Loan;

(f) the Permitted Mezzanine Loan shall have the same maturity date as the Maturity Date under the Loan, or a maturity date extending beyond the Maturity Date under the Loan;

(g) the Permitted Mezzanine Loan (including all of the terms, provisions and conditions of the Permitted Mezzanine Loan, including, without limitation, the loan documents evidencing and securing the Permitted Mezzanine Loan (“**Permitted Mezzanine Loan Documents**”)) shall be acceptable to Lender in its reasonable discretion (it being agreed that with respect (only) to Lender’s approval of the form of loan documents that loan documents in substantially the same form as the Ninth Mezzanine Loan Documents, appropriately modified to reflect subordination to the Mezzanine Loans still outstanding, shall be deemed to be acceptable);

(h) the Permitted Mezzanine Loan Lender shall enter into a co-lender or intercreditor agreement substantially on the standard CMSA form (or the form entered into by Lender, Other Mezzanine Lenders and Mortgage Lender in connection with the closing of the Loan) or in form and substance reasonably acceptable to Lender, acknowledging the subordination of the Permitted Mezzanine Loan in all respects to each of the Mezzanine Loans and the Mortgage Loan (and Lender agrees to enter into such co-lender or intercreditor agreement upon request);

(i) the Permitted Mezzanine Loan shall be a fixed rate loan, or a floating rate loan containing an interest rate that is capped at an amount that satisfies the debt service coverage ratio requirement set forth in subparagraph (c) above, with interest due and payable monthly (*i.e.*, interest does not accrue) and such interest rate shall not be subject to adjustment except after an event of default (Borrower agreeing to cause the purchase of an interest rate cap to reflect the foregoing);

(j) if requested by Lender, Borrower shall execute amendments to the Loan Documents reasonably requested by Lender, to reflect the existence of such Permitted Mezzanine Loan, provided that any such amendments or agreements will not alter the payment terms of the Loan set forth in this Agreement or the other Loan Documents or materially and adversely affect Borrower or impose additional material obligations or liabilities upon Borrower;

(k) if required by Lender, Borrower shall deliver (i) Additional Insolvency Opinions and, if the Loan Documents are amended pursuant to Section 2.8(k), opinions regarding due execution and enforceability with respect to the Properties, Mortgage Borrower, Mezzanine Borrowers, Holdings, Guarantor and their respective Affiliates and the Loan Documents, and such related matters as Lender shall reasonably require, and (ii) revised organizational documents for Borrower, which opinions and organizational documents shall be reasonably satisfactory to Lender;

(l) all necessary or appropriate governmental or other third party consents (including any approvals, notices, filings or other actions under or pursuant to the Gaming Laws

or other Legal Requirements) required to be obtained or taken by Borrower, Mortgage Borrower, any Mezzanine Borrower or the Permitted Mezzanine Borrower for the execution, delivery and performance by the Permitted Mezzanine Borrower of the Permitted Mezzanine Loan shall have been obtained or taken; and

(m) all reasonable out-of-pocket costs and expenses (including reasonable attorneys' fees and expenses) incurred by Lender in connection with this Section 2.8 shall be paid by Borrower (but no approval or consent fees shall be payable in connection therewith).

### III. CONDITIONS PRECEDENT

**Section 3.1. Conditions Precedent to Closing.** The obligation of Lender to make the Loan hereunder is subject to the fulfillment by Borrower or waiver by Lender of the following conditions precedent no later than the Closing Date:

**3.1.1 Representations and Warranties; Compliance with Conditions.** The representations and warranties of Borrower contained in this Agreement and the other Loan Documents shall be true and correct in all material respects on and as of the Closing Date with the same effect as if made on and as of such date, and no Default or an Event of Default shall have occurred and be continuing; and Borrower shall be in compliance in all material respects with all terms and conditions set forth in this Agreement and in each other Loan Document on its part to be observed or performed.

**3.1.2 Loan Agreement and Note.** Lender shall have received a copy of this Agreement and the Note, in each case, duly executed and delivered on behalf of Borrower.

#### **3.1.3 Delivery of Loan Documents; Title Insurance; Reports; Leases.**

(a) **Pledge Agreement.** Lender shall have received from Borrower fully executed and acknowledged counterparts of the Pledge Agreement and delivery of the Pledged Company Interests, the UCC Financing Statements, and such other documents required pursuant to the Pledge Agreement, in the reasonable judgment of Lender, so as to effectively create valid and enforceable Liens upon the Collateral, of the requisite priority, in favor of Lender, subject only to the Permitted Encumbrances and such other Liens as are permitted pursuant to the Loan Documents. Lender shall have also received from Borrower fully executed counterparts of the other Loan Documents.

(b) **Title Insurance.** Lender shall have received a UCC Title Insurance Policy (the "**UCC Title Insurance Policy**") issued by a title company acceptable to Lender and dated as of the Closing Date, with reinsurance and direct access agreements acceptable to Lender. Such UCC Title Insurance Policy shall (i) provide coverage in amounts reasonably satisfactory to Lender, (ii) insure Lender that the Pledge Agreement and the documents executed and delivered in connection therewith create a valid lien on the Collateral of the requisite priority, free and clear of all exceptions from coverage other than Permitted Encumbrances and standard exceptions and exclusions from coverage (as modified by the terms of any endorsements), (iii) contain such endorsements and affirmative coverages as Lender may reasonably request, and (iv) name Lender as the insured. The UCC Title Insurance Policy shall

be assignable. Lender also shall have received evidence that all premiums in respect of such UCC Title Insurance Policy have been paid. Lender shall have received each Owner's Title Policy in an amount equal to the value of the Property, together with an endorsement in favor of Lender and in form and substance reasonably satisfactory to Lender.

(c) **Survey.** Lender shall have received a current Survey for each Individual Property, certified to the title company and Lender and their successors and assigns, in form and content reasonably satisfactory to Lender and prepared by a professional and properly licensed land surveyor satisfactory to Lender in accordance with the Accuracy Standards for ALTA/ACSM Land Title Surveys as adopted by ALTA, American Congress on Surveying & Mapping and National Society of Professional Surveyors in 2005. Each such Survey shall reflect the same legal description contained in the Title Insurance Policies relating to such Individual Property and shall include, among other things, a metes and bounds description (or other description reasonably satisfactory to Lender) of the real property comprising part of such Individual Property reasonably satisfactory to Lender. The surveyor's seal shall be affixed to each Survey and the surveyor shall provide a certification for each Survey in form and substance reasonably acceptable to Lender.

(d) **Insurance.** Lender shall have received valid certificates of insurance for the Policies required hereunder, satisfactory to Lender in its reasonable discretion. Lender shall be included as an "additional insured" under such Policies and Lender shall have received evidence of the payment of all Insurance Premiums payable for the existing policy period.

(e) **Environmental Reports.** Lender shall have received a Phase I environmental report (and, if recommended by the Phase I environmental report, a Phase II environmental report) in respect of each Individual Property, in each case satisfactory in form and substance to Lender, Lender acknowledges that the foregoing condition has been satisfied, provided that the underground storage tank at Harrah's Las Vegas shall be registered if and to the extent the same is required under Legal Requirements and Lender shall have received and reasonably approved the O&M Plans contemplated pursuant to the above-referenced environmental reports in respect of Flamingo Las Vegas and Harrah's Las Vegas.

(f) **Zoning.** With respect to each Individual Property, Lender shall have received, at Lender's option, either (i) (A) letters or other evidence with respect to each Individual Property from the appropriate municipal authorities (or other Persons) concerning applicable zoning and building laws, and (B) an ALTA 3.1 zoning endorsement for the applicable Title Insurance Policy or (ii) a zoning report, in each case in substance reasonably satisfactory to Lender.

(g) **Encumbrances.** Borrower shall have taken or caused to be taken such actions in such a manner so that Lender has a valid and perfected first priority Lien as of the Closing Date on the Collateral and with respect to the Pledge Agreement and Lender shall have received satisfactory evidence thereof.

(h) **Senior Loan Documents.** The Mortgage Loan Documents and Senior Mezzanine Loan Documents shall have been duly authorized, executed and delivered by all parties thereto, the Mortgage Loan and Senior Mezzanine Loan shall have been

contemporaneously funded and Lender shall have received and approved certified copies thereof. All of the conditions precedent set forth in Article III of the Mortgage Loan Agreement and Senior Mezzanine Loan Agreements shall have been satisfied and the Mortgage Loan and Senior Mezzanine Loans shall have closed and been fully advanced in accordance therewith.

**3.1.4 Related Documents.** Each additional document not specifically referenced herein, but relating to the transactions contemplated herein, shall be in form and substance reasonably satisfactory to Lender, and shall have been duly authorized, executed and delivered by all parties thereto and Lender shall have received and approved certified copies thereof.

**3.1.5 Delivery of Organizational Documents.** Borrower shall deliver or cause to be delivered to Lender copies certified by Borrower of all organizational documentation related to Borrower and each Loan Party and/or the formation, structure, existence, good standing and/or qualification to do business, as Lender may request in its sole discretion, including, without limitation, good standing certificates, qualifications to do business in the appropriate jurisdictions, resolutions authorizing the entering into of the Loan and incumbency certificates as may be requested by Lender.

**3.1.6 Opinions of Borrower's Counsel.** Lender shall have received opinions from Borrower's counsel with respect to non-consolidation and the due execution, authority, enforceability of the Loan Documents and such other matters as Lender may require, including True-Lease Opinions, an opinion with respect to the priority and perfection of the Collateral and all such opinions shall be in form, scope and substance satisfactory to Lender and Lender's counsel in their reasonable discretion.

**3.1.7 Budgets.** Borrower shall have delivered, and Lender shall have approved in its reasonable discretion, the Annual Budget for the current Fiscal Year.

**3.1.8 Basic Carrying Costs.** Borrower shall have caused Mortgage Borrower to have paid all Basic Carrying Costs relating to the Properties which are in arrears, including, without limitation, (a) accrued but unpaid Insurance Premiums, (b) currently due Taxes (including any in arrears) and (c) currently due Other Charges, which amounts shall be funded with proceeds of the Loan.

**3.1.9 Completion of Proceedings.** All corporate and other proceedings taken or to be taken in connection with the transactions contemplated by this Agreement and other Loan Documents and all documents incidental thereto shall be satisfactory in form and substance to Lender, and Lender shall have received all such counterpart originals or certified copies of such documents as Lender may reasonably request.

**3.1.10 Payments.** All payments, deposits or escrows required to be made or established by Borrower under this Agreement, the Note and the other Loan Documents on or before the Closing Date shall have been paid.

**3.1.11 Windstorm Insurance Intercreditor Agreement.** The Windstorm Insurance Intercreditor Agreement shall have been executed by all parties thereto and delivered to Lender.

**3.1.12 Transaction Costs.** Borrower shall have paid or reimbursed Lender for all UCC Title Insurance Policy premiums, all Owner's Title Policy premiums, costs of obtaining recording and filing fees, costs of environmental reports, Physical Conditions Reports, appraisals and other reports, the reasonable fees and costs of Lender's counsel and all other third party out-of-pocket expenses reasonably incurred in connection with the origination of the Loan to the extent such costs and expenses relating to third party costs have not already been paid or reimbursed by Mortgage Borrower to Mortgage Lender.

**3.1.13 Material Adverse Change.** There shall have been no material adverse change in the financial condition or business condition of Borrower, any Loan Party, the Collateral, the Senior Mezzanine Collateral or the Properties since the date of the most recent financial statements delivered to Lender. The income and expenses of the Properties, the occupancy thereof, and all other features of the transaction shall be as represented to Lender without material adverse change. None of Borrower, any Loan Party, or any of their respective constituent Persons shall be the subject of any bankruptcy, reorganization, or insolvency proceeding.

**3.1.14 Leases and Rent Roll.** Lender shall have received copies of all Leases and certified copies of any Leases as requested by Lender. Lender shall have received a current certified rent roll of the Properties, reasonably satisfactory in form and substance to Lender.

**3.1.15 Tax Lot.** Lender shall have received evidence that each Individual Property constitutes one (1) or more separate tax lots, which evidence shall be reasonably satisfactory in form and substance to Lender.

**3.1.16 Physical Conditions Reports.** Lender shall have received Physical Conditions Reports with respect to each Individual Property, which reports shall be reasonably satisfactory in form and substance to Lender. Lender acknowledges that the foregoing condition has been satisfied.

**3.1.17 Operating Leases; Operating Lease Guaranty.** Lender shall have received copies of the Operating Leases, each Operating Lease Guaranty and the Gaming Equipment Facility Agreements, which shall be reasonably satisfactory in form and substance to Lender.

**3.1.18 Appraisal.** Lender shall have received an appraisal of each Individual Property, which shall be reasonably satisfactory in form and substance to Lender.

**3.1.19 Financial Statements.** Lender shall have received a balance sheet with respect to each Individual Property for the two most recent Fiscal Years and statements of income and statements of cash flows with respect to each Individual Property for the three most recent Fiscal Years, each in form and substance reasonably satisfactory to Lender.

**3.1.20 Further Documents.** Lender or its counsel shall have received a fully executed Interest Rate Cap Agreement and a Collateral Assignment of Interest Rate Cap Agreement, together with an opinion of counsel in form and substance satisfactory to it, or shall have received reasonably satisfactory evidence that same will be delivered promptly following the Closing Date.

**3.1.21 Gaming Authority Approvals.** Mortgage Borrower and Operating Company shall have obtained all Operating Permits from Gaming Authorities that are required in order to permit the closing of the Mortgage Loan and the Mezzanine Loans (if required), or in connection with the Operating Lease or the Operating Lease Guaranty (if required), or to permit the conveyances of any of the Properties to Mortgage Borrower (effected immediately prior hereto) and the operation of the Properties as currently conducted.

#### IV. REPRESENTATIONS AND WARRANTIES

**Section 4.1. Borrower Representations.** Borrower represents and warrants as of the date hereof and as of the Closing Date, except as disclosed in Schedule XXIII, that:

**4.1.1 Organization.** (a) Borrower has been duly organized and is validly existing and in good standing with requisite power and authority to own the Individual Properties and to transact the businesses in which it is (or each of them is) now engaged. Borrower is duly qualified to do business and is in good standing in each jurisdiction where it is required to be so qualified in connection with its properties, businesses and operations. Borrower possesses all rights, licenses, permits and authorizations (governmental or otherwise) necessary to entitle it to own its properties and to transact the businesses in which it is now engaged and the failure to possess which would reasonably be expected to have an Individual Material Adverse Effect. The sole business of Borrower is the ownership of Senior Mezzanine Borrower. The ownership interests of Borrower are as set forth on the organizational chart attached hereto as Schedule VIII.

(b) Each Operating Company has been duly organized and is validly existing and in good standing with requisite power and authority to own its properties or assets, including the Gaming Equipment, and to transact the businesses in which it is now engaged. Each Operating Company is duly qualified to do business and is in good standing in each jurisdiction where it is required to be so qualified in connection with its properties, businesses and operations, including the operation of the Casino Components at each Individual Property. Each Operating Company possesses all rights, licenses, permits and authorizations (governmental or otherwise) necessary to entitle it to operate the Properties currently operated by each such Operating Company and to transact the businesses in which it is now engaged and the failure to possess which would reasonably be expected to have an Individual Material Adverse Effect. The sole business of each Operating Company is the management and operation of the Individual Property or Properties currently operated by each such Operating Company. The ownership interests of each Operating Company are as set forth on the organizational chart attached hereto as Schedule VIII.

(c) Borrower has the power and authority and the requisite ownership interests in Senior Mezzanine Borrower and Mortgage Borrower to control the actions of Senior Mezzanine Borrower and Mortgage Borrower, and upon the realization of the Collateral under the Pledge Agreement, Lender or any other party succeeding to the Borrower's interest in the Collateral described in the Pledge Agreement would have such control. Without limiting the foregoing, Borrower has sufficient control over Senior Mezzanine Borrower and Mortgage Borrower to cause Senior Mezzanine Borrower and Mortgage Borrower to (i) take any action on

Senior Mezzanine Borrower's or Mortgage Borrower's part required by the Loan Documents and (ii) refrain from taking any action prohibited by the Loan Documents.

**4.1.2 Proceedings.** Borrower and Operating Company have taken all necessary action to authorize the execution, delivery and performance of this Agreement and the other Loan Documents. This Agreement and such other Loan Documents have been duly executed and delivered by or on behalf of Borrower and Operating Company and constitute legal, valid and binding obligations of Borrower and Operating Company enforceable against Borrower and Operating Company (as applicable) in accordance with their respective terms, subject only to applicable bankruptcy, insolvency and similar laws affecting rights of creditors generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

**4.1.3 No Conflicts; Approvals.** (a) The execution, delivery and performance of this Agreement and the other Loan Documents by Borrower and Operating Company will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance (other than pursuant to the Loan Documents) upon any of the property or assets of Borrower or Operating Company pursuant to the terms of any indenture, mortgage, deed of trust, loan agreement, partnership agreement, management agreement, material lease or other material agreement or instrument to which Borrower or Operating Company (as applicable) is a party or by which any of Borrower's or Operating Company's property or assets is or are subject, nor will such action result in any violation of the provisions of any statute or any order, rule or regulation of any Governmental Authority having jurisdiction over Borrower or Operating Company any of Borrower's or Operating Company's properties or assets, and any consent, approval, authorization, order, registration or qualification of or with any such Governmental Authority required for the execution, delivery and performance by Borrower and Operating Company of this Agreement or any other Loan Documents (and the execution by Lender of the remedies provided in the Loan Documents, subject to the limitations thereon pursuant to applicable Gaming Laws) has been obtained and is in full force and effect.

(b) Borrower, Senior Mezzanine Borrower, Mortgage Borrower and Operating Company have obtained all consents and approvals, including all approvals of Governmental Authorities including Gaming Authorities, if required, in connection with the execution, delivery and performance of the Loan Documents (including by Mortgage Lender and each Mezzanine Lender), the Operating Lease, the Operating Lease Guaranty and the operation of the business currently conducted at any of the Properties, and shall promptly execute any and all such instruments and documents, deliver any certificates and do all such other acts or things required by the Gaming Authorities to maintain or keep current such approvals.

**4.1.4 Litigation.** There are no actions, suits or proceedings at law or in equity by or before any Governmental Authority or other agency now pending or, to Borrower's knowledge, threatened against or affecting any Loan Party, any Affiliates of Borrower, including Holdings, Operating Company or any Individual Property, or any prior owner or other holder of any interest in any Individual Property, which actions, suits or proceedings, if determined against any Loan Party, Holdings, Operating Company, any other Affiliate or any Individual Property (taking into account the reasonably estimated damages payable in connection therewith), is

reasonably likely to materially adversely affect the condition (financial or otherwise) or business of any Loan Party, any Affiliate of Borrower that is a direct or indirect owner of Mortgage Borrower, including Holdings and Operating Company, or the condition or ownership of any Individual Property, or any of the material rights, interests and remedies of Lender under the Loan Documents (taken as a whole). None of the actions described on Schedule XXIV, if determined adversely to Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company and/or any of their respective Affiliates, as applicable, would result in the payment by Borrower, Mortgage Borrower, Operating Company or such Affiliate of an amount in excess of Ten Million and no/100 Dollars (\$10,000,000.00), except to the extent covered by insurance.

**4.1.5 Agreements.** None of Borrower, Senior Mezzanine Borrower, Mortgage Borrower or Operating Company is in default, in any material respect, in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any material agreement or instrument to which it is a party or by which Borrower, Senior Mezzanine Borrower, Mortgage Borrower, Operating Company, the Collateral, the Senior Mezzanine Collateral or any of the Properties are bound. None of Borrower, Senior Mezzanine Borrower, Mortgage Borrower or Operating Company has any material financial obligation under any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which Borrower, Senior Mezzanine Borrower, Mortgage Borrower or Operating Company is a party or by which Borrower, Senior Mezzanine Borrower, Mortgage Borrower, Operating Company, the Collateral, the Senior Mezzanine Collateral or the Properties is otherwise bound, other than (a) with respect to Mortgage Borrower, obligations incurred in the ordinary course of the operation of the Properties as permitted pursuant to clause (t) of the definition of "Special Purpose Entity" set forth in Section 1.1 of the Mortgage Loan Agreement, (b) with respect to Borrower, obligations under the Loan Documents, (c) with respect to Senior Mezzanine Borrower, obligations under the Senior Mezzanine Loan Documents, and (d) with respect to Operating Company, the Operating Lease and Permitted Indebtedness (Operating Company).

**4.1.6 Title.** (a) The Borrower (as pledgor under the Pledge Agreement) is the record and beneficial owner of, and Borrower has good and marketable title to the Collateral, free and clear of all Liens whatsoever except the Liens created by the Loan Documents. The Permitted Encumbrances in the aggregate do not materially and adversely affect the value, operation or use of any of the Properties (as currently used) or Borrower's ability to repay the Loan. The Pledge Agreement, together with the delivery of the certificates evidencing ownership of the Pledged Company Interests and the endorsement in blank, as being delivered concurrently herewith, will create a valid perfected, first priority lien on, and security interest in and to, the Collateral, all in accordance with the terms thereof. There are no claims for payment for work, labor or materials affecting any of the Properties which are or may become a Lien prior to, or of equal priority with, the Liens created by the Mortgage Loan Documents.

(b) Each Operating Company has good, marketable title to the Gaming Equipment, free and clear of all Liens whatsoever (except equipment financing and leasing

arrangements entered into by Operating Company in the ordinary course of its business (subject to the limitations set forth in the definition of “Permitted Indebtedness (Operating Company)”).

**4.1.7 Solvency.** Borrower has (a) not entered into the transaction or executed the Note, this Agreement or any other Loan Documents with the actual intent to hinder, delay or defraud any creditor and (b) received reasonably equivalent value in exchange for its obligations under such Loan Documents. The fair saleable value of Borrower’s assets exceeds and will, immediately following the making of the Loan, exceed Borrower’s total liabilities, including, without limitation, subordinated, unliquidated, disputed and contingent liabilities. The fair saleable value of Borrower’s assets is and will, immediately following the making of the Loan, be greater than Borrower’s probable liabilities, including the maximum amount of its contingent liabilities on its debts as such debts become absolute and matured. Borrower’s assets do not and, immediately following the making of the Loan will not, constitute unreasonably small capital to carry out its business as conducted or as proposed to be conducted. Borrower does not intend to, and does not believe that it will, incur debt and liabilities (including contingent liabilities and other commitments) beyond its ability to pay such debt and liabilities as they mature (taking into account the timing and amounts of cash to be received by Borrower and the amounts to be payable on or in respect of obligations of Borrower). No petition in bankruptcy has been filed against Borrower, Operating Company, any Loan Party or any constituent Person, and none of Borrower, Operating Company, any Loan Party or any constituent Person has ever made an assignment for the benefit of creditors or taken advantage of any insolvency act for the benefit of debtors. None of Borrower, Operating Company, any Loan Party or any of their respective constituent Persons are contemplating either the filing of a petition by it under any state or federal bankruptcy or insolvency laws or the liquidation of all or a major portion of Borrower’s, Operating Company’s, or any Loan Party’s assets or properties, and Borrower has no knowledge of any Person contemplating the filing of any such petition against it, Operating Company, any Loan Party or such constituent Persons.

**4.1.8 Full and Accurate Disclosure.** No statement of fact made by Borrower in this Agreement or in any of the other Loan Documents contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained herein or therein not misleading. There is no material fact presently known to Borrower which has not been disclosed to Lender which has, nor as far as Borrower can foresee, might reasonably be expected to have an Individual Material Adverse Effect or an Aggregate Material Adverse Effect.

**4.1.9 No Plan Assets.** Borrower is not an “employee benefit plan,” as defined in Section 3(3) of ERISA, subject to Title I of ERISA, and none of the assets of Borrower constitutes or will constitute “plan assets” of one or more such plans within the meaning of 29 C.F.R. Section 2510.3-101. In addition, (a) Borrower is not a “governmental plan” within the meaning of Section 3(32) of ERISA and (b) transactions by or with Borrower are not subject to any state statute regulating investments of, or fiduciary obligations with respect to, governmental plans similar to the provisions of Section 406 of ERISA or Section 4975 of the Code currently in effect, which prohibit or otherwise restrict the transactions contemplated by this Loan Agreement.

**4.1.10 Compliance.** Except as disclosed in the zoning reports obtained by Lender in connection with the origination of the Loan, Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company and each Individual Property (including the use thereof) comply in all material respects with all applicable Legal Requirements, including, without limitation, building and zoning ordinances and codes and Prescribed Laws. Borrower, Mortgage Borrower, Senior Mezzanine Borrower and Operating Company are not in default or violation of (i) any material order, writ, injunction, decree or demand of any Gaming Authority or (ii) any material order, writ, injunction, decree or demand of any other Governmental Authority. There has not been committed by Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any other Person in occupancy of or involved with the operation or use of the Properties any act or omission affording the federal government or any other Governmental Authority the right of forfeiture as against any Individual Property or any part thereof or any monies paid in performance of Borrower's obligations under any of the Loan Documents.

**4.1.11 Financial Information.** All financial data, including, without limitation, the statements of cash flow and income and operating expense, that have been delivered to Lender in connection with the Loan, the Collateral, the Senior Mezzanine Collateral, the Properties and each Loan Party (i) are true, complete and correct in all material respects, (ii) accurately represent in all material respects the financial condition of the Properties as of the date of such reports, and (iii) to the extent prepared or audited by an independent certified public accounting firm, have been prepared in accordance with GAAP throughout the periods covered, except as disclosed therein. Except for Permitted Encumbrances, Borrower does not have any contingent liabilities, liabilities for taxes, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments that are known to Borrower and reasonably likely to have a materially adverse effect on the Collateral, the Senior Mezzanine Collateral, Borrower, any Loan Party, any Individual Property or the operation thereof as mixed-use hotel and casino properties, except as referred to or reflected in said financial statements. Borrower has no Indebtedness other than the Loan. Except for Permitted Indebtedness (Operating Company), Operating Company does not have any Indebtedness or contingent liabilities, or due and unpaid liabilities for taxes, that are known to Borrower, Mortgage Borrower, Senior Mezzanine Borrower or Operating Company and reasonably likely to have a materially adverse effect on the Collateral, any Senior Mezzanine Collateral, Borrower, any Loan Party, any Individual Property or the operation thereof as mixed-use hotel and casino properties, except as referred to or reflected in said financial statements. Since the date of such financial statements, there has been no material adverse change in the financial condition, operation or business of Borrower or Operating Company from that set forth in said financial statements.

**4.1.12 Condemnation.** No Condemnation or other similar proceeding has been commenced or, to Borrower's best knowledge, is threatened or contemplated with respect to all or any portion of any Individual Property or for the relocation of roadways providing access to any Individual Property.

**4.1.13 Federal Reserve Regulations.** No part of the proceeds of the Loan will be used for the purpose of purchasing or acquiring any "margin stock" within the meaning of Regulation U of the Board of Governors of the Federal Reserve System or for any other purpose

which would be inconsistent with such Regulation U or any other Regulations of such Board of Governors, or for any purposes prohibited by Legal Requirements or by the terms and conditions of this Agreement or the other Loan Documents.

**4.1.14 Utilities and Public Access.** Each Individual Property has rights of access to public ways and is served by water, sewer, sanitary sewer and storm drain facilities adequate to service such Individual Property for its respective intended uses. All public utilities necessary or convenient to the full use and enjoyment of each Individual Property are located either in the public right-of-way abutting such Individual Property (which are connected so as to serve such Individual Property without passing over other property) or in recorded easements serving such Individual Property and such easements are set forth in and insured by the Title Insurance Policies. All roads necessary for the use of each Individual Property for their current respective purposes have been completed and dedicated to public use and accepted by all Governmental Authorities.

**4.1.15 Not a Foreign Person.** Borrower is not a "foreign person" within the meaning of § 1445(f)(3) of the Code.

**4.1.16 Separate Lots.** Each Individual Property is comprised of one (1) or more parcels which constitute a separate tax lot or lots and does not constitute a portion of any other tax lot not a part of such Individual Property.

**4.1.17 Assessments.** There are no pending or, to Borrower's knowledge, proposed special or other assessments for public improvements or otherwise affecting any Individual Property, nor are there any contemplated improvements to any Individual Property that may result in such special or other assessments.

**4.1.18 Enforceability.** The Loan Documents are not subject to any right of rescission, set-off, counterclaim or defense by Borrower, any Affiliates of Borrower including Holdings, Operating Company or Guarantor, including the defense of usury, nor would the operation of any of the terms of the Loan Documents, or the exercise of any right thereunder, render the Loan Documents unenforceable (subject to principles of equity and bankruptcy, insolvency and other laws generally affecting creditors' rights and the enforcement of debtors' obligations), and Borrower, any Affiliates of Borrower including Holdings, Operating Company and Guarantor have not asserted any right of rescission, set-off, counterclaim or defense with respect thereto.

**4.1.19 No Prior Assignment.** There are no prior assignments of the Leases (including the Operating Leases) or of the Rents (or any Revenue) due and payable or to become due and payable which are presently outstanding. There are no prior assignments of the Collateral which are presently outstanding except in accordance with the Loan Documents.

**4.1.20 Insurance.** Borrower (or Mortgage Borrower or Operating Company) has obtained and has delivered to Lender certified copies of all Policies reflecting the insurance coverages, amounts and other requirements set forth in this Agreement. No material claims have been made under any such Policies except such as have been disclosed to Lender, and no Person,

including Borrower, Mortgage Borrower, Senior Mezzanine Borrower and Operating Company, has done, by act or omission, anything which would impair the coverage of any such Policies.

**4.1.21 Use of Property.** Each Individual Property is used exclusively as a mixed-use hotel and casino operation, and other appurtenant and related uses.

**4.1.22 Gaming Licenses and Operating Permits.** (a) Schedule IX contains a correct and complete list of all Gaming Licenses and other material licenses, certification and permits for each of the Properties (and the holder thereof).

(b) Borrower possesses all licenses, permits, franchises, authorizations, certificates, approvals and consents which are material to the ownership of the Collateral. Mortgage Borrower possesses all licenses, permits, franchises, authorizations, certificates, approvals and consents, including, without limitation, all certificates of occupancy, which are material to the ownership and use of each of the Properties, and Operating Company possesses all licenses, permits, franchises, authorizations, certificates, approvals and consents, including, without limitation, all environmental, liquor, Gaming Licenses, health and safety licenses of all Governmental Authorities which are material to the conduct of their business and the use, occupation and operation of each of the Properties and the failure to possess which would have an Individual Material Adverse Effect (collectively, “**Operating Permits**”); each such Operating Permit is and will be in full force and effect (unless, in the case of any Operating Permit, such Operating Permit is no longer necessary or advisable for the conduct of Borrower’s, Senior Mezzanine Borrower’s, Mortgage Borrower’s or Operating Company’s business); Borrower, Senior Mezzanine Borrower, Mortgage Borrower, Operating Company and each of its Affiliates are in compliance in all material respects with all such Operating Permits, and no event (including, without limitation, any material violation of any law, rule or regulation) has occurred which would be reasonably likely to lead to the revocation or termination of any such Operating Permit or the imposition of any material restriction thereon.

(c) Operating Company and each of its Affiliates possesses all Gaming Licenses which are material to the conduct of their business and the ownership, use, occupation and operation of each of the Properties. Further, Borrower hereby represents and warrants as follows:

(i) Each Gaming License is in full force and effect (except for such Gaming Licenses as are no longer necessary or advisable for the conduct of Borrower’s, Senior Mezzanine Borrower’s, Mortgage Borrower’s or Operating Company’s business); Operating Company and each of its Affiliates, respective directors, members, managers, officers, key personnel and Persons holding a five percent (5%) equity or economic interests directly or indirectly in Operating Company is in compliance in all material respects with all such Gaming Licenses (to the extent required by Legal Requirements), and no event (including, without limitation, any material violation of any Legal Requirements) has occurred which would be reasonably likely to lead to the revocation or termination of any such Gaming Licenses or the imposition of any restriction thereon;

(ii) Borrower has no reason to believe Mortgage Borrower and Operating Company will not be able to maintain in effect all Gaming Licenses necessary for the

lawful conduct of their respective businesses or operations wherever now conducted and as planned to be conducted, including the ownership and operation of the Casino Components, pursuant to all applicable Legal Requirements;

(iii) All Gaming Licenses are in full force and effect and have not been amended or otherwise modified, rescinded, revoked or assigned in any manner that would reasonably be expected to have an Individual Material Adverse Effect;

(iv) Neither Mortgage Borrower nor Operating Company is in default in any material respect under, or in violation in any material respect of, any Gaming License (and no event has occurred, and no condition exists, which, with the giving of notice or passage of time or both, would constitute a default thereunder or violation thereof that has caused or would reasonably be expected to cause the loss of any Gaming License) (unless, in the case of any Gaming License, such Gaming License is no longer necessary or advisable for the conduct of Borrower's or Operating Company's business);

(v) Neither Mortgage Borrower nor Operating Company has received any notice of any violation of Legal Requirements which has caused or would reasonably be expected to cause any Gaming License to be suspended, forfeited, modified in any manner that would have an Individual Material Adverse Effect, not renewed, rescinded or revoked (unless, in the case of any Gaming License, such Gaming License is no longer necessary or advisable for the conduct of Mortgage Borrower's or Operating Company's business);

(vi) No condition exists or event has occurred which would reasonably be expected to result in the suspension, revocation, impairment, forfeiture, rescission or non-renewal of any Gaming License (unless, in the case of any Gaming License, such Gaming License is no longer necessary or advisable for the conduct of Mortgage Borrower's or Operating Company's business); and

(vii) The continuation, validity and effectiveness of all Gaming Licenses will not be adversely affected by the transactions contemplated by this Agreement.

(d) There is no proceeding, investigation, or disciplinary action (including, without limitation, before any Gaming Authority, under any Gaming Law or under any Gaming License or other Operating Permit) pending or, to Borrower's knowledge, threatened against any of Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or, to Borrower's knowledge, any of their respective directors, members, managers, officers, key personnel or Persons holding a five percent (5%) or greater direct or indirect equity or economic interest in Mortgage Borrower, Senior Mezzanine Borrower or Operating Company and that could reasonably be expected to have an Individual Material Adverse Effect.

(e) There is no proceeding (including, without limitation, before any Gaming Authority, under any Gaming Law or under any Gaming License or other Operating Permit) pending or, to Borrower's knowledge, threatened either (a) in connection with, or that seeks to restrain, enjoin, prevent the consummation of or otherwise challenge, any of the Loan

Documents or any of the transactions contemplated therein, or (b) that could reasonably be expected to have an Individual Material Adverse Effect.

(f) Neither the execution, delivery or performance of any of the Loan Documents (nor the Securitization or any participations in the Loan, or the creation or sale of any of the Mortgage Loan or Mezzanine Loans) will (i) require the consent of any Gaming Authority not heretofore obtained or (ii) allow or result in the imposition of any material penalty under, or the revocation or termination of, any Gaming License or any material impairment of the rights of the holder of any Gaming License.

**4.1.23 Intentionally Omitted.**

**4.1.24 Intentionally Omitted.**

**4.1.25 Intentionally Omitted.**

**4.1.26 Leases.** (a) The Operating Leases (together with any certificates and notifications entered into in connection therewith) and the Operating Lease Guaranty provided to Lender on the Closing Date are true, correct, accurate and complete copies of such documents and constitute the entire agreement between the parties thereto with respect to the subject matter therein and there are no written agreements modifying, amending, supplementing or restating such documents. Except as set forth on Schedule X, the Properties are not subject to any space Leases other than the Operating Lease and space Leases providing for occupancy of less than one hundred (100) square feet. Each Operating Lease is a “true lease” for all purposes of the Bankruptcy Code (including Section 365(d) and 502(b)(6) thereof) and applicable Legal Requirements, and no Operating Lease constitutes a financing or conveys any interest in the Properties other than the leasehold interest therein demised thereby. Mortgage Borrower is the owner and lessor of landlord’s interest in the Operating Lease and the Operating Lease Guaranty. Currently, no Person has any possessory interest in any Individual Property or right to occupy the same except under and pursuant to the provisions of the Operating Lease, any other space Leases listed on Schedule X and, with respect to a right to occupancy only (and not a possessory interest), hotel guests. Each Operating Lease and Operating Lease Guaranty is in full force and effect and there are no material events of default thereunder by any party thereto and there are no conditions that, with the passage of time or the giving of notice, or both, would constitute a default thereunder. No Rent under any Operating Lease has been paid more than one (1) month in advance of its due date and no Rents or charges under the Operating Lease have been waived, released or otherwise discharged or compromised. There has been no prior sale, transfer or assignment, hypothecation or pledge of any Operating Lease, any Operating Lease Guaranty or of the Rents. No Operating Company has assigned the Operating Lease or sublet all or any portion of any Individual Property except pursuant to the Operating Lease and the terms hereof.

(b) The Properties are not subject to any space Leases other than the Leases described in Schedule X attached hereto. Operating Company is the owner and lessor of landlord’s interest in all such space Leases. No Person has any possessory interest in any Individual Property except under and pursuant to the provisions of the space Leases, and no Person has any right to occupy any portion of any Individual Property except under and pursuant to the provisions of the space Leases and hotel guests. The current space Leases are in full force

and effect and, except as shown in Schedule X attached hereto, to Borrower's knowledge, there are no material defaults thereunder by either party and there are no conditions that, with the passage of time or the giving of notice, or both, would constitute defaults thereunder. No Rent has been paid more than one (1) month in advance of its due date. Except as shown in Schedule X attached hereto, all work to be performed by Mortgage Borrower (or Operating Company) under each space Lease has been performed as and to the extent required and has been accepted by the applicable tenant, and any payments, free rent, partial rent, rebate of rent or other payments, credits, allowances or abatements required to be given by Mortgage Borrower (or Operating Company) to any tenant has already been received by such tenant. There has been no prior sale, transfer or assignment, hypothecation or pledge of any space Lease or of the Rents received therein which is still in effect. To Borrower's knowledge, except as shown on Schedule X, no tenant listed on Schedule X has assigned its space Lease or sublet all or any portion of the premises demised thereby, no such tenant holds its leased premises under assignment or sublease, nor does anyone except such tenant and its employees occupy such leased premises. No tenant under any space Lease has a right or option pursuant to such Lease or otherwise to purchase all or any part of the leased premises or the building of which the leased premises are a part. No tenant under any space Lease has any right or option for additional space in the Improvements except pursuant to such tenant's space Lease.

**4.1.27 Intentionally Omitted.**

**4.1.28 Principal Place of Business; State of Organization.** (a) Borrower's principal place of business as of the date hereof is the address set forth in Schedule I. Each Borrower is organized under the laws of the State of Delaware.

(b) Operating Company's principal place of business as of the date hereof is the address set forth in Schedule I. Each Operating Company is organized under the laws of the state of Delaware.

**4.1.29 Filing and Recording Taxes.** All transfer taxes, deed stamps, intangible taxes or other amounts in the nature of transfer taxes required to be paid by any Person under applicable Legal Requirements currently in effect in connection with the transfer of the Collateral to Borrower have been paid. All recording, stamp, intangible or other similar tax required to be paid by any Person under applicable Legal Requirements currently in effect in connection with the execution, delivery, recordation, filing, registration, perfection or enforcement of any of the Loan Documents, including, without limitation, the Pledge Agreement, have been paid, and, under current Legal Requirements, the Pledge Agreement is enforceable in accordance with their respective terms by Lender (or any subsequent holder thereof), subject to principles of equity and bankruptcy, insolvency and other laws generally applicable to creditors' rights and the enforcement of debtors' obligations.

**4.1.30 Special Purpose Entity/Separateness.** (a) Until the Debt has been paid in full, Borrower hereby represents, warrants and covenants that Borrower and each SPE Party is, shall be and shall continue to be a Special Purpose Entity.

(b) The representations, warranties and covenants set forth in Section 4.1.30(a) shall survive for so long as any amount remains payable to Lender under this Agreement or any other Loan Document.

(c) All of the assumptions made in the Insolvency Opinion, including, but not limited to, any exhibits attached thereto, are true and correct and any assumptions made in any subsequent non-consolidation opinion required to be delivered in connection with the Loan Documents (an “**Additional Insolvency Opinion**”), including, but not limited to, any exhibits attached thereto, will have been and shall be true and correct. Borrower has complied and will comply with, and Borrower shall cause each SPE Party and Operating Company to comply with, all of the assumptions made with respect to the SPE Parties and Operating Company in the Insolvency Opinion. The SPE Parties will have complied and will comply with all of the assumptions made with respect to the SPE Parties in any Additional Insolvency Opinion. Each entity with respect to which an assumption shall be made in any Additional Insolvency Opinion will have complied and will comply with all of the assumptions made with respect to it in any Additional Insolvency Opinion.

(d) All of the assumptions made in the True Lease Opinion, including, but not limited to, any exhibits attached thereto, are true and correct and any assumptions made in any subsequent true lease opinion required to be delivered in connection with the Loan Documents (an “**Additional True Lease Opinion**”), including, but not limited to, any exhibits attached thereto, will have been and shall be true and correct. Each SPE Party has complied and will comply with, and Borrower shall cause Operating Company to comply with, all of the assumptions made with respect to such SPE Parties and Operating Company in the True Lease Opinion. Each SPE Party will have complied and will comply with all of the assumptions made with respect to such SPE Parties in any Additional True Lease Opinion. Each entity with respect to which an assumption shall be made in any Additional True Lease Opinion will have complied and will comply with all of the assumptions made with respect to it in any Additional True Lease Opinion.

**4.1.31 Operating Leases; Operating Lease Guaranty.** The Operating Leases and the Operating Lease Guaranty are in full force and effect and there is no default thereunder by any party thereto and no event has occurred that, with the passage of time and/or the giving of notice would constitute a default thereunder.

**4.1.32 Illegal Activity.** No portion of any Individual Property or the Collateral has been or will be purchased with proceeds of any illegal activity.

**4.1.33 Intentionally Omitted.**

**4.1.34 Investment Company Act.** Borrower is not an “investment company” or a company “controlled” by an “investment company,” within the meaning of the Investment Company Act of 1940, as amended.

**4.1.35 Embargoed Person.** At all times throughout the term of the Loan, including after giving effect to any Transfers permitted pursuant to the Loan Documents, (a) none of the funds or other assets of Borrower, Senior Mezzanine Borrower, Mortgage

Borrower, Holdings, Operating Company and Guarantor constitute property of, or are beneficially owned, directly or indirectly, by any person, entity or government subject to trade restrictions under U.S. law, including, but not limited to, the International Emergency Economic Powers Act, 50 U.S.C. § 1701 *et seq.*, The Trading with the Enemy Act, 50 U.S.C. App. 1 *et seq.*, and any Executive Orders or regulations promulgated thereunder with the result that the investment in any Loan Party or Operating Company, as applicable (whether directly or indirectly), is prohibited by law or the Loan made by the Lender is in violation of law (“**Embargoed Person**”); (b) no Embargoed Person has any interest of any nature whatsoever in any Loan Party, Holdings or Operating Company, as applicable, with the result that the investment in any Loan Party, Holdings or Operating Company, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law; and (c) none of the funds of any Loan Party, Holdings or Operating Company, as applicable, have been derived from any unlawful activity with the result that the investment in any Loan Party, Borrower, Holdings or Operating Company, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law.

**4.1.36 Operating Lease Subsidiary.** Tahoe Propco, LLC is the owner of one hundred percent (100%) of the equity interests of Ground Lease Subsidiary; Ground Lease Subsidiary does not own any assets other than its interests in the Ground Lease and does not have any liabilities other than liabilities under the Ground Lease; Ground Lease Subsidiary does not engage in any business other than that related to its ownership of interests in the Ground Lease.

**4.1.37 Taxes including Gaming Taxes and Fees.** Mortgage Borrower, Borrower and each of their respective Affiliates, and Operating Company and each of its Affiliates, have filed or caused to be filed all Federal, state, local and foreign tax returns (including, without limitation, all reports relating to gaming taxes and fees to the Gaming Authorities) which are required to be filed by them, on or prior to the date hereof, other than tax returns in respect of taxes that (i) are not franchise, capital or income taxes, (ii) in the aggregate are not material and (iii) would not, if unpaid, result in the imposition of any material Lien on any property or assets of Mortgage Borrower, Senior Mezzanine Borrower, Borrower or Operating Company or any of their respective Affiliates. All such filed tax returns were, to Borrower’s knowledge, true, correct and complete when filed. Mortgage Borrower, Senior Mezzanine Borrower, Borrower, Operating Company and each of their respective Affiliates, have paid or caused to be paid all taxes shown to be due and payable on such filed returns or on any assessments received by them, other than any taxes or assessments the validity of which Mortgage Borrower, Senior Mezzanine Borrower, Borrower, Operating Company or such Affiliate, as applicable) is contesting in good faith by appropriate proceedings, and with respect to which Mortgage Borrower, Senior Mezzanine Borrower, Borrower, Operating Company or such Affiliate, as applicable, shall have set aside adequate reserves. None of Mortgage Borrower, Senior Mezzanine Borrower, Borrower, Operating Company or any of their respective Affiliates, has as of the date hereof requested or been granted any extension of time to file any Federal, state, local or foreign tax return. None of Mortgage Borrower, Senior Mezzanine Borrower, Borrower or Operating Company is party to (or has any obligation under) any tax sharing agreement.

**4.1.38 Intentionally Omitted.**

**4.1.39 Intentionally Omitted.**

**4.1.40 Operation of Property.**

(a) The operation, management and use of each Individual Property by Mortgage Borrower and Operating Company is in compliance in all material respects with applicable Legal Requirements, including all applicable Gaming Laws, and all other federal, state, or local governmental authorities including, without limitation, those requirements relating to such Individual Property's physical structure and environment, except to the extent that non-compliance would not reasonably be expected to have an Individual Material Adverse Effect.

(b) The licenses, permits, and regulatory agreements, approvals and registrations relating to each Individual Property, including the Gaming Licenses, (i) may not be, and have not been, transferred to any location other than any Individual Property; have not been pledged as collateral security for any other loan or indebtedness; and are held free from restrictions or known conflicts that would materially impair the use or operation of any Individual Property as intended, (ii) are in full force and effect and in good standing and (iii) are not provisional, conditional or probationary in any manner.

(c) None of Mortgage Borrower, Senior Mezzanine Borrower, Borrower, Holdings, Guarantor or Operating Company is currently the subject of any proceeding by any Governmental Authority, and no notice of any violation has been received from a Governmental Authority that, in either case, would reasonably be expected to have an Individual Material Adverse Effect or an Aggregate Material Adverse Effect.

(d) None of Mortgage Borrower, Senior Mezzanine Borrower, Borrower or Operating Company has received a statement of charges or deficiencies and no penalty enforcement actions have been undertaken against any of them relating to any Individual Property by any Governmental Authority during the last three (3) calendar years which caused or could cause an Individual Material Adverse Effect or an Aggregate Material Adverse Effect.

(e) Each Operating Lease and Operating Lease Guaranty is in full force and effect and no party to either agreement has defaulted thereunder in any material respect.

(f) None of Mortgage Borrower or Operating Company has pledged its receivables relating to any of the Properties as collateral security for any other loan or indebtedness.

**4.1.41 Mortgage Loan Representations and Warranties.** All of the representations and warranties contained in the Mortgage Loan Documents and Senior Mezzanine Loan Documents are hereby incorporated into this Agreement and deemed made hereunder as and when made thereunder and shall remain incorporated without regard to any waiver, amendment or other modification thereof by the Mortgage Lender or Senior Mezzanine Lender or to whether the related Mortgage Loan Document or Senior Mezzanine Loan Document has been repaid or otherwise terminated, unless otherwise consented to in writing by Lender.

**4.1.42 Affiliates.** Effective as of the consummation of the transactions contemplated by this Agreement, the sole member of Borrower is Principal, which owns one hundred percent (100%) of the membership interests in Borrower. Borrower does not have any subsidiaries except as set forth in Schedule VIII.

**Section 4.2. Survival of Representations.** Borrower agrees that all of the representations and warranties of Borrower set forth in Section 4.1 and elsewhere in this Agreement and in the other Loan Documents shall survive for so long as any amount remains owing to Lender under this Agreement or any of the other Loan Documents by Borrower. All representations, warranties, covenants and agreements made in this Agreement or in the other Loan Documents by Borrower shall be deemed to have been relied upon by Lender notwithstanding any investigation heretofore or hereafter made by Lender or on its behalf.

## **V. BORROWER COVENANTS**

**Section 5.1. Affirmative Covenants.** From the date hereof and until payment and performance in full of all obligations of Borrower under the Loan Documents or the earlier release of the Liens of the Pledge Agreement (and all related obligations) in accordance with the terms of this Agreement and the other Loan Documents, Borrower hereby covenants and agrees with Lender that:

**5.1.1 Existence; Compliance with Legal Requirements.** Borrower shall, and shall cause Mortgage Borrower, Senior Mezzanine Borrower and Operating Company to, do or cause to be done all things necessary to preserve, renew and keep in full force and effect their existence, rights, licenses, permits and franchises and comply with all Legal Requirements applicable to Borrower, Senior Mezzanine Borrower, Mortgage Borrower, the Collateral, the Senior Mezzanine Collateral, Operating Company and the Properties, including, without limitation, Prescribed Laws. There shall never be committed by Borrower and Borrower shall not permit Mortgage Borrower or Senior Mezzanine Borrower to permit any other Person in occupancy of or involved with the operation or use of the Properties, including Operating Company, to commit any act or omission affording the federal government or any state or local government the right of forfeiture against the Collateral, the Senior Mezzanine Collateral, any Individual Property or any part thereof or any monies paid in performance of Borrower's obligations under any of the Loan Documents. Borrower hereby covenants and agrees not to commit, permit or suffer to exist any act or omission affording such right of forfeiture. Borrower shall, and shall cause Mortgage Borrower to, at all times maintain, preserve and protect all franchises and trade names and preserve all the remainder of its property used or useful in the conduct of its business and shall keep the Properties in good working order and repair. Borrower shall cause Mortgage Borrower to keep the Properties insured at all times as (and in the amounts) provided elsewhere in this Agreement. Borrower shall cause Mortgage Borrower to operate any Individual Property that is the subject of the O&M Agreement in accordance with the terms and provisions thereof in all material respects. After prior notice to Lender, Borrower, at its own expense, may contest (or cause Mortgage Borrower to contest) by appropriate legal proceeding promptly initiated and conducted in good faith and with due diligence, the validity of any Legal Requirement, the applicability of any Legal Requirement to Borrower, Senior Mezzanine Borrower, Mortgage Borrower, the Collateral, the Senior Mezzanine Collateral or any Individual Property or any alleged violation of any Legal Requirement, provided that (i) no Event of

Default has occurred and remains uncured; (ii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any applicable material instrument to which Borrower, Senior Mezzanine Borrower or Mortgage Borrower is subject and shall not constitute a default thereunder and such proceeding shall be conducted in accordance with all Legal Requirements; (iii) none of the Collateral, the Senior Mezzanine Collateral or any Individual Property nor any material part thereof or interest therein will be in imminent danger of being sold, forfeited, terminated, cancelled or lost; (iv) Borrower shall promptly upon receipt of a final, non-appealable determination thereof comply with any such Legal Requirement determined to be valid or applicable or cure any violation of any such Legal Requirement; (v) such proceeding shall suspend the enforcement of the contested Legal Requirement against Borrower, Senior Mezzanine Borrower, Mortgage Borrower, the Collateral, the Senior Mezzanine Collateral and any Individual Property; and (vi) Borrower shall furnish such security as may be required in the proceeding, or as may be reasonably requested by Lender, to insure compliance with such Legal Requirement, together with all interest and penalties payable in connection therewith. Lender may apply any such security, as necessary to cause compliance with such Legal Requirement at any time when, in the reasonable judgment of Lender, the validity, applicability or violation of such Legal Requirement is finally established or the Collateral, the Senior Mezzanine Collateral or any Individual Property (or any part thereof or interest therein) shall be in imminent danger of being sold, forfeited, terminated, cancelled or lost.

**5.1.2 Taxes and Other Charges.** Borrower shall pay or shall cause Mortgage Borrower to pay or cause to be paid all Taxes and Other Charges now or hereafter levied or assessed or imposed against the Properties or any part thereof as the same become due and payable; provided, however, Borrower's obligation to cause Mortgage Borrower to directly pay or cause to be paid Taxes shall be suspended for so long as Borrower complies with the terms and provisions of Section 7.2 hereof. Borrower will deliver or cause to be delivered to Lender receipts for payment or other evidence satisfactory to Lender that the Taxes and Other Charges have been so paid or are not then delinquent no later than the date on which the Taxes and/or Other Charges would otherwise be delinquent if not paid. Borrower shall furnish or cause to be furnished to Lender receipts for the payment of the Taxes and the Other Charges prior to the date the same shall become delinquent provided, however, Borrower is not required to furnish such receipts for payment of Taxes in the event that such Taxes have been paid by Lender pursuant to Section 7.2 hereof. Borrower shall not suffer (and shall not permit Mortgage Borrower to suffer) and shall promptly pay or cause to be paid and discharged (or cause Mortgage Borrower to pay or cause to be paid and discharged any Lien or charge whatsoever which may be or become a Lien or charge against the Properties other than Permitted Encumbrances, and shall promptly pay or cause to be paid for all utility services provided to the Properties. After prior notice to Lender, Borrower, at its own expense, may contest (or cause Mortgage Borrower to contest) by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any Taxes or Other Charges, provided that (a) no Default or Event of Default has occurred and remains uncured; (b) such proceeding shall be permitted under and be conducted in accordance with the provisions of any applicable material other instrument to which Borrower or Mortgage Borrower is subject and shall not constitute a default thereunder and such proceeding shall be conducted in accordance with all Legal Requirements; (c) none of the Collateral, the Senior Mezzanine Collateral, any Individual Property or any part of either or interest in either will be in imminent danger of being sold, forfeited, terminated, cancelled or lost; (d) Borrower shall promptly upon

receipt of a final, non-appealable determination thereof pay (or cause Mortgage Borrower to pay) the amount of any such Taxes or Other Charges, together with all costs, interest and penalties which may be payable in connection therewith; (e) such proceeding shall suspend the collection of such contested Taxes or Other Charges from the applicable Individual Property; and (f) Borrower shall furnish or cause Mortgage Borrower to furnish such security as may be required in the proceeding, or as may be reasonably requested by Lender, to insure the payment of any such Taxes or Other Charges, together with all interest and penalties thereon. Lender may pay over any such cash deposit or part thereof held by Lender to the claimant entitled thereto at any time when, in the judgment of Lender, the entitlement of such claimant is established or any Individual Property (or part thereof or interest therein) shall be in danger of being sold, forfeited, terminated, cancelled or lost or there shall be any danger of the Lien of any Mortgage being primed by any related Lien.

**5.1.3 Litigation.** Borrower shall give prompt notice to Lender of any litigation or governmental proceedings pending or, to Borrower's knowledge, threatened against Borrower, Senior Mezzanine Borrower, Mortgage Borrower, the Collateral, Operating Company, Holdings or Guarantor which, in any such case, might materially adversely affect Borrower's, Senior Mezzanine Borrower's, Mortgage Borrower's, the Collateral's, Operating Company's, Holdings's or Guarantor's condition (financial or otherwise) or business or any Individual Property. Borrower shall not, without the prior written consent of Lender (which may be furnished or withheld at its sole and absolute discretion), give its consent or approval to the settlement of any claim against Borrower, other than a fully insured third party claim, in any amount greater than One Hundred Thousand and No/100 Dollars (\$100,000.00).

**5.1.4 Access to Properties.** Borrower shall cause Mortgage Borrower to permit agents, representatives and employees of Lender and any Noteholder, and prospective purchasers of any Note or any interest therein, to inspect the Properties or any part thereof at reasonable hours upon reasonable advance notice, and Borrower shall cause Operating Company to permit such access by Lender, in each case subject to the rights of tenants under Leases and Hotel guests.

**5.1.5 Notice of Default.** Borrower shall promptly advise Lender of any material Default or Event of Default of which Borrower has knowledge, including any Mortgage Loan Default, Senior Mezzanine Loan Default, Senior Mezzanine Loan Event of Default or Mortgage Loan Event of Default.

**5.1.6 Cooperate in Legal Proceedings.** Borrower shall cooperate fully with Lender with respect to any proceedings before any court, board or other Governmental Authority which may in any way affect the rights of Lender hereunder or any rights obtained by Lender under any of the other Loan Documents and, in connection therewith, permit Lender, at its election, to participate in any such proceedings.

**5.1.7 Perform Loan Documents.** Borrower shall observe, perform and satisfy all the terms, provisions, covenants and conditions of, and shall pay when due all costs, fees and expenses to the extent required under the Loan Documents executed and delivered by, or applicable to, Borrower.

**5.1.8 Award and Insurance Benefits.** Borrower shall cooperate with Lender in obtaining for Lender the benefits of any Awards or Insurance Proceeds lawfully or equitably payable in connection with any Individual Property, and Lender shall be reimbursed for any actual, reasonable out-of-pocket expenses incurred in connection therewith (including actual, reasonable out-of-pocket attorneys' fees and disbursements, and, if reasonably required, the payment by Borrower of the expense of an appraisal on behalf of Lender in case of Casualty or Condemnation affecting any Individual Property or any part thereof) out of such Insurance Proceeds.

**5.1.9 Further Assurances.** Borrower shall and shall cause Mortgage Borrower, Senior Mezzanine Borrower, Guarantor and Operating Company to, at Borrower's sole cost and expense:

(a) furnish to Lender all instruments, documents, boundary surveys, footing or foundation surveys, certificates, plans and specifications, appraisals, title and other insurance reports and agreements, and each and every other document, certificate, agreement and instrument, in each case in such party's possession, not subject to confidentiality restrictions barring the delivery of such materials, and which are either required to be furnished by Borrower or Operating Company pursuant to the terms of the Loan Documents or which are reasonably requested by Lender in connection therewith;

(b) execute and deliver to Lender such documents, instruments, certificates, assignments and other writings, and do such other acts necessary or desirable, to evidence, preserve and/or protect the collateral at any time securing or intended to secure the obligations of Borrower under the Loan Documents, as Lender may reasonably require; and

(c) do and execute all and such further lawful and reasonable acts, conveyances and assurances for the better and more effective carrying out of the intents and purposes of this Agreement and the other Loan Documents, as Lender shall reasonably require from time to time.

**5.1.10 Mortgage Taxes.** Borrower represents that it has caused Mortgage Borrower to pay all state, county and municipal recording and all other taxes imposed upon the execution and recordation of the Mortgage.

**5.1.11 Financial Reporting.** (a) Borrower will keep or will cause to be kept and maintained on a Fiscal Year basis, in accordance with GAAP (or such other accounting basis acceptable to Lender), books, records and accounts reflecting all of the financial affairs of Borrower, Senior Mezzanine Borrower and Mortgage Borrower and all items of income and expense in connection with the operation on an individual basis of the Properties. Lender (at Lender's sole cost and expense) shall have the right from time to time at all times during normal business hours upon reasonable notice to examine the books, records and accounts of Borrower, Senior Mezzanine Borrower and Mortgage Borrower at the office of Borrower or any other Person maintaining such books, records and accounts and to make such copies or extracts thereof as Lender shall desire. After the occurrence and during the continuance of an Event of Default, Borrower shall pay any costs and expenses incurred by Lender to examine Borrower's, Senior Mezzanine Borrower's, Mortgage Borrower's or to the extent permitted under the Operating

Lease, Operating Company's accounting records with respect to the Properties, as Lender shall determine to be necessary or appropriate in the protection of Lender's interest.

(b) Borrower will furnish or cause to be furnished to Lender annually, by no later than April 30, 2009, and thereafter within no more than one hundred twenty (120) days following the end of each Fiscal Year of Borrower, a complete copy of the annual financial statements of the Operating Companies, Mortgage Borrower, Senior Mezzanine Borrower and Borrower (and of no other entity or Person), audited by a "Big Four" accounting firm or other independent certified public accountant acceptable to Lender in accordance with GAAP (or such other accounting basis acceptable to Lender) covering the Properties on a combined basis for such Fiscal Year (and no other Persons, Properties or assets) and containing statements of profit and loss for the Operating Companies, Borrower, Senior Mezzanine Borrower, Mortgage Borrower and the Properties (on a combined basis) and a balance sheet for the Operating Companies, Borrower, Senior Mezzanine Borrower, Mortgage Borrower and the Properties (on a combined basis), in each case showing no other assets than the Properties (and the interests of Operating Companies, Mortgage Borrower, Senior Mezzanine Borrower and Borrower therein). In addition, Borrower will furnish or cause to be furnished to Lender by no later than April 30, 2008 (i) a "balance sheet only audit" prepared by a "Big Four" accounting firm or other independent certified public accountant acceptable to Lender (for the Fiscal Year ending December 31, 2007) and (ii) a complete copy of annual financial statements for the Operating Company, Mortgage Borrower, Senior Mezzanine Borrower and Borrower prepared in accordance with GAAP (or such other accounting basis acceptable to Lender) covering the Operating Companies, Mortgage Borrower, Borrower, Senior Mezzanine Borrower, and the Properties on a combined basis for such Fiscal Year (ending December 31, 2007) and containing statements of profit and loss for the Operating Companies, Mortgage Borrower, Senior Mezzanine Borrower, Borrower and the Properties (in each case, on a combined basis), and a balance sheet for the Operating Companies, Mortgage Borrower, Senior Mezzanine Borrower, Borrower and the Properties (in each case on a combined basis). All such statements (including statements for the Fiscal Year ending December 31, 2007, and thereafter for all statements provided yearly to Lender) shall set forth the financial condition and the results of operations for the Properties for such Fiscal Year, and shall include, but not be limited to, amounts representing Borrower's reasonable and good faith determination of aggregate annual EBITDAR from all of the Properties and capital expenditures (allocated between maintenance and growth) at the Properties (it being acknowledged that Borrower's statement of EBITDAR pursuant to the above provisions of this sentence and the balance of this Section 5.1.11 shall not be binding on Lender and shall be subject to Lender's reasonable review). All such statements (including statements for the Fiscal Year ending December 31, 2007, and thereafter for all statements provided yearly to Lender) shall also set forth unaudited schedules for each Individual Property, detailing the statements of profit and loss and a balance sheet for each Individual Property, as well as gross revenues, gross hotel and casino revenues, EBITDAR and capital expenditures (allocated between maintenance and growth). The annual financial statements, as described above, shall be accompanied by (1) a comparison of the budgeted income and expenses and the actual income and expenses for the prior Fiscal Year, (2) in the case of any financial statements for Fiscal Year 2008 and thereafter, an unqualified opinion of a "Big Four" accounting firm or other independent certified public accountant reasonably acceptable to Lender, (3) room rate reports and RevPAR calculations, and (4) an Officer's Certificate certifying (A) that each annual financial statement presents fairly the financial condition and the results of operations of the Operating Companies,

Borrower, Mortgage Borrower, Senior Mezzanine Borrower and the Properties being reported upon, (B) that such financial statements have been prepared in accordance with GAAP (or such other accounting basis acceptable to Lender) and (C) as of the date thereof whether there exists an event or circumstance which constitutes a Default or Event of Default, and if such Default or Event of Default exists, the nature thereof, the period of time it has existed and the action then being taken to remedy the same. Any audits performed by Borrower (and any audited materials and other information provided to Lender, as required hereunder in order for Borrower to comply with the requirements of this subparagraph (b)) may be performed with respect to the Properties on a “combining basis” (so that a single audit of the Properties, rather than individual audits of each of the separate Properties, may be performed and provided).

(c) Borrower will furnish, or cause to be furnished, to Lender on or before sixty (60) days after the end of each fiscal quarter the following items, accompanied by an Officer’s Certificate stating that such items fairly present the financial condition and results of the Operating Companies, Mortgage Borrower, Senior Mezzanine Borrower, Borrower and the Properties, subject to normal year end adjustments, as applicable: (i) quarterly and year to date operating statements (including Capital Expenditures) noting such information as is necessary and sufficient to fairly represent the financial position and results of operation of the Properties during such quarter, and containing a comparison of budgeted income and expenses and the actual income and expenses together with a detailed explanation of any variances of ten percent (10%) or more between budgeted and actual amounts for such periods, all in form reasonably satisfactory to Lender; and (ii) a calculation reflecting the Debt Service Coverage Ratio, gross revenues, gross hotel and casino revenues, EBITDAR and capital expenditures (allocated between maintenance and growth, in the case for the immediately preceding twelve (12) month period as of the last day of such quarter (it being acknowledged that Borrower’s statement of EBITDAR pursuant to the above provisions of this sentence and the balance of this [Section 5.1.11](#) shall not be binding on Lender and shall be subject to Lender’s reasonable review). Borrower shall provide the statements and calculations required hereunder on both a “combined basis” for all Properties and on an Individual Property-by-Individual Property basis. In addition, such Officer’s Certificate shall also state that the representations and warranties of Borrower set forth in [Section 4.1.30](#) are true and correct as of the date of such certificate and that there are no trade payables outstanding for more than ninety (90) days. In addition, prior to a Securitization or Syndication, Borrower shall be obligated to provide the statements and calculations, as well as the Officer’s Certificate, described in this subparagraph (c) to Lender on a monthly basis (such requirements to be modified as appropriate to reflect the fact that the information shall be required to be provided monthly (e.g., monthly rent rolls, monthly and year-to-date operating statements, a calculation reflecting the Debt Service Coverage Ratio for the immediately preceding twelve (12) month period as of the last day of such month), in each case within no more than thirty (30) days following the end of each calendar month.

(d) For the partial year period commencing on the date hereof, and for each Fiscal Year thereafter, Borrower shall submit to Lender for informational purposes only an Annual Budget not later than the commencement of such period or Fiscal Year in form reasonably satisfactory to Lender.

(e) Intentionally Omitted.

(f) If, at the time one or more Disclosure Documents are being prepared for a public Securitization, Lender expects that Borrower alone or Borrower and one or more Affiliates of Borrower collectively, or the Properties and Related Properties collectively, will be a “**Significant Obligor**”, as that term is defined in Item 1101(k) of Regulation AB (as defined below), Borrower shall furnish to Lender upon request (i) the selected financial data or, if applicable, net operating income, required under Item 1112(b)(1) of Regulation AB, if Lender expects that the principal amount of the Loan together with any other loans made to an Affiliate of Borrower or secured by a Related Property, that is included in a Securitization with the Loan (each, a “**Related Loan**”) as of the cut-off date for such Securitization may, or if the principal amount of the Loan together with any Related Loans as of the cut-off date for such Securitization and at any time during which the Loan and any Related Loans are included in a Securitization does, equal or exceed ten percent (10%) (but less than twenty percent (20%)) of the aggregate principal amount of all loans included or expected to be included, as applicable, in the Securitization or (ii) the financial statements required under Item 1112(b)(2) of Regulation AB, if Lender expects that the principal amount of the Loan together with any Related Loans as of the cut-off date for such Securitization may, or if the principal amount of the Loan together with any Related Loans as of the cut-off date for such Securitization and at any time during which the Loan and any Related Loans are included in a Securitization does, equal or exceed twenty percent (20%) of the aggregate principal amount of all loans included or expected to be included, as applicable, in the Securitization. Such financial data or financial statements shall be furnished to Lender (A) within ten (10) Business Days after written notice from Lender in connection with the preparation of Disclosure Documents for the Securitization, (B) not later than thirty (30) days after the end of each fiscal quarter of Borrower and (C) not later than sixty (60) days after the end of each fiscal year of Borrower; provided, however, that Borrower shall not be obligated to furnish financial data or financial statements pursuant to clauses (B) or (C) of this sentence with respect to any period for which a filing pursuant to the Exchange Act in connection with or relating to the Securitization (an “**Exchange Act Filing**”) is not required. If requested by Lender, in writing, Borrower shall use commercially reasonable efforts to furnish to Lender financial data and/or financial statements for any tenant of any of the Properties (other than a tenant that is a reporting company under the Exchange Act) if, in connection with a Securitization, Lender expects there to be, with respect to such tenant or group of affiliated tenants, a concentration within all of the loans included or expected to be included, as applicable, in the Securitization such that such tenant or group of affiliated tenants would constitute a Significant Obligor. “**Related Property**” shall mean a parcel of real property, together with improvements thereon and personal property related thereto, that is “related”, within the meaning of the definition of Significant Obligor, to any of the Properties. “**Regulation AB**” shall mean Regulation AB under the Securities Act and the Exchange Act, as such Regulation may be amended from time to time.

(g) All financial data and financial statements provided by Borrower, Senior Mezzanine Borrower, Mortgage Borrower and Operating Company hereunder pursuant to Section 5.1.11(f) shall be prepared in accordance with GAAP, and all such financial statements shall meet the requirements of Regulation AB, Regulation S-X, Regulation S-K to the extent applicable and any other applicable legal requirements. All financial statements referred to in clause (ii) of Section 5.1.11(f) shall be audited by independent accountants of Borrower reasonably acceptable to Lender in accordance with Regulation AB, Regulation S-X, Regulation S-K to the extent applicable and all other applicable legal requirements, shall be

accompanied by the manually executed report of the independent accountants thereon, which report shall meet the requirements of Regulation AB, Regulation S-X, Regulation S-K to the extent applicable and all other applicable legal requirements, and shall be further accompanied by a manually executed written consent of the independent accountants, in form and substance reasonably acceptable to Lender, to the inclusion of such financial statements in any Disclosure Document and any Exchange Act Filing and to the use of the name of such independent accountants and the reference to such independent accountants as “experts” in any Disclosure Document and Exchange Act Filing, all of which shall be provided at the same time as the related financial statements are required to be provided, in each case if applicable (i.e., in the case of a public securitization). All financial data and financial statements (audited or unaudited) provided by Borrower under this Section 5.1.11(g) shall be accompanied by an Officer’s Certificate which shall state that such financial statements meet the requirements set forth in the first sentence of this Section 5.1.11(g), to the extent applicable.

(h) If requested by Lender, Borrower shall provide Lender, promptly upon request, with any other or additional financial statements, or financial, statistical or operating information, as Lender shall reasonably determine to be required pursuant to Regulation AB, Regulation S-X, Regulation S-K or any amendment, modification or replacement thereto or other legal requirements in connection with any Disclosure Document or any Exchange Act Filing or as shall otherwise be reasonably requested by the Lender.

(i) In the event Lender reasonably determines, in connection with a Securitization, that the financial data and financial statements required in order to comply with Regulation AB, Regulation S-X, Regulation S-K or any amendment, modification or replacement thereto or other legal requirements are other than as provided herein, then notwithstanding the provisions of Sections 5.1.11(f) and (g), Lender may request, and Borrower shall promptly provide, such other financial statements as Lender determines to be necessary or appropriate for such compliance.

(j) Any reports, statements or other information required to be delivered under this Agreement shall be delivered (i) in paper form, and (ii) if requested by Lender and within the capabilities of Borrower’s data systems without change or modification thereto, in electronic form and prepared using a Microsoft Word for Windows or WordPerfect for Windows files (which files may be prepared using a spreadsheet program and saved as word processing files). Borrower agrees that Lender may disclose information regarding any of the Properties, the Collateral, the Senior Mezzanine Collateral, Mortgage Borrower, Senior Mezzanine Borrower, Borrower and Operating Company that is provided to Lender pursuant to this Section in connection with the Securitization to such parties reasonably requesting such information in connection with such Securitization.

**5.1.12 Business and Operations.** Borrower will, and will cause Mortgage Borrower and Operating Company to, continue to engage in the businesses presently conducted by it as and to the extent the same are necessary for the ownership, maintenance, management and operation of the Properties. Borrower will and will cause Senior Mezzanine Borrower, Mortgage Borrower and Operating Company to qualify to do business and will remain in good standing under the laws of each jurisdiction as and to the extent the same are required for the ownership, maintenance, management and operation of the Properties.

**5.1.13 Title to the Properties.** Borrower will cause Mortgage Borrower to warrant and defend (a) the title to each Individual Property and every part thereof, subject only to Liens permitted hereunder (including Permitted Encumbrances) and (b) the validity and priority of the Liens of the Mortgages and the Assignments of Leases, subject only to Liens permitted hereunder (including Permitted Encumbrances), in each case against the claims of all Persons whomsoever. Borrower shall reimburse Lender for any actual out-of-pocket losses, costs, damages or expenses (including reasonable attorneys' fees and court costs) incurred by Lender if an interest in any Individual Property, other than as permitted hereunder, is claimed by another Person. Borrower will warrant and defend (a) the title to the Collateral and every part thereof, subject only to Liens permitted hereunder and (b) the validity and priority of the Liens of the Pledge Agreement, in each case against the claims of all Persons whomsoever. Borrower shall reimburse Lender for any actual out-of-pocket losses, costs, damages or expenses (including reasonable attorneys' fees and court costs) incurred by Lender if an interest in any part of the Collateral, other than as permitted hereunder, is claimed by another Person.

**5.1.14 Costs of Enforcement.** In the event (a) that any Mortgage encumbering any Individual Property or the Lien of the Pledge Agreement is foreclosed in whole or in part or that any such Mortgage or Pledge Agreement is put into the hands of an attorney for collection, suit, action or foreclosure, (b) of the foreclosure of any mortgage prior to or subsequent to any Mortgage or any Lien prior to or subsequent to the Lien of the Pledge Agreement in which proceeding Mortgage Lender or Lender is made a party or exercises any or all of its rights or remedies under such Mortgage or the Pledge Agreement or any other Loan Documents as and when permitted thereby, or (c) of the bankruptcy, insolvency, rehabilitation or other similar proceeding in respect of Borrower, Senior Mezzanine Borrower, Mortgage Borrower or Operating Company or an assignment by Borrower, Senior Mezzanine Borrower, Mortgage Borrower or Operating Company for the benefit of its creditors, Borrower, its successors or assigns, shall be chargeable with and agrees to pay all reasonable out-of-pocket costs of collection and defense, including reasonable out-of-pocket attorneys' fees and costs, incurred by Lender, Mortgage Borrower, Senior Mezzanine Borrower or Borrower in connection therewith and in connection with any appellate proceeding or post-judgment action involved therein, together with all required service or use taxes.

**5.1.15 Estoppel Statement.** (a) After request by Lender, Borrower shall within ten (10) Business Days (but, provided there exists no Default or Event of Default, no more often than twice during the course of each fiscal year of Borrower) furnish Lender with a statement, duly acknowledged and certified, (i) with respect to the Loan, setting forth (A) the original principal amount of the Note, (B) the unpaid principal amount of the Loan, (C) the Interest Rate of the Loan, (D) the date installments of interest and/or principal were last paid, (E) any offsets or defenses to the payment of the Debt, if any, and (F) that the Note, this Agreement, the Pledge Agreement and the other Loan Documents are valid, legal and binding obligations and have not been modified or if modified, giving particulars of such modification, (ii) with respect to any Senior Mezzanine Loan, setting forth (A) the original principal amount of the applicable Senior Mezzanine Loan, (B) the unpaid principal amount of the Senior Mezzanine Loan, (C) the interest rate of the Senior Mezzanine Loan, (D) the date installments of interest and/or principal were last paid, (E) any offsets or defenses to the payment of the debt, if any, and (F) that the Senior Mezzanine Note, the Senior Mezzanine Loan Agreement and the other Senior Mezzanine Loan Documents are valid, legal and binding obligations and have not been modified or if modified,

giving particulars of such modification and (iii) with respect to the Mortgage Loan, setting forth (A) the original principal amount of the Mortgage Loan, (B) the unpaid principal amount of the Mortgage Loan, (C) the interest rate of the Mortgage Loan, (D) the date installments of interest and/or principal were last paid, (E) any offsets or defenses to the payment of the debt, if any, and (F) that the Mortgage Note, the Mortgage Loan Agreement, the Security Instruments and the other Mortgage Loan Documents are valid, legal and binding obligations and have not been modified or if modified, giving particulars of such modification.

(b) Borrower shall exercise reasonable best efforts to deliver to Lender upon request, tenant estoppel certificates from each space tenant leasing space at the Properties, and shall exercise reasonable best efforts to deliver an estoppel certificate from each Ground Lessor, each in form and substance reasonably satisfactory to Lender provided that Borrower shall not be required to deliver such certificates more frequently than two (2) times in any calendar year.

(c) After request by Borrower, but not more than twice during the course of each year, Lender shall furnish Borrower with a statement setting forth (i) the original principal amount of the Loan, (ii) the unpaid principal amount of the Loan, (iii) the Interest Rate of the Loan, (iv) the date installments of interest and/or principal were last paid, and (v) that the Loan Documents have not been modified or if modified, giving particulars of such modification.

**5.1.16 Loan Proceeds.** Borrower shall use the proceeds of the Loan received by it on the Closing Date only for the purposes set forth in Section 2.1.4.

**5.1.17 Performance by Borrower.** Borrower shall in a timely manner observe, perform and fulfill each and every covenant, term and provision of each Loan Document executed and delivered by, or applicable to, Borrower, and shall not enter into or otherwise suffer or permit any amendment, waiver, supplement, termination or other modification of any Loan Document executed and delivered by, or applicable to, Borrower without the prior consent of Lender. Borrower shall cause Mortgage Borrower and Senior Mezzanine Borrower, in a timely manner, to observe, perform and fulfill each and every covenant, term and provision of each Mortgage Loan Document and Senior Mezzanine Loan Documents executed and delivered by, or applicable to, Mortgage Borrower and Senior Mezzanine Borrower, and shall not cause or permit Mortgage Borrower or Senior Mezzanine Borrower to enter into or otherwise suffer or permit any amendment, waiver, supplement, termination or other modification of any Mortgage Loan Document or Senior Mezzanine Loan Document executed and delivered by, or applicable to, Mortgage Borrower or Senior Mezzanine Borrower without the prior written consent of Lender.

**5.1.18 Confirmation of Representations.** Borrower shall deliver, in connection with any Securitization, (a) one or more Officer's Certificates certifying as to the accuracy of all representations made by Borrower in the Loan Documents as of the date of the closing of such Securitization in all relevant jurisdictions, and (b) certificates of the relevant Governmental Authorities in all relevant jurisdictions indicating the good standing and qualification of Mortgage Borrower, Senior Mezzanine Borrower, Borrower and Holdings as of the date of the Securitization.

**5.1.19 No Joint Assessment.** Borrower shall not, and shall not permit Mortgage Borrower to, suffer, permit or initiate the joint assessment of any Individual Property (a) with

any other real property constituting a tax lot separate from such Individual Property, and (b) which constitutes real property with any portion of such Individual Property which may be deemed to constitute personal property, or any other procedure whereby the lien of any taxes which may be levied against such personal property shall be assessed or levied or charged to such real property portion of the Individual Property, except as required by Legal Requirements.

**5.1.20 Leasing Matters.** (a) Borrower shall not (and shall cause Mortgage Borrower and Guarantor (Operating Lease) not to), without the prior written consent of Lender (and, if a Securitization shall have occurred, Borrower shall have obtained and delivered to Lender a Rating Agency Confirmation) restate, materially modify, materially amend or materially supplement (or permit the restatement, material modification, amendment or supplement of) any Operating Lease or Operating Lease Guaranty (provided, that any modification, amendment or supplement affecting any of the economic terms of any Operating Lease or any of the terms of the Operating Lease Guaranty shall be deemed to be material for purposes hereof), terminate or accept the surrender (or permit the termination or surrender) of any Operating Lease or Operating Lease Guaranty, or release or materially waive (or permit the release or material waiver of) the Operating Company or Guarantor (Operating Lease) from the performance or observance of any obligation or condition under the Operating Leases or Operating Lease Guaranty. In connection with a material modification, Lender may request, and in such event, Borrower shall not effect such modification without, an Additional True Lease Opinion in form and substance reasonably satisfactory to Lender issued by Borrower's counsel (at Borrower's expense). Borrower shall not permit (or cause or permit Mortgage Borrower to permit) the prepayment of any rents under the Operating Leases for more than one (1) month prior to the due date thereof. Notwithstanding the foregoing, Lender's consent shall not be required in connection with any modification, amendment or waiver of any provision of the Operating Lease as may be reasonably necessary to comply with the requirements of this Agreement or any other Loan Document or that makes the provisions of the Operating Lease consistent with the provisions of this Agreement or any other Loan Document. Notwithstanding anything contained in this Section 5.1.20(a) to the contrary, (x) Lender's consent to any amendment, modification or supplement of the Operating Lease (or any new Operating Lease) or the Operating Lease Guaranty may also be conditioned on the delivery by Borrower, upon the reasonable request of Lender, of an Additional Insolvency Opinion and/or an Additional True Lease Opinion acceptable to Lender (and, if a Securitization shall have occurred, acceptable to the Rating Agencies), and (y) Lender's consent to any assignment of any Operating Lease or Operating Lease Guaranty (or of any interest therein) or any material amendment, material modification or material supplement of any Operating Lease shall also be conditioned on the delivery by Borrower, upon the reasonable request of Lender, of an Additional Insolvency Opinion and an Additional True Lease Opinion acceptable to Lender (and, if a Securitization shall have occurred, acceptable to the Rating Agencies).

(b) Borrower shall not permit (or consent to) an assignment by any Operating Company of any such Operating Company's interest(s) under any Operating Lease or an assignment by any Mortgage Borrower of any such Mortgage Borrower's interest(s) under any Operating Lease Guaranty without, in each case, Lender's prior written consent (and, if a Securitization shall have occurred, at Lender's request, without Borrower providing to Lender a Rating Agency Confirmation and an Additional True Lease Opinion).

(c) All space Leases and all renewals of space Leases executed after the date hereof entered into by Operating Company shall (i) provide for rental rates, rent credits and free rent periods comparable to existing local market rates for comparable properties, (ii) be on commercially reasonable terms, (iii) provide that such Lease is subordinate to the Mortgage encumbering the Individual Property in question and that the lessee will attorn to Mortgage Lender and any purchaser at a foreclosure sale; (iv) not contain any terms which would materially adversely affect Lender's rights under the Loan Documents; (v) not grant to the Tenants thereunder any option or right to purchase the applicable Individual Property (or any portion thereof); and (v) in the case of Major Leases, have initial terms less than twenty (20) consecutive years, in each case (unless otherwise consented to by Lender pursuant to clause (d) below).

(d) (i) Any Major Lease entered into by Operating Company with respect to an Individual Property executed after the date hereof (and any renewal of any Major Lease with respect to an Individual Property), and any space Lease or space Lease renewal proposed to be entered into by Operating Company after the date hereof and that does not meet the criteria set forth in Sections 5.1.20(a) and subparagraph (c) above, shall be subject to the prior written approval of Lender, which approval shall not be unreasonably withheld, conditioned or delayed. Borrower shall not terminate or accept the surrender of (and shall not permit Operating Company or Mortgage Borrower to terminate or accept the surrender of) a Major Lease (unless by reason of a tenant default) without the consent of Lender.

(ii) Every submission to Lender of any proposed Major Lease (or Major Lease renewal, amendment, modification or termination) for Lender's approval shall be forwarded to Lender together with a notice from Borrower (in bold typeface) that states "YOUR FAILURE TO RESPOND TO THIS NOTICE AND REQUEST FOR APPROVAL WITHIN TEN (10) BUSINESS DAYS OF YOUR RECEIPT OF THIS NOTICE SHALL CONSTITUTE YOUR DEEMED CONSENT TO THE MATTERS DESCRIBED IN OR THAT ARE THE SUBJECT OF THIS NOTICE". If Lender responds to Borrower's request by identifying missing documents or materials that are incomplete or inaccurate (and that are the subject of the request for approval), then Borrower shall re-submit such documents or materials to Lender for its approval together with a second notice from Borrower that complies with this section.

(iii) If Lender fails to approve or disapprove any such proposed request or submission attached to a first notice or request sent by Borrower (or the matters that are the subject of the re-submitted notice or request for approval) within ten (10) Business Days of receipt of same, Borrower shall re-submit such instruments or materials to Lender for Lender's approval and give Lender a second notice (in bold typeface) that states "SECOND NOTICE — YOUR FAILURE TO RESPOND TO THIS NOTICE AND REQUEST FOR APPROVAL WITHIN FIVE (5) BUSINESS DAYS OF YOUR RECEIPT OF THIS NOTICE SHALL CONSTITUTE YOUR DEEMED CONSENT TO THE MATTERS DESCRIBED IN OR THAT ARE THE SUBJECT OF THIS NOTICE". If Lender fails to respond to such second notice within five (5) Business Days of receipt of same, then Lender's consent to the proposed request or submission that is the subject of such notice shall be deemed granted.

(e) Borrower shall and shall cause Mortgage Borrower and Operating Company to (i) observe and perform the obligations imposed upon the lessor under the Leases in

a commercially reasonable manner; (ii) enforce the terms, covenants and conditions contained in the Leases upon the part of the lessee thereunder to be observed or performed in a commercially reasonable manner and in a manner not to impair the value of the Individual Property involved; (iii) not collect any of the rents more than one (1) month in advance (other than security deposits); (iv) not execute any other assignment of lessor's interest in the Leases or the Rents (except as contemplated by the Loan Documents); (v) not alter, modify or change the terms of the Leases in a manner inconsistent with the provisions of the Loan Documents; and (vi) execute and deliver at the request of Lender all such further assurances, confirmations and assignments in connection with the Leases as Lender shall from time to time reasonably require.

(f) Upon request, Borrower shall furnish Lender with executed copies of all new Leases or Lease renewals or amendments.

(g) Notwithstanding anything to the contrary contained herein, Borrower shall not enter into (or permit Operating Company or Mortgage Borrower to enter into) a lease of all or substantially all of any Individual Property without Lender's prior consent.

**5.1.21 Alterations.** (a) Borrower shall cause all Alterations with respect to any portion of any of the Properties to be conducted and performed with due diligence in a good and workmanlike manner, and all materials used and work done shall be in accordance with all applicable Legal Requirements. In addition, with respect to the Convention Center Project and the Tower Project, to the extent such projects are pursued, Borrower agrees to cause Mortgage Borrower to (i) diligently pursue each such project to completion in a timely manner, subject to delays arising from Force Majeure events, (ii) cause the work to be performed in connection with each such project in substantial conformance with the plans and specifications for such project, and otherwise in conformity with the Mortgage Loan Agreement, each Senior Mezzanine Loan Agreement and this Agreement, (iii) provide Lender with reasonably detailed monthly progress reports (and such information as Lender shall reasonably request from time to time) regarding the status of the Convention Center Project and the Tower Project, (iv) upon the substantial completion of each such project, provide Lender with evidence of the substantial completion of each such project, copies of final unconditional lien waivers from the general contractors, construction managers or subcontractors for such project (if requested by Lender) and evidence of the final payment of all amounts due in connection with each such project, and a title search for the affected Individual Property indicating that such Individual Property is free from all liens, claims and other encumbrances not previously approved by Lender, and (v) upon final completion of each such project, provide Lender with a final survey acceptable to Lender showing the "as-built" location of the completed Improvements and all easements appurtenant thereto, and "as-built" plans and specifications for Lender's file and a certificate of occupancy to the extent issued by the relevant Governmental Authority.

(b) Borrower shall obtain Lender's prior consent to (i) any Material Alterations (unless collateral or a completion guaranty is provided as set forth in subparagraph (c) below) or (ii) any Alterations to any of the Improvements (even if otherwise described in clause (i) above) that is reasonably likely to have an Individual Material Adverse Effect. Lender's consent shall not be required for any Alterations other than the Alterations described in the preceding sentence. Notwithstanding any provision hereof to the contrary, without Lender's consent, not to be unreasonably withheld or delayed, in no event shall Borrower close or shutter,

or undertake or permit any Tenant or other Person to undertake, an Alteration that, alone or together with other work then being undertaken, closes or shutters, more than ten percent (10%) of the income-generating space in any Individual Property at any one time. Prior to undertaking any Alteration with respect to an Individual Property in excess of five percent (5%) of the sum of the Allocated Loan Amount for such Individual Property and the "Allocated Loan Amounts" under (and as defined in each of) the Mortgage Loan Agreement and the Other Mezzanine Loan Agreements for such Individual Property, to afford Lender a prior and reasonable opportunity to determine whether or not the proposed Alteration would have an Individual Material Adverse Effect, Borrower will deliver such plans, specifications, project schedules, logistical plans, construction budgets (including a statement of sources and uses) and such other information as Lender may reasonably request in respect of such Alteration for review by Lender (and its consultants). All reasonable out-of-pocket costs and expenses incurred by Lender in connection with reviewing said Alterations proposal, including, without limitation, reasonable counsel fees and disbursements and Lender's consultants, shall be paid by Borrower. The above-referenced submission to Lender shall be delivered with a notice from Borrower (in bold typeface) that states "YOUR FAILURE TO RESPOND TO THIS NOTICE AND REQUEST FOR APPROVAL WITHIN TEN (10) BUSINESS DAYS OF YOUR RECEIPT OF THIS NOTICE SHALL CONSTITUTE YOUR DEEMED CONSENT TO THE MATTERS DESCRIBED IN OR THAT ARE THE SUBJECT OF THIS NOTICE". If Lender responds to Borrower's request by identifying missing documents or materials that are incomplete or inaccurate (and that are the subject of the request for approval), then Borrower shall re-submit such documents or materials to Lender for its approval together with a second notice from Borrower that complies with this Section. If Lender fails to approve or disapprove any such proposed request or submission attached to a first notice or request sent by Borrower (or the matters that are the subject of the re-submitted notice or request for approval) within ten (10) Business Days of receipt of same, Borrower shall re-submit such instruments or materials to Lender for Lender's approval and give Lender a second notice (in bold typeface) that states "SECOND NOTICE — YOUR FAILURE TO RESPOND TO THIS NOTICE AND REQUEST FOR APPROVAL WITHIN TEN (10) BUSINESS DAYS OF YOUR RECEIPT OF THIS NOTICE SHALL CONSTITUTE YOUR DEEMED CONSENT TO THE MATTERS DESCRIBED IN OR THAT ARE THE SUBJECT OF THIS NOTICE". If Lender fails to respond to such second notice within ten (10) Business Days of receipt of same, then Lender's consent to the proposed request or submission that is the subject of such notice shall be deemed granted.

(c) With respect to any Material Alteration, unless otherwise consented to by Lender, Borrower shall promptly deliver to Mortgage Lender as security for the payment of such amounts and as additional security for Borrower's obligations under the Loan Documents any of the following: (A) cash, (B) U.S. Obligations, (C) other securities having a rating acceptable to Lender and that the applicable Rating Agencies have confirmed in writing will not, in and of itself, result in a downgrade, withdrawal or qualification of the initial, or, if higher, then current ratings assigned to any Securities or any class thereof in connection with any Securitization, (D) a completion and performance bond or an irrevocable letter of credit (payable on sight draft only) issued by an Eligible Institution, or (E) a completion guaranty from an Approved Guarantor in the form attached hereto as Exhibit A (with such changes as Lender shall approve), together with evidence reasonably satisfactory to Lender that the Approved Guarantor has reasonable liquidity taking into account the nature and amount of the guaranteed obligations under such completion guaranty (it being agreed that, if the Approved Guarantor in question is

Holdings, then the amounts available for repayment of such obligations under any revolving credit facility in effect at such time in favor of Harrah's Operating Company, Inc. will be taken into account in determining whether Holdings has reasonable liquidity), and with, if required by applicable Rating Agency requirements, an Additional Insolvency Opinion. Such security, including the amount of the guaranteed obligations under any completion guaranty delivered as aforesaid, shall be in an amount equal to the sum of (i) the excess of the total unpaid amounts with respect to alterations to the Improvements on the applicable Individual Property (other than such amounts to be paid or reimbursed by tenants under the Leases) over the Threshold Amount and (ii) the costs of collection, and, upon the occurrence and during the continuance of an Event of Default, Lender may apply such security from time to time at the option of Lender to pay for such alterations.

**5.1.22 Operation of Properties.** (a) Borrower shall cause Mortgage Borrower to cause each of the Properties to be operated, in all material respects, in accordance with the Operating Leases and in accordance with all applicable Legal Requirements, including Gaming Laws, and all Gaming Licenses and other Operating Permits and in a manner consistent with their respective use as of the Closing Date. Borrower shall cause Operating Company to post all required bonds, if any, with any Gaming Authority as and in the amounts required under all applicable Legal Requirements (and shall, if Lender makes a request therefor, promptly provide Lender with copies of all such bonds).

(b) Borrower shall not, without Lender's prior written consent, permit Operating Company to assign or transfer, and Operating Company shall not, without Lender's prior written consent, assign or transfer, or delegate any responsibilities with respect to, any Gaming License or Operating Permit.

(c) Borrower shall cause Operating Company to make all filings required under the Gaming Laws, or in connection with any Gaming Licenses or Operating Permits, including in connection with the origination of the Mortgage Loan and the Mezzanine Loans, and shall deliver copies of such filings as Lender shall reasonably request to Lender, promptly upon request. Borrower will timely pay all fees, investigative fees and costs required by the Gaming Authorities with respect to any such approvals and licenses. Borrower will and will cause Mortgage Borrower to diligently and comprehensively respond to any inquiries and requests from the Gaming Authorities and promptly file or cause to be filed any additional information required in connection with any required filings as soon as practicable after receipt of requests therefor.

(d) Upon request of Lender, Borrower shall deliver to Lender (or cause Operating Company to deliver to Lender) such evidence of compliance (by Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company and each Individual Property) with all Legal Requirements, including Gaming Laws as shall be reasonably requested by Lender. Borrower shall immediately deliver to Lender (and shall cause Operating Company and Mortgage Borrower to deliver to Lender) any notice of material non-compliance or material violation of any Legal Requirement, or of any material inquiry or investigation commenced by the Gaming Authorities in connection with any of the Properties. Borrower shall immediately notify Lender if it, Senior Mezzanine Borrower, Mortgage Borrower or Operating Company believe that any material license, including any Gaming License, is being or could be revoked or

suspended, or that any action is pending, being considered or being, or could be, taken to revoke or suspend Borrower's, Senior Mezzanine Borrower's, Mortgage Borrower's or Operating Company's material licenses, including the Gaming Licenses, or to fine, penalize or impose remedies upon Borrower, Mortgage Borrower, Senior Mezzanine Borrower or Operating Company, or that any action is pending, being considered, or being, or could be, taken to discontinue, suspend, deny, decrease or recoup any payments due, made or coming due to Borrower, Senior Mezzanine Borrower, Mortgage Borrower or Operating Company, in each case if same might reasonably be expected to have an Individual Material Adverse Effect. Borrower shall immediately deliver to Lender any notice received by Borrower, Senior Mezzanine Borrower, Mortgage Borrower or Operating Company alleging or relating to the material non-compliance by Borrower, Senior Mezzanine Borrower, Mortgage Borrower or Operating Company with any Legal Requirements, including Gaming Laws.

(e) In the event that any of the Operating Leases expire or are terminated (without limiting any obligation of Borrower to obtain Lender's consent to any termination or modification of any of the Operating Leases in accordance with the terms and provisions of this Agreement), Borrower shall cause Mortgage Borrower to promptly enter into a replacement Operating Lease (in form and substance satisfactory to Lender) with Operating Company or another operating company reasonably satisfactory to Lender, provided Borrower will obtain a Rating Agency Confirmation as a condition to the effectiveness of such replacement Operating Lease and that Borrower will cause Guarantor (Operating Lease) to execute and deliver an operating lease guaranty in the same form and substance as the Operating Lease Guaranty.

(f) Borrower shall cause Mortgage Borrower to: (i) promptly perform and/or observe, in all material respects, all of the covenants and agreements required to be performed and observed by it under the Operating Lease and do all things necessary to preserve and to keep unimpaired its material rights thereunder; (ii) promptly notify Lender of any material default under any Operating Lease or Operating Lease Guaranty of which it is aware; (iii) promptly deliver to Lender a copy of each financial statement, business plan, capital expenditures plan, notice, report and estimate received by it under each Operating Lease; and (iv) enforce the performance and observance of all of the material covenants and agreements required to be performed and/or observed by each Operating Company under each Operating Lease and by each Guarantor (Operating Lease) under each Operating Lease Guaranty, in a commercially reasonable manner.

(g) Borrower shall cause Mortgage Borrower to cause the Hotel Components to be at all times open for business as a hotel and the Casino Components to be open for business as a casino, except to the extent necessary to undertake any alterations or repairs (subject to the provisions of this Agreement with respect to the performance of any such alterations or repairs). Borrower shall cause each Individual Property to be at all times operated, managed and maintained, at all times and in the manner and accordance with the standards required pursuant to the Operating Leases and all applicable Legal Requirements in all material respects.

(h) If Mortgage Borrower shall be in material default under any Operating Lease, then, subject to the terms of such Operating Lease, Borrower shall cause Mortgage Borrower (subject to any applicable Legal Requirements) to grant Lender the right (but not the obligation), to cause the default or defaults under such Operating Lease to be remedied and

otherwise exercise any and all rights of Mortgage Borrower under such Operating Lease, as may be necessary to prevent or cure any default provided such actions are necessary to protect Lender's interest under the Loan Documents, and Lender shall have the right to enter all or any portion of the affected Individual Property at such times and in such manner as Lender deems necessary, to prevent or to cure any such default. The actions or payments of Lender to cure any default by Mortgage Borrower under any Operating Lease shall not remove or waive, as between Borrower and Lender, any default that may occur or occurred under this Agreement by virtue of such default by Mortgage Borrower under such Operating Lease. All out-of-pocket sums reasonably expended by Lender to cure any such default shall be paid by Borrower to Lender, upon demand, with interest on such sum at the rate set forth in this Agreement from the date such sum is expended to and including the date the reimbursement payment is made to Lender. All such indebtedness shall be deemed to be secured by the Pledge Agreement and the Collateral.

(i) Borrower shall notify Lender promptly in writing of (i) the occurrence, to Borrower's knowledge, of any material default by any party to any Operating Lease or any Operating Lease Guaranty, (ii) the occurrence, to Borrower's knowledge, of any event that, with the passage of time or service of notice, or both, would constitute a material default by any party under any Operating Lease or any Operating Lease Guaranty, and (iii) the receipt by Borrower or its Affiliate of any notice (written or otherwise) from any party under any Operating Lease or any Operating Lease Guaranty noting or claiming the occurrence of any material default by Borrower under such Operating Lease or such Operating Lease Guaranty.

(j) Borrower shall (subject to any applicable Legal Requirements) promptly cause Mortgage Borrower to execute, acknowledge and deliver to Lender such instruments as may reasonably be required to permit Lender to cure any material default under any Operating Lease or permit Lender to take such other action required to enable Lender to cure or remedy the matter in default and preserve the value of the security interest of Lender under the Loan Documents with respect to the Collateral. Upon the occurrence and during the continuance of an Event of Default, Borrower irrevocably appoints Lender as its true and lawful attorney-in-fact to do, in its name or otherwise, any and all acts and to execute any and all documents that are necessary to preserve any rights of Mortgage Borrower under or with respect to any Operating Lease, including, without limitation, the right to effectuate any extension or renewal of any Operating Lease, or to preserve any rights of Mortgage Borrower whatsoever in respect of any part of any Operating Lease (and the above powers granted to Lender are coupled with an interest and shall be irrevocable).

(k) With respect to any Operating Lease or any Operating Lease Guaranty, Borrower shall, from time to time, upon ten (10) Business Days' prior written request from Lender, execute, acknowledge and deliver to Lender, a statement containing the following: (A) a statement that such Operating Lease or such Operating Lease Guaranty is unmodified and in full force and effect or, if there have been modifications, that the Operating Lease or the Operating Lease Guaranty is in full force and effect as modified and setting forth such modifications, (B) a statement that Mortgage Borrower is not in default thereunder beyond any applicable grace, cure or notice period or, if any such default shall exist thereunder, a description of such default and the steps being taken to cure such default, (C) a statement that, to Borrower's knowledge, either the other party thereto is not in default thereunder beyond any applicable grace, cure or notice period or, if any such default shall exist thereunder, a description of such default and the steps

being taken to cure such default and (D) such other information with respect to the Operating Lease or the Operating Lease Guaranty as Lender shall reasonably request.

(l) With respect to any Operating Lease, Borrower shall, from time to time, upon ten (10) Business Days of Lender's prior written request from Lender, provide Lender with a statement from each Operating Company containing the following: (A) a statement that such Operating Lease is unmodified and in full force and effect or, if there have been modifications, that the Operating Lease is in full force and effect as modified and setting forth such modifications, (B) a statement that Operating Company is not in default thereunder beyond any applicable grace, cure or notice period or, if any such default shall exist thereunder, a description of such default and the steps being taken to cure such default, (C) a statement that, to Operating Company's knowledge, the Mortgage Borrower is not in default thereunder beyond any applicable grace, cure or notice period or, if any such default shall exist thereunder, a description of such default and the steps being taken to cure such default and (D) such other information with respect to Operating Company, any Operating Lease and/or any Operating Lease Guaranty as Lender shall reasonably request.

(m) With respect to any Operating Lease Guaranty, Borrower shall, from time to time, upon ten (10) Business Days of Lender's prior written request from Lender, provide Lender with a statement from Guarantor (Operating Lease) containing the following: (A) a statement that such Operating Lease Guaranty is unmodified and in full force and effect or, if there have been modifications, that the Operating Lease Guaranty is in full force and effect as modified and setting forth such modifications; (B) a statement that Guarantor (Operating Lease) is not in default thereunder beyond any applicable grace, cure or notice period or, if any such default shall exist thereunder, a description of such default and the steps being taken to cure such default; and (C) such other information with respect to such Guarantor (Operating Lease) and/or Operating Lease Guaranty as Lender shall reasonably request.

**5.1.23 Ground Lease Estoppel.** Borrower shall, on or prior to May 28, 2008, either (i) effect the substitution of the Properties commonly known as "Paris Las Vegas" and "Harrah's Laughlin" for the Individual Properties referred to as "Harrah's Lake Tahoe", "Harvey's Lake Tahoe", "Bill's Lake Tahoe" and "Showboat Atlantic City" as described in Section 2.5.2 of this Agreement or (ii) (x) cause the occurrence of the events set forth in paragraph 1, clause (ii) of the Ground Lease Side Letter and (y) in connection therewith, deliver to Lender updates to its UCC Title Insurance Policy and any endorsements to the Mortgage Borrower's owner's policies delivered to Lender in connection with the closing of the Loan, together with such other documents, instruments and new or updated opinions (including as to enforceability, non-consolidation and true lease matters) as Lender may reasonably request. The failure by Borrower to cause the occurrence of the event described in clause (i) or of the events described in clause (ii) above, on or prior to May 28, 2008 shall constitute a "Ground Lease Estoppel Trigger Event" hereunder, but shall not constitute a Default or an Event of Default hereunder.

**5.1.24 Mortgage Loan Reserve Funds.** Borrower shall cause Mortgage Borrower and Senior Mezzanine Borrower to deposit and maintain each of the Mortgage Loan Reserve Funds and Senior Mezzanine Loan Reserve Funds (if any) as more particularly set forth in Article VII of the Mortgage Loan Agreement and Senior Mezzanine Loan Agreement and to

perform and comply with all the terms and provisions relating thereto. Borrower grants to Lender a first-priority perfected security interest in Borrower's interest in each of the Mortgage Loan Reserve Funds and Senior Mezzanine Loan Reserve Funds, if any, subject to the prior rights of Mortgage Lender and Senior Mezzanine Lender, and any and all monies now or hereafter deposited in each Mortgage Loan Reserve Fund and Senior Mezzanine Loan Reserve Funds as additional security for payment of the Debt to the extent Borrower has an interest in same. Subject to the qualifications regarding Mortgage Lender's and Senior Mezzanine Lender's interest in the Mortgage Loan Reserve Funds and Senior Mezzanine Loan Reserve Funds (as applicable), if any, until expended or applied in accordance with the Mortgage Loan Documents, Senior Mezzanine Loan Documents or the Loan Documents, Borrower's interest in the Mortgage Loan Reserve Funds and Senior Mezzanine Loan Reserve Funds shall constitute additional security for the Debt and upon the occurrence of an Event of Default, Lender may, in addition to any and all other remedies available to Lender, apply any sums then present in any or all of the Mortgage Loan Reserve Funds and Senior Mezzanine Loan Reserve Funds to the payment of the Debt in any order in its sole discretion and/or hold the same as Collateral for the Loan.

**5.1.25 Notices.** Borrower shall give notice, or cause notice to be given to Lender promptly upon the occurrence and during the continuance of an Event of Default and upon any of the following:

(a) any Mortgage Loan Event of Default or Senior Mezzanine Loan Event of Default;

(b) any default or event of default under any contractual obligation of Borrower, or, to the knowledge of Borrower, Senior Mezzanine Borrower, Mortgage Borrower, Operating Company, Principal or Guarantor that could reasonably be expected to have an Individual Material Adverse Affect or an Aggregate Material Adverse Affect;

(c) any litigation or proceeding affecting Borrower, or, to the knowledge of Borrower, affecting any of Mortgage Borrower, Senior Mezzanine Borrower, Operating Company, Principal or Guarantor, which could or could reasonably be expected to have an Individual Material Adverse Effect or an Aggregate Material Adverse Effect; or

(d) a change in the business, operations, property or financial or other condition or prospects of Borrower, or, to the knowledge of Borrower, Senior Mezzanine Borrower, Mortgage Borrower, Operating Company, Principal or Guarantor which could reasonably be expected to have an Individual Material Adverse Affect or an Aggregate Material Adverse Affect.

**5.1.26 Special Distributions.** On each date on which amounts are required to be paid to Lender under any of the Loan Documents (or required be disbursed to the Mezzanine Collection Account, if applicable) Borrower shall exercise its rights under the First Mezzanine Borrower Company Agreement to cause Senior Mezzanine Borrower to make to Borrower a distribution in an aggregate amount such that Lender shall receive the amount required to be disbursed to the Mezzanine Collection Account or otherwise paid to Lender on such date.

**5.1.27 Curing.** Lender shall have the right, but shall not have the obligation, to exercise Borrower's rights under the First Mezzanine Borrower Company Agreement (a) to cure a Mortgage Loan Default, or Senior Mezzanine Loan Default, (b) to cure a Mortgage Loan Event of Default, or Senior Mezzanine Loan Event of Default, (c) to satisfy any Liens, claims or judgments against the Properties (except for Liens permitted by the Mortgage Loan Documents or Senior Mezzanine Loan Documents), (d) to satisfy any Liens, claims or judgments against the Senior Mezzanine Collateral, in the case of either (a), (b) or (c), unless Borrower, Senior Mezzanine Borrower or Mortgage Borrower shall be diligently pursuing remedies to cure the Mortgage Loan Default, the Senior Mezzanine Loan Default, the Senior Mezzanine Loan Event of Default or Mortgage Loan Event of Default or to satisfy any such Liens, claims or judgments, in either case to Lender's sole satisfaction. Borrower shall reimburse Lender on demand for any and all costs incurred by Lender in connection with curing any such Mortgage Loan Default, Senior Mezzanine Loan Default, Mortgage Loan Event of Default or Senior Mezzanine Loan Event of Default or satisfying any Liens, claims or judgments against any of the Properties or the Senior Mezzanine Collateral.

**5.1.28 Senior Borrower Covenants.** Borrower shall cause Mortgage Borrower and Senior Mezzanine Borrower to comply with all obligations with which Mortgage Borrower and/or Senior Mezzanine Borrower have covenanted to comply under the Mortgage Loan Agreement, Senior Mezzanine Loan Agreement, all Senior Mezzanine Loan Documents and all other Mortgage Loan Documents, as applicable (including, without limitation, those certain affirmative and negative covenants set forth in Article V of the Mortgage Loan Agreement and Senior Mezzanine Loan Agreement), unless otherwise consented to in writing by Lender.

**Section 5.2. Negative Covenants.** From the date hereof until payment and performance in full of all obligations of Borrower under the Loan Documents or the earlier release of the Liens of the Collateral in accordance with the terms of this Agreement and the other Loan Documents, Borrower covenants and agrees with Lender that it will not do, directly or indirectly, any of the following (without, in each case, the prior written consent of Lender):

**5.2.1 Operation of Properties.** (a) Borrower shall not cause or permit Mortgage Borrower to, without Lender's prior consent: (i) surrender, terminate or cancel (or permit to be surrendered, terminated or canceled) any of the Operating Leases or any Operating Lease Guaranty; (ii) reduce or consent to the reduction of (or permit the reduction or the consent to the reduction) of the term of any of the Operating Leases; (iii) decrease or consent to any decrease (or permit to be decreased or the consent to the decrease) of the amount of any rent or other charges payable under any of the Operating Leases; (iv) Transfer, convey, assign, sell, mortgage, encumber, pledge, hypothecate, grant a security interest in, grant an option or options with respect to, or otherwise dispose of (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, whether or not for consideration) the Properties or any collateral for the Mortgage Loan (or permit Operating Company to do so), in each case without the prior written consent of Lender or except as expressly permitted in Section 5.2.10, or (v) otherwise modify, change, supplement, alter or amend, or waive or release (or permit to be modified, changed, supplemented, altered, amended, waived or released) any of the rights and remedies of Borrower, Mortgage Borrower or any Operating Company under any of the Operating Leases in any material respect or any Operating Lease Guaranty (provided that Lender shall not unreasonably withhold its consent to any modification, change, supplement, alteration,

amendment, waiver or release of the Operating Lease as may be reasonably necessary to comply with the requirements of this Agreement or any other Loan Document).

(b) During the continuance of an Event of Default, Borrower shall not exercise (and shall not cause or permit Mortgage Borrower to exercise) any rights, make any decisions, grant any approvals or otherwise take any action under any Operating Lease, Operating Lease Guaranty or any management agreement without, in each instance, the prior written consent of Lender, which consent may be withheld in Lender's sole discretion.

**5.2.2 Liens.** (a) Borrower shall not create, incur, assume or suffer to exist any Lien on any of the Collateral, except Liens created by or permitted pursuant to the Loan Documents. Borrower shall not, and shall not cause or permit Mortgage Borrower or Senior Mezzanine Borrower to create, incur, assume or suffer to exist any Lien on any portion of any Individual Property or Senior Mezzanine Collateral or permit any such action to be taken, except:

(i) Permitted Encumbrances;

(ii) Liens created by or permitted pursuant to the Loan Documents, Senior Mezzanine Loan Documents or Mortgage Loan Documents; and

(iii) Liens for Taxes or Other Charges not yet due.

(b) Borrower shall not incur any Indebtedness other than the Loan, shall not permit Mortgage Borrower to incur any Indebtedness other than the Mortgage Loan and Permitted Indebtedness (as defined in the Mortgage Loan Agreement), and shall not permit Senior Mezzanine Borrower to incur any Indebtedness other than the Senior Mezzanine Loans. Borrower shall not permit any Operating Company to incur Indebtedness in excess or other than Permitted Indebtedness (Operating Company).

**5.2.3 Dissolution.** Borrower shall not, and shall not permit Mortgage Borrower, Senior Mezzanine Borrower or Operating Company to, (a) engage in any dissolution, liquidation or consolidation or merger with or into any other business entity, (b) engage in any business activity not related to (i) in the case of Borrower, the ownership of the Collateral, (ii) in the case of Senior Mezzanine Borrower, ownership of the Senior Mezzanine Collateral, (iii) in the case of Mortgage Borrower, the ownership and operation of the Properties and (iv) in the case of Operating Company, the leasing and operation of the Properties, (c) transfer, lease or sell, in one transaction or any combination of transactions, the assets or all or substantially all of the properties or assets of Borrower, Senior Mezzanine Borrower or Mortgage Borrower except to the extent permitted by the Loan Documents, (d) modify (in any material respect), amend (in any material respect), waive or terminate its organizational documents or its qualification and good standing in any jurisdiction or (e) cause Holdings to (i) dissolve, wind up or liquidate or take any action, or omit to take an action, as a result of which Holdings, Senior Mezzanine Borrower or Mortgage Borrower would be dissolved, wound up or liquidated in whole or in part, or (ii) amend (in any material respect), modify (in any material respect), waive or terminate the certificate of incorporation or bylaws of Holdings, Senior Mezzanine Borrower or Mortgage Borrower, in each case, without obtaining the prior consent of Lender.

**5.2.4 Change in Business.** Borrower shall not cause Mortgage Borrower to enter into any line of business other than the ownership and operation of any of the Properties and other activities reasonably ancillary thereto, or make any material change in the scope or nature of its business objectives, purposes or operations, or undertake or participate in activities other than the continuance of its present business. In addition, Borrower shall not permit or cause Mortgage Borrower to cancel or otherwise forgive or release any material claim or debt (other than termination of Leases in accordance herewith) owed to Mortgage Borrower by any Person, except for adequate consideration and in the ordinary cause of Mortgage Borrower's business. Borrower shall not enter into any line of business other than the ownership of the Collateral, or make any material change in the scope or nature of its business objectives, purposes or operations, or undertake or participate in activities other than the continuance of its present business. Borrower shall not allow Senior Mezzanine Borrower to enter into any line of business other than the direct or indirect ownership of the applicable Senior Mezzanine Collateral or make any material change in the scope or nature of its business objectives, purposes or operations, or undertake or participate in activities other than the continuance of its present business.

**5.2.5 Debt Cancellation.** Borrower shall not, and shall not permit Mortgage Borrower, Senior Mezzanine Borrower or Operating Company to, cancel or otherwise forgive or release any claim or debt (other than termination of Leases in accordance herewith) owed to Mortgage Borrower, Borrower or Senior Mezzanine Borrower by any Person, except for adequate consideration and in the ordinary course of Mortgage Borrower's, Borrower's or Senior Mezzanine Borrower's business. In addition, Borrower shall not permit or cause itself, Senior Mezzanine Borrower, or Mortgage Borrower to cancel or otherwise forgive or release any material claim or debt (other than termination of Leases in accordance herewith) owed to Senior Mezzanine Borrower, Borrower or Mortgage Borrower by any Person, except for adequate consideration and in the ordinary course of Mortgage Borrower's, Borrower's or Senior Mezzanine Borrower's business.

**5.2.6 Zoning.** Borrower shall not, and shall not permit Mortgage Borrower or Operating Company to, initiate or consent to any zoning reclassification of any portion of any Individual Property or seek any variance under any existing zoning ordinance or use or permit the use of any portion of any Individual Property in any manner that could result in such use becoming a non-conforming use under any zoning ordinance or any other applicable land use law, rule or regulation, without the prior consent of Lender.

**5.2.7 Ground Lease.** Borrower shall not (or shall not cause or permit Mortgage Borrower or Ground Lease Subsidiary, as applicable, to) (a) fail to pay any rent, additional rent or other charge mentioned in or made payable under any Ground Lease as and when such rent or other charge is due (unless waived in writing by the ground lessor under such Ground Lease), (b) permit to occur any event of default (beyond any applicable notice, grace or cure periods) by any Mortgage Borrower, or Ground Lease Subsidiary, as applicable, as tenant under the related Ground Lease, in the observance or performance of any term, covenant or condition of such Ground Lease on the part of such Mortgage Borrower or Ground Lease Subsidiary, as applicable, to be observed or performed (unless waived in writing by the ground lessor under such Ground Lease), (c) permit any one or more of the events referred to in any Ground Lease to occur which would cause such Ground Lease to terminate without notice or action by the ground lessor under

such Ground Lease or which would entitle such ground lessor to terminate such Ground Lease and the term thereof by giving notice to the related Mortgage Borrower or Ground Lease Subsidiary, as applicable, as tenant thereunder (unless waived in writing by the ground lessor under such Ground Lease), (d) permit the leasehold estate created by any Ground Lease to be surrendered or any Ground Lease to be terminated or canceled for any reason or under any circumstances whatsoever or (e) permit any of the terms, covenants or conditions of any Ground Lease to be materially modified, materially changed, materially supplemented, materially altered, or materially amended without the consent of Lender except as otherwise may be permitted by this Agreement.

**5.2.8 Principal Place of Business and Organization.** Borrower shall not, nor shall Borrower permit Mortgage Borrower, Senior Mezzanine Borrower or Operating Company to, change the place of its organization as set forth in Section 4.1.28 without the consent of Lender, which consent shall not be unreasonably withheld. Upon Lender's request, Borrower shall (and shall cause Mortgage Borrower, Senior Mezzanine Borrower or Operating Company to) execute and deliver additional financing statements, security agreements and other instruments which may be necessary to effectively evidence or perfect Mortgage Lender's security interest in any of the Properties, any Senior Mezzanine Lender's Security Interest in the related Senior Mezzanine Collateral or Lender's security interest in the Collateral as a result of such change of place of organization.

**5.2.9 ERISA.** (a) Borrower shall not engage in any transaction which would cause any obligation, or action taken or to be taken, hereunder (or the exercise by Lender of any of its rights under the Note, this Agreement or the other Loan Documents) to be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under ERISA.

(b) Borrower further covenants and agrees to deliver to Lender such certifications or other evidence from time to time throughout the term of the Loan, as requested by Lender in its sole discretion, that (i) Borrower is not an "employee benefit plan" as defined in Section 3(3) of ERISA, which is subject to Title I of ERISA, or a "governmental plan" within the meaning of Section 3(32) of ERISA; (ii) Borrower is not subject to any state statute regulating investments of, or fiduciary obligations with respect to, governmental plans; and (iii) one or more of the following circumstances is true:

(A) Equity interests in Borrower are publicly offered securities, within the meaning of 29 C.F.R. § 2510.3-101(b)(2);

(B) Less than twenty-five percent (25%) of each outstanding class of equity interests in Borrower is held by "benefit plan investors" within the meaning of 29 C.F.R. § 2510.3-101(f)(2); or

(C) Borrower qualifies as an "operating company" or a "real estate operating company" within the meaning of 29 C.F.R. § 2510.3-101(c) or (e).

**5.2.10 Transfers.** (a) Without the prior consent of Lender and except to the extent otherwise set forth in this Section 5.2.10, Borrower shall not, and shall not permit any other Person holding any direct or indirect legal, economic, beneficial or other ownership interest

in Borrower, the Collateral, the Senior Mezzanine Collateral or one or more of the Properties to, (1) Transfer all or any part of the Collateral, the Senior Mezzanine Collateral or one or more of the Properties, (2) permit any Transfer (directly or indirectly) of any direct or indirect interest in Borrower, or (3) permit any Transfer (directly or indirectly) of any direct or indirect interest in Operating Company or any transfer or assignment or subletting (of all or substantially of any Individual Property) by any Operating Company under any Operating Lease.

(b) A Transfer of (but not a mortgage, pledge, hypothecation, encumbrance or grant of a security interest in) a direct or indirect beneficial interest in Borrower consisting of ownership interests in or at any level above the level of Ninth Mezzanine Borrower shall be permitted without Lender's consent (but subject to the last sentence of Section 5.2.10(d)), provided that (i) immediately prior to such Transfer, no Event of Default shall have occurred and be continuing, (ii) Borrower is at all times Controlled and at least fifty percent (50%) owned (directly or indirectly) by Qualified Transferees, (iii) subsequent to such Transfer, Borrower will continue to be a Special Purpose Entity, (iv) if (1) such Transfer causes the Transferee to own, in the aggregate with the ownership interests of its Affiliates, more than a forty nine percent (49%) interest in Borrower (and the Transferee (together with the ownership interests of its Affiliates) did not, prior to such Transfer, own more than a forty-nine percent (49%) interest in Borrower), or (2) such Transfer, together with all other Transfers by Borrower, whether in a single Transfer or in a series of Transfers and whether or not effected simultaneously, results in a Transfer of more than forty-nine percent (49%) of the aggregate interests in Borrower, then if required by applicable Rating Agency requirements, an acceptable non-consolidation opinion is delivered to the holder of the Loan and to each of the Rating Agencies concerning, as applicable, Borrower, the new Transferee and/or their respective owners, and (v) subsequent to such Transfer, the beneficial ownership of Borrower and Operating Company will be substantially identical. For purposes hereof, Control shall not be deemed absent solely because other parties have veto rights with respect to major decisions. Further, a Change in Control shall be deemed a Transfer hereunder and, unless clauses (ii) through (v) of this Section 5.2.10(b) shall be satisfied, the same shall be an Event of Default hereunder (and for the sake of clarity, nothing else contained in this Section 5.2.10 or this Agreement shall be deemed to limit or qualify the above terms of this sentence).

(c) A Transfer of (but not a mortgage, pledge, hypothecation, encumbrance or grant of a security interest in) a direct or indirect beneficial interest in Operating Company shall be permitted without Lender's consent (but subject to the last sentence of Section 5.2.10(d)), provided that (i) immediately prior to such Transfer, no Event of Default shall have occurred and be continuing, (ii) Operating Company is at all times Controlled and at least fifty percent (50%) owned (directly or indirectly) by Qualified Transferees, and (iii) subsequent to such Transfer, the beneficial ownership of Borrower and Operating Company will be substantially identical. For purposes hereof, Control shall not be deemed absent solely because other parties have veto rights with respect to major decisions.

(d) In the event that a permitted Transfer of more than a forty nine percent (49%) interest in Borrower is made pursuant to this Section 5.2.10, at Borrower's request, Lender shall release Guarantor from (i) the obligations and liabilities under any Guaranty for obligations and liabilities that occurred subsequent to such Transfer, provided that a replacement guarantor(s) reasonably satisfactory to Lender shall have executed and delivered to Lender

replacement guarantees in form and substance substantially similar to the applicable Guaranty, pursuant to which such replacement guarantor(s) expressly assumes all of Guarantor's obligations under the applicable Guaranty for obligations and liabilities arising from and after the date of such Transfer, and (ii) the obligations and liabilities under any Guaranty for obligations and liabilities that occurred either prior or subsequent to such Transfer, provided that a replacement guarantor(s) reasonably satisfactory to Lender shall have executed and delivered to Lender replacement guarantees in form and substance substantially similar to the applicable Guaranty, pursuant to which such replacement guarantor(s) expressly assumes all of Guarantor's obligations under the applicable Guaranty, including those which occurred prior to the Transfer. Notwithstanding the foregoing or anything else that may be construed to the contrary, in no event may Borrower effect a Transfer, or permit or suffer any Transfer, that would result in any loss or impairment of any Gaming License or in any similar event that would have an Individual Property Material Adverse Effect or Aggregate Property Material Adverse Effect.

(e) Notwithstanding the foregoing or anything herein to the contrary, but subject to the final sentence of Section 5.2.10(d), nothing contained in this Agreement or the other Loan Documents shall in any way restrict or prohibit, nor shall any notice to Lender or consent of Lender or Rating Agency Confirmation be required in connection with the Transfer or issuance in the ordinary course of any securities in any Person whose securities are publicly traded on a national exchange (except to the extent that the same would cause a Change of Control) or with an initial public offering of securities issued by Holdings or of subsidiary of Holdings (other than the Borrower and any Mezzanine Borrower (provided that, in the case of an issuance by a subsidiary, such issuance would not cause a Change in Control).

(f) Assumptions of the Loan shall be permitted, provided that the following conditions are satisfied and/or occur to Lender's satisfaction:

(i) such sale has been approved or deemed approved under the Mortgage Loan Documents and Senior Mezzanine Loan Documents and all conditions set forth in the Mortgage Loan Documents and Senior Mezzanine Loan Documents relating thereto have been satisfied;

(ii) an assumption of this Agreement, the Note, the Pledge Agreement and the other Loan Documents as so modified by the proposed transferee, subject to the provisions of Section 9.3 hereof;

(iii) payment of all of reasonable out-of-pocket costs and expenses incurred in connection with such Transfer including, without limitation, the cost of any legal fees and expenses, Rating Agency fees and expenses or required legal opinions;

(iv) the payment of a non-refundable assumption fee equal to Lender's Share of One Million and No/100 Dollars (\$1,000,000) per transaction (effecting an assumption of the Loan) or series of related transactions (effected to implement an assumption of the Loan);

(v) the delivery of an Additional Insolvency Opinion reflecting the proposed transfer satisfactory in form and substance to Lender; and the delivery of an Additional True-Lease Opinion in form and substance satisfactory to Lender;

(vi) the proposed Transferee being Controlled and at least 50% owned, directly or indirectly, by one or more Qualified Transferees;

(vii) the Operating Company being Controlled and at least 50% owned, directly or indirectly, by one or more Qualified Transferees, having sufficient experience (or having a manager that has sufficient experience) in the management of properties similar to the Properties, and such Operating Company or its manager not having materially less than the same level of experience in the operation of properties similar to the Properties as the current Operating Company under the Operating Lease and, in each case, Lender shall be provided with reasonable evidence thereof (and Lender reserves the right to approve the Transferee(s) without approving the substitution of the Operating Company) and the operating tenant shall be either the Operating Company or, if permitted by applicable Legal Requirements, a manager acceptable to Lender under a management agreement acceptable to Lender; provided that so long as the Operating Lease is in force and effect and the current Operating Company shall continue to be the tenant thereunder and owned and Controlled by the same Person(s) that currently own and Control the Operating Company, the condition with respect to the Operating Company set forth in this subclause (vi) shall be deemed to have been met in all respects;

(viii) the delivery of evidence reasonably satisfactory to Lender that the single purpose nature and bankruptcy remoteness of Borrower, its shareholders, partners or members, as the case may be, following such transfers are in accordance with the then current standards of Lender and the Rating Agencies; and the Transferee(s)' continued compliance with the representations and covenants set forth in Section 4.1.30 and Section 5.2.9 hereof;

(ix) Borrower's delivery to Lender of evidence reasonably satisfactory to Lender of any required approval or consent of any Governmental Authority, including the Gaming Authorities, that has direct or indirect authority or oversight over Borrower, Mortgage Borrower, Senior Mezzanine Borrower, the Properties, Operating Company or the operations conducted at the Properties to the change in ownership and/or operator of the Properties (or any part thereof);

(x) prior to any release of the Guarantor, a substitute guarantor reasonably acceptable to Lender shall have assumed all of the obligations of the Guarantor under the Guaranty (FF&E), the Guaranty (Recourse Carveouts), the Operating Lease Guaranty, the Guaranty (Ground Lease Estoppel), any completion guaranty provided under Section 5.1.21 and the Environmental Indemnity or executed replacement guaranties and an environmental indemnity reasonably satisfactory to Lender;

(xi) receipt of evidence satisfactory to Lender that all of the entities which own interests in the transferee similar to the interests in Borrower owned by the Sixth Mezzanine Borrower (1) shall assume the Sixth Mezzanine Loan (if still outstanding) and

all the agreements of Sixth Mezzanine Borrower under the Sixth Mezzanine Loan Documents (and without limiting the foregoing, all of the ownership interests in Borrower, all payments thereon and all proceeds thereof shall be pledged to Lender on terms no less favorable than the pledge of the Collateral under the applicable Pledge Agreement), (2) shall each be a bankruptcy-remote single purpose entity, and (3) shall otherwise have a legal, financial and ownership structure that is (a) substantially the same as the Sixth Mezzanine Borrower or (b) at least as favorable to the Sixth Mezzanine Lender, as determined by the Sixth Mezzanine Lender in its reasonable discretion, as the legal, financial and ownership structure of Sixth Mezzanine Borrower;

(xii) receipt of evidence satisfactory to Lender that all of the entities which own interests in the transferee similar to the interests in Sixth Mezzanine Borrower owned by the Seventh Mezzanine Borrower (1) shall assume the Seventh Mezzanine Loan (if still outstanding) and all the agreements of Seventh Mezzanine Borrower under the Seventh Mezzanine Loan Documents (and without limiting the foregoing, all of the ownership interests in Sixth Mezzanine Borrower, all payments thereon and all proceeds thereof shall be pledged to Lender on terms no less favorable than the pledge of the Collateral under the applicable Pledge Agreement), (2) shall each be a bankruptcy remote single purpose entity, and (3) shall otherwise have a legal, financial and ownership structure that is (a) substantially the same as the Seventh Mezzanine Borrower or (b) at least as favorable to the Seventh Mezzanine Lender, as determined by the Seventh Mezzanine Lender in its reasonable discretion, as the legal, financial and ownership structure of Seventh Mezzanine Borrower;

(xiii) receipt of evidence satisfactory to Lender that all of the entities which own interests in the transferee similar to the interests in Seventh Mezzanine Borrower owned by the Eighth Mezzanine Borrower (1) shall assume the Eighth Mezzanine Loan (if still outstanding) and all the agreements of Eighth Mezzanine Borrower under the Eighth Mezzanine Loan Documents (and without limiting the foregoing, all of the ownership interests in Seventh Mezzanine Borrower, all payments thereon and all proceeds thereof shall be pledged to Lender on terms no less favorable than the pledge of the Collateral under the applicable Pledge Agreement), (2) shall each be a bankruptcy remote single purpose entity, and (3) shall otherwise have a legal, financial and ownership structure that is (a) substantially the same as the Eighth Mezzanine Borrower or (b) at least as favorable to the Eighth Mezzanine Lender, as determined by the Eighth Mezzanine Lender in its reasonable discretion, as the legal, financial and ownership structure of Eighth Mezzanine Borrower; and

(xiv) receipt of evidence satisfactory to Lender that all of the entities which own interests in the transferee similar to the interests in Eighth Mezzanine Borrower owned by the Ninth Mezzanine Borrower (1) shall assume the Ninth Mezzanine Loan (if still outstanding) and all the agreements of Ninth Mezzanine Borrower under the Ninth Mezzanine Loan Documents (and without limiting the foregoing, all of the ownership interests in Eighth Mezzanine Borrower, all payments thereon and all proceeds thereof shall be pledged to Lender on terms no less favorable than the pledge of the Collateral under the applicable Pledge Agreement), (2) shall each be a bankruptcy remote single purpose entity, and (3) shall otherwise have a legal, financial and ownership structure that

is (a) substantially the same as the Ninth Mezzanine Borrower or (b) at least as favorable to the Ninth Mezzanine Lender, as determined by the Ninth Mezzanine Lender in its reasonable discretion, as the legal, financial and ownership structure of Ninth Mezzanine Borrower.

(xv) a written consent to the transfer from the lender under each Mezzanine Loan (and, if any, a Permitted Mezzanine Loan) or receipt by Lender of other evidence satisfactory to Lender that all conditions imposed under the terms of each Mezzanine Loan and Permitted Mezzanine Loan shall have been complied with by the borrower thereunder or otherwise waived by the applicable lender;

(xvi) subsequent to such assumption of the Loan, the beneficial ownership of Borrower and Operating Company will be substantially identical; and

(xvii) the delivery of a new Owner's Title Policy, in an amount equal to the value of the Properties, together with an endorsement to Lender in form and substance reasonably satisfactory to Lender.

Lender agrees to provide a written consent to a transfer pursuant to this Section 5.2.10(f) upon satisfaction of all of the conditions set forth in this Section 5.2.10(f) other than the condition set forth in clause (xvi) of this Section 5.2.10(f).

(g) Restrictions on Transfers set forth herein or in the Pledge shall not apply to (i) the pledge of the Collateral to Lender pursuant to the Pledge Agreement, (ii) the pledge by First Mezzanine Borrower of the ownership interests in Mortgage Borrower as security for the First Mezzanine Loan pursuant to the First Mezzanine Loan Agreement, (iii) the pledge by Second Mezzanine Borrower of the ownership interests in First Mezzanine Borrower as security for the Second Mezzanine Loan pursuant to the Second Mezzanine Loan Agreement, (iv) the pledge by Third Mezzanine Borrower of the ownership interests in Second Mezzanine Borrower as security for the Third Mezzanine Loan pursuant to the Third Mezzanine Loan Agreement, (v) the pledge by Fourth Mezzanine Borrower of the ownership interests in Third Mezzanine Borrower as security for the Fourth Mezzanine Loan pursuant to the Fourth Mezzanine Agreement, (vi) the pledge by Sixth Mezzanine Borrower of the ownership interests in Fifth Borrower as security for the Sixth Mezzanine Loan pursuant to the Sixth Mezzanine Loan Agreement, (vii) the pledge by Seventh Mezzanine Borrower of the ownership interests in Sixth Mezzanine Borrower as security for the Seventh Mezzanine Loan pursuant to the Seventh Mezzanine Loan Agreement, (viii) the pledge by Eighth Mezzanine Borrower of the ownership interests in Seventh Mezzanine Borrower as security for the Eighth Mezzanine Loan pursuant to the Eighth Mezzanine Loan Agreement, (ix) the pledge by Ninth Mezzanine Borrower of the ownership interests in Eighth Mezzanine Borrower as security for the Ninth Mezzanine Loan pursuant to the Ninth Mezzanine Loan Agreement, (x) any pledge pursuant to a New Mezzanine Loan or (xi) the Transfer or pledge of any direct or indirect interest in Holdings, provided that no Change in Control shall occur.

(h) Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Debt immediately due and payable upon a Transfer without Lender's consent. This provision shall apply to every

Transfer regardless of whether voluntary or not, or whether or not Lender has consented to any previous Transfer.

**5.2.11 Operating Lease Subsidiary.** Borrower shall not cause or permit Mortgage Borrower to Transfer any of its interests in Ground Lease Subsidiary without the prior written consent of Lender; Borrower shall not permit Mortgage Borrower to cause or permit Ground Lease Subsidiary to own any assets other than its interests in the Ground Lease or to incur any liabilities other than liabilities under the Ground Lease; Borrower shall not permit Mortgage Borrower to cause or permit Ground Lease Subsidiary to engage in any business other than that related to its ownership of interests in the Ground Lease.

**5.2.12 Limitations on Distributions.** Following the occurrence and during the continuance of an Event of Default, Borrower shall not make any distributions to its members. If any Distributions shall be received by Borrower or any Affiliate of Borrower after the occurrence and during the continuance of an Event of Default, Borrower shall hold, or shall cause the same to be held, in trust for the benefit of Lender.

**5.2.13 Other Limitations.** Prior to the payment in full of the Debt, neither Borrower nor any of its Affiliates shall, without the prior written consent of Lender (which may be furnished or withheld at its sole and absolute discretion), give its consent or approval to any of the following actions or items: the distribution by Mortgage Borrower or Senior Mezzanine Borrower of property other than cash.

**5.2.14 Refinancing.** Borrower shall not consent to or permit a refinancing of the Mortgage Loan or Senior Mezzanine Loan unless it obtains the prior consent of Lender, unless the Loan shall be paid in full in connection with such refinancing in accordance with this Agreement. Borrower shall not consent to or permit a prepayment in full or in part of the Mortgage Loan or Senior Mezzanine Loan unless it obtains the prior consent of Lender, unless the Loan shall likewise be prepaid (in the same proportion, in the case of any partial prepayment) in accordance with this Agreement.

**Section 5.3. General.** For avoidance of doubt, all requirements contained in this Article V with respect to the Operating Company shall mean that it shall be a Default or Event of Default hereunder if Operating Company fails to perform in the specified manner, but Lender acknowledges that Operating Company is not a party to this Agreement and that Borrower does not control Operating Company.

## **VI. INSURANCE; CASUALTY; CONDEMNATION**

**Section 6.1. Insurance.** (a) Borrower shall cause Mortgage Borrower to maintain at all times during the term of the Loan the Policies required under Section 6.1 of the Mortgage Loan Agreement, including, without limitation, meeting all insurer requirements thereunder. In addition, Borrower shall cause Lender to be named “as their interest may appear”, under the Policies required under Sections 6.1(a)(i),(ii),(iii),(iv),(v),(vi),(vii),(viii),(ix),(x) and (xi) of the Mortgage Loan Agreement and as an “additional insured” with respect to liability coverages. Borrower shall also cause all insurance policies required under this Section 6.1 to provide for at least thirty (30) days’ prior notice to Lender in the event of policy cancellation or

material changes. Borrower shall provide Lender with evidence of all such insurance required hereunder on or before the date on which Mortgage Borrower is required to provide such evidence to Mortgage Lender. For purposes of this Agreement, Lender shall have the same approval rights over the insurance referred to above and in the Mortgage Loan Agreement (including, without limitation, the insurers, deductibles and coverages thereunder, as well as the right to require other reasonable insurance pursuant to Section 6.1 of the Mortgage Loan Agreement) as are provided in favor of the Mortgage Lender in the Mortgage Loan Agreement.

(b) If at any time Lender is not in receipt of written evidence that all insurance required hereunder is in full force and effect, Lender shall have the right, without notice to Borrower, to take such action as Lender deems necessary to protect its interest in any of the Properties or the Collateral, including, without limitation, the obtaining of such insurance coverage as Lender in its sole discretion deems appropriate (but limited to the coverages and amounts required under the Mortgage Loan Agreement) and all premiums incurred by Lender in connection with such action or in obtaining such insurance and keeping it in effect shall be paid by Borrower to Lender upon demand and shall bear interest at the Default Rate.

**Section 6.2. Casualty.** If the Individual Property shall be materially damaged or destroyed, in whole or in part, by fire or other casualty (a "Casualty"), Borrower shall give prompt notice of such damage to Lender and shall cause Mortgage Borrower to promptly commence and diligently prosecute the completion of the Restoration of the Individual Property as nearly as possible to the condition the Individual Property was in immediately prior to such Casualty, with such alterations as may be reasonably approved by Lender and otherwise in accordance with Section 6.4 of the Mortgage Loan Agreement. Borrower shall cause Mortgage Borrower to pay all costs of such Restoration whether or not such costs are covered by insurance. Lender may, but shall not be obligated to make proof of loss if not made promptly by Borrower or Mortgage Borrower. In addition, Lender may participate in any settlement discussions with any insurance companies with respect to any Casualty in which the Net Proceeds or the costs of completing the Restoration are equal to or greater than, in the case of each Casualty, an amount equal to five percent (5%) of the sum of the Allocated Loan Amount for the affected Individual Property and the "Allocated Loan Amounts" under (and as defined in each of) the Mortgage Loan Agreement and the Other Mezzanine Loan Agreements for the affected Individual Property, and Borrower shall deliver to Lender all instruments required by Lender to permit such participation.

**Section 6.3. Condemnation.** Borrower shall promptly give Lender notice of the actual or threatened commencement of any proceeding for the Condemnation of any Individual Property and shall cause Mortgage Borrower to deliver to Lender copies of any and all papers served in connection with such proceedings. Lender may participate in any such proceedings, and Borrower shall from time to time deliver to Lender all instruments requested by it to permit such participation. Borrower shall, at its expense, diligently prosecute any such proceedings, and shall consult with Lender, its attorneys and experts, and cooperate with them in the carrying on or defense of any such proceedings. Notwithstanding any taking by any public or quasi-public authority through Condemnation or otherwise (including, but not limited to, any transfer made in lieu of or in anticipation of the exercise of such taking), Borrower shall continue to pay the Debt at the time and in the manner provided for its payment in the Note and in this Agreement and the Debt shall not be reduced until any Award shall have been actually received

and applied by Lender, after the deduction of expenses of collection, to the reduction or discharge of the Debt. Lender shall not be limited to the interest paid on the Award by the condemning authority but shall be entitled to receive out of the Award interest at the rate or rates provided herein or in the Note. If any Individual Property or any portion thereof is taken by a condemning authority, Borrower shall cause Mortgage Borrower to promptly commence and diligently prosecute the Restoration of the applicable Individual Property and otherwise comply with the provisions of Section 6.4 of the Mortgage Loan Agreement. If any Individual Property is sold, through foreclosure or otherwise, prior to the receipt by Lender of the Award, Lender shall have the right, whether or not a deficiency judgment on the Note shall have been sought, recovered or denied, to receive the Award, or a portion thereof sufficient to pay the Debt.

**Section 6.4. Restoration.** Borrower shall, or shall cause Mortgage Borrower to, deliver to Lender all reports, plans, specifications, documents and other materials that are delivered to Mortgage Lender under Section 6.4 of the Mortgage Loan Agreement in connection with the Restoration of any Individual Property after a Casualty or Condemnation.

## VII. RESERVE FUNDS

### **Section 7.1. Intentionally Omitted.**

**Section 7.2. Tax and Insurance Escrow Fund.** (a) If (and for so long as) a Trigger Event shall have occurred and shall not have been cured by a Trigger Event Cure, on each Payment Date during such period, Borrower shall pay to Lender (or Servicer, as directed by Lender) an amount equal to (i) one-twelfth of the Taxes that Lender estimates will be payable during the next ensuing twelve (12) months in order to accumulate with Lender sufficient funds to pay all such Taxes at least thirty (30) days prior to their respective due dates, and (ii) one-twelfth of the Insurance Premiums that Lender estimates will be payable for the renewal of the coverage afforded by the Policies upon the expiration thereof in order to accumulate with Lender sufficient funds to pay all such Insurance Premiums at least thirty (30) days prior to the expiration of the Policies (said amounts in (i) and (ii) above hereinafter called the “**Tax and Insurance Escrow Fund**”). Lender shall apply the Tax and Insurance Escrow Fund to payments of Taxes and Insurance Premiums required to be made by Borrower pursuant to Section 5.1.2 hereof and under the Mortgage Loan Agreement. In making any payment relating to the Tax and Insurance Escrow Fund, Lender may do so according to any bill, statement or estimate procured from the appropriate public office (with respect to Taxes) or insurer or agent (with respect to Insurance Premiums), without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof. If the amount of the Tax and Insurance Escrow Fund shall exceed the amounts due for Taxes and Insurance Premiums pursuant to Section 5.1.2 hereof, provided no Event of Default shall have occurred and be continuing, then Lender shall return any excess to Borrower (or to Operating Company, if so directed by Borrower). In allocating such excess, Lender may deal with the Person shown on the records of Lender to be the owner of the Properties. If at any time Lender reasonably determines that the Tax and Insurance Escrow Fund is not or will not be sufficient to pay Taxes and Insurance Premiums by the dates set forth in (i) and (ii) above, Lender shall notify Borrower of such determination and Borrower shall increase its monthly payments to Lender by the amount that Lender estimates is sufficient to make up the deficiency at least thirty (30) days

prior to the due date of the Taxes and/or thirty (30) days prior to expiration of the Policies, as the case may be.

(b) Notwithstanding the foregoing, Borrower shall not be required to make any deposits into the Tax and Insurance Escrow Fund on account of Insurance Premiums if (and for so long as) Borrower shall maintain a blanket insurance policy in respect of the Properties that is in accordance with the provisions of Section 6.1(a), and otherwise satisfactory to Lender in all material respects.

(c) Any amount remaining in the Tax and Insurance Escrow Fund following the occurrence of a Trigger Event Cure shall be returned to Borrower (or Operating Company, as directed by Borrower).

**7.2.2 Waiver of Tax Escrow.** Borrower shall be relieved of its obligation to make deposits of Tax and Insurance Escrow Fund under Section 7.2 above, provided that (a) Mortgage Borrower or Senior Mezzanine Borrower is required to and does make monthly deposits to a tax escrow account under the Mortgage Loan or Senior Mezzanine Loan, and (b) Lender receives evidence acceptable to it of the making of such deposits and of the payment of all such Taxes.

**7.2.3 Tax and Insurance Escrow Funds After Debt Paid.** Any Tax and Insurance Escrow Funds remaining after the Debt has been paid in full shall be remitted (i) if the Sixth Mezzanine Loan is outstanding, then to the Sixth Mezzanine Lender or (ii) if the Sixth Mezzanine Loan is no longer outstanding, then to the Seventh Mezzanine Lender in accordance with the Sixth Mezzanine Loan Agreement or (iii) if the Sixth Mezzanine Loan and the Seventh Mezzanine Loan are no longer outstanding, then to the Eighth Mezzanine Lender in accordance with the Seventh Mezzanine Loan Agreement or (iv) if the Sixth Mezzanine Loan, the Seventh Mezzanine Loan and the Eighth Mezzanine Loan are no longer outstanding, then to the Ninth Mezzanine Lender in accordance with the Eighth Mezzanine Loan Agreement or (v) if the Sixth Mezzanine Loan, the Seventh Mezzanine Loan, the Eighth Mezzanine Loan and the Ninth Mezzanine Loan are no longer outstanding then to Borrower or, at Borrower's election, shall be credited against the Debt simultaneously with the satisfaction of the balance of the Loan.

### **Section 7.3. FF&E Reserve Account.**

**7.3.1 FF&E Reserve Fund.** (a) Unless Borrower shall have delivered to Lender a Guaranty (FF&E), Borrower shall pay to Lender (or Servicer, as directed by Lender) on each Payment Date an amount equal to (i) one-twelfth of three percent (3%) of the amount of all Revenues for the full calendar year prior to the first (1st) day of the month in which such Payment Date occurs, less (ii) any amount spent during the previous calendar month by Borrower or Operating Company on behalf of Borrower in accordance with the Operating Lease on account of FF&E (other than from the FF&E Reserve Fund, it being understood that amounts expended on account of FF&E from the FF&E Reserve Fund shall not be included in any deductions required pursuant to the preceding subclause (i) and that any FF&E that is purchased through disbursements from the FF&E Reserve Fund may not be subsequently financed by Borrower or Operating Company). Notwithstanding anything to the contrary contained herein, in no event shall Borrower be required to maintain in the FF&E Reserve Account an amount in

excess of the aggregate amount of all FF&E deposits required to be made in the preceding calendar year (as determined, for purposes of this sentence, utilizing the monthly formula set forth in the preceding sentence). In addition, notwithstanding anything to the contrary contained herein, for purposes of determining the amount of any required FF&E Reserve Fund deposits (and for purposes of calculating such amount, monthly, based on the formula set forth in the first sentence of this Section 7.3.1), Revenues shall include Revenue from the Hotel Component and the Casino Component but shall not include non-Hotel or Casino related Revenues (e.g., Rents from retail tenants).

(b) Amounts deposited by Borrower as described in this Section 7.3.1 shall hereinafter be referred to as the “**FF&E Reserve Fund**” and the account in which such amounts are held shall hereinafter be referred to as the “**FF&E Reserve Account**”.

**7.3.2 Disbursements from FF&E Reserve Account.** (a) All disbursements from the FF&E Reserve Account shall be made solely for the purpose of reimbursing Borrower (or Operating Company for FF&E bought on behalf and in the name of Borrower in accordance with the Operating Lease, as directed by Borrower) for its costs and expenses incurred, or for paying costs to be incurred, in connection with the repair, replacement and/or upgrade of FF&E at the Properties. Provided no Event of Default shall have occurred and be continuing, Lender shall, within ten (10) days following request by Borrower, make disbursements from the FF&E Reserve Fund no more frequently than once in any thirty (30) day period, in amounts no less than \$10,000 per disbursement (or a lesser amount if the total amount in the FF&E Reserve Account is less than \$10,000, in which case only one disbursement of the amount remaining in the account shall be made), and upon delivery by Borrower (or Operating Company) of Lender’s standard form of draw request accompanied by copies of invoices for the amounts requested and, if required by Lender for requests in excess of \$50,000 for a single item, receipts and releases from all parties furnishing materials and/or services in connection with the requested payment.

(b) Disbursements may be made from the FF&E Reserve Account, at Borrower’s election, directly to third parties (as directed by Borrower).

(c) In no event shall funds in the FF&E Reserve Account be utilized to pay (or reimburse any Person) for any Capital Expenditures or non-recurring work being performed at the Properties.

**7.3.3 Balance in the FF&E Reserve Account.** (a) The insufficiency of any balance in the FF&E Reserve Account shall not relieve Borrower from its obligation to fulfill all preservation and maintenance covenants in the Loan Documents.

**7.3.4 Waiver of FF&E Reserve.** Borrower shall be relieved of its obligation to make deposits of FF&E Reserve Fund under Section 7.3 above, provided that either (a) (i) Mortgage Borrower or Senior Mezzanine Borrower is required to and does make monthly deposits to a FF&E reserve account under the Mortgage Loan or Senior Mezzanine Loan, and (ii) Lender receives evidence acceptable to it of the making of such deposits or (b) an FF&E Guaranty is provided to Mortgage Lender.

**7.3.5 FF&E Reserve Funds After Debt Paid.** Any FF&E Reserve Funds remaining after the Debt has been paid in full shall be remitted (i) if the Sixth Mezzanine Loan is outstanding, then to the Sixth Mezzanine Lender or (ii) if the Sixth Mezzanine Loan is no longer outstanding, then to the Seventh Mezzanine Lender in accordance with the Sixth Mezzanine Loan Agreement or (iii) if the Sixth Mezzanine Loan and the Seventh Mezzanine Loan are no longer outstanding, then to the Eighth Mezzanine Lender in accordance with the Seventh Mezzanine Loan Agreement or (iv) if the Sixth Mezzanine Loan, the Seventh Mezzanine Loan and the Eighth Mezzanine Loan are no longer outstanding, then to the Ninth Mezzanine Lender in accordance with the Eighth Mezzanine Loan Agreement or (v) if the Sixth Mezzanine Loan, the Seventh Mezzanine Loan, the Eighth Mezzanine Loan and the Ninth Mezzanine Loan are no longer outstanding then to Borrower.

**Section 7.4. Ground Rent Funds.**

**7.4.1 Deposits of Ground Rent Funds.** If (and for so long as) a Trigger Event shall have occurred and shall not have been cured by a Trigger Event Cure, Borrower shall deposit with Lender (or Servicer, as directed by Lender), at least ten (10) Business Days prior to each Payment Date during such period, an amount equal to the Ground Rent that will be payable under the Ground Lease for the month in which such Payment Date occurs. Amounts deposited by Borrower as described in this Section 7.4.1 shall hereinafter be referred to as the “**Ground Rent Reserve Fund**” and the account in which such amounts are held shall hereinafter be referred to as the “**Ground Rent Reserve Account**”. Such deposit may be increased by Lender in the amount Lender deems is necessary in its reasonable discretion based on any increases in the Ground Rent.

**7.4.2 Release of Ground Rent Funds.** Provided no Event of Default has occurred and is continuing, Lender shall apply the Ground Rent Reserve Funds to payments of Ground Rent. In making any payment relating to Ground Rent, Lender may do so according to any bill or statement given by the Ground Lessor without inquiry into the accuracy of such bill or statement or into the validity of any rent, additional rent or other charge thereof. If the amount of the Ground Rent Reserve Funds shall exceed the amounts due for Ground Rent, Lender shall return any excess to Borrower.

**7.4.3 Waiver of Ground Rent Reserve.** Borrower shall be relieved of its obligation to make deposits of Ground Rent Reserve Funds under Section 7.4 above, provided that (a) Mortgage Borrower or Senior Mezzanine Borrower is required to and does make monthly deposits to a ground rent reserve account under the Mortgage Loan or Senior Mezzanine Loan, and (b) Lender receives evidence acceptable to it of the making of such deposits and of the payment of all Ground Rent.

**7.4.4 Ground Rent Reserve Funds After Debt Paid.** Any Ground Rent Reserve Funds remaining after the Debt has been paid in full shall be remitted (i) if the Sixth Mezzanine Loan is outstanding, then to the Sixth Mezzanine Lender or (ii) if the Sixth Mezzanine Loan is no longer outstanding, then to the Seventh Mezzanine Lender in accordance with the Sixth Mezzanine Loan Agreement or (iii) if the Sixth Mezzanine Loan and the Seventh Mezzanine Loan are no longer outstanding, then to the Eighth Mezzanine Lender in accordance with the Seventh Mezzanine Loan Agreement or (iv) if the Sixth Mezzanine Loan, the Seventh

Mezzanine Loan and the Eighth Mezzanine Loan are no longer outstanding, then to the Ninth Mezzanine Lender in accordance with the Eighth Mezzanine Loan Agreement or (v) if the Sixth Mezzanine Loan, the Seventh Mezzanine Loan, the Eighth Mezzanine Loan and the Ninth Mezzanine Loan are no longer outstanding then to Borrower.

**Section 7.5. Reserve Funds, Generally.** (a) Borrower grants to Lender a first-priority perfected security interest in each of the Reserve Funds and any and all monies now or hereafter deposited in each Reserve Fund as additional security for payment of the Debt. Until expended or applied in accordance herewith, the Reserve Funds shall constitute additional security for the Debt. Upon the occurrence and during the continuance of an Event of Default, Lender may, in addition to any and all other rights and remedies available to Lender, apply any sums then present in any or all of the Reserve Funds to the payment of the Debt in any order in its sole discretion. The Reserve Funds shall not constitute trust funds and may be commingled with other monies held by Lender.

(b) Borrower shall not, without obtaining the prior consent of Lender, further pledge, assign or grant any security interest in any Reserve Fund or the monies deposited therein or permit any lien or encumbrance to attach thereto, or any levy to be made thereon, or any UCC-1 Financing Statements, except those naming Lender as the secured party, to be filed with respect thereto.

(c) The Reserve Funds shall be held by Lender (or Servicer) and may be invested at Borrower's election and direction in Permitted Investments routinely offered by the Servicer of the Securitization for investment by Borrower. All interest or other earnings on a Reserve Fund shall be added to and become a part of such Reserve Fund for the benefit of Borrower and shall be disbursed in the same manner as other monies deposited in such Reserve Fund. Borrower shall have the right to direct Lender (or Servicer) to invest sums on deposit in the Eligible Account in Permitted Investments provided (a) such investments are permitted by applicable federal, state and local rules, regulations and laws, (b) the maturity date of the Permitted Investment is not later than the date on which the applicable Reserve Funds are required for payment of an obligation for which such Reserve Fund was created, and (c) no Event of Default shall have occurred and be continuing. Borrower shall be responsible for payment of any federal, state or local income or other tax applicable to the interest or income earned on the Reserve Funds. No other investments of the sums on deposit in the Reserve Funds shall be permitted except as set forth in this **Section 7.5**. Borrower shall bear all reasonable costs associated with the investment of the sums in the account in Permitted Investments. Such costs shall be deducted from the income or earnings on such investment, if any, and to the extent such income or earnings shall not be sufficient to pay such costs, such costs shall be paid by Borrower promptly on demand by Lender. Lender shall have no liability for the rate of return earned or losses incurred on the investment of the sums in Permitted Investments.

(d) Borrower shall indemnify Lender and hold Lender harmless from and against any and all actions, suits, claims, demands, liabilities, losses, damages, obligations and costs and expenses (including litigation costs and reasonable attorneys fees and expenses) arising from or in any way connected with the Reserve Funds or the performance of the obligations for which the Reserve Funds were established. Borrower shall assign to Lender all rights and claims Borrower may have against all Persons supplying labor, materials or other services which are to

be paid from or secured by the Reserve Funds; provided, however, that Lender may not pursue any such right or claim unless an Event of Default has occurred and remains uncured.

**Section 7.6. Transfer of Reserve Funds Under Mortgage Loan and Senior Mezzanine Loan.** If Mortgage Lender or Senior Mezzanine Lender waives any reserves or escrow accounts required in accordance with the terms of the Mortgage Loan Agreement or Senior Mezzanine Loan Agreement which reserves or escrow accounts are also required in accordance with the terms of this Article VII, or if the Mortgage Loan or Senior Mezzanine Loan is refinanced or paid off in full (without a prepayment of the Loan) and Reserve Funds that are required hereunder are not required under the new mortgage loan, if any, then Borrower shall cause any amounts that would have been deposited into any reserves or escrow accounts in accordance with the terms of the Mortgage Loan Agreement or Senior Mezzanine Loan Agreement to be paid to and deposited with Lender in accordance with the terms of this Article VII (and Borrower shall enter into lockbox and cash management agreements for the benefit of Lender in form and substance acceptable to Lender).

## VIII. DEFAULTS

**Section 8.1. Event of Default.** (a) Each of the following events shall constitute an event of default hereunder (an “**Event of Default**”):

- (i) if (A) any portion of the Debt is not paid in full on the Maturity Date, (B) the Debt Service is not paid in full on or before the related Payment Date, or (C) any other portion of the Debt is not paid within five (5) days of when due;
- (ii) if any of the Taxes or Other Charges are not paid (with respect to each Individual Property) prior to Delinquency;
- (iii) if the Policies (with respect to each Individual Property) are not kept in full force and effect, or if certified copies of the Policies (for each Individual Property) are not delivered to Lender upon request (or certificates thereof, if a Policy shall be renewed and certified copies of the Policy are not immediately available upon such renewal (Borrower agreeing in such instance to provide copies of the Policies to Lender promptly thereafter));
- (iv) if Borrower Transfers or otherwise encumbers any portion of the Properties or the Collateral, or there shall otherwise occur a Transfer, without Lender’s prior consent in violation of the provisions of this Agreement, the Pledge Agreement or any other Loan Document or any Transfer is made in violation of the provisions of Section 5.2.10;
- (v) if any representation or warranty made by Borrower or any other Loan Party herein or in any other Loan Document, or in any report, certificate, financial statement or other instrument, agreement or document furnished to Lender shall have been false or misleading in any material respect as of the date the representation or warranty was made (and, with respect to any such breach which is not the subject of any other subsection of this Section 8.1 and which is capable of being cured, Borrower fails

to remedy such condition within ten (10) days following notice to Borrower from Lender, in the case of any such breach which can be cured by the payment of a sum of money, or within thirty (30) days following notice from Lender in the case of any other such breach);

(vi) if Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Principal, Holdings, Operating Company or any Guarantor shall make an assignment for the benefit of creditors;

(vii) if a receiver, liquidator or trustee shall be appointed for Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Principal, Holdings, Operating Company or Guarantor, or if Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Principal, Holdings, Operating Company or Guarantor shall be adjudicated a bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to federal bankruptcy law, or any similar federal or state law, shall be filed by or against, consented to, or acquiesced in by, Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Principal, Holdings, Operating Company or Guarantor, or if any proceeding for the dissolution or liquidation of Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Principal, Holdings, Operating Company or Guarantor shall be instituted; provided, however, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Principal, Holdings, Operating Company or Guarantor, upon the same not being discharged, stayed or dismissed within ninety (90) days;

(viii) if Borrower attempts to assign its rights under this Agreement or any of the other Loan Documents or any interest herein or therein in contravention of the Loan Documents;

(ix) if Borrower breaches any of its respective negative covenants contained in Section 5.2 or any covenant contained in Section 4.1.30 or Section 5.1.11 hereof (and, with respect to any such breach of any covenant set forth in Section 5.1.11 which is not the subject of any other subsection of this Section 8.1, Borrower fails to remedy such condition within ten (10) days after notice to Borrower from Lender, in the case of any such Default under Section 5.1.11 which can be cured by the payment of a sum of money, or for thirty (30) days after notice from Lender in the case of any other such Default under Section 5.1.11);

(x) with respect to any term, covenant or provision set forth herein which specifically contains a notice requirement or grace period, if Borrower shall be in default under such term, covenant or condition after the giving of such notice or the expiration of such grace period;

(xi) if any of the assumptions contained in the Insolvency Opinion delivered to Lender in connection with the Loan, or in the Additional Insolvency Opinion delivered subsequent to the closing of the Loan, is or shall become untrue in any material respect; or if any of the assumptions contained in the True Lease Opinion delivered to Lender in

connection with the Loan, or in the Additional True Lease Opinion delivered subsequent to the closing of the Loan, is or shall become untrue in any material respect;

(xii) if Mortgage Borrower, Operating Company or Guarantor (Operating Lease) is in default of any of its material obligations under the Operating Lease (or under another lease and/or management agreement in substitution for the Operating Lease in accordance herewith) or under the Operating Lease Guaranty (or under another operating lease guaranty in substitution for the Operating Lease Guaranty in accordance herewith) beyond any applicable notice and cure periods contained therein; or if any Operating Lease (or such other lease and/or management agreement) or any Operating Lease Guaranty (or such other operating lease guaranty) shall be surrendered or any Operating Lease or any Operating Lease Guaranty shall be terminated or canceled for any reason or under any circumstances whatsoever, except with the consent of Lender; or if any of the terms, covenants or conditions of the Operating Lease (or such other lease and/or management agreement) or the Operating Lease Guaranty (or such other operating lease guaranty) shall in any manner be modified, changed, supplemented, altered, restated or amended without the consent of Lender except as may otherwise expressly permitted in this Agreement;

(xiii) if any Affiliate of Borrower that is or becomes a party to the Windstorm Insurance Intercreditor Agreement is in default of any of its material obligations under the Windstorm Insurance Intercreditor Agreement beyond any applicable notice and cure periods contained therein; or if the Windstorm Insurance Intercreditor Agreement shall be surrendered, terminated or canceled for any reason or under any circumstances whatsoever, except with the consent of Lender; or if any of the terms, covenants or conditions of the Windstorm Insurance Intercreditor Agreement shall in any manner be modified, changed, supplemented, altered, restated or amended without the consent of Lender;

(xiv) if Borrower, Senior Mezzanine Borrower or Mortgage Borrower fails to comply with the covenants as to Prescribed Laws set forth in Section 5.1.1 hereof;

(xv) if (A) subject to any notice and cure periods contained in the applicable Ground Lease, Mortgage Borrower or Ground Lease Subsidiary, as applicable, shall fail in the payment of any rent, additional rent or other charge mentioned in or made payable by such Ground Lease as and when such rent or other charge is payable (unless waived by the landlord under such Ground Lease), (B) subject to any notice and cure periods contained in the applicable Ground Lease, there shall occur any default by Mortgage Borrower or Ground Lease Subsidiary, as applicable, as tenant under such Ground Lease, in the observance or performance of any term, covenant or condition of the Ground Lease on the part of Mortgage Borrower or Ground Lease Subsidiary, as applicable, to be observed or performed (unless waived by the landlord under the Ground Lease) (other than any such default being contested by Borrower in good faith by appropriate proceedings, provided that (i) no Event of Default has occurred and remains uncured, (ii) such proceeding shall be conducted in accordance with all applicable statutes, laws and ordinances, (iii) in Lender's reasonable determination, the Ground Lease is not in imminent danger of being forfeited, terminated, cancelled or lost and the Operating

Company's use and operation of the ground leased premises in connection with the operation of Harrah's Lake Tahoe", "Harvey's Lake Tahoe" or "Bill's Lake Tahoe" is not in imminent danger of being denied, forfeited, terminated, cancelled or lost and (iv) Borrower shall furnish such security as may be reasonably requested by Lender), (C) any one or more of the events referred to in any Ground Lease shall occur which would cause the Ground Lease to terminate without notice or action by the landlord under the Ground Lease or which would entitle the landlord to terminate the Ground Lease and the term thereof by giving notice to Mortgage Borrower or Ground Lease Subsidiary, as applicable, as tenant thereunder (unless waived by the landlord under the Ground Lease), (D) the leasehold estate created by any Ground Lease shall be surrendered or the Ground Lease shall be terminated or canceled for any reason or under any circumstances whatsoever unless Mortgage Borrower or Ground Lease Subsidiary, as applicable, acquires the fee interest and mortgages same to Lender (unless Mortgage Borrower or Ground Lease Subsidiary, as applicable, acquires the fee interest, with Lender's prior reasonable approval, and mortgages same to Mortgage Lender) or (E) if any of the terms, covenants or conditions of any Ground Lease shall in any manner be modified, changed, supplemented, altered, or amended without the consent of Lender except as otherwise permitted by this Agreement;

(xvi) any Gaming License shall be refused, suspended, revoked, modified in a materially adverse manner or canceled or allowed to lapse or any proceeding is commenced by any Governmental Authority for the purpose of suspending, revoking or canceling any Gaming License in any materially adverse respect, or any Governmental Authority shall have appointed a conservator, supervisor or trustee to or for any of the Casino Components and, in each case of the foregoing, such action could reasonably be expected to (A) have an Individual Material Adverse Effect, (B) materially and adversely effect the continued operation of the Casino Components in the usual course of business and in substantially the same manner and to at least the same standard as was maintained prior to such action, or (C) result in any material decrease in the then expected cash flow and revenues to be derived from the Casino Components;

(xvii) if Borrower shall continue to be in Default under any of the other terms, covenants or conditions of this Agreement not specified in subsections (i) to (xv) above, for ten (10) days after notice to Borrower from Lender, in the case of any Default which can be cured by the payment of a sum of money, or for thirty (30) days after notice from Lender in the case of any other Default; provided, however, that if such non-monetary Default is susceptible of cure but cannot reasonably be cured within such thirty (30) day period and provided further that Borrower shall have commenced to cure such Default within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for such time as is reasonably necessary for Borrower in the exercise of due diligence to cure such Default, such additional period not to exceed one hundred twenty (120) days;

(xviii) if there shall be a default under any of the other Loan Documents beyond any applicable cure periods contained in such documents, whether as to Borrower, Mortgage Borrower, Senior Mezzanine Borrower, the Collateral or any Individual Property, or if any other such event shall occur or condition shall exist, if the effect of

such event or condition is to accelerate the maturity of any portion of the Debt or to permit Lender to accelerate the maturity of all or any portion of the Debt;

(xix) if the Liens created pursuant to any Loan Document shall cease to be a fully protected enforceable first priority security interest in the Collateral, or any portion of the Collateral is Transferred without Lender's prior written consent except as permitted hereunder; or

(xx) if a Mortgage Loan Event of Default or Senior Mezzanine Loan Event of Default shall occur.

(b) Upon the occurrence of an Event of Default (other than an Event of Default described in clauses (vi) or (vii) above) and at any time thereafter, in addition to any other rights or remedies available to it pursuant to this Agreement and the other Loan Documents or at law or in equity, Lender may take such action, without notice or demand, that Lender deems advisable to protect and enforce its rights against Borrower and in and to all or any of the Collateral, including, without limitation, declaring the Debt to be immediately due and payable, and Lender may enforce or avail itself of any or all rights or remedies provided in the Loan Documents and may exercise all the rights and remedies of a secured party under the Uniform Commercial Code, as adopted and enacted by the State or States where any of the Collateral is located against Borrower and any or all of the Collateral, including, without limitation, all rights or remedies available at law or in equity; and upon any Event of Default described in clauses (vi) or (vii) above, the Debt and all other obligations of Borrower hereunder and under the other Loan Documents shall immediately and automatically become due and payable, without notice or demand, and Borrower hereby expressly waives any such notice or demand, anything contained herein or in any other Loan Document to the contrary notwithstanding.

**Section 8.2. Remedies.** (a) Upon the occurrence of an Event of Default, but in compliance with applicable Gaming Laws, all or any one or more of the rights, powers, privileges and other remedies available to Lender against Borrower under this Agreement or any of the other Loan Documents executed and delivered by, or applicable to, Borrower or at law or in equity may be exercised by Lender at any time and from time to time, whether or not all or any of the Debt shall be declared due and payable, and whether or not Lender shall have commenced any foreclosure proceeding or other action for the enforcement of its rights and remedies under any of the Loan Documents with respect to all or any of the Collateral. Any such actions taken by Lender shall be cumulative and concurrent and may be pursued independently, singularly, successively, together or otherwise, at such time and in such order as Lender may determine in its sole discretion, to the fullest extent permitted by law, without impairing or otherwise affecting the other rights and remedies of Lender permitted by law, equity or contract or as set forth herein or in the other Loan Documents. Without limiting the generality of the foregoing, Borrower agrees that if an Event of Default is continuing (i) Lender is not subject to any "one action" or "election of remedies" law or rule, and (ii) all liens and other rights, remedies or privileges provided to Lender shall remain in full force and effect until Lender has exhausted all of its remedies against the Collateral and the Collateral has been foreclosed upon, sold and/or otherwise realized upon in satisfaction of the Debt or the Debt has been paid in full.

(b) With respect to Borrower and the Collateral, nothing contained herein or in any other Loan Document shall be construed as requiring Lender to resort to any portion of the Collateral for the satisfaction of any of the Debt in preference or priority to any other portion of the Collateral, and Lender may seek satisfaction out of all of the Collateral or any part thereof, in its absolute discretion in respect of the Debt. In addition, Lender shall have the right from time to time to partially foreclose upon the Collateral in any manner and for any amounts secured by the Pledge Agreement then due and payable as determined by Lender in its sole discretion including, without limitation, the following circumstances: (i) in the event Borrower defaults beyond any applicable grace period in the payment of one or more scheduled payments of principal and interest, Lender may foreclose upon the Collateral to recover such delinquent payments, or (ii) in the event Lender elects to accelerate less than the entire outstanding principal balance of the Loan, Lender may foreclose upon the Collateral to recover so much of the principal balance of the Loan as Lender may accelerate and such other sums secured by the Collateral as Lender may elect. Notwithstanding one or more partial foreclosures, the Collateral shall remain subject to the Pledge Agreement and the other Loan Documents to secure payment of sums secured by the Pledge Agreement and other Loan Documents and not previously recovered.

(c) Upon the occurrence and during the continuance of an Event of Default, Lender shall have the right from time to time to sever the Note and the other Loan Documents into one or more separate notes, pledges and other security documents (the “**Severed Loan Documents**”) in such denominations as Lender shall determine in its sole discretion for purposes of evidencing and enforcing its rights and remedies provided hereunder. Borrower shall execute and deliver to Lender from time to time, promptly after the request of Lender, a severance agreement and such other documents as Lender shall request in order to effect the severance described in the preceding sentence, all in form and substance reasonably satisfactory to Lender. Borrower hereby absolutely and irrevocably appoints Lender as its true and lawful attorney, coupled with an interest, in its name and stead to make and execute all documents necessary or desirable to effect the aforesaid severance, Borrower ratifying all that its said attorney shall do by virtue thereof; provided, however, Lender shall not make or execute any such documents under such power until three (3) days after notice has been given to Borrower by Lender of Lender’s intent to exercise its rights under such power. Borrower shall be obligated to pay any costs or expenses incurred in connection with the preparation, execution, recording or filing of the Severed Loan Documents. The Severed Loan Documents shall not contain any representations, warranties or covenants not contained in the Loan Documents and any such representations and warranties contained in the Severed Loan Documents will be given by Borrower only as of the Closing Date. The Severed Loan Documents shall (a) not increase the aggregate stated principal amount of the Loan, (b) provide that the weighted average spread of the Loan on the date of such severance shall equal the weighted average spread which was applicable to the Loan immediately prior to such severance (Borrower acknowledging that such Severed Loan Document may, in connection with the application of principal to the amounts evidenced by such Severed Loan Documents, subsequently cause the weighted average spread of such new notes or modified notes to change), (c) not adversely affect the overall economics to Borrower of the Loan, taken as a whole, or (d) expose Borrower to any additional costs or increased risk of any liability (beyond that or greater than that existing in the Loan Documents in effect on the date hereof).

(d) The rights, powers and remedies of Lender under this Agreement shall be cumulative and not exclusive of any other right, power or remedy which Lender may have against Borrower pursuant to this Agreement or the other Loan Documents, or existing at law or in equity or otherwise. Lender's rights, powers and remedies may be pursued singularly, concurrently or otherwise, at such time and in such order as Lender may determine in Lender's sole discretion. No delay or omission to exercise any remedy, right or power accruing upon an Event of Default shall impair any such remedy, right or power or shall be construed as a waiver thereof, but any such remedy, right or power may be exercised from time to time and as often as may be deemed expedient. A waiver of one Default or Event of Default with respect to Borrower shall not be construed to be a waiver of any subsequent Default or Event of Default by Borrower or to impair any remedy, right or power consequent thereon.

(e) Any amounts recovered from the Collateral after an Event of Default may be applied by Lender toward the payment of any interest and/or principal of the Loan and/or any other amounts due under the Loan Documents in such order, priority and proportions as Lender in its sole discretion shall determine.

(f) Upon the occurrence and during the continuance of an Event of Default, Lender may, but without any obligation to do so and without notice to or demand on Borrower and without releasing Borrower from any obligation hereunder or being deemed to have cured any Event of Default hereunder, make, do or perform any obligation of Borrower hereunder in such manner and to such extent as Lender may deem necessary. Borrower shall cause Mortgage Borrower to permit Lender to enter upon any Individual Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in any Individual Property for such purposes, and the cost and expense thereof (including reasonable attorneys' fees to the extent permitted by law), with interest as provided in this Section 8.2, shall constitute a portion of the Debt and shall be due and payable to Lender upon demand. All such costs and expenses incurred by Lender in remedying such Event of Default or such failed payment or act or in appearing in, defending, or bringing any action or proceeding shall bear interest at the Default Rate, for the period after such cost or expense was incurred into the date of payment to Lender. All such costs and expenses incurred by Lender together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and be secured by the liens, claims and security interests provided to Lender under the Loan Documents and shall be immediately due and payable upon demand by Lender therefore. Upon the occurrence and during the continuance of a Senior Mezzanine Loan Event of Default, Lender may, but without any obligation to do so and without notice to or demand on Borrower or Senior Mezzanine Borrower and without releasing Senior Mezzanine Borrower from any obligation under the Senior Mezzanine Loan Documents or being deemed to have cured any Senior Mezzanine Loan Event of Default, make, do or perform any obligation of Senior Mezzanine Borrower under Senior Mezzanine Loan Documents in such manner and to such extent as Lender may deem necessary. All such costs and expenses incurred by Lender in remedying such Senior Mezzanine Loan Event of Default or such failed payment or act shall bear interest at the Default Rate, for the period after such cost or expense was incurred into the date of payment to Lender. All such costs and expenses incurred by Lender together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and be secured by the liens, claims and security interests provided to Lender under the Loan Documents and shall be immediately due and payable upon demand by Lender therefor. Upon the occurrence and during the continuance

of a Mortgage Loan Event of Default, Lender may, but without any obligation to do so and without notice to or demand on Borrower or Mortgage Borrower and without releasing Mortgage Borrower from any obligation under the Mortgage Loan Documents or being deemed to have cured any Mortgage Loan Event of Default, make, do or perform any obligation of Mortgage Borrower under Mortgage Loan Documents in such manner and to such extent as Lender may deem necessary. All such costs and expenses incurred by Lender in remedying such Mortgage Loan Event of Default or such failed payment or act shall bear interest at the Default Rate, for the period after such cost or expense was incurred into the date of payment to Lender. All such costs and expenses incurred by Lender together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and be secured by the liens, claims and security interests provided to Lender under the Loan Documents and shall be immediately due and payable upon demand by Lender therefor.

(g) For the purpose of carrying out the provisions and exercising the rights, powers and privileges granted in this Section 8.2, Borrower hereby irrevocably constitutes and appoints the Lender its true and lawful attorney-in-fact to execute, acknowledge and deliver any instruments and do and perform any acts such as are referred to in this subsection in the name and on behalf of Borrower upon the occurrence and during the continuance of an Event of Default. This power of attorney is a power coupled with an interest and cannot be revoked.

**Section 8.3. Intentionally Omitted.**

**Section 8.4. Costs of Collection.** In the event that after an Event of Default and during the continuance thereof: (a) the Note or any of the Loan Documents is placed in the hands of an attorney for collection or enforcement or is collected or enforced through any legal proceeding; (b) an attorney is retained to represent Lender in any bankruptcy, reorganization, receivership, or other proceedings affecting creditors' rights and involving a claim under the Note or any of the Loan Documents or (c) an attorney is retained to protect or enforce the lien or any of the terms of this Agreement, the Pledge Agreement or any of the Loan Documents, then, in any such instance, Borrower shall pay to Lender all reasonable attorneys' fees, costs and expenses actually incurred in connection therewith, including costs of appeal, together with interest on any judgment obtained by Lender at the Default Rate.

**IX. SPECIAL PROVISIONS**

**Section 9.1. Sale of Notes and Securitization.** Borrower acknowledges and agrees that the Lender may sell all or any portion of the Loan and the Loan Documents, or issue one or more participations therein, or consummate one or more private or public securitizations of rated single- or multi-class securities (the "**Securities**") secured by or evidencing ownership interests in all or any portion of the Loan and the Loan Documents or a pool of assets that include the Loan and the Loan Documents (such sales, participations and/or securitizations, collectively, a "**Securitization**"). At the request of Lender, and to the extent not already required to be provided by Borrower under this Agreement, Borrower shall use reasonable efforts to provide information not in the possession of Lender or which may be reasonably required by Lender in order to satisfy the market standards to which Lender customarily adheres or which may be reasonably required by prospective investors and/or the Rating Agencies in connection with any such Securitization including, without limitation, to:

(a) provide or cause Mortgage Borrower and Senior Mezzanine Borrower to provide additional and/or updated Provided Information, together with appropriate verification and/or consents related to the Provided Information through letters of auditors or opinions of counsel of independent attorneys reasonably acceptable to Lender and the Rating Agencies;

(b) cooperate in good faith in the preparation of descriptive materials for presentations to any or all of the Rating Agencies, and work with, and if requested, supervise, third-party service providers engaged by Borrower, Holdings and their respective affiliates to obtain, collect, and deliver information requested or required by Lender or the Rating Agencies;

(c) deliver, if required or requested by any Rating Agency, (i) updated opinions of counsel as to non-consolidation, due execution and enforceability with respect to the Properties, Borrower, Mortgage Borrower, Senior Mezzanine Borrower, the Collateral, the Senior Mezzanine Collateral, Principal, Holdings and their respective Affiliates and the Loan Documents, and (ii) revised organizational documents for Borrower, which counsel opinions and organizational documents shall be reasonably satisfactory to Lender and the Rating Agencies;

(d) if required by any Rating Agency, use commercially reasonable efforts to deliver such additional tenant estoppel letters, subordination agreements or other agreements from parties to agreements that affect any of the Properties, which estoppel letters, subordination agreements or other agreements shall be reasonably satisfactory to Lender and the Rating Agencies;

(e) execute such amendments to the Loan Documents as may be requested by Lender or the Rating Agencies to effect the Securitization and/or deliver one or more new component notes to replace the original note or modify the original note to reflect multiple components of the Loan such that the pricing and marketability of the Securities and the size of each class of Securities and the rating assigned to each such class by the Rating Agencies shall provide the most favorable rating levels and achieve the optimum rating levels for the Loan, provided that, (i) the aggregate stated principal amount of the notes, following such amendments or delivery of new or component notes, shall equal the aggregate stated principal amount of the Loan immediately prior thereto, (ii) the weighted average spread of the Loan on the date of such amendment or delivery of new or component notes shall equal the weighted average spread which was applicable to the Loan immediately prior to such adjustment (Borrower acknowledging that such new notes or modified notes may, in connection with the application of principal to such new notes or modified note following the occurrence of an Event of Default, but not otherwise, subsequently cause the weighted average spread of such new notes or modified notes to change and (iii) the provisions of Section 2.1.5 otherwise shall apply to any such amendments and delivery of new or component notes (such provisions being incorporated herein by this reference);

(f) if requested by Lender, review any information regarding any of the Properties, Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Principal, the Collateral, the Senior Mezzanine Collateral, Holdings, the Operating Company and the Loan which is contained in a preliminary or final private placement memorandum, prospectus, prospectus supplement (including any amendment or supplement to either thereof), or other disclosure document to be used by Lender or any affiliate thereof; and

(g) supply to Lender such documentation, financial statements and reports in form and substance required in order to comply with any applicable securities laws (to the extent in Borrower's possession, or in the possession of Borrower's advisors, agents or employees), including, without limitation, if applicable, information necessary to comply with any applicable reporting or information requirements under Regulation D under the Securities Act of 1933 or Regulation S under the Securities Act of 1933.

Lender and Borrower each shall pay their respective costs and expenses incurred in connection with the foregoing, including, without limitation, legal fees in connection with any of the foregoing matters; except that all costs and expenses of Lender and Borrower associated with any restructuring of the Loan requested by Lender, including under Sections 2.1.5, 2.1.6 and 2.1.7, shall be paid solely by Lender.

**Section 9.2. Securitization Indemnification.** (a) Borrower understands that certain of the Provided Information may be included in Disclosure Documents in connection with the Securitization and may also be included in filings with the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended (the "**Securities Act**"), or the Securities and Exchange Act of 1934, as amended (the "**Exchange Act**"), or provided or made available to investors or prospective investors in the Securities, the Rating Agencies, and service providers relating to the Securitization. In the event that the Disclosure Document is required to be revised prior to the sale of all Securities, Borrower will cooperate with the holder of the Note in updating the Disclosure Document by providing all current information necessary to keep the Disclosure Document accurate and complete in all material respects to the extent in Borrower's possession.

(b) Borrower agrees to provide, in connection with the Securitization, an indemnification agreement (i) certifying that (A) Borrower has carefully examined the Disclosure Documents, including, without limitation, the sections entitled "Risk Factors," "Special Considerations," "Description of the Collateral," "Description of the Mezzanine Loans," "The Operating Company," "The Borrower" and "Certain Legal Aspects of the Mezzanine Loans," and (B) such sections and such other information in the Disclosure Documents (to the extent such information relates to or includes any Provided Information or any information regarding the Properties, Borrower, Mortgage Borrower, the Collateral, the Senior Mezzanine Collateral and/or Operating Company) (collectively with the Provided Information, the "**Covered Disclosure Information**") do not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, (ii) indemnifying Lender, each Noteholder, JPM (whether or not it is the Lender), any Affiliate of JPM or a Noteholder that has filed any registration statement relating to the Securitization or has acted as the sponsor or depositor in connection with the Securitization, any Affiliate of JPM or a Noteholder that acts as an underwriter, placement agent or initial purchaser of Securities issued in the Securitization, any other co-underwriters, co-placement agents or co-initial purchasers of Securities issued in the Securitization, and each of their respective officers, directors, partners, employees, representatives, agents and Affiliates and each Person or entity who controls any such Person within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act (collectively, the "**Indemnified Persons**"), for any losses, claims, damages, liabilities, costs or expenses (including, without limitation, legal fees and expenses for

enforcement of these obligations (collectively, the “**Liabilities**”)) to which any such Indemnified Person may become subject insofar as the Liabilities arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in the Covered Disclosure Information or arise out of or are based upon the omission or alleged omission to state in the Covered Disclosure Information a material fact required to be stated therein or necessary in order to make the statements in the Covered Disclosure Information, in light of the circumstances under which they were made, not misleading and (iii) agreeing to reimburse each Indemnified Person for any legal or other expenses incurred by such Indemnified Person, as they are incurred, in connection with investigating or defending the Liabilities provided, however, that Borrower shall have liability with respect to Liabilities arising out of or based upon the Covered Disclosure Information only to the extent that such Liabilities arise out of or are based upon any such untrue statement or omission made in the Covered Disclosure Information in reliance upon and in conformity with information furnished to Lender or such Noteholder by or on behalf of Borrower in connection with the preparation of the Disclosure Documents or in connection with the underwriting or the closing of the Loan (including without limitation financial statements of Borrower and operating statements and rent rolls with respect to the Properties), and in no event shall Borrower be liable for Liabilities arising from information contained in a Disclosure Document that was not provided to Borrower for comment at least five (5) Business Days prior to its dissemination or on which Borrower provided comments to Lender in writing and Lender failed to incorporate such comments (assuming such comments were accurate). This indemnity agreement will be in addition to any liability which Borrower may otherwise have. Moreover, the indemnification provided for in clauses (ii) and (iii) above shall be effective whether or not an indemnification agreement described in clause (i) above is provided.

(c) In connection with filings under the Exchange Act (if any), Borrower agrees to indemnify (i) the Indemnified Persons for Liabilities to which any such Indemnified Person may become subject insofar as the Liabilities arise out of or are based upon any untrue statement or alleged untrue statement of any material fact in the Covered Disclosure Information, or the omission or alleged omission to state in the Covered Disclosure Information a material fact required to be stated therein or necessary in order to make the statements in the Covered Disclosure Information, in light of the circumstances under which they were made, not misleading and (ii) reimburse each Indemnified Person for any legal or other expenses incurred by such Indemnified Persons, as they are incurred, in connection with defending or investigating the Liabilities.

(d) Promptly after receipt by an Indemnified Person of notice of any claim or the commencement of any action, the Indemnified Person shall, if a claim in respect thereof is to be made against Borrower, notify Borrower in writing of the claim or the commencement of that action; provided, however, that the failure to notify Borrower shall not relieve it from any liability which it may have under the indemnification provisions of this Section 9.2 except to the extent that it has been materially prejudiced by such failure and, provided, further, that the failure to notify Borrower shall not relieve it from any liability which it may have to an Indemnified Person otherwise than under the provisions of this Section 9.2. If any such claim or action shall be brought against an Indemnified Person, and it shall notify Borrower thereof, Borrower shall be entitled to participate therein and, to the extent that it wishes, assume the defense thereof with counsel reasonably satisfactory to the Indemnified Person. After notice from any Borrower to an Indemnified Person of its election to assume the defense of such claim or action, Borrower shall

not be liable to the Indemnified Person for any legal or other expenses subsequently incurred by the Indemnified Person in connection with the defense thereof except as provided in the following sentence; provided, however, if the defendants in any such action include both Borrower, on the one hand, and one or more Indemnified Persons on the other hand, and an Indemnified Person shall have reasonably concluded that there are any legal defenses available to it and/or other Indemnified Persons that are different or in addition to those available to Borrower, the Indemnified Person or Persons shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on behalf of such Indemnified Person or Persons. The Indemnified Person shall instruct its counsel to maintain reasonably detailed billing records for fees and disbursements for which such Indemnified Person is seeking reimbursement hereunder and shall submit copies of such detailed billing records to substantiate that such counsel's fees and disbursements are solely related to the defense of a claim for which Borrower is required hereunder to indemnify such Indemnified Person. Borrower shall not be liable for the expenses of more than one (1) such separate counsel unless such Indemnified Person shall have reasonably concluded that there may be legal defenses available to it that are different from or additional to those available to another Indemnified Person.

(e) Without the prior consent of the Indemnified Person in question (which consent shall not be unreasonably withheld), Borrower shall not settle or compromise or consent to the entry of any judgment in any pending or threatened claim, action, suit or proceeding in respect of which indemnification may be sought hereunder (whether or not any Indemnified Person is an actual or potential party to such claim, action, suit or proceeding) unless Borrower shall have given such Indemnified Person reasonable prior notice thereof and shall have obtained an unconditional release of each Indemnified Person hereunder from all liability arising out of such claim, action, suit or proceedings. As long as Borrower has complied with its obligations to defend and indemnify hereunder, Borrower shall not be liable for any settlement made by any Indemnified Person without the consent of Borrower (which consent shall not be unreasonably withheld).

(f) Borrower agrees that if any indemnification or reimbursement sought pursuant to this Section 9.2 is finally judicially determined to be unavailable for any reason or is insufficient to hold any Indemnified Person harmless (with respect only to the Liabilities that are the subject of this Section 9.2), then Borrower, on the one hand, and such Indemnified Person, on the other hand, shall contribute to the Liabilities for which such indemnification or reimbursement is held unavailable or is insufficient: (x) in such proportion as is appropriate to reflect the relative benefits to Borrower, on the one hand, and such Indemnified Person, on the other hand, from the transactions to which such indemnification or reimbursement relates; or (y) if the allocation provided by clause (x) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (x) but also the relative faults of Borrower, on the one hand, and all Indemnified Persons, on the other hand, as well as any other equitable considerations. Notwithstanding the provisions of this Section 9.2, (A) no party found liable for a fraudulent misrepresentation shall be entitled to contribution from any other party who is not also found liable for such fraudulent misrepresentation, and (B) Borrower agrees that in no event shall the amount to be contributed by the Indemnified Persons collectively pursuant to this paragraph exceed the amount of the fees

(by underwriting discount or otherwise) actually received by the Indemnified Persons in connection with the closing of the Loan or the Securitization.

(g) Borrower agrees that the indemnification, contribution and reimbursement obligations set forth in this Section 9.2 shall apply whether or not any Indemnified Person is a formal party to any lawsuits, claims or other proceedings. Borrower further agrees that the Indemnified Persons are intended third party beneficiaries under this Section 9.2.

(h) The liabilities and obligations of the Indemnified Persons and Borrower under this Section 9.2 shall survive the termination of this Agreement and the satisfaction and discharge of the Debt.

(i) Notwithstanding anything to the contrary contained herein, Borrower shall have no obligation to act as depositor with respect to the Loan or an issuer or registrant with respect to the Securities issued in any Securitization.

**Section 9.3. Exculpation.** (a) Subject to the qualifications below, Lender shall not enforce the liability and obligation of Borrower to perform and observe the obligations contained in the Note, this Agreement, the Pledge Agreement or the other Loan Documents by any action or proceeding wherein a money judgment shall be sought against Borrower, except that Lender may bring a foreclosure action, an action for specific performance or any other appropriate action or proceeding to enable Lender and each Noteholder to enforce and realize upon its interest under the Note, this Agreement, the Pledge Agreement and the other Loan Documents, or in the Collateral, or any other collateral given to Lender pursuant to the Loan Documents; provided, however, that, except as specifically provided herein, any judgment in any such action or proceeding shall be enforceable against Borrower only to the extent of Borrower's interest in the Collateral and in any other collateral given to Lender, and Lender, by accepting the Note, this Agreement, the Pledge Agreement and the other Loan Documents, agrees that it shall not sue for, seek or demand any deficiency judgment against Borrower in any such action or proceeding under, or by reason of, or in connection with, the Note, this Agreement, the Pledge Agreement or the other Loan Documents. The provisions of this Section shall not, however, (a) constitute a waiver, release or impairment of any obligation evidenced or secured by any of the Loan Documents; (b) impair the right of Lender to name Borrower as a party defendant in any action or suit for foreclosure and sale under the Pledge Agreement; (c) affect the validity or enforceability of or any Guaranty made in connection with the Loan or any of the rights and remedies of Lender thereunder; (d) impair the right of Lender to obtain the appointment of a receiver; (e) intentionally omitted; (f) constitute a prohibition against Lender to seek a deficiency judgment against Borrower in order to fully realize the security granted by the Pledge Agreement or to commence any other appropriate action or proceeding in order for Lender to exercise its remedies against all of the Collateral; or (g) constitute a waiver of the right of Lender to enforce the liability and obligation of Borrower, by money judgment or otherwise, to the extent of any actual loss, damage, cost, expense, liability, claim or other obligation incurred by Lender (including attorneys' fees and costs reasonably incurred) arising out of or in connection with the following:

(i) fraud or intentional misrepresentation by Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor in connection with the execution and delivery of the Loan Documents and/or the Loan;

(ii) the misappropriation, conversion or misapplication in contravention of the Loan Documents by Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor of any funds of Borrower, Senior Mezzanine Borrower, Mortgage Borrower or Operating Company, including, without limitation, (A) any Revenues, (B) any Net Liquidation Proceeds or Insurance Proceeds, (C) any Awards received in connection with a Condemnation, (D) any Rents or security deposits (or any item of Revenue, from whatever source) following an Event of Default, or (E) any distribution or other payments made in connection with any part of the Collateral or Senior Mezzanine Collateral;

(iii) the misappropriation, conversion or misapplication by Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor of any security deposits or Rents paid more than one (1) month in advance;

(iv) any act of actual intentional physical waste by Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor;

(v) the breach of any representation, warranty, covenant or indemnification provision in the Environmental Indemnity Agreement concerning environmental laws, hazardous substances and asbestos and any indemnification of Lender with respect thereto in either document;

(vi) if Borrower, Mortgage Borrower, Senior Mezzanine Borrower or Operating Company fails to obtain Lender's prior consent to any voluntary intentional Transfer as required by this Agreement, the Mortgage Loan Agreement or the Mortgages, as applicable;

(vii) any security deposits, advance deposits or any other deposits collected with respect to any of the Properties which are not delivered to Mortgage Lender upon a foreclosure of any of the Properties or action in lieu thereof, except to the extent any such security deposits were applied in accordance with the terms and conditions of any of the Leases prior to the occurrence of the Event of Default that gave rise to such foreclosure or action in lieu thereof;

(viii) in the event of: (A) Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor filing a voluntary petition under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (B) the filing of an involuntary petition against Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law by any Person in which Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor or any of their respective Affiliates, agents or employees colludes with or such other Person, or Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor soliciting or causing to be solicited petitioning creditors for any involuntary petition against Borrower, Operating Company or any Guarantor from any Person; (C) Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating

Company or any Guarantor filing an answer consenting to or otherwise acquiescing in or joining in any involuntary petition filed against it by any other Person, other than Lender, under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (D) Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor consenting to or acquiescing in or joining in an application for the appointment of a custodian, receiver, trustee, or examiner for Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor or any of the Properties, the Collateral, the Senior Mezzanine Collateral or any portion thereof, other than at the request of Lender; or (E) Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor making an assignment for the benefit of creditors (other than Lender), or admitting, in writing or in any legal proceeding, its insolvency or inability to pay its debts as they become due;

(ix) if Borrower, Senior Mezzanine Borrower or Mortgage Borrower fails to maintain its status as a Special Purpose Entity or breaches any material representation or warranty set forth in Section 4.1.30 of this Agreement; and

(x) if Borrower, Mortgage Borrower, Senior Mezzanine Borrower or Operating Company fails to obtain Lender's prior consent to any voluntary Indebtedness (other than (x) with respect to Mortgage Borrower, Permitted Indebtedness and (y) with respect to Operating Company, Permitted Indebtedness (Operating Company), as applicable) or voluntary Lien (other than Permitted Encumbrances) encumbering any of the Properties, Senior Mezzanine Collateral or Collateral as required by this Agreement, the Senior Mezzanine Loan Agreement, the Mortgage Loan Agreement, the Pledge Agreement or the Mortgages.

Notwithstanding anything to the contrary under this Agreement, neither any present or future Affiliate of Borrower (other than Guarantor, to the extent provided under the Guaranty) nor any present or future shareholder, officer, director, employee, trustee, beneficiary, advisor, partner, member, principal, participant or agent of or in any Borrower or of or in any person or entity that is or becomes an Affiliate of any Borrower shall have any personal liability, directly or indirectly, under or in connection with the Loan Documents. Neither the negative capital account of any Affiliate of Borrower in Borrower, or in any other Affiliate of Borrower in any other Affiliate of Borrower, nor any obligation of any Affiliate of Borrower in any Borrower to restore a negative capital account or to contribute or loan capital to any Borrower or to any other Affiliate of Borrower shall at any time be deemed to be the property or an asset of any Borrower (or any other Affiliate of Borrower) and neither Lender nor its successors or assigns shall have any right to collect, enforce or proceed against any such negative capital account or obligation to restore, contribute or loan capital.

(b) Notwithstanding anything to the contrary in this Agreement, the Note or any of the Loan Documents, Lender shall not be deemed to have waived any right which Lender may have under Section 506(a), 506(b), 1111(b) or any other provisions of the Bankruptcy Code to file a claim for the full amount of the Indebtedness or to require that all collateral shall

continue to secure all of the Indebtedness owing to Lender in accordance with the Loan Documents.

**Section 9.4. Servicer.** (a) At the option of Lender, the Loan may be serviced by a servicer/trustee (the “**Servicer**”) selected by Lender and Lender may delegate all or any portion of its responsibilities under this Agreement and the other Loan Documents to the Servicer pursuant to a servicing agreement (the “**Servicing Agreement**”) between Lender and Servicer. Lender shall be responsible for any set-up fees or any other initial costs relating to or arising under the Servicing Agreement (arising in connection with the Securitization) and the payment of the monthly servicing fee due to Servicer under the Servicing Agreement, and, unless otherwise specifically set forth herein, Borrower shall be responsible for the payment of all fees and other reasonable out-of-pocket expenses incurred by Servicer resulting from any Borrower requests (for approvals or otherwise) to Servicer.

(b) In the event of a Securitization or syndication, the grant of participations in the Loan or any secondary marketing by Lender, Mortgage Borrower and the Mezzanine Borrowers, collectively may rely upon approvals or consents given by one (1) agent or representative in respect of the Mortgage Lender and the Mezzanine Lenders for the matter in question (which such parties shall designate, and pending further notice from Lender, such agent shall be JPM). Borrower shall only pay legal fees for the outside counsel of one Servicer.

**Section 9.5. Assignments and Participations.** (a) In addition to the rights Lender has under Section 9.1, Lender shall have the right, subject to this Section 9.5, to assign, sell, negotiate, pledge or hypothecate all or any portion of their rights and obligations hereunder (a “**Syndication**”). Except in connection with a Securitization, no Lender shall assign, sell, negotiate, pledge, hypothecate or otherwise transfer all or any portion of its rights in and to the Loan to any other Person (an “**Assignee**”) (a) other than in compliance with Section 9.9 hereof; and (b) unless such transaction shall be an assignment of a constant (and not varying), ratable percentage of such Lender’s interest in the Loan; provided, however, any Lender shall have the right at any time without the consent of or notice to any other Lender or other Person to grant a security interest in all or any portion of such Lender’s interest in the Loan to any Federal Reserve Bank or the central reserve bank or similar authority of any other country to secure any obligation of such Lender to such bank or similar authority (a “**Central Bank Pledge**”). Effective on any such assignment and assumption by the assignee and on compliance with Section 9.9 hereof, the assigning Lender shall have no further liability hereunder with respect to the interest of such Lender that was the subject of such transfer and such Assignee shall be a Lender with respect to such interest, and Borrower shall have the same rights as to such Assignee with respect to such interest from and after the date of such assignment as if such Lender were an original Lender hereunder. Except for a Central Bank Pledge or financing transaction under a repurchase agreement, a Lender making any such assignment shall notify Borrower of same, specifying the Assignee thereof and the amount of the assignment and shall provide such other detail as Borrower may reasonably request to substantiate compliance with the foregoing.

**Section 9.6. Participation.** Lender may, without the consent of the Borrower, in compliance with applicable law, sell participations to one or more banks or other entities (a “**Participant**”), in all or a portion of Lender’s rights and obligations under this Agreement (including all or a portion of the Loan owing to it); provided that (A) Lender’s obligations under

this Agreement shall remain unchanged, (B) Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) the Borrower shall continue to deal solely and directly with Lender in connection with Lender's rights and obligations under this Agreement. The Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.2.3 and 2.2.4 (subject to requirements and limitations therein) to the same extent as if it were a Noteholder and had acquired its interest by assignment pursuant to Section 9.5. Each Lender that sells a participation shall, acting solely for this purpose as an agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each participant's interest in the Loans or other obligations under this Agreement (the "**Participant Register**"). The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each person whose name is recorded in the Participant Register as the owner of such Loan or other obligation hereunder as the owner thereof for all purposes of this Agreement notwithstanding any notice to the contrary.

**Section 9.7. Borrower's Facilitation of Transfer.** In order to facilitate permitted assignments and other transfers to Assignees and sales to Participants, Borrower shall execute and deliver to Lender and shall cause Guarantor to execute and deliver to Lender such further documents, instruments or agreements as Lender may reasonably require, including, if required by Lender, supplemental notes in the principal amount of such Lender's pro rata share of the Loan substantially in the form of such Lender's Note against surrender of the prior notes, and such supplemental note shall (i) be payable to order of such Lender, (ii) be dated as of the date hereof, and (iii) mature on the Maturity Date. Such supplemental note shall provide that it evidences a portion of the existing indebtedness hereunder and under the Notes and not any new or additional indebtedness of Borrower. The term "Note" as used in this Agreement and in all the other Loan Documents shall include all such supplemental notes but exclude any Note it replaces. Notwithstanding the foregoing, such documents, instruments or agreements shall not (a) increase the obligations or liabilities of any such Person hereunder or under the other Loan Documents in excess of the obligations or liabilities intended to be provided herein or in the other Loan Documents or (b) decrease such Person's rights hereunder or under the other Loan Documents to less than what they were prior to the execution of such documents, instruments or agreements. In addition, Borrower agrees to reasonably cooperate with Lender, including providing such information and documentation regarding Borrower, Senior Mezzanine Borrower, Mortgage Borrower, Holdings, the Operating Company and any other Person as Lender or any potential Assignee or Participant may reasonably request and to meet with potential Assignees and Participants upon reasonable notice. Lender and Borrower each shall pay their respective costs and expenses incurred in connection with the foregoing, including, without limitation, legal fees in connection with any of the foregoing matters, except that all costs and expenses of Lender and Borrower associated with any restructuring of the Loan requested by Lender, including under Section 2.1.5, 2.1.6 and 2.1.7, shall be paid solely by Lender.

**Section 9.8. Notice; Registration Requirement.** No Syndication of any part of Lender's interest in and to the Loan shall be effective or permitted under Section 9.5 until (a) an assignment and acceptance agreement in a form reasonably acceptable to Lender (an "**Assignment and Acceptance**") with respect to such Syndication shall have been delivered to Lender, (b) Lender shall have registered such Assignee's name and address in the Register which Lender maintains for the recordation of the names, addresses and interests of Noteholders, and (c) if such Assignee is not already a Lender hereunder, such Assignee shall deliver any tax forms

required hereunder. The entries in the Register shall be conclusive, absent manifest error. This Section 9.8 shall not apply to any Central Bank Pledge.

**Section 9.9. Registry.** Borrower hereby designates Lender to serve as Borrower's agent, solely for purposes of this Section 9.9, to maintain at one of its offices a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the names and addresses of each Assignee, and the principal amount of the Loan (or portions thereof) owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). Failure to make any such recordation, or any error in such recordation shall not affect Borrower's obligations in respect of the Loan. With respect to any Lender, the transfer of the rights to the principal of, and interest on, its interest in the Loan shall not be effective until such transfer is recorded on the Register maintained by Lender with respect to ownership of such Loan and prior to such recordation all amounts owing to the transferor with respect to such Note shall remain owing to the transferor. The registration of a transfer of all or part of the Loan shall be recorded by Lender on the Register only upon the acceptance by Lender of a properly executed and delivered Assignment and Acceptance by the assignor and assignee. At the assigning Lender's option, concurrently with the delivery of an Assignment and Acceptance pursuant to which an interest of such Lender in the Loan was assigned to such Assignee, the assigning Lender shall surrender to Borrower its Note, if any, evidencing the portion of the Loan corresponding to the interest so transferred and Borrower shall deliver to Lender one or more new promissory notes in the same aggregate principal amount issued to the assigning Lender and/or the Assignee.

**Section 9.10. Cooperation in Syndication.** Borrower agrees to assist the Lender in completing a Syndication satisfactory to the Lender. Such assistance shall include (i) direct contact between senior management and advisors of Borrower and the proposed Assignees and/or Participants, (ii) assistance in the preparation of a confidential information memorandum and other marketing materials to be used in connection with the Syndication, (iii) the hosting, with the Lender, of one or more meetings of prospective Assignees and/or Participants, (iv) the delivery of appraisals satisfactory to the Lender if required. To assist the Lender in its Syndication efforts, Borrower agrees promptly to prepare and provide to the Lender all information with respect to Borrower, Senior Mezzanine Borrower, Mortgage Borrower, Holdings, the Operating Company, Guarantor, the Collateral, the Senior Mezzanine Collateral and the Properties contemplated hereby, including all financial information and projections (the "Projections"), as the Lender may reasonably request in connection with the Syndication of the Loan. If required in connection with the Syndication, Borrower hereby agrees to:

(a) deliver updated financial and operating statements and other information reasonably required by the Lender to facilitate the Syndication;

(b) use reasonable efforts to deliver reliance letters reasonably satisfactory to the Lender with respect to the environmental assessments and reports delivered to the Lender prior to the Closing Date, which will run to the Lender and its successors and assigns;

(c) execute modifications to the Loan Documents required by the Lender, provided that such modification will not (except as set forth in (d)) change any material or economic terms of the Loan Documents, or otherwise increase the obligations or decrease the rights of Borrower pursuant to the Loan Documents (except to a de minimis extent); and

(d) if the Lender elects, in its sole discretion, prior to or upon a Syndication, to exercise its rights under Section 2.1.5, Borrower agrees to cooperate with the Lender in connection with the foregoing and to execute the required modifications and amendments to the Notes, this Agreement and the Loan Documents and to use reasonable efforts to provide opinions necessary to effectuate the same. Such Notes or components may be assigned different interest rates, so long as the weighted average of such interest rates does not exceed the Applicable Interest Rate, except in connection with the application of principal to such Notes or components following the occurrence of an Event of Default.

Lender and Borrower each shall pay their respective costs and expenses incurred in connection with the foregoing, including, without limitation, legal fees in connection with any of the foregoing matters, except that all costs and expenses of Lender and Borrower associated with any restructuring of the Loan requested by Lender, including under Sections 2.1.5, 2.1.6 and 2.1.7, shall be paid solely by Lender.

## **X. MISCELLANEOUS**

**Section 10.1. Survival.** This Agreement and all covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the making by Lender of the Loan and the execution and delivery to Lender of the Note, and shall continue in full force and effect so long as all or any of the Debt is outstanding and unpaid unless a longer period is expressly set forth herein or in the other Loan Documents. Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the legal representatives, successors and assigns of such party. All covenants, promises and agreements in this Agreement, by or on behalf of Borrower, shall inure to the benefit of the legal representatives, successors and assigns of Lender.

**Section 10.2. Lender's Discretion.** Whenever pursuant to this Agreement, Lender exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Lender, the decision of Lender to approve or disapprove or to decide whether arrangements or terms are satisfactory or not satisfactory shall (except as is otherwise specifically herein provided) be in the sole discretion of Lender and shall be final and conclusive. Whenever this Agreement expressly provides that Lender may not withhold or shall be reasonable in granting its consent or its approval of an arrangement or term, such provisions shall also be deemed to prohibit Lender from delaying or conditioning such consent or approval.

**Section 10.3. Governing Law.** (a) **THIS AGREEMENT WAS NEGOTIATED IN THE STATE OF NEW YORK, THE LOAN WAS MADE BY LENDER AND ACCEPTED BY BORROWER IN THE STATE OF NEW YORK, AND THE PROCEEDS OF THE LOAN DELIVERED PURSUANT HERETO WERE DISBURSED FROM THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS AND THE OBLIGATIONS ARISING HEREUNDER AND THEREUNDER SHALL BE**

GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA. TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER AND LENDER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVE ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS, AND THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER OR BORROWER ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS MAY AT LENDER'S OPTION BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW AND BORROWER WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND BORROWER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. BORROWER DOES HEREBY DESIGNATE AND APPOINT:

Corporation Service Company  
2711 Centerville Road, Suite 400  
Wilmington, DE 19808

AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON ITS BEHALF SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY FEDERAL OR STATE COURT IN NEW YORK, NEW YORK, AND AGREES THAT SERVICE OF PROCESS UPON SAID AGENT AT SAID ADDRESS AND NOTICE OF SAID SERVICE MAILED OR DELIVERED TO BORROWER IN THE MANNER PROVIDED HEREIN SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON BORROWER IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE STATE OF NEW YORK. BORROWER (I) SHALL GIVE PROMPT NOTICE TO LENDER OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER, (II) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN NEW YORK, NEW YORK (WHICH SUBSTITUTE AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS), AND (III) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE IF ITS AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN NEW YORK, NEW YORK OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR.

**Section 10.4. Modification, Waiver in Writing.** No modification, amendment, extension, discharge, termination or waiver of any provision of this Agreement, or of the Note, or of any other Loan Document, nor consent to any departure by Borrower therefrom, shall in any event be effective unless the same shall be in a writing signed by the party against whom enforcement is sought, and then such waiver or consent shall be effective only in the specific instance, and for the purpose, for which given. Except as otherwise expressly provided herein, no notice to, or demand on Borrower, shall entitle Borrower to any other or future notice or demand in the same, similar or other circumstances. To the extent required by any Gaming Law, Borrower shall notify all relevant Gaming Authorities of any amendment to this Agreement or any Loan Document.

**Section 10.5. Delay Not a Waiver.** Except as expressly set forth herein, neither any failure nor any delay on the part of Lender in insisting upon strict performance of any term, condition, covenant or agreement, or exercising any right, power, remedy or privilege hereunder, or under the Note or under any other Loan Document, or any other instrument given as security therefor, shall operate as or constitute a waiver thereof, nor shall a single or partial exercise thereof preclude any other future exercise, or the exercise of any other right, power, remedy or privilege. In particular, and not by way of limitation, by accepting payment after the due date of any amount payable under this Agreement, the Note or any other Loan Document, Lender shall not be deemed to have waived any right either to require prompt payment when due of all other amounts due under this Agreement, the Note or the other Loan Documents, or to declare a default for failure to effect prompt payment of any such other amount.

**Section 10.6. Notices.** All notices, consents, approvals and requests required or permitted hereunder or under any other Loan Document shall be given in writing and shall be effective for all purposes if hand delivered or sent by (a) certified or registered United States mail, postage prepaid, return receipt requested or (b) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery, and by telecopier (with answer back acknowledged), addressed as follows (or at such other address and Person as shall be designated from time to time by any party hereto, as the case may be, in a notice to the other parties hereto in the manner provided for in this Section 10.6):

If to Lender:           JPMorgan Chase Bank, N.A.  
                              270 Park Avenue, 10th Floor  
                              New York, New York 10017  
                              Attention: Michael Mesard  
                              Facsimile No.: (212) 834-6592

with a copy to: Sullivan & Cromwell LLP  
125 Broad Street  
New York, New York 10004  
Attention: Arthur S. Adler  
Facsimile No.: 212-558-3588

Cadwalader, Wickersham & Taft LLP  
One World Financial Center  
New York, New York 10281  
Attention: Fredric L. Altschuler  
Facsimile No.: (212) 504-6666

If to Borrower: One Caesars Palace Drive  
Las Vegas, Nevada 89109  
Attention: Chief Financial Officer  
Facsimile No.: (702) 407-6081

With a copy to: One Caesars Palace Drive  
Las Vegas, Nevada 89109  
Attention: General Counsel  
Facsimile No.: (702) 407-6418

and

Cleary Gottlieb Steen & Hamilton LLP  
One Liberty Plaza  
New York, New York 10006  
Attention: Michael Weinberger  
Facsimile No.: (212) 225-3999

and

Pircher, Nichols & Meeks  
1925 Century Park East, Seventeenth Floor  
Los Angeles, California 90067  
Attention: David Packer  
Facsimile No.: (310) 201-8922

A notice shall be deemed to have been given: in the case of hand delivery, at the time of delivery; in the case of registered or certified mail, when delivered or the first attempted delivery on a Business Day; or in the case of expedited prepaid delivery and telecopy, upon the first attempted delivery on a Business Day; or in the case of telecopy, upon sender's receipt of a machine-generated confirmation of successful transmission after advice by telephone to recipient that a telecopy notice is forthcoming. Each Borrower hereby designates Tahoe Mezz 5, LLC, a Delaware limited liability company ("**Borrower Agent**"), as the party to give and receive notices on behalf of Borrower hereunder, and any notice received by Lender by a Borrower other than Borrower Agent shall not constitute effective notice to, or be binding upon Lender hereunder.

Notwithstanding the foregoing, any notice by Lender to one or more Borrowers other than Borrower Agent shall be deemed to constitute effective notice to all of the Borrowers.

**Section 10.7. Trial by Jury.** BORROWER AND LENDER HEREBY AGREE NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVE ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY BORROWER AND LENDER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. BORROWER AND LENDER ARE HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER.

**Section 10.8. Headings.** The Article and/or Section headings and the Table of Contents in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

**Section 10.9. Severability.** Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

**Section 10.10. Preferences.** Lender shall have the continuing and exclusive right to apply or reverse and reapply any and all payments by Borrower to any portion of the obligations of Borrower hereunder (except that, unless there exists an Event of Default, payments of principal shall be applied to components of the Note on a pro-rata basis). To the extent Borrower makes a payment or payments to Lender, which payment or proceeds or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable cause, then, to the extent of such payment or proceeds received, the obligations hereunder or part thereof intended to be satisfied shall be revived and continue in full force and effect, as if such payment or proceeds had not been received by Lender.

**Section 10.11. Waiver of Notice.** Borrower hereby expressly waives, and shall not be entitled to, any notices of any nature whatsoever from Lender except with respect to matters for which this Agreement or the other Loan Documents specifically and expressly provide for the giving of notice by Lender to Borrower and except with respect to matters for which Borrower is not, pursuant to applicable Legal Requirements, permitted to waive the giving of notice.

**Section 10.12. Remedies of Borrower.** In the event that a claim or adjudication is made that Lender or its agents have acted unreasonably or unreasonably delayed

acting in any case where by law or under this Agreement or the other Loan Documents, Lender or such agent, as the case may be, has an obligation to act reasonably or promptly, Borrower agrees that neither Lender nor its agents shall be liable for any monetary damages, and Borrower's sole remedies shall be limited to commencing an action seeking injunctive relief or declaratory judgment (except in cases of bad faith, gross negligence or willful misconduct). The parties hereto agree that any action or proceeding to determine whether Lender has acted reasonably shall be determined by an action seeking declaratory judgment.

**Section 10.13. Expenses; Indemnity.** (a) Borrower covenants and agrees to pay or, if Borrower fails to pay, to reimburse, Lender and each Noteholder upon receipt of notice from such Person for all reasonable out-of-pocket costs and expenses (including reasonable attorneys' fees and disbursements) incurred by such Person in connection with (i) the preparation, negotiation, execution and delivery of this Agreement and the other Loan Documents and the consummation of the transactions contemplated hereby and thereby and all the costs of furnishing all opinions by counsel for Borrower (including, without limitation, any opinions requested by such Person as to any legal matters arising under this Agreement or the other Loan Documents with respect to the Properties); (ii) Borrower's ongoing performance of and compliance with Borrower's respective agreements and covenants contained in this Agreement and the other Loan Documents on its part to be performed or complied with after the Closing Date, including, without limitation, confirming compliance with environmental, gaming and insurance requirements if necessary or advisable due to reasonably suspected non-compliance; (iii) the negotiation, preparation, execution, delivery and administration of any consents, amendments, waivers or other modifications to this Agreement and the other Loan Documents and any other documents or matters requested by Borrower; (iv) securing Borrower's compliance with any requests made pursuant to the provisions of this Agreement, if Borrower defaults in its obligations hereunder; (v) the filing and recording fees and expenses, title insurance and reasonable fees and expenses of counsel for providing to Lender or any Noteholder all required legal opinions, and other similar expenses incurred in creating and perfecting the Liens in favor of Lender (or, as applicable, any Noteholder) pursuant to this Agreement and the other Loan Documents; (vi) enforcing or preserving any rights, either in response to third party claims or in prosecuting or defending any action or proceeding or other litigation, in each case against, under or affecting Borrower, Senior Mezzanine Borrower, Mortgage Borrower, Operating Company, this Agreement, the other Loan Documents, the Properties, the Collateral or any other security given for the Loan; and (vii) enforcing any obligations of or collecting any payments due from Borrower under this Agreement, the other Loan Documents or with respect to the Properties, Operating Company or in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a "work-out" or of any insolvency or bankruptcy proceedings; provided, however, that Borrower shall not be liable for the payment of any such costs and expenses to any Person to the extent the same arise by reason of the gross negligence, illegal acts, fraud or willful misconduct of such Person. Any cost and expenses due and payable to Lender or any Noteholder may be paid from any amounts in the Mezzanine Collection Account upon the occurrence and during the continuance of an Event of Default.

(b) Borrower shall indemnify, defend and hold harmless Lender from and against any and all other actual liabilities, obligations, losses, damages (excluding, however, any punitive and consequential damages), penalties, actions, judgments, suits, claims, costs, expenses

and disbursements of any kind or nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel for Lender in connection with any investigative, administrative or judicial proceeding commenced or threatened, whether or not Lender shall be designated a party thereto), that may be imposed on, incurred by, or asserted against Lender in any manner relating to or arising out of (i) any breach by Borrower of its obligations under, or any material misrepresentation by Borrower contained in, this Agreement or the other Loan Documents, (ii) the use or intended use of the proceeds of the Loan, (iii) the Leases or any of the duties, responsibilities or obligations of Borrower or any Operating Company thereunder, (iv) the transactions contemplated in the Collection Account Agreements or (v) any third-party claims alleging that the Loan, the Senior Mezzanine Loan or the Mortgage Loan, the Operating Lease, the Operating Lease Guaranty or any of the Loan Documents violates any agreements or Legal Requirements binding on the Borrower or its Affiliates or their respective properties (collectively, the “**Indemnified Liabilities**”); provided, however, that Borrower shall not have any obligation to Lender hereunder to the extent that such Indemnified Liabilities arise from the gross negligence, illegal acts, fraud or willful misconduct of Lender. To the extent that the undertaking to indemnify, defend and hold harmless set forth in the preceding sentence may be unenforceable because it violates any law or public policy, Borrower shall pay the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by Lender.

(c) Borrower covenants and agrees to pay for or, if Borrower fails to pay, to reimburse Lender for, any fees and expenses incurred by any Rating Agency in connection with any request by Borrower that required Rating Agency Confirmation pursuant to the terms hereof.

**Section 10.14. Schedules Incorporated.** The Schedules annexed hereto are hereby incorporated herein as a part of this Agreement with the same effect as if set forth in the body hereof.

**Section 10.15. Offsets, Counterclaims and Defenses.** Any assignee of Lender’s interest in and to this Agreement, the Note and the other Loan Documents shall take the same free and clear of all offsets, counterclaims or defenses which are unrelated to such documents which Borrower may otherwise have against any assignor of such documents, and no such unrelated counterclaim or defense shall be interposed or asserted by Borrower in any action or proceeding brought by any such assignee upon such documents and any such right to interpose or assert any such unrelated offset, counterclaim or defense in any such action or proceeding is hereby expressly waived by Borrower.

**Section 10.16. No Joint Venture or Partnership; No Third Party Beneficiaries.** (a) Borrower and Lender intend that the relationships created hereunder and under the other Loan Documents be solely that of borrower and lender. Nothing herein or therein is intended to create a joint venture, partnership, tenancy-in-common, or joint tenancy relationship between Borrower and Lender nor to grant Lender any interest in the Properties other than that of mortgagee, beneficiary or lender.

(b) Except as expressly provided herein, this Agreement and the other Loan Documents are solely for the benefit of Lender and Borrower and nothing contained in this Agreement or the other Loan Documents shall be deemed to confer upon anyone other than

Lender and Borrower any right to insist upon or to enforce the performance or observance of any of the obligations contained herein or therein. Lender and Borrower acknowledge and agree that the Noteholders are intended third party beneficiaries of all rights and remedies of the Lender hereunder. All conditions to the obligations of Lender to make the Loan hereunder are imposed solely and exclusively for the benefit of Lender and no other Person shall have standing to require satisfaction of such conditions in accordance with their terms or be entitled to assume that Lender will refuse to make the Loan in the absence of strict compliance with any or all thereof and no other Person shall under any circumstances be deemed to be a beneficiary of such conditions, any or all of which may be freely waived in whole or in part by Lender if, in Lender's sole discretion, Lender deems it advisable or desirable to do so.

**Section 10.17. Intentionally Omitted.**

**Section 10.18. Waiver of Marshalling of Assets.** To the fullest extent permitted by law, Borrower, for itself and its successors and assigns, waives all rights to a marshalling of the assets of Borrower, Borrower's partners and others with interests in Borrower, and of the Properties, or to a sale in inverse order of alienation in the event of foreclosure of all or any of the Mortgages, and agrees not to assert any right under any laws pertaining to the marshalling of assets, the sale in inverse order of alienation, homestead exemption, the administration of estates of decedents, or any other matters whatsoever to defeat, reduce or affect the right of Lender under the Loan Documents to a sale of the Properties for the collection of the Debt without any prior or different resort for collection or of the right of Lender to the payment of the Debt out of the net proceeds of the Properties in preference to every other claimant whatsoever. In addition, Borrower, for itself and its successors and assigns, waives in the event of foreclosure of any or all of the Collateral, any equitable right otherwise available to Borrower which would require the separate sale of the Collateral with respect to each Mortgage Borrower or require Lender to exhaust its remedies against any Collateral with respect to each Mortgage Borrower or any combination of such Collateral before proceeding against any other Collateral with respect to one or more Mortgage Borrowers; and further in the event of such foreclosure Borrower does hereby expressly consent to and authorize, at the option of Lender, the foreclosure and sale either separately or together of any combination of the Collateral.

**Section 10.19. Waiver of Counterclaim.** Borrower hereby waives the right to assert a counterclaim, other than a compulsory counterclaim, in any action or proceeding brought against it by Lender or its agents.

**Section 10.20. Conflict; Construction of Documents; Reliance.** In the event of any conflict between the provisions of this Loan Agreement and any of the other Loan Documents, the provisions of this Loan Agreement shall control. The parties hereto acknowledge that they were represented by competent counsel in connection with the negotiation, drafting and execution of the Loan Documents and that such Loan Documents shall not be subject to the principle of construing their meaning against the party which drafted same. Borrower acknowledges that, with respect to the Loan, Borrower shall rely solely on its own judgment and advisors in entering into the Loan without relying in any manner on any statements, representations or recommendations of Lender or any parent, subsidiary or Affiliate of Lender. Lender shall not be subject to any limitation whatsoever in the exercise of any rights or remedies available to it under any of the Loan Documents or any other agreements or

instruments which govern the Loan by virtue of the ownership by it or any parent, subsidiary or Affiliate of Lender of any equity interest any of them may acquire in Borrower, and Borrower hereby irrevocably waives the right to raise any defense or take any action on the basis of the foregoing with respect to Lender's exercise of any such rights or remedies. Borrower acknowledges that Lender engages in the business of real estate financings and other real estate transactions and investments which may be viewed as adverse to or competitive with the business of Borrower or its Affiliates.

**Section 10.21. Brokers and Financial Advisors.** Borrower hereby represents that it has dealt with no financial advisors, brokers, underwriters, placement agents, agents or finders in connection with the transactions contemplated by this Agreement (other than those the fees and other claims of which shall be paid by Borrower). Borrower hereby agrees to indemnify, defend and hold Lender and each Noteholder harmless from and against any and all claims, liabilities, costs and expenses of any kind (including Lender's attorneys' fees and expenses) in any way relating to or arising from a claim by any Person that such Person acted on behalf of Borrower or Lender in connection with the transactions contemplated herein. Each of Lender and (by its acceptance of its respective Note) the Noteholders hereby represents that it has dealt with no financial advisors, brokers, underwriters, placement agents, agents or finders in connection with the transactions contemplated by this Agreement. The provisions of this Section 10.21 shall survive the expiration and termination of this Agreement and the payment of the Debt.

**Section 10.22. Prior Agreements.** This Agreement and the other Loan Documents contain the entire agreement of the parties hereto and thereto in respect of the transactions contemplated hereby and thereby, and all prior agreements among or between such parties, whether oral or written, including, without limitation, the Commitment Letter dated December 19, 2006 between Affiliates of Borrower and Lender are superseded by the terms of this Agreement and the other Loan Documents.

**Section 10.23. Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which counterparts together shall constitute one agreement with the same effect as if the parties had signed the same signature page.

**Section 10.24. Intentionally Omitted.**

**Section 10.25. Gaming Laws.** All rights, remedies and powers in or under this Agreement may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of the Gaming Laws.

**Section 10.26. Certain Additional Rights of Lender (VCOC).** Notwithstanding anything to the contrary contained in this Agreement, Lender shall have:

(a) the right to routinely consult with and advise Borrower's management regarding the significant business activities and business and financial developments of Borrower, Senior Mezzanine Borrower and Mortgage Borrower, provided that any such advice or consultation shall be completely nonbinding on Borrower, and; provided, however, that such

consultations shall not include discussions of environmental compliance programs or disposal of hazardous substances;

(b) the right, in accordance with the terms of this Agreement, to examine the books and records of Borrower, Senior Mezzanine Borrower and Mortgage Borrower at any reasonable times upon reasonable notice;

(c) the right, in accordance with the terms of this Agreement, including, without limitation, Section 5.1.11 hereof, to receive monthly, quarterly and year end financial reports, including balance sheets, statements of income, shareholder's equity and cash flow, a management report and schedules of outstanding indebtedness, in each case to the extent explicitly set forth herein; and

(d) the right, without restricting any other rights of Lender under this Agreement (including any similar right), to reasonably approve any acquisition by Borrower, Senior Mezzanine Borrower or Mortgage Borrower of any other significant real property.

The rights described above in this Section 10.26 may be exercised by any entity which owns and controls, directly or indirectly, substantially all of the interests in Lender.

#### **XI. JOINT AND SEVERAL LIABILITY; WAIVERS**

**Section 11.1. Joint and Several Liability; Primary Obligors.** Each entity comprising Borrower (each, a "**Borrower Entity**") shall be a primary obligor with respect to payment of the Debt and performance of Borrower's obligations under the Loan Documents and all such Borrower Entities shall be jointly and severally liable for payment of the Debt and performance of such other obligations. As used in this Article, references to "**Other Borrowers**" shall mean all Borrower Entities other than the particular Borrower Entity referred to.

**Section 11.2. Waivers.** Without limiting the primary liability of each Borrower Entity as set forth above, to the extent any such Borrower Entity is determined to be secondarily liable with respect to any portion of the Debt or any other obligation hereunder, the following shall apply:

**11.2.1 No Duty to Pursue Others.** It shall not be necessary for Lender (and each Borrower Entity hereby waives any rights which such Borrower Entity may have to require Lender), in order to enforce the obligations of such Borrower Entity hereunder, first to (a) institute suit or exhaust its remedies against any Other Borrower or others liable on the Debt or any other person, (b) enforce Lender's rights against any collateral mortgaged, pledged or granted by any Other Borrower which shall ever have been given to secure the Debt ("**Other Borrower Collateral**"), (c) enforce Lender's rights against any other guarantors of the Debt, (d) join Borrower or any others liable on the Debt in any action against any Other Borrower seeking to enforce the Loan Documents, (e) exhaust any remedies available to Lender against any collateral which shall ever have been given to secure the Debt, or (f) resort to any other means of obtaining payment of the Loan by any Other Borrower. Lender shall not be required to

mitigate damages or take any other action pertaining to any Other Borrower or any Other Borrower Collateral to reduce, collect or enforce the Debt from any Other Borrower.

**11.2.2 Waivers.** Such Borrower Entity agrees to the provisions of the Loan Documents, and hereby waives notice of (a) any loans or advances made by Lender to any Other Borrower, (b) acceptance of the Loan Documents, (c) any amendment or extension of the Note, the Loan Agreement or of any other Loan Documents entered into by any Other Borrower, (d) the execution and delivery by any Other Borrower and Lender of any other loan or credit agreement or of any Other Borrower's execution and delivery of any promissory notes or other documents arising under the Loan Documents or in connection with the Other Borrower Collateral, (e) the occurrence of any breach by any Other Borrower or an Event of Default with respect to any Other Borrower or Other Borrower Collateral, (f) Lender's transfer or disposition of the Debt, or any part thereof, (g) sale or foreclosure (or posting or advertising for sale or foreclosure) of any Other Borrower Collateral, (h) protest, proof of non-payment or default by any Other Borrower and (i) any other action at any time taken or omitted by Lender, and, generally, all demands and notices to any Other Borrower of every kind in connection with the Loan Documents, any documents or agreements evidencing, securing or relating to any of the Debt.

**11.2.3 Waiver of Subrogation, Reimbursement and Contribution.** Notwithstanding anything to the contrary contained in the Loan Documents, each Borrower hereby unconditionally and irrevocably waives, releases and abrogates, prior to the payment in full of the Loan and for a period of ninety-one (91) days thereafter any and all rights it may now or hereafter have under any agreement, at law or in equity (including any law subrogating such Borrower Entity to the rights of Lender), to assert any claim against or seek contribution, indemnification or any other form of reimbursement (other than pursuant to the express provisions of the Contribution Agreement) from any Other Borrower or any other party liable for payment of any or all of the Debt for any payment made by such Borrower Entity under or in connection with the Loan Documents or otherwise.

**11.2.4 Events and Circumstances Not Reducing or Discharging Guarantor's Obligations.** Each Borrower Entity hereby consents and agrees to each of the following, and agrees that such Borrower Entity's obligations under the Loan Documents shall not be released, diminished, impaired, reduced or adversely affected by any of the following, and waives any common law, equitable, statutory or other rights (including rights to notice) which such Borrower Entity might otherwise have as a result of or in connection with any of the following:

(a) Modifications. Any renewal, extension, increase, modification, alteration, restatement or rearrangement entered into by any Other Borrower of all or any part of the Debt, the Note, the Loan Agreement, the other Loan Documents, or any other document, instrument, contract or understanding between any Other Borrower and Lender, or any other parties, pertaining to the Debt or any failure of Lender to notify Borrower Entity of any such action.

(b) Adjustment. Any adjustment, indulgence, forbearance or compromise that might be granted or given by Lender to any Other Borrower.

(c) Condition of Borrower or Borrower Entity. The insolvency, bankruptcy, arrangement, adjustment, composition, liquidation, disability, dissolution or lack of power of any Other Borrower or any other party at any time liable for the payment of all or part of the Debt; or any dissolution of any Other Borrower, or any sale, lease or transfer of any or all of the assets of Borrower or of any Other Borrower, or any changes in the shareholders, partners or members of any Other Borrower; or any reorganization of any Other Borrower.

(d) Invalidity of Debt. The invalidity, illegality or unenforceability of all or any part of the Debt, or any document or agreement executed in connection with the Debt, for any reason whatsoever, including the fact that (a) the Debt, or any part thereof, exceeds the amount permitted by law, (b) the act of creating the Debt or any part thereof is ultra vires, (c) the officers or representatives executing the Note, the Loan Agreement or the other Loan Documents or otherwise creating the Debt acted in excess of their authority, (d) the Debt violate applicable usury laws, (e) any Other Borrower has valid defenses, claims or offsets (whether at law, in equity or by agreement) which render the Debt wholly or partially uncollectible from such Other Borrower, (f) the creation, performance or repayment of the Debt (or the execution, delivery and performance of any document or instrument by any Other Borrower representing part of the Debt or executed in connection with the Debt, or given to secure the repayment of the Debt) is illegal, uncollectible or unenforceable, or (g) the Note, the Loan Agreement or any of the other Loan Documents have been forged or otherwise are irregular or not genuine or authentic, it being agreed that such Borrower Entity shall remain liable hereon regardless of whether any Other Borrower or any other Person be found not liable on the Debt or any part thereof for any reason.

(e) Release of Obligors. Any full or partial release of the liability of any Other Borrower on the Debt, or any part thereof, or of any guarantor(s) thereof, or any other person or entity now or hereafter liable, whether directly or indirectly, jointly, severally, or jointly and severally, to pay, perform, guarantee or assure the payment of the Debt, or any part thereof, it being recognized, acknowledged and agreed by such Borrower Entity that such Borrower Entity may be required to pay the Debt in full without assistance or support of any other party, and such Borrower Entity has not been induced to enter into the Loan Documents on the basis of a contemplation, belief, understanding or agreement that other Persons will be liable to pay or perform the Debt, or that Lender will look to other Persons to pay or perform the Debt.

(f) Other Collateral. The taking or accepting of any other security, collateral or guaranty, or other assurance of payment, for all or any part of the Debt.

(g) Release of Collateral. Any release, surrender, exchange, subordination, deterioration, waste, loss or impairment (including negligent, willful, unreasonable or unjustifiable impairment) of any collateral, property or security at any time existing in connection with, or assuring or securing payment of, all or any part of the Debt.

(h) Care and Diligence. The failure of Lender or any other party to exercise diligence or reasonable care in the preservation, protection, enforcement, sale or other handling or treatment of Other Borrower Collateral, all or any part of such collateral, property or security, including any neglect, delay, omission, failure or refusal of Lender (a) to take or prosecute any action for the collection of any of the Debt or (b) to foreclose, or initiate any action to foreclose, or, once commenced, prosecute to completion any action to foreclose upon Other Borrower

Collateral, or (c) to take or prosecute any action in connection with any instrument or agreement evidencing or securing all or any part of the Debt.

(i) Unenforceability. The fact that any collateral, security, security interest or lien contemplated or intended to be given, created or granted as security for the repayment of the Debt, or any part thereof, shall not be properly perfected or created, or shall prove to be unenforceable or subordinate to any other security interest or lien, it being recognized and agreed by such Borrower Entity that such Borrower Entity is not entering into the Loan Documents in reliance on, or in contemplation of the benefits of, the validity, enforceability, collectibility or value of any of the collateral for the Debt.

(j) Offset. Any existing or future right of offset, claim or defense of Borrower against Lender, or any other Person, or against payment of the Debt by any Other Borrower, whether such right of offset, claim or defense arises in connection with the Debt (or the transactions creating the Debt) or otherwise.

(k) Merger. The reorganization, merger or consolidation of any Other Borrower into or with any other corporation or entity.

(l) Preference. Any payment by Borrower to Lender is held to constitute a preference under bankruptcy laws, or for any reason Lender is required to refund such payment or pay such amount to Borrower or someone else.

**Section 11.3. Other Actions Taken or Omitted.** Any other action taken or omitted to be taken with respect to the Loan Documents, the Debt, or Other Borrower Collateral, whether or not such action or omission prejudices such Borrower Entity or increases the likelihood that such Borrower Entity will be required to pay the Debt pursuant to the terms hereof, it is the unambiguous and unequivocal intention of such Borrower Entity that such Borrower Entity shall be obligated to pay the Debt when due, notwithstanding any occurrence, circumstance, event, action, or omission whatsoever pertaining to any Other Borrower or any Other Borrower Collateral, whether contemplated or not, and whether or not otherwise or particularly described herein, which obligation shall be deemed satisfied only upon the full and final payment and satisfaction of the Debt.

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**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed by their duly authorized representatives, all as of the day and year first above written.

**BORROWER:**

**HARRAH'S LAS VEGAS MEZZ 5, LLC,**  
a Delaware limited liability company

By: /s/ Jonathan S. Halkyard

Name: Jonathan S. Halkyard

Title: President and Treasurer

**HARRAH'S ATLANTIC CITY MEZZ 5, LLC,**  
a Delaware limited liability company

By: /s/ Jonathan S. Halkyard

Name: Jonathan S. Halkyard

Title: President and Treasurer

**TAHOE MEZZ 5, LLC,**  
a Delaware limited liability company

By: /s/ Jonathan S. Halkyard

Name: Jonathan S. Halkyard

Title: President and Treasurer

**RIO MEZZ 5, LLC,**  
a Delaware limited liability company

By: /s/ Jonathan S. Halkyard

Name: Jonathan S. Halkyard

Title: President and Treasurer

**FLAMINGO LAS VEGAS MEZZ 5, LLC,**  
a Delaware limited liability company

By: /s/ Jonathan S. Halkyard

Name: Jonathan S. Halkyard

Title: President and Treasurer

**SHOWBOAT ATLANTIC CITY MEZZ 5, LLC,**  
a Delaware limited liability company

By: /s/ Jonathan S. Halkyard

Name: Jonathan S. Halkyard

Title: President and Treasurer

**LENDER:**

**JPMORGAN CHASE BANK, N.A.**

By: /s/ Jennifer A. Loughrey

Name: Jennifer A. Loughrey

Title: Vice President

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**SIXTH MEZZANINE LOAN AGREEMENT**

Dated as of January 28, 2008

Between

**THE ENTITIES IDENTIFIED ON THE SIGNATURE PAGES  
HEREOF AS BORROWER,**  
collectively, as Borrower

and

**JPMORGAN CHASE BANK N.A.,**  
as Lender

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**SIXTH MEZZANINE LOAN AGREEMENT**

**THIS SIXTH MEZZANINE LOAN AGREEMENT**, dated as of January 28, 2008 (as amended, restated, replaced, supplemented or otherwise modified from time to time, this “**Agreement**”), between **JPMORGAN CHASE BANK, N.A.**, a banking association chartered under the laws of the United States of America, having an address at 270 Park Avenue, New York, New York 10017 (“**Lender**”), and **THE ENTITIES IDENTIFIED ON THE SIGNATURE PAGES HEREOF AS BORROWER**, each a Delaware limited liability company having its principal place of business at the addresses set forth on Schedule I attached hereto (collectively, “**Borrower**”).

**WITNESSETH:**

**WHEREAS**, JPMorgan Chase Bank, N.A., having an address at 270 Park Avenue, New York, New York 10017, as mortgage lender (“**Mortgage Lender**”), is making a loan in the principal amount of Four Billion and No/100 Dollars (\$4,000,000,000) (the “**Mortgage Loan**”) to Mortgage Borrower (as hereinafter defined) pursuant to that certain Loan Agreement, dated as of the date hereof (as the same may be amended, supplemented, replaced or otherwise modified from time to time, the “**Mortgage Loan Agreement**”), which Mortgage Loan is evidenced by the Mortgage Note (as hereinafter defined) made by Mortgage Borrower to Mortgage Lender and secured by, among other things, the Mortgage (as hereinafter defined) given by Mortgage Borrower in favor of Mortgage Lender pursuant to which Mortgage Borrower has granted Mortgage Lender a first priority mortgage on, among other things, the Properties and other collateral as more fully described in the Mortgage;

**WHEREAS**, JPMorgan Chase Bank, N.A., having an address at 270 Park Avenue, New York, New York 10017, as first mezzanine lender (“**First Mezzanine Lender**”), is making a loan in the principal amount of \$300,000,000 (the “**First Mezzanine Loan**”) to First Mezzanine Borrower (as hereinafter defined) pursuant to that certain First Mezzanine Loan Agreement, dated as of the date hereof (as the same may be amended, supplemented, replaced or otherwise modified from time to time, the “**First Mezzanine Loan Agreement**”), which First Mezzanine Loan is evidenced by the First Mezzanine Note (as hereinafter defined) made by First Mezzanine Borrower to First Mezzanine Lender and secured by, among other things, the First Mezzanine Pledge Agreement (as hereinafter defined) given by First Mezzanine Borrower in favor of First Mezzanine Lender pursuant to which First Mezzanine Borrower has granted First Mezzanine Lender a first priority security interest on, among other things, the Collateral (as defined in the First Mezzanine Pledge Agreement);

**WHEREAS**, JPMorgan Chase Bank, N.A., having an address at 270 Park Avenue, New York, New York 10017, as second mezzanine lender (“**Second Mezzanine Lender**”), is making a loan in the principal amount of \$275,000,000 (the “**Second Mezzanine Loan**”) to Second Mezzanine Borrower (as hereinafter defined) pursuant to that certain Second Mezzanine Loan Agreement, dated as of the date hereof (as the same may be amended, supplemented, replaced or otherwise modified from time to time, the “**Second Mezzanine Loan Agreement**”), which Second Mezzanine Loan is evidenced by the Second Mezzanine Note (as

hereinafter defined) made by Second Mezzanine Borrower to Second Mezzanine Lender and secured by, among other things, the Second Mezzanine Pledge Agreement (as hereinafter defined) given by Second Mezzanine Borrower in favor of Second Mezzanine Lender pursuant to which Second Mezzanine Borrower has granted Second Mezzanine Lender a first priority security interest on, among other things, the Collateral (as defined in the Second Mezzanine Pledge Agreement);

**WHEREAS**, JPMorgan Chase Bank, N.A., having an address at 270 Park Avenue, New York, New York 10017, as third mezzanine lender (“**Third Mezzanine Lender**”), is making a loan in the principal amount of \$275,000,000 (the “**Third Mezzanine Loan**”) to Third Mezzanine Borrower (as hereinafter defined) pursuant to that certain Third Mezzanine Loan Agreement, dated as of the date hereof (as the same may be amended, supplemented, replaced or otherwise modified from time to time, the “**Third Mezzanine Loan Agreement**”), which Third Mezzanine Loan is evidenced by the Third Mezzanine Note (as hereinafter defined) made by Third Mezzanine Borrower to Third Mezzanine Lender and secured by, among other things, the Third Mezzanine Pledge Agreement (as hereinafter defined) given by Third Mezzanine Borrower in favor of Third Mezzanine Lender pursuant to which Third Mezzanine Borrower has granted Third Mezzanine Lender a first priority security interest on, among other things, the Collateral (as defined in the Third Mezzanine Pledge Agreement);

**WHEREAS**, JPMorgan Chase Bank, N.A., having an address at 270 Park Avenue, New York, New York 10017, as fourth mezzanine lender (“**Fourth Mezzanine Lender**”), is making a loan in the principal amount of \$275,000,000 (the “**Fourth Mezzanine Loan**”) to Fourth Mezzanine Borrower (as hereinafter defined) pursuant to that certain Fourth Mezzanine Loan Agreement, dated as of the date hereof (as the same may be amended, supplemented, replaced or otherwise modified from time to time, the “**Fourth Mezzanine Loan Agreement**”), which Fourth Mezzanine Loan is evidenced by the Fourth Mezzanine Note (as hereinafter defined) made by Fourth Mezzanine Borrower to Fourth Mezzanine Lender and secured by, among other things, the Fourth Mezzanine Pledge Agreement (as hereinafter defined) given by Fourth Mezzanine Borrower in favor of Fourth Mezzanine Lender pursuant to which Fourth Mezzanine Borrower has granted Fourth Mezzanine Lender a first priority security interest on, among other things, the Collateral (as defined in the Fourth Mezzanine Pledge Agreement);

**WHEREAS**, JPMorgan Chase Bank, N.A., having an address at 270 Park Avenue, New York, New York 10017, as fifth mezzanine lender (“**Fifth Mezzanine Lender**”), is making a loan in the principal amount of \$275,000,000 (the “**Fifth Mezzanine Loan**”) to Fifth Mezzanine Borrower (as hereinafter defined) pursuant to that certain Fifth Mezzanine Loan Agreement, dated as of the date hereof (as the same may be amended, supplemented, replaced or otherwise modified from time to time, the “**Fifth Mezzanine Loan Agreement**”), which Fifth Mezzanine Loan is evidenced by the Fifth Mezzanine Note (as hereinafter defined) made by Fifth Mezzanine Borrower to Fifth Mezzanine Lender and secured by, among other things, the Fifth Mezzanine Pledge Agreement (as hereinafter defined) given by Fifth Mezzanine Borrower in favor of Fifth Mezzanine Lender pursuant to which Fifth Mezzanine Borrower has granted Fifth Mezzanine Lender a first priority security interest on, among other things, the Collateral (as defined in the Fifth Mezzanine Pledge Agreement);

**WHEREAS**, First Mezzanine Borrower is the legal and beneficial owner of all of the interests in Mortgage Borrower;

**WHEREAS**, Second Mezzanine Borrower is the legal and beneficial owner of all of the interests in First Mezzanine Borrower;

**WHEREAS**, Third Mezzanine Borrower is the legal and beneficial owner of all of the interests in Second Mezzanine Borrower;

**WHEREAS**, Fourth Mezzanine Borrower is the legal and beneficial owner of all of the interests in Third Mezzanine Borrower;

**WHEREAS**, Fifth Mezzanine Borrower is the legal and beneficial owner of all of the interests in Fourth Mezzanine Borrower;

**WHEREAS**, Borrower is the legal and beneficial owner of all of the interests in Fifth Mezzanine Borrower;

**WHEREAS**, Borrower desires to obtain the Loan (as hereinafter defined) from Lender;

**WHEREAS**, as a condition precedent to the obligation of Lender to make the Loan to Borrower, Borrower has entered into that certain Pledge and Security Agreement (Sixth Mezzanine Loan), dated as of the date hereof, in favor of Lender (as amended, supplemented or otherwise modified from time to time, the "**Pledge Agreement**"), pursuant to which Borrower has granted to Lender a first priority security interest in the Collateral (as defined in the Pledge Agreement) as collateral security for the Debt (as hereinafter defined); and

**WHEREAS**, Lender is willing to make the Loan to Borrower, subject to and in accordance with the terms of this Agreement and the other Loan Documents (as hereinafter defined).

**NOW THEREFORE**, in consideration of the making of the Loan by Lender and the covenants, agreements, representations and warranties set forth in this Agreement, the parties hereto hereby covenant, agree, represent and warrant as follows:

#### **I. DEFINITIONS; PRINCIPLES OF CONSTRUCTION**

**Section 1.1. Definitions.** For all purposes of this Agreement, except as otherwise expressly required or unless the context clearly indicates a contrary intent:

"**Acceptable Counterparty**" shall mean any counterparty to the Interest Rate Cap Agreement that has and shall maintain, until the expiration of the applicable Interest Rate Cap Agreement, a long-term unsecured debt rating of at least "A+" by S&P and "Aa3" from

Moody's, which rating shall not include a "t" or otherwise reflect a termination risk and is otherwise reasonably acceptable to Lender.

**"Additional Insolvency Opinion"** shall have the meaning set forth in Section 4.1.30(c) hereof.

**"Additional True Lease Opinion"** shall have the meaning set forth in Section 4.1.30(d) hereof.

**"Affiliate"** shall mean, as to any Person, any other Person that, directly or indirectly, is in Control of, is Controlled by or is under common Control with such Person or is a director or officer of such Person or of an Affiliate of such Person.

**"Aggregate Debt Service"** shall mean, with respect to any particular period of time, the sum of (a) the Debt Service, (b) the Mortgage Debt Service and (c) the Other Mezzanine Debt Service.

**"Aggregate Material Adverse Effect"** shall mean any event or condition that, either singly or in the aggregate, could reasonably be expected to have or result in a material adverse effect upon (a) the business, operations, economic performance, prospects, assets or condition (financial or otherwise) of (i) Mortgage Borrower, Senior Mezzanine Borrower or Borrower (taken as a whole), (ii) Guarantor, (iii) Operating Company (taken as a whole), (iv) the Operating Lease or the Operating Lease Guaranty (taken as a whole) or (v) the Properties (taken as a whole), the Collateral, the Senior Mezzanine Collateral, the Hotel Components (taken as a whole) or the Casino Components (taken as a whole); (b) the ability of Mortgage Borrower (taken as a whole), Senior Mezzanine Borrower (taken as a whole), Borrower (taken as a whole) or Guarantor to perform, in all material respects, its obligations under the Loan Documents, Senior Mezzanine Loan Documents or Mortgage Loan Documents (taken as a whole) to which such entity is a party; (c) the ability of Operating Company (taken as a whole) to perform, in all material respects, the obligations under the Operating Leases (taken as a whole); or the ability of Guarantor (Operating Lease) (taken as a whole) to perform, in all material respects, the obligations under the Operating Lease Guaranty (taken as a whole); (d) the enforceability or validity of (i) the Operating Lease (taken as a whole) or the Operating Lease Guaranty (taken as a whole), (ii) the Loan Documents, Senior Mezzanine Loan Documents or Mortgage Loan Documents (taken as a whole) or the perfection or priority of the Liens created under the Loan Documents, Senior Mezzanine Loan Documents or Mortgage Loan Documents (taken as a whole); (e) the value of, or cash flow from, the Properties or the operations thereof (taken as a whole) or the Collateral; or (f) the material rights, interests and remedies of Lender under the Loan Documents (taken as a whole).

**"Allocated Loan Amount"** shall mean, for an Individual Property, the amount set forth on Schedule II attached hereto.

**"ALTA"** shall mean American Land Title Association, or any successor thereto.

**"Alteration"** shall mean, with respect to any Individual Property, any alteration, improvement, demolition, construction or removal of all or any portion of the Improvements at such Individual Property.

“**Annual Budget**” shall mean, individually and collectively as the context requires, (a) the Borrower Annual Budget and (b) the Operating Company Annual Budget.

“**Applicable Interest Rate**” shall mean the rate or rates at which the outstanding principal amount of the Loan bears interest from time to time in accordance with the provisions of Section 2.2.3 hereof.

“**Approved Guarantor**” means (x) Holdings, for so long Holdings meets the Minimum Value Test, or (y) any other guarantor that meets the Minimum Value Test and is otherwise reasonably satisfactory to Lender.

“**Assignee**” shall have the meaning set forth in Section 9.5 hereof.

“**Assignment and Acceptance**” shall have the meaning set forth in Section 9.8 hereof.

“**Award**” shall mean any compensation paid by any Governmental Authority in connection with a Condemnation with respect to all or any part of any Individual Property.

“**Bankruptcy Action**” shall mean with respect to any Person (a) such Person filing a voluntary petition under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (b) the filing of an involuntary petition against such Person under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law, or soliciting or causing to be solicited petitioning creditors for any involuntary petition against such Person; (c) such Person filing an answer consenting to or otherwise acquiescing in or joining in any involuntary petition filed against it, by any other Person under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law, or soliciting or causing to be solicited petitioning creditors for any involuntary petition from any Person; (d) such Person consenting to or acquiescing in or joining in an application for the appointment of a custodian, receiver, trustee, or examiner for such Person or any portion of its property; or (e) such Person making an assignment for the benefit of creditors, or admitting, in writing or in any legal proceeding, its insolvency or inability to pay its debts as they become due.

“**Bankruptcy Code**” shall mean Title 11 of the United States Code, 11 U.S.C. §101, et seq., as the same may be amended from time to time, and any successor statute or statutes and all rules and regulations from time to time promulgated thereunder, and any comparable foreign laws relating to bankruptcy, insolvency or creditors’ rights or any other Federal or state bankruptcy or insolvency law.

“**Basic Carrying Costs**” shall mean, for any period, with respect to each Individual Property, the sum of the following costs associated with such Individual Property for such period: (a) Taxes, (b) Insurance Premiums and (c) Ground Rent.

“**Bill’s Lake Tahoe Casino**” shall mean that certain property identified on Schedule II as “Bill’s Lake Tahoe” having a street address of 15 Highway 50, Stateline, Nevada.

“**Borrower**” shall have the meaning set forth in the introductory paragraph hereto, together with its successors and permitted assigns. As used herein, the term “Borrower” shall

mean one of the Borrowers individually, or the Borrowers collectively, as the context shall require.

“**Borrower Agent**” shall have the meaning set forth in Section 10.6 hereof.

“**Borrower Annual Budget**” shall mean the operating budget of Mortgage Borrower, prepared by Mortgage Borrower for the applicable Fiscal Year or other period.

“**Borrower Entity**” shall have the meaning set forth in Section 11.1 hereof.

“**Business Day**” shall mean any day other than a Saturday, Sunday or any other day on which national banks in New York, New York are not open for business.

“**Capital Expenditures**” shall mean, for any period, the amount expended for items capitalized under GAAP (including expenditures for building improvements or major repairs, leasing commissions, tenant improvements and Fixtures).

“**Capitalized Software Expenditures**” shall mean, for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities) by a Person during such period in respect of licensed or purchased software or internally developed software and software enhancements that, in accordance with GAAP, are or are required to be reflected as capitalized costs on the consolidated balance sheet of such Person.

“**Cash Management Account**” shall have the meaning set forth in the Mortgage Loan Agreement.

“**Casino Components**” shall mean, collectively, those portions of each Individual Property devoted to the operation of casino gaming operations, including (without limitation) those areas devoted to the conduct of games of chance, facilities associated directly with gaming operations including, without limitation, casino support areas such as surveillance and security areas, cash cages, counting and accounting areas and gaming back-of-the-house areas in each case, to the extent the operation thereof requires a Gaming License under applicable Gaming Laws. The Casino Components are more particularly described and set forth in each Operating Lease, as appropriate.

“**Casualty**” shall have the meaning set forth in Section 6.2 hereof.

“**Change in Control**” shall mean (1) a “Change in Control” as defined in the Credit Agreement, dated the date hereof, among Hamlet Merger Inc., a Delaware corporation, Harrah’s Operating Company, Inc., a Delaware corporation, the Lenders party thereto from time to time, Bank of America, N.A., as administrative agent and collateral agent for the Lenders, and certain other parties thereto, or (2) a Change in Control as defined in clause (b) of said definition except that references therein to Borrower shall be deemed to refer to Holdings.

“**Closing Date**” shall mean the date of the funding of the Loan.

“**Code**” shall mean the Internal Revenue Code of 1986, as amended, as it may be further amended from time to time, and any successor statutes thereto, and applicable U.S. Department of Treasury regulations issued pursuant thereto in temporary or final form.

“**Collateral**” shall have the meaning set forth in the Pledge Agreement.

“**Collateral Assignment of Interest Rate Cap Agreement**” shall mean that certain Collateral Assignment of Interest Rate Cap Agreement, dated as of the date hereof, executed by Borrower in connection with the Loan for the benefit of the Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Collection Account**” shall have the meaning set forth in the Mortgage Loan Agreement.

“**Collection Banks**” shall mean (a) any Eligible Institution(s) designated by Mortgage Borrower as Collection Bank and reasonably approved by Lender from time to time in accordance with the terms hereof, or (c) any other financial institution otherwise reasonably approved by Lender and, if a Securitization has occurred, with respect to which a Rating Agency Confirmation has been obtained.

“**Condemnation**” shall mean a temporary or permanent taking by any Governmental Authority as the result or in lieu or in anticipation of the exercise of the right of condemnation or eminent domain, of all or any part of any Individual Property, or any interest therein or right accruing thereto, including any right of access thereto or any change of grade affecting such Individual Property or any part thereof.

“**Consolidated Net Income**” shall mean, with respect to any Person for any period, the aggregate of the Net Income of such Person for such period, on a consolidated basis; provided, however, that, without duplication,

(i) any net after-tax extraordinary, nonrecurring or unusual gains or losses or income or expense or charge (less all fees and expenses relating thereto), including, without limitation, any severance, relocation or other restructuring expenses, any expenses related to any reconstruction, decommissioning, recommissioning or reconfiguration of fixed assets for alternative uses, fees, expenses or charges relating to new product lines, curtailments or modifications to pension and post-retirement employee benefit plans, excess pension charges, acquisition integration costs, facilities opening costs, project start-up costs, business optimization costs, signing, retention or completion bonuses, shall be excluded,

(ii) any net after tax income or loss from disposed, abandoned, transferred, closed or discontinued operations and any net after tax gain or loss on disposal of disposed, abandoned, transferred, closed or discontinued operations shall be excluded,

(iii) any net after tax gain or loss (less all fees and expenses or charges relating thereto) attributable to business dispositions or asset dispositions other than in the ordinary course of business (as determined in good faith by the management of the Borrower) shall be excluded,

(iv) Consolidated Net Income for such period shall not include the cumulative effect of a change in accounting principles during such period,

(v) effects of purchase accounting adjustments (including the effects of such adjustments pushed down to such Person) in component amounts required or permitted by GAAP, resulting from the application of purchase accounting in relation to any consummated acquisition or the amortization or write-off of any amounts thereof, net of taxes, shall be excluded,

(vi) any impairment charges or asset write-offs, in each case pursuant to GAAP, and the amortization of intangibles arising pursuant to GAAP, shall be excluded,

(vii) any non cash compensation charge or expenses realized or resulting from stock option plans, employee benefit plans or post-employment benefit plans, or grants or sales of stock, stock appreciation or similar rights, stock options, restricted stock, preferred stock or other rights shall be excluded,

(viii) accruals and reserves that are established or adjusted within twelve months after the Closing Date and that are so required to be established or adjusted in accordance with GAAP or as a result of adoption or modification of accounting policies shall be excluded,

(ix) non-cash gains, losses, income and expenses resulting from fair value accounting required by the applicable standard under GAAP and related interpretations shall be excluded,

(x) (i) the non-cash portion of "straight-line" rent expense shall be excluded and (ii) the cash portion of "straight-line" rent expense which exceeds the amount expensed in respect of such rent expense shall be included,

(xi) to the extent covered by insurance and actually reimbursed, or, so long as such Person has made a determination that there exists reasonable evidence that such amount will in fact be reimbursed by the insurer and only to the extent that such amount is (i) not denied by the applicable carrier in writing within 180 days and (ii) in fact reimbursed within 365 days of the date of such evidence (with a deduction for any amount so added back to the extent not so reimbursed within 365 days), expenses with respect to liability or casualty events or business interruption shall be excluded, and

(xii) non-cash charges for deferred tax asset valuation allowances shall be excluded.

**"Contribution Agreement"** shall mean that certain Contribution Agreement, dated as of the date hereof, between Borrower and Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

**"Control"** shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management, policies or activities of a Person, whether through

ownership of voting securities, by contract or otherwise. “Controlled” and “Controlling” shall have correlative meanings.

“Convention Center Parcel” shall mean the parcel shown on Schedule XXII and comprising a part of the Harrah’s Atlantic City Property.

“Convention Center Project” shall mean that certain conference center currently contemplated to be constructed on the Convention Center Parcel by the Mortgage Borrower and/or the Operating Company owning the Harrah’s Atlantic City Property, and more fully described in the schematic designs for the Convention Center Project provided by Mortgage Borrower to Mortgage Lender. The Convention Center Project will not be funded with the proceeds of the Loan (but will be funded by Mortgage Borrower, including with capital contributions).

“Counterparty” shall mean, with respect to the Interest Rate Cap Agreement and any Replacement Interest Rate Cap Agreement, any Acceptable Counterparty.

“Covered Disclosure Information” shall have the meaning set forth in Section 9.2(b) hereof.

“Debt” shall mean the outstanding principal amount set forth in, and evidenced by, this Agreement and the Notes together with all interest accrued and unpaid thereon (including any interest that would accrue on the outstanding principal amount of the Loan through and including the end of any applicable Interest Period, even if such Interest Period extends beyond any applicable Payment Date, prepayment date or the Maturity Date) and all other sums due to Lender in respect of the Loan under the Notes, this Agreement, the Pledge Agreement and the other Loan Documents.

“Debt Service” shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under this Agreement and the Note.

“Debt Service Coverage Ratio” shall mean a ratio for the applicable period in which:

(a) the numerator is EBITDAR of the Operating Company for the four (4) quarter period preceding the date of determination, as set forth in the financial statements required hereunder; and

(b) the denominator is the sum of (i) the aggregate amount of Mortgage Debt Service which was due and payable for such preceding four (4) quarter period calculated, for these purposes, assuming that (A) the spread on the Mortgage Loan is the Spread (as defined in the Mortgage Loan Agreement) and (B) LIBOR is equal to the lesser of (y) LIBOR on the date of determination, or (z) the applicable Strike Price, (ii) the aggregate amount of Mezzanine Debt Service (including the Debt Service) which was due and payable for such preceding four (4) quarter period calculated, for these purposes, assuming that (A) the spread on the Mezzanine Loans is the “Spread” as defined in each Mezzanine Loan Agreement and (B) LIBOR is equal to the lesser of (y) LIBOR on the date of determination, or (z) the applicable Strike Price (as defined in the Mortgage Loan

Agreement), and (iii) the aggregate amount of the Permitted Mezzanine Debt Service which was due and payable for such preceding four (4) quarter period (or the annualized amount, if the Permitted Mezzanine Loan were outstanding for less than 12 calendar months) calculated, for these purposes, assuming that (A) the spread on the Permitted Mezzanine Loan is the "Spread" (as defined in the documents evidencing the Permitted Mezzanine Loan Documents and (B) LIBOR is equal to the lesser of (y) LIBOR on the date of determination, or (z) the strike price under the related interest rate cap purchased in connection with the Permitted Mezzanine Loan);

provided, however, that, solely for the purpose of Section 2.5, the Debt Service Coverage Ratio shall be determined as described in Section 2.5.1(c).

"**Default**" shall mean the occurrence of any event hereunder or under any other Loan Document which, but for the giving of notice or passage of time, or both, would be an Event of Default.

"**Default Rate**" shall mean a rate per annum equal to the lesser of (a) the Maximum Legal Rate and (b) two percent (2%) above the Applicable Interest Rate.

"**Delinquency**" shall mean, with respect to each Individual Property, the latest date on which Taxes or Other Charges may be paid (with respect to such Individual Property) without the payment of a premium, penalty or interest.

"**Determination Date**" shall mean, with respect to any Interest Period, the date that is two (2) London Business Days prior to the fifteenth (15<sup>th</sup>) day of the calendar month in which such Interest Period commences.

"**Disclosure Document**" shall mean a prospectus, prospectus supplement, private placement memorandum, offering memorandum, offering circular, term sheet, road show presentation materials or other offering documents or marketing materials, in each case in preliminary or final form, used to offer Securities in connection with a Securitization.

"**EBITDAR**" shall mean, with respect to any Person for any period, the Consolidated Net Income of such Person plus the sum of (in each case without duplication and to the extent the respective amounts described in subclauses (i) through (vi) below reduced such Consolidated Net Income (and were not excluded therefrom) for the respective period for which EBITDAR is being determined):

- (i) provision for Taxes based on income, profits or capital for such period, including, without limitation, state, franchise and similar taxes and foreign withholding taxes (including penalties and interest related to taxes or arising from tax examinations);
- (ii) Interest Expense for such period (net of interest income for such period),
- (iii) depreciation and amortization expenses for such period including, but not exclusively, the amortization of intangible assets, deferred financing fees and Capitalized Software Expenditures and amortization of unrecognized prior service costs and actuarial gains and losses related to pensions and other post-employment benefits;

(iv) any expenses or charges (other than depreciation or amortization expense as described in the preceding clause (iii)) related to any acquisition, disposition, recapitalization or the incurrence, modification or repayment of Indebtedness permitted to be incurred by this Agreement (including a refinancing thereof) (whether or not successful), including (y) any amendment or other modification of such Indebtedness, and (z) commissions, discounts, yield and other fees and charges (including any interest expense) related to any such Indebtedness;

(v) restructuring charges or reserves (which, for the avoidance of doubt, shall include, without limitation, the effect of inventory optimization programs, retention, severance, systems establishment costs, contract termination costs, future lease commitments and excess pension charges), to the extent that such expenses, charges or reserves are considered to be extraordinary expenses under GAAP;

(vi) any costs or expense incurred pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement or any stock subscription or shareholder agreement, to the extent that such cost or expenses are funded with cash proceeds contributed to the capital of such Person;

(vii) with respect to the Operating Company, the Fixed Rent payable under the Operating Lease; and

(viii) if the Captive Insurance Company shall be utilized to provide terrorism coverage hereunder, the amount of the premiums expended by Mortgage Borrower to obtain such terrorism coverage to the extent such amount exceeds the Terrorism Premium Limit and such excess is retained by the Captive Insurance Company;

provided that EBITDAR shall be reduced by the sum of the following for the respective period for which EBITDAR is being determined:

(A) management fees equal to the greater of (x) 3 percent per annum of gross revenues at the Properties and (y) the actual management fees payable under any management agreement (provided the foregoing shall not be construed as Lender's approval of any management agreement except in accordance with the terms hereof), without double counting actual amounts incurred and otherwise reflected in the calculation of EBITDAR, and

(B) FF&E reserves equal to 3 percent per annum of gross hotel and casino revenues at the Properties without double counting actual amounts incurred and otherwise reflected in the calculation of EBITDAR.

**"EBITDAR (Closing Date)"** shall mean EBITDAR for calendar year 2007, as agreed upon between Borrower and Lender.

**"Eighth Mezzanine Borrower"** shall mean, collectively, the entities set forth on Schedule XX hereto, each a Delaware limited liability company, together with their respective successors and permitted assigns. As used herein, the term "Eighth Mezzanine Borrower" shall

mean one of the Eighth Mezzanine Borrowers individually, or the Eighth Mezzanine Borrowers collectively, as the context shall require.

“**Eighth Mezzanine Debt Service**” shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Eighth Mezzanine Notes.

“**Eighth Mezzanine Lender**” shall mean JPMorgan Chase Bank, N.A., in its capacity as the holder of the Eighth Mezzanine Loan, together with its successors and assigns.

“**Eighth Mezzanine Loan**” shall mean that certain loan in the original principal amount of Two Hundred Seventy Five Million and No/100 Dollars (\$275,000,000) of even date herewith made by Eighth Mezzanine Lender to Eighth Mezzanine Borrower.

“**Eighth Mezzanine Loan Agreement**” shall mean that certain Eighth Mezzanine Loan Agreement, dated as of the date hereof, between Eighth Mezzanine Borrower and Eighth Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Eighth Mezzanine Loan Documents**” shall mean the Eighth Mezzanine Loan Agreement, the Eighth Mezzanine Notes and all other documents and instruments executed and delivered in connection with the Eighth Mezzanine Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

“**Eighth Mezzanine Notes**” shall mean the “Notes” as defined in the Eighth Mezzanine Loan Agreement.

“**Eligibility Requirements**” means, with respect to any Person, that such Person (a) has total assets (in name or under management) in excess of \$4,000,000,000 and (except with respect to a pension advisory firm or similar fiduciary) capital/statutory surplus or shareholder’s equity of \$1,000,000,000, (b) is regularly engaged in the business of owning and operating commercial real estate properties, (c) is not currently, and its principals are not currently, subject to a Bankruptcy Action and for the immediately preceding 10 years, neither it nor any material subsidiary has been subject to a Bankruptcy Action, and (d) has not been, and its principals have not been, convicted and is not under current indictment for a felony or crime involving moral turpitude, has not been found by a court of competent jurisdiction to have violated federal or state securities laws, and is not an organized crime figure.

“**Eligible Account**” shall mean a separate and identifiable account from all other funds held by the holding institution that is either (a) an account or accounts maintained with a federal or state-chartered depository institution or trust company which complies with the definition of Eligible Institution or (b) a segregated trust account or accounts maintained with a federal or state chartered depository institution or trust company acting in its fiduciary capacity which, in the case of a state chartered depository institution or trust company, is subject to regulations substantially similar to 12 C.F.R. § 9.10(b), having in either case a combined capital and surplus of at least \$50,000,000 and subject to supervision or examination by federal and state authority. An Eligible Account will not be evidenced by a certificate of deposit, passbook or other instrument.

**“Eligible Institution”** shall mean a depository institution or trust company, the short term unsecured debt obligations or commercial paper of which are rated at least “A-1” by S&P, “P-1” by Moody’s and “F-1” by Fitch in the case of accounts in which funds are held for thirty (30) days or less (or, in the case of accounts in which funds are held for more than thirty (30) days, the long term unsecured debt obligations of which are rated at least “A” by Fitch and S&P and “A2” by Moody’s). After a Securitization of all or any portion of the Loan, only the ratings of those Rating Agencies rating the Securities shall be taken into account in determining whether institutions or trust companies constitute Eligible Institutions.

**“Embargoed Person”** shall have the meaning set forth in Section 4.1.35 hereof.

**“Environmental Indemnity”** shall mean that certain Environmental Indemnity Agreement, dated as of the date hereof, executed by Borrower and Guarantor in connection with the Loan for the benefit of Lender and the Noteholders, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

**“Equipment”** shall mean, with respect to each Individual Property, any equipment now owned or hereafter acquired by Mortgage Borrower or Operating Company, which is used at or in connection with the Improvements or such Individual Property or is located thereon or therein, including (without limitation) all Gaming Equipment, all machinery, equipment, furnishings, and electronic data-processing and other office equipment now owned or hereafter acquired by or on behalf of Mortgage Borrower or Operating Company and any and all additions, substitutions and replacements of any of the foregoing), together with all attachments, components, parts, equipment and accessories installed thereon or affixed thereto.

**“ERISA”** shall mean the Employee Retirement Income Security Act of 1974, as amended.

**“Event of Default”** shall have the meaning set forth in Section 8.1(a) hereof.

**“Exchange Act”** shall have the meaning set forth in Section 9.2(a) hereof.

**“Exchange Act Filing”** shall have the meaning set forth in Section 5.1.11(f) hereof.

**“FF&E”** shall mean, with respect to each Individual Property, collectively, furnishings, fixtures (other than Fixtures) and Equipment located in the guest rooms, hallways, lobbies, restaurants, lounges, meeting and banquet rooms, parking facilities, public areas or otherwise in any portion of such Individual Property, including (without limitation) all fixed asset supplies (including, but not limited to, linen, china, glassware, tableware, uniforms, other hotel inventory and similar items, whether used in connection with public space or guest rooms), beds, chairs, bookcases, tables, carpeting, drapes, couches, luggage carts, luggage racks, bars, bar fixtures, radios, television sets, intercom and paging equipment, electric and electronic equipment, heating, lighting and plumbing fixtures, fire prevention and extinguishing apparatus, cooling and air-conditioning systems, elevators, escalators, stoves, ranges, refrigerators, laundry machines, tools, machinery, boilers, incinerators, switchboards, conduits, compressors, vacuum cleaning systems, floor cleaning, waxing and polishing equipment, cabinets, lockers, shelving, dishwashers, garbage disposals, washer and dryers, gaming equipment and other casino

equipment and all other customary hotel and casino resort equipment and other tangible property owned by Mortgage Borrower or Operating Company, or in which Mortgage Borrower or Operating Company has or shall have an interest, now or hereafter located at such Individual Property and useable in connection with the present or future operation and occupancy of such Individual Property; provided, however, that FF&E shall not include items owned by tenants under space Leases (other than the Operating Lease) or by third party operators (other than Operating Company).

“**FF&E Reserve Account**” shall have the meaning set forth in Section 7.3 hereof.

“**FF&E Reserve Fund**” shall have the meaning set forth in Section 7.3 hereof.

“**Fifth Mezzanine Borrower**” shall mean, collectively, the entities set forth on Schedule XVII hereto, each a Delaware limited liability company, together with their respective successors and permitted assigns. As used herein, the term “Fifth Mezzanine Borrower” shall mean one of the Fifth Mezzanine Borrowers individually, or the Fifth Mezzanine Borrowers collectively, as the context shall require.

“**Fifth Mezzanine Debt Service**” shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Fifth Mezzanine Notes.

“**Fifth Mezzanine Lender**” shall mean JPMorgan Chase Bank, N.A., in its capacity as the holder of the Fifth Mezzanine Loan, together with its successors and assigns.

“**Fifth Mezzanine Loan**” shall mean that certain loan in the original principal amount of Two Hundred Seventy Five Million and No/100 Dollars (\$275,000,000) of even date herewith made by Fifth Mezzanine Lender to Fifth Mezzanine Borrower.

“**Fifth Mezzanine Loan Agreement**” shall mean that certain Fifth Mezzanine Loan Agreement, dated as of the date hereof, between Fifth Mezzanine Borrower and Fifth Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Fifth Mezzanine Loan Documents**” shall mean the Fifth Mezzanine Loan Agreement, the Fifth Mezzanine Notes and all other documents and instruments executed and delivered in connection with the Fifth Mezzanine Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

“**Fifth Mezzanine Notes**” shall mean the “Notes” as defined in the Fifth Mezzanine Loan Agreement.

“**Fifth Mezzanine Pledge Agreement**” shall mean that certain Pledge and Security Agreement (Fifth Mezzanine Loan), dated as of the date hereof, between Fifth Mezzanine Borrower and Fifth Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**“First Mezzanine Borrower”** shall mean, collectively, the entities set forth on Schedule XIV hereto, each a Delaware limited liability company, together with their respective successors and permitted assigns. As used herein, the term “First Mezzanine Borrower” shall mean one of the First Mezzanine Borrowers individually, or the First Mezzanine Borrowers collectively, as the context shall require.

**“First Mezzanine Borrower Company Agreements”** shall mean, collectively, the Limited Liability Company Agreements of First Mezzanine Borrower, by each Borrower, as sole member, dated as of the date hereof.

**“First Mezzanine Debt Service”** shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the First Mezzanine Note.

**“First Mezzanine Lender”** shall have the meaning set forth in the Recitals.

**“First Mezzanine Loan”** shall have the meaning set forth in the Recitals.

**“First Mezzanine Loan Agreement”** shall have the meaning set forth in the Recitals.

**“First Mezzanine Loan Documents”** shall mean the First Mezzanine Loan Agreement, the First Mezzanine Notes, and all other documents and instruments executed and delivered in connection with the First Mezzanine Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

**“First Mezzanine Notes”** shall mean the “Notes” as defined in the First Mezzanine Loan Agreement.

**“First Mezzanine Pledge Agreement”** shall mean that certain Pledge and Security Agreement (First Mezzanine Loan), dated as of the date hereof, between First Mezzanine Borrower and First Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**“Fiscal Year”** shall mean each twelve (12) month period commencing on January 1 and ending on December 31 during each year of the term of the Loan.

**“Fitch”** shall mean Fitch, Inc.

**“Fixed Rent”** shall mean the Base Rent (as defined in the Operating Lease) payable under the Operating Lease.

**“Fixtures”** shall mean, with respect to each Individual Property, all Equipment now owned, or the ownership of which is hereafter acquired, by Mortgage Borrower which is so related to the Land and the Improvements forming part of the Individual Property in question that it is deemed fixtures or real property under applicable Legal Requirements, including, without limitation, all building or construction materials intended for construction, reconstruction, alteration, decoration or repair of or installation on the applicable Individual Property, construction equipment, appliances, machinery, plant equipment, fittings, apparatuses,

fixtures and other items now or hereafter attached to, installed in or used in connection with (temporarily or permanently) any of the Improvements or the Land, including, but not limited to, engines, devices for the operation of pumps, pipes, plumbing, call and sprinkler systems, fire extinguishing apparatuses and equipment, heating, ventilating, incinerating, electrical, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances and equipment, pollution control equipment, security systems, disposals, dishwashers, refrigerators and ranges, recreational equipment and facilities of all kinds, and water, electrical, storm and sanitary sewer facilities, utility lines and equipment (whether owned individually or jointly with others, and, if owned jointly, to the extent of Mortgage Borrower's interest therein) and all other utilities whether or not situated in easements, all water tanks, water supply, water power sites, fuel stations, fuel tanks, fuel supply, and all other structures, together with all accessions, appurtenances, additions, replacements, betterments and substitutions or any of the foregoing and the proceeds thereof.

**"Flamingo Las Vegas"** shall mean that certain Individual Property identified on Schedule II as the "Flamingo Las Vegas" and having a street address of 3555 Las Vegas Boulevard South, Las Vegas, Nevada.

**"Force Majeure"** shall mean any delay caused by reason of strike, lock-out or other labor trouble, casualty, governmental preemption of priorities or other controls in connection with a national or other public emergency or shortages of fuel, supplies or labor resulting therefrom or other causes beyond Borrower's reasonable control.

**"Foreign Taxes"** shall have the meaning set forth in Section 2.2.3(e) hereof.

**"Fourth Mezzanine Borrower"** shall mean, collectively, the entities set forth on Schedule XVI hereto, each a Delaware limited liability company, together with their respective successors and permitted assigns. As used herein, the term "Fourth Mezzanine Borrower" shall mean one of the Fourth Mezzanine Borrowers individually, or the Fourth Mezzanine Borrowers collectively, as the context shall require.

**"Fourth Mezzanine Debt Service"** shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Fourth Mezzanine Notes.

**"Fourth Mezzanine Lender"** shall mean JPMorgan Chase Bank, N.A., in its capacity as the holder of the Fourth Mezzanine Loan, together with its successors and assigns.

**"Fourth Mezzanine Loan"** shall mean that certain loan in the original principal amount of Two Hundred Seventy Five Million and No/100 Dollars (\$275,000,000) of even date herewith made by Fourth Mezzanine Lender to Fourth Mezzanine Borrower.

**"Fourth Mezzanine Loan Agreement"** shall mean that certain Fourth Mezzanine Loan Agreement, dated as of the date hereof, between Fourth Mezzanine Borrower and Fourth Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**“Fourth Mezzanine Loan Documents”** shall mean the Fourth Mezzanine Loan Agreement, the Fourth Mezzanine Notes and all other documents and instruments executed and delivered in connection with the Fourth Mezzanine Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

**“Fourth Mezzanine Notes”** shall mean the “Notes” as defined in the Fourth Mezzanine Loan Agreement.

**“Fourth Mezzanine Pledge Agreement”** shall mean that certain Pledge and Security Agreement (Fourth Mezzanine Loan), dated as of the date hereof, between Fourth Mezzanine Borrower and Fourth Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**“GAAP”** shall mean generally accepted accounting principles in the United States of America as of the date of the applicable financial report.

**“Gaming Authorities”** shall mean, in any jurisdiction in which Borrower, Senior Mezzanine Borrower, Mortgage Borrower, Operating Company or any of their respective subsidiaries manages or conducts any casino, gaming business or activities, the applicable gaming board, commission, or other governmental gaming regulatory authority, body or agency which (a) has, or may at any time after the Closing Date have, jurisdiction over the gaming activities at any of the Properties or any successor to such authority or (b) is, or may at any time after the Closing Date be, responsible for interpreting, administering and enforcing the Gaming Laws.

**“Gaming Equipment”** shall mean any and all gaming devices, gaming device parts inventory and other related gaming equipment and supplies used in connection with the operation of a casino, including (without limitation), slot machines, gaming tables, cards, dice, chips, tokens, player tracking systems, cashless wagering systems, electronic betting systems, mobile gaming systems and associated equipment which are located at the Casino Components, owned or leased by Operating Company or Mortgage Borrower and used or useable exclusively in the present or future operation of slot machines and live games at the Casino Component, together with all improvements and/or additions thereto.

**“Gaming Laws”** or **“Gaming Regulations”** shall mean all applicable constitutions, treaties, laws, statutes and municipal ordinances pursuant to which any Gaming Authority possesses regulatory, licensing or permitting authority over gaming, gambling or casino or casino-related activities and all rules, rulings, orders, ordinances and regulations of any Gaming Authority applicable to the gambling, casino, gaming businesses or casino or casino-related activities of Borrower, Senior Mezzanine Borrower, Mortgage Borrower or the Operating Companies or any of their respective subsidiaries in any jurisdiction, as in effect from time to time, including the policies, interpretations and administration thereof by the Gaming Authorities.

**“Gaming License”** shall mean, in any jurisdiction in which Borrower, Senior Mezzanine Borrower, Mortgage Borrower, Operating Company or any of their respective subsidiaries conducts any casino and gaming business or activities, any license, qualification,

franchise, accreditation, approval, registration, permit, finding of suitability or other authorization relating to gaming, the gaming business or the operation of a casino under the Gaming Laws or required by the Gaming Authorities or otherwise necessary for the operation of gaming, the gaming business or a resort casino.

“**Gaming Liquidity Requirement**” shall mean the minimum bankroll requirements for cash and cash equivalents required to be maintained by each Operating Company pursuant to Gaming Laws in an amount no greater than is mandated by applicable law, which requirements may be subject to (a) adjustment in an amount equal to any incremental increase or decrease in the amount of the Gaming Liquidity Requirement that is required to be maintained by Operating Company under applicable Gaming Laws as a result of any increase or decrease in gaming business at the applicable Casino Component, or (b) subject to increase or decrease due to any change in the applicable requirements under Gaming Laws generally.

“**Gaming Operating Reserve**” shall mean, with respect to the Casino Component, such cash funds and reserves that are held and maintained on-site at each Individual Property by Operating Company, in its capacity as the duly licensed operator of the Casino Component, including (without limitation) casino chips, tokens, checks and markers; provided, however, that all such Gaming Operating Reserves (a) are established and maintained in compliance with all applicable Gaming Liquidity Requirements, (b) are solely for use in the day-to-day operation and management of each Casino Component in the ordinary course of business, and (c) in the case of each Individual Property, are in amounts customary and generally comparable for casinos comparable to the Individual Property in question.

“**Governmental Authority**” shall mean any court, board, agency, commission, office or other authority of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence, including, without limitation, all Gaming Authorities having jurisdiction over the Properties (and any operations conducted thereat), Mortgage Borrower, Borrower and Operating Company. For the avoidance of doubt, the term “Governmental Authority” shall include, and be deemed to include, all Gaming Authorities.

“**Ground Lease**” shall mean, individually and collectively, as the context requires, those certain ground leases listed in Schedule IV, as the same may be amended, supplemented, replaced or otherwise modified from time to time in accordance with the provisions hereof.

“**Ground Lease Estoppel Reserve Amount**” shall have the meaning set forth in the Ground Lease Side Letter.

“**Ground Lease Estoppel Trigger Event**” shall have the meaning set forth in Section 5.1.23 hereof.

“**Ground Lease Estoppel Trigger Spread**” shall have the meaning set forth in the Ground Lease Side Letter.

“**Ground Lease Side Letter**” shall have the meaning assigned to such term in the Mortgage Loan Agreement.

“**Ground Lease Subsidiary**” shall have the meaning assigned to such term in the Mortgage Loan Agreement.

“**Ground Rent**” shall mean any rent, additional rent or other charge payable by the tenant under the Ground Lease.

“**Ground Rent Reserve Account**” shall have the meaning set forth in Section 7.4 hereof.

“**Ground Rent Reserve Funds**” shall have the meaning set forth in Section 7.4.

“**Guarantor**” shall mean, collectively, Guarantor (FF&E), Guarantor (Recourse Carveouts), Guarantor (Operating Lease), Guarantor (Ground Lease Estoppel) and any guarantor under any completion guaranty provided under Section 5.1.21.

“**Guarantor (FF&E)**” shall mean any Approved Guarantor. Initially, Guarantor (FF&E) shall mean Holdings, and its successors. If Holdings fails to meet the Minimum Value Test, then Borrower shall replace Holdings, as the guarantor under the Guaranty (FF&E), with an Approved Guarantor.

“**Guarantor (Ground Lease Estoppel)**” shall mean Holdings, and its successors.

“**Guarantor (Operating Lease)**” shall mean Holdings, and its successors.

“**Guarantor (Recourse Carveouts)**” shall mean Holdings, and its successors.

“**Guaranty**” shall mean, collectively, the Guaranty (FF&E), the Guaranty (Recourse Carveouts), the Guaranty (Ground Lease Estoppel), the Operating Lease Guaranty and any completion guaranty provided under Section 5.1.21.

“**Guarantor (Operating Lease)**” shall mean Holdings, and its successors.

“**Guaranty**” shall mean, collectively, the Guaranty (FF&E), the Guaranty (Recourse Carveouts), the Operating Lease Guaranty and any completion guaranty provided under Section 5.1.21.

“**Guaranty (FF&E)**” shall mean that certain Guaranty (FF&E) (Sixth Mezzanine Loan), dated as of the date hereof, from Guarantor (FF&E) to Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Guaranty (Ground Lease Estoppel)**” shall mean that certain Guaranty (Harvey’s - Payment) (Sixth Mezzanine), dated as of the date hereof, from Guarantor (Ground Lease Estoppel) to Lender, as the same may be amended, restated, supplemented or modified from time to time.

“**Guaranty (Recourse Carveouts)**” shall mean that certain Guaranty (Recourse Carveouts) (Sixth Mezzanine Loan), dated as of the date hereof, from Guarantor (Recourse

Carveouts) to Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Harrah’s Atlantic City Property**” shall mean that certain Individual Property identified on Schedule II as “Harrah’s Atlantic City” and having a street address of 777 Harrah’s Boulevard, Atlantic City, New Jersey.

“**Holdings**” shall mean Harrah’s Entertainment, Inc., and its successors.

“**Hotel Components**” shall mean, collectively, those portions of each Individual Property devoted to the operation of a hotel and related facilities, excluding the Casino Component, but including (without limitation) (a) all guest rooms and suites, hotel amenities, restaurants, conference centers, meeting, banquet and other public rooms, spa, parking spaces and other facilities of the hotel portion of such Individual Property, and (b) any theaters or performing arts spaces in the Individual Property in question. The Hotel Components are more particularly described and set forth in each Operating Lease, as applicable.

“**Improvements**” shall have the meaning set forth in the granting clause of the related Mortgage with respect to each Individual Property.

“**Indebtedness**” of a Person, at a particular date, means the sum (without duplication) at such date of (a) all indebtedness of such Person (including, without limitation, amounts for borrowed money and indebtedness in the form of mezzanine debt and preferred equity); (b) obligations evidenced by bonds, debentures, notes, or other similar instruments; (c) obligations for the deferred purchase price of property or services (including trade obligations); (d) obligations under letters of credit; (e) obligations under acceptance facilities; (f) all guaranties, endorsements (other than for collection or deposit in the ordinary course of business) and other contingent obligations to purchase, to provide funds for payment, to supply funds, to invest in any Person or entity, or otherwise to assure a creditor against loss; and (g) obligations secured by any Liens, whether or not the obligations have been assumed.

“**Indemnified Liabilities**” shall have the meaning set forth in Section 10.13 hereof.

“**Indemnified Person**” shall have the meaning set forth in Section 9.2(b) hereof.

“**Independent Director**” or “**Independent Manager**” shall mean a natural person who is not and will not be while serving and has not been during the five years preceding his or her initial appointment to such position any of the following: (a) a stockholder (other than a stockholder who owns a *de minimis* amount of shares and receive *de minimis* income therefrom, or who indirectly owns stock through its interest in one or more mutual funds), member (other than as a Special Member or Springing Member of Borrower), director, manager (except in his or her capacity as an Independent Manager on the Board of Managers of Borrower), officer, employee, partner, attorney, trustee or counsel of Borrower or any Affiliate of Borrower or any direct or indirect parent of either of them, including Holdings, (b) a creditor, customer (other than a retail customer of an Individual Property), supplier or other Person who derives any of its purchases or revenues from its activities with Borrower or any Affiliate of Borrower, including Holdings, (c) a Person or other entity controlling or under common control

with any such stockholder, partner, member, director, manager or officer, customer, supplier or other Person excluded from serving as Independent Director or Independent Manager described in the foregoing subclause (a) or subclause (b), or (d) a member of the immediate family by blood or marriage of any such stockholder, member, manager, director, officer, employee, partner, attorney, customer, supplier or other Person excluded from serving as Independent Director or Independent Manager in subclause (a) or subclause (b). A natural person who satisfies the foregoing definition other than subclause (b) above shall not be disqualified from serving as an Independent Manager, if such individual is an independent director provided by a nationally recognized company that provides professional independent directors and managers, it being hereby acknowledged and agreed that Corporation Service Company satisfies such criteria. Further, a natural person who otherwise satisfies the foregoing definition except for subclause (a) by reason of being the independent director of a "special purpose entity" affiliated with the Borrower shall not be disqualified from serving as an Independent Director of the Borrower if such individual is either (i) a Professional Independent Director or (ii) the fees and other income that such individual earns from serving as independent director of affiliates of the Borrower in any given year constitute in the aggregate less than five percent (5%) of such individual's annual income for that year. Notwithstanding the immediately preceding sentence, an Independent Director may not simultaneously serve as Independent Director of the Borrower and independent director of a special purpose entity that owns a direct or indirect equity interest in the Borrower or a direct or indirect interest in any co-borrower with the Borrower. For purposes of this paragraph, a "special purpose entity" is an entity, whose organizational documents contain restrictions on its activities and impose requirements intended to preserve such entity's separateness that are substantially similar to the "special purpose entity" provisions of this Agreement. Notwithstanding anything herein to the contrary, an Independent Director may not simultaneously serve as Independent Director of a Borrower and an independent director of a special purpose entity that owns a direct or indirect equity interest in any Borrower; provided, however, that one Independent Director of Borrower (but not both Independent Directors simultaneously) may serve as an independent director of each Other Mezzanine Borrower.

**"Individual Material Adverse Effect"** shall mean any event or condition that, either singly or in the aggregate, could reasonably be expected to have or result in a material adverse effect upon (a) the business, operations, economic performance, prospects, assets or condition (financial or otherwise) of (i) any Borrower, any Senior Mezzanine Borrower or any Mortgage Borrower, (ii) Guarantor, (iii) any Operating Company, (iv) any Operating Lease or Operating Lease Guaranty or (v) the Collateral, the Senior Mezzanine Collateral or any Individual Property or any Hotel Component or Casino Component thereon; (b) the ability of any Borrower, any Senior Mezzanine Borrower, any Mortgage Borrower or Guarantor to perform, in all material respects, its obligations under each of the Loan Documents, Senior Mezzanine Loan Documents or Mortgage Loan Documents to which it is a party; (c) the ability of any Operating Company to perform, in all material respects, its obligations under its Lease; (d) the enforceability or validity of (i) any Operating Lease or Operating Lease Guaranty, or (ii) any Loan Document, Senior Mezzanine Loan Document, Mortgage Loan Document or the perfection or priority of any Lien created under any Loan Document, Senior Mezzanine Loan Document or Mortgage Loan Document; (e) the value of, or cash flow from, any Individual Property, the Collateral, the Senior Mezzanine Collateral or the operations thereof; or (f) the material rights, interests and remedies of Lender under any of the Loan Documents.

**“Individual Property”** shall mean, individually, any one of the properties identified on Schedule II (it being the Improvements thereon and all Fixtures and all Equipment, FF&E and personal property owned by Mortgage Borrower and encumbered by a Mortgage, together with all rights pertaining to such property and Improvements, as more particularly described in the Granting Clauses of each Mortgage and referred to therein as the “Property”. For all purposes herein and in the other Loan Documents and to the extent not prohibited by the Ground Lease, the premises leased by Ground Lease Subsidiary or Borrower, as applicable, under the Ground Lease shall constitute a part of the Individual Property known as “Harvey’s Lake Tahoe”, “Harrah’s Lake Tahoe” and “Bill’s Lake Tahoe”, except that such ground leased premises shall not be subject to a lien of a Mortgage or an Operating Lease unless and until required pursuant hereto, the Mortgage Loan Agreement or pursuant to the Ground Lease Side Letter.

**“Insolvency Opinion”** shall mean that certain non-consolidation opinion letter dated the date hereof delivered by Cleary Gottlieb Steen & Hamilton LLP in connection with the Loan.

**“Institutional Lender”** shall mean any Person reasonably acceptable to Lender in all respects that is either (a) a real estate investment trust, bank, saving and loan association, investment bank, insurance company, trust company, commercial credit corporation, pension plan, pension fund or pension advisory firm, mutual fund, government entity or plan, provided that any such Person referred to in this clause (a) satisfies the Eligibility Requirements; (b) an investment company, money management firm or “qualified institutional buyer” within the meaning of Rule 144A under the Securities Act of 1933, as amended, or an institutional “accredited investor” within the meaning of Regulation D under the Securities Act of 1933, as amended, provided that any such Person referred to in this clause (b) satisfies the Eligibility Requirements; (c) an institution substantially similar to any of the foregoing entities described in clauses (a) or (b) that satisfies the Eligibility Requirements; (d) any entity controlled by any of the entities described in clauses (a) or (c) above; or (e) an investment fund, limited liability company, limited partnership or general partnership where a Permitted Fund Manager or an entity that is otherwise an Institutional Lender under clauses (a), (b), (c) or (d) of this definition acts as the general partner, managing member or fund manager and at least fifty percent (50%) of the equity interests in such investment fund are owned, directly or indirectly, by one or more entities that are otherwise Institutional Lenders under clauses (a), (b), (c) or (d) of this definition.

**“Insurance Premiums”** shall have the meaning set forth in the Mortgage Loan Agreement.

**“Insurance Proceeds”** shall have the meaning set forth in the Mortgage Loan Agreement.

**“Interest Expense”** shall mean, with respect to any Person for any period, the sum of (a) gross interest expense of such Person for such period on a consolidated basis, including (i) the amortization of debt discounts, (ii) the amortization of all fees payable in connection with the incurrence of Indebtedness to the extent included in interest expense and (iii) the portion of any payments or accruals with respect to equipment financing and equipment leases allocable to interest expense, (b) capitalized interest of such Person, and (c) commissions,

discounts, yield and other fees and charges incurred in connection with any indebtedness which are payable to any Person other than Borrower. For purposes of the foregoing, interest on equipment financing or equipment leases shall be deemed to accrue at an interest rate reasonably determined by the Borrower to be the rate of interest implicit in such equipment financing or equipment lease in accordance with GAAP.

**“Interest Period”** shall mean (a) for the first interest period hereunder, (i) if the Closing Date occurs on or before the fourteenth (14<sup>th</sup>) day of a calendar month, the period commencing on the Closing Date and ending on (and including) the fourteenth (14<sup>th</sup>) day of the calendar month in which the Closing Date occurs, and (ii) if the Closing Date occurs on or after the fifteenth (15<sup>th</sup>) day of a calendar month, the period commencing on the Closing Date and ending on (and including) the fourteenth (14<sup>th</sup>) day of the following calendar month and (b) for each interest period thereafter commencing February 15, 2008, the period commencing on the fifteenth (15<sup>th</sup>) day of each calendar month and ending on (and including) the fourteenth (14<sup>th</sup>) day of the following calendar month. Each Interest Period as set forth in clause (b) above shall be a full month and shall not be shortened by reason of any payment of the Loan prior to the expiration of such Interest Period. Notwithstanding the foregoing, Lender shall have the right, in connection with a Securitization, to change the Interest Period and Payment Date, provided that in doing so, Lender shall not increase Borrower’s costs hereunder (other than the direct costs of implementing such change, such as legal fees, which Borrower hereby agrees to pay).

**“Interest Rate Cap Agreement”** shall mean, as applicable, an Interest Rate Cap Agreement (together with the confirmation and schedules relating thereto) in form and substance reasonably satisfactory to Lender between Borrower and an Acceptable Counterparty or a Replacement Interest Rate Cap Agreement.

**“JPM”** shall mean JPMorgan Chase Bank, N.A. and its successors in interest.

**“Lease”** shall mean any lease (including the Operating Lease), sublease or subsublease, letting, license, concession or other agreement (whether written or oral and whether now or hereafter in effect) pursuant to which any Person is granted a possessory interest in, or right to use or occupy all or any portion of any space in any Individual Property (other than short term arrangements with transient hotel guests entered into in the usual course of business), and (a) every modification, amendment or other agreement relating to such lease, sublease, subsublease, or other agreement entered into in connection with such lease, sublease, subsublease, or other agreement and (b) every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto (including the Operating Lease Guaranty).

**“Legal Requirements”** shall mean, with respect to each Individual Property and the Collateral, all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions of Governmental Authorities affecting such Individual Property, the Senior Mezzanine Collateral, the Collateral or any part thereof (including, without limitation, all Gaming Laws), or affecting the construction, use, alteration or operation thereof, or any part thereof, whether now or hereafter enacted and in force, and all permits, licenses and authorizations and regulations relating thereto (including, without limitation, all Gaming Licenses and Operating Permits), and all covenants, agreements,

restrictions and encumbrances contained in any instruments, either of record or known to Borrower, Mortgage Borrower or Operating Company, at any time in force affecting such Individual Property or any part thereof, including, without limitation, any which may (a) require repairs, modifications or alterations in or to such Individual Property or any part thereof, or (b) in any way limit the use and enjoyment thereof. Legal Requirements shall include any (x) judicial, administrative or other governmental or quasi governmental order, injunction, writ, judgment, decree, ruling, interpretation, finding or other directive, whether domestic or foreign; (y) arbitrator's, mediator's or referee's decision, finding, award or recommendation; or (z) charter, rule, regulation or other organizational or governance document of any self-regulatory or governing body or organization. For the avoidance of doubt, the term "Legal Requirements" shall include, and be deemed to include, all applicable Gaming Laws and Gaming Regulations.

"**Lender**" shall have the meaning set forth in the introductory paragraph hereto, together with its successors and assigns.

"**Lender's Share**" shall mean a fraction, the numerator of which is the outstanding principal amount of the Loan and the denominator of which is the sum of the outstanding principal amounts of the Mortgage Loan, the Loan and the Other Mezzanine Loans (in each case, as of the date of determination).

"**Liabilities**" shall have the meaning set forth in Section 9.2(b) hereof.

"**LIBOR**" shall mean, with respect to each Interest Period, the rate (expressed as a percentage per annum and rounded to the next nearest 1/100 of 1%) for deposits in U.S. dollars, for a one-month period, that appears on Reuters Screen LIBOR01 Page (or the successor thereto) as of 11:00 a.m., London time, on the related Determination Date. If such rate does not appear on Reuters Screen LIBOR01 Page as of 11:00 a.m., London time, on such Determination Date, LIBOR shall be the arithmetic mean of the offered rates (expressed as a percentage per annum) for deposits in U.S. dollars for a one-month period that appear on the Reuters Screen Libor Page as of 11:00 a.m., London time, on such Determination Date, if at least two such offered rates so appear. If fewer than two such offered rates appear on the Reuters Screen Libor Page as of 11:00 a.m., London time, on such Determination Date, Lender shall request the principal London office of any four major reference banks in the London interbank market selected by Lender to provide such bank's offered quotation (expressed as a percentage per annum) to prime banks in the London interbank market for deposits in U.S. dollars for a one-month period as of 11:00 a.m., London time, on such Determination Date for the amounts of not less than U.S. \$1,000,000. If at least two such offered quotations are so provided, LIBOR shall be the arithmetic mean of such quotations. If fewer than two such quotations are so provided, Lender shall request any three major banks in New York City selected by Lender to provide such bank's rate (expressed as a percentage per annum) for loans in U.S. dollars to leading European banks for a one-month period as of approximately 11:00 a.m., New York City time on the applicable Determination Date for amounts of not less than U.S. \$1,000,000. If at least two such rates are so provided, LIBOR shall be the arithmetic mean of such rates. LIBOR shall be determined conclusively by Lender or its agent. Notwithstanding the foregoing, for the Interest Period ending February 14, 2008, LIBOR is 3.31%.

“**LIBOR Loan**” shall mean the Loan at such time as interest thereon accrues at a rate of interest based upon LIBOR.

“**Lien**” shall mean, with respect to each Individual Property, the Senior Mezzanine Collateral and the Collateral, any mortgage, deed of trust, lien, pledge, hypothecation, assignment, security interest, or any other encumbrance, charge or restriction on transfer of, on or affecting Borrower, Senior Mezzanine Borrower, Mortgage Borrower, any Individual Property, the Senior Mezzanine Collateral or the Collateral, any portion of either or any interest therein, including, without limitation, any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, the filing of any financing statement, and mechanic’s, materialmen’s and other similar liens and encumbrances, in each case whether arising by contract, operation of law, or otherwise.

“**Liquidation Event**” shall have the meaning set forth in Section 2.4.2 hereof.

“**Loan**” shall mean the loan made by Lender to Borrower pursuant to this Agreement.

“**Loan Adjustment**” shall have the meaning set forth in Section 2.1.6 hereof.

“**Loan Amount**” shall mean, as determined from time to time, the outstanding principal amount of the Loan.

“**Loan Documents**” shall mean, collectively, this Agreement, the Note, the Pledge Agreement, the Environmental Indemnity, the O&M Agreement, the Guaranty (Recourse Carveouts), the Guaranty (FF&E), the Guaranty (Ground Lease Estoppel), the Collateral Assignment of Interest Rate Cap Agreement, the Contribution Agreement and all other documents executed and/or delivered in connection with the Loan.

“**Loan Party**” shall mean, collectively, Mortgage Borrower, Borrower, Senior Mezzanine Borrower, Principal and Guarantor.

“**London Business Day**” shall mean any day other than a Saturday, Sunday or any other day on which commercial banks in London, England are not open for business.

“**Major Lease**” shall mean any of the following: (a) with respect to any Individual Property, any Lease (i) covering in excess of forty thousand (40,000) net rentable square feet at such Individual Property or (ii) made with a Tenant that is a Tenant under another Lease at such Individual Property (or with a Tenant that is an Affiliate of a Tenant under another Lease at such Individual Property) if any such Leases, together, cover in excess of forty thousand (40,000) net rentable square feet or more at such Individual Property, (b) any Lease of space at any Individual Property with an Affiliate of Mortgage Borrower, or (c) any Lease that is not the result of arm’s length negotiations; provided, however, that the Operating Lease shall not constitute a Major Lease for purposes of this Agreement.

“**Material Alteration**” shall mean any Alteration with respect to all or a portion of any Individual Property that (i) when aggregated with all other Alterations at such Individual Property then being conducted involve an estimated total cost in excess of an amount equal to ten

percent (10%) of the sum of the Allocated Loan Amount for such Individual Property and the “Allocated Loan Amounts” under (and as defined in each of) the Mortgage Loan Agreement and the Other Mezzanine Loan Agreements for such Individual Property or (ii) when aggregated with all other Alterations at the Properties, including such Individual Property, then being conducted, involve an estimated total cost in excess of an amount equal to five percent (5%) of the sum of the Loan Amount, the Mortgage Loan Amount and the Other Mezzanine Loan Amount (and, as used herein, “**Threshold Amount**” shall mean whichever of said 5% or 10% amount shall have been exceeded, provided that if both shall have been exceeded, then the lower of such two amounts shall be the “Threshold Amount”); provided, that, in determining whether one or more Alterations comprise a Material Alteration, there shall not be included (a) merely decorative work such as painting, wall papering, carpeting and replacement of FF&E to the extent the same are of a routine and recurring nature, performed in the ordinary course of business; (b) tenant improvement work performed by a tenant pursuant to the terms of any Lease (other than the Operating Lease) entered into in accordance with the terms hereof, so long as such work does not adversely affect any structural component of any Improvements, any utility or HVAC system contained in any Improvements or the exterior of any building constituting a part of any Improvements, (c) any Alterations which are performed in connection with the Restoration of any portion of any Individual Property after the occurrence of a Casualty or Condemnation in accordance with the terms and provisions of this Agreement, or (d) the Tower Project or the Convention Center Project.

“**Maturity Date**” shall mean the Scheduled Maturity Date or such other date on which the final payment of principal of the Notes becomes due and payable as therein or herein provided, whether at such Scheduled Maturity, by declaration of acceleration, or otherwise.

“**Maximum Legal Rate**” shall mean the maximum nonusurious interest rate, if any, that at any time or from time to time may be contracted for, taken, reserved, charged or received on the indebtedness evidenced by the Note and as provided for herein or the other Loan Documents, under the laws of such state or states whose laws are held by any court of competent jurisdiction to govern the interest rate provisions of the Loan.

“**Mezzanine Borrowers**” shall mean, collectively, Borrower, First Mezzanine Borrower, Second Mezzanine Borrower, Third Mezzanine Borrower, Fourth Mezzanine Borrower, Fifth Mezzanine Borrower, Seventh Mezzanine Borrower, Eighth Mezzanine Borrower, Ninth Mezzanine Borrower and any New Mezzanine Borrower.

“**Mezzanine Collection Account**” shall have the meaning set forth in Section 2.6.4 hereof.

“**Mezzanine Debt Service**” shall mean, with respect to any particular period of time, the sum of (a) the Debt Service, (b) the First Mezzanine Debt Service, (c) the Second Mezzanine Debt Service, (d) the Third Mezzanine Debt Service, (e) the Fourth Mezzanine Debt Service, (f) the Fifth Mezzanine Debt Service, (g) the Seventh Mezzanine Debt Service, (h) the Eighth Mezzanine Debt Service, (i) the Ninth Mezzanine Debt Service, and (j) debt service on any New Mezzanine Loan.

**“Mezzanine Lenders”** shall mean, collectively, Lender, First Mezzanine Lender, Second Mezzanine Lender, Third Mezzanine Lender, Fourth Mezzanine Lender, Fifth Mezzanine Lender, Seventh Mezzanine Lender, Eighth Mezzanine Lender, Ninth Mezzanine Lender and Lender, as lender under any New Mezzanine Loan.

**“Mezzanine Loan Agreements”** shall mean, collectively, this Agreement, the First Mezzanine Loan Agreement, the Second Mezzanine Loan Agreement, the Third Mezzanine Loan Agreement, the Fourth Mezzanine Loan Agreement, the Fifth Mezzanine Loan Agreement, the Seventh Mezzanine Loan Agreement, the Eighth Mezzanine Loan Agreement, the Ninth Mezzanine Loan Agreement and any New Mezzanine Loan Agreement.

**“Mezzanine Loan Amount”** shall mean, as determined from time to time, the outstanding principal amount of the Mezzanine Loans.

**“Mezzanine Loan Documents”** shall mean, collectively, the Loan Documents, the First Mezzanine Loan Documents, the Second Mezzanine Loan Documents, the Third Mezzanine Loan Documents, the Fourth Mezzanine Loan Documents, the Fifth Mezzanine Loan Documents, the Seventh Mezzanine Loan Documents, the Eighth Mezzanine Loan Documents, the Ninth Mezzanine Loan Documents and any loan documents entered into in connection with any New Mezzanine Loan.

**“Mezzanine Loans”** shall mean, collectively, this Loan, the First Mezzanine Loan, the Second Mezzanine Loan, the Third Mezzanine Loan, the Fourth Mezzanine Loan, the Fifth Mezzanine Loan, the Seventh Mezzanine Loan, the Eighth Mezzanine Loan, the Ninth Mezzanine Loan and any New Mezzanine Loan.

**“Minimum Value Test”** shall mean, with respect to any Person, that the greater of the book value or the fair market value of the assets of such Person (excluding, for purposes of making such determination, the value of the Properties) exceeds Five Billion and no/100 Dollars (\$5,000,000,000.00) in the aggregate, as certified to Lender in an Officer’s Certificate prepared in good faith based on the most recent financial statements of such Person.

**“Monthly Disbursements”** shall have the meaning provided in Section 2.6.2.

**“Monthly FF&E Reserve Amount”** means the monthly deposit for FF&E required pursuant to Section 7.3 of this Agreement.

**“Monthly Ground Rent Reserve Amount”** means the monthly deposit for Ground Rent required pursuant to Section 7.4 of this Agreement.

**“Monthly Tax and Insurance Amount”** means the monthly deposit for Taxes and Insurance required pursuant to Section 7.2 of this Agreement.

**“Moody’s”** shall mean Moody’s Investors Service, Inc.

**“Mortgage”** shall mean, with respect to each Individual Property, that certain first priority Mortgage (or Deed of Trust or Deed to Secure Debt) and Security Agreement, dated the date hereof, executed and delivered by Mortgage Borrower as security for the Mortgage Loan

and encumbering such Individual Property and any first priority Mortgage (Deed of Trust or Deed to Secure Debt) and Security Agreement delivered pursuant to the Ground Lease Side Letter, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Mortgage Borrower**” shall mean, collectively, the entities set forth on Schedule XIII hereto, each a Delaware limited liability company, together with their respective successors and permitted assigns. As used herein the term “Mortgage Borrower” shall mean one of the Mortgage Borrowers individually or the Mortgage Borrowers collectively, as the context shall require.

“**Mortgage Debt Service**” shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Mortgage Note and the Mortgage Loan Agreement.

“**Mortgage Lender**” shall have the meaning set forth in the Recitals.

“**Mortgage Loan**” shall have the meaning set forth in the Recitals.

“**Mortgage Loan Agreement**” shall have the meaning set forth in the Recitals.

“**Mortgage Loan Amount**” shall mean, as determined from time to time, the outstanding principal amount of the Mortgage Loan.

“**Mortgage Loan Default**” shall mean a “Default” as defined in the Mortgage Loan Agreement.

“**Mortgage Loan Documents**” shall mean the Mortgage Loan Agreement, the Mortgage Note, the Mortgage and all other documents and instruments executed and delivered in connection with the Mortgage Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

“**Mortgage Loan Event of Default**” shall mean an “Event of Default” as defined in the Mortgage Loan Agreement.

“**Mortgage Loan Reserve Funds**” shall mean the “Reserve Funds” as defined in the Mortgage Loan Agreement.

“**Mortgage Note**” shall mean the “Note” as defined in the Mortgage Loan Agreement.

“**Net Income**” shall mean, with respect to any Person, the net income (loss) of such Person, determined in accordance with GAAP and before any reduction in respect of preferred stock dividends.

“**Net Liquidation Proceeds After Debt Service**” shall mean, with respect to any Liquidation Event, all amounts paid to or received by or on behalf of Borrower, Senior Mezzanine Borrower or Mortgage Borrower in connection with such Liquidation Event,

including, without limitation, proceeds of any sale, refinancing or other disposition or liquidation, less (a) Lender's, Senior Mezzanine Lender's and/or Mortgage Lender's reasonable costs incurred in connection with the recovery thereof, (b) amounts required or permitted to be deducted therefrom and amounts paid pursuant to the Mortgage Loan Documents and Senior Mezzanine Loan Documents to Mortgage Lender and/or Senior Mezzanine Lender (as applicable), (c) in the case of a foreclosure sale, disposition or Transfer of any Individual Property in connection with realization thereon following a Mortgage Loan Event of Default, such reasonable and customary costs and expenses of sale or other disposition (including attorneys' fees and brokerage commissions), (d) in the case of a foreclosure sale, disposition or Transfer of any Senior Mezzanine Collateral in connection with realization thereon following a Senior Mezzanine Loan Default under any Senior Mezzanine Loan Documents, such reasonable and customary costs and expenses of sale or other disposition (including attorneys' fees and brokerage commissions), (e) in the case of a foreclosure sale, such costs and expenses incurred by Mortgage Lender under the Mortgage Loan Documents as Mortgage Lender shall be entitled to receive reimbursement for under the terms of the Mortgage Loan Documents, (f) in the case of a foreclosure sale, such costs and expenses incurred by Senior Mezzanine Lender under the Senior Mezzanine Loan Documents as Senior Mezzanine Lender shall be entitled to receive reimbursement for under the terms of the Senior Mezzanine Loan Documents, (g) in the case of a refinancing of the Mortgage Loan and/or Senior Mezzanine Loan, such costs and expenses (including attorneys' fees) of such refinancing as shall be reasonably approved by Mortgage Lender and/or Senior Mezzanine Lender, as the case may be, and (h) the amount of any prepayments required pursuant to the Mortgage Loan Documents, Senior Mezzanine Loan Documents, and/or the Loan Documents, in connection with any such Liquidation Event.

"**Net Proceeds**" shall have the meaning set forth in Section 6.4 hereof.

"**New Mezzanine Borrower**" shall have the meaning set forth in Section 2.1.7.

"**New Mezzanine Loan**" shall have the meaning set forth in Section 2.1.7.

"**Ninth Mezzanine Borrower**" shall mean, collectively, the entities set forth on Schedule XXI hereto, each a Delaware limited liability company, together with their respective successors and permitted assigns. As used herein, the term "Ninth Mezzanine Borrower" shall mean one of the Ninth Mezzanine Borrowers individually, or the Ninth Mezzanine Borrowers collectively, as the context shall require.

"**Ninth Mezzanine Debt Service**" shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Ninth Mezzanine Notes.

"**Ninth Mezzanine Lender**" shall mean JPMorgan Chase Bank, N.A., in its capacity as the holder of the Ninth Mezzanine Loan, together with its successors and assigns.

"**Ninth Mezzanine Loan**" shall mean that certain loan in the original principal amount of Two Hundred Seventy Five Million and No/100 Dollars (\$275,000,000) of even date herewith made by Ninth Mezzanine Lender to Ninth Mezzanine Borrower.

“**Ninth Mezzanine Loan Agreement**” shall mean that certain Ninth Mezzanine Loan Agreement, dated as of the date hereof, between Ninth Mezzanine Borrower and Ninth Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Ninth Mezzanine Loan Documents**” shall mean the Ninth Mezzanine Loan Agreement, the Ninth Mezzanine Notes and all other documents and instruments executed and delivered in connection with the Ninth Mezzanine Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

“**Ninth Mezzanine Note**” shall mean the “Notes” as defined in the Ninth Mezzanine Loan Agreement.

“**Note**” or “**Notes**” shall mean, collectively, Note A-1, Note A-2, Note A-3, Note A-4, Note A-5, Note A-6, Note A-7, Note A-8 and Note A-9.

“**Note A-1**” shall mean that certain Promissory Note A-1 (Sixth Mezzanine Loan), dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of Forty One Million Two Hundred Fifty Four Thousand Five Hundred Eighty Three and 33/100 Dollars (\$41,254,583.33), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Note A-2**” shall mean that certain Promissory Note A-2 (Sixth Mezzanine Loan), dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of Forty One Million Two Hundred Fifty Four Thousand Five Hundred Eighty Three and 33/100 Dollars (\$41,254,583.33), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Note A-3**” shall mean that certain Promissory Note A-3 (Sixth Mezzanine Loan), dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of Forty One Million Two Hundred Fifty Four Thousand Five Hundred Eighty Three and 33/100 Dollars (\$41,254,583.33), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Note A-4**” shall mean that certain Promissory Note A-4 (Sixth Mezzanine Loan), dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of Forty One Million Two Hundred Fifty Four Thousand Five Hundred Eighty Three and 33/100 Dollars (\$41,254,583.33), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Note A-5**” shall mean that certain Promissory Note A-5 (Sixth Mezzanine Loan), dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of Forty One Million Two Hundred Fifty Four Thousand Five Hundred Eighty Three and 34/100 Dollars (\$41,254,583.34), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Note A-6**” shall mean that certain Promissory Note A-6 (Sixth Mezzanine Loan), dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of

Forty One Million Two Hundred Fifty Four Thousand Five Hundred Eighty Three and 34/100 Dollars (\$41,254,583.34), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Note A-7**” shall mean that certain Promissory Note A-7 (Sixth Mezzanine Loan), dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of Nine Million One Hundred Fifty Seven Thousand Five Hundred and No/100 Dollars (\$9,157,500.00), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Note A-8**” shall mean that certain Promissory Note A-8 (Sixth Mezzanine Loan), dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of Nine Million One Hundred Fifty Seven Thousand Five Hundred and No/100 Dollars (\$9,157,500.00), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Note A-9**” shall mean that certain Promissory Note A-9 (Sixth Mezzanine Loan), dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of Nine Million One Hundred Fifty Seven Thousand Five Hundred and No/100 Dollars (\$9,157,500.00), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Noteholders**” shall mean, collectively, the holders of the Notes from time to time and a “**Noteholder**” shall mean any holder of a Note from time to time (provided that the transfer of a Note shall not result in any prior Noteholder’s loss of any indemnification provided for hereunder to a Noteholder).

“**OC Accounts**” shall have the meaning set forth in Section 2.6.1(c).

“**O&M Agreement**” shall mean, with respect to each Individual Property (to the extent required by the environmental reports referenced in Section 3.1.3(e) hereof, that certain Operations and Maintenance Agreement (Sixth Mezzanine Loan), dated as of the date hereof, between Borrower and Lender given in connection with the Loan, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Officer’s Certificate**” shall mean a certificate delivered to Lender by Borrower which is signed by an authorized senior officer of Borrower or the general partner or managing member of Borrower, as applicable.

“**Off-Shore Accounts**” shall mean the accounts more particularly described on Schedule V.

“**Operating Company**” shall mean, collectively, the tenants under the Operating Leases, and their successors and permitted assigns.

“**Operating Company Annual Budget**” shall mean, individually and collectively as the context requires, with respect to each Operating Company, the operating budget of such

Operating Company, including all planned Capital Expenditures, prepared by such Operating Company for the applicable Fiscal Year or other period.

“**Operating Lease**” shall mean, collectively, those certain Lease Agreements listed on Schedule VI, dated as of the date hereof, having a term of fifteen (15) years commencing on the Closing Date, and any similar Lease Agreement executed and delivered pursuant to the Ground Lease Side Letter, as the same may be amended, supplemented, replaced or otherwise modified from time to time in accordance with the provisions hereof.

“**Operating Lease Guaranty**” shall mean, collectively, those certain Lease Guaranty Agreements listed on Schedule VIA, executed and delivered by Guarantor (Operating Lease), dated as of the date hereof, unconditionally guaranteeing the payment and performance by the Operating Company of all of its obligations under the Operating Lease, and any similar Lease Guaranty Agreement executed and delivered pursuant to the Ground Lease Side Letter, as such Lease Guaranty Agreements may be amended, supplemented, replaced or otherwise modified from time to time in accordance with the provisions hereof.

“**Operating Permits**” shall have the meaning set forth in Section 4.1.22 hereof.

“**O’Shea’s**” shall have the meaning ascribed to such term in the Mortgage Loan Agreement.

“**Other Borrower Collateral**” shall have the meaning set forth in Section 11.2.1 hereof.

“**Other Borrowers**” shall have the meaning set forth in Section 11.1 hereof.

“**Other Charges**” shall mean all ground rents, maintenance charges, impositions other than Taxes, and any other charges, including, without limitation, vault charges and license fees for the use of vaults, chutes and similar areas adjoining any Individual Property, now or hereafter levied or assessed or imposed against such Individual Property or any part thereof.

“**Other Mezzanine Borrowers**” shall mean, individually or collectively as the context may require, all of the Mezzanine Borrowers other than Borrower.

“**Other Mezzanine Debt Service**” shall mean, individually or collectively as the context may require, all of the Mezzanine Debt Service other than the Debt Service.

“**Other Mezzanine Lenders**” shall mean, individually or collectively as the context may require, all of the Mezzanine Lenders other than Lender.

“**Other Mezzanine Loans**” shall mean, individually or collectively as the context may require, all of the Mezzanine Loans other than the Loan.

“**Other Mezzanine Loan Agreements**” shall mean, individually or collectively as the context may require, all of the Mezzanine Loan Agreements other than this Agreement.

“**Other Mezzanine Loan Amounts**” shall mean, as determined from time to time, the outstanding principal amounts of all of the Mezzanine Loans other than the Loan.

“**Owner’s Title Policy**” shall mean those certain ALTA extended coverage owner’s policies of title insurance issued in connection with the closing of the Mortgage Loan insuring the Mortgage Borrower as the owner of the Property.

“**Participant**” shall have the meaning set forth in Section 9.6 hereof.

“**Participant Register**” shall have the meaning set forth in Section 9.6 hereof.

“**Payment Date**” shall mean the ninth (9<sup>th</sup>) calendar day of each calendar month during the term of the Loan, and if such day is not a Business Day, then the Business Day immediately preceding such day, commencing on March 9, 2008 and continuing to and including the Maturity Date. Notwithstanding the foregoing, the Payment Date in the final Interest Period shall be the Maturity Date (*i.e.*, the second to last Business Day in such Interest Period rather than the ninth calendar day of such month).

“**Permitted Encumbrances**” shall mean, with respect to an Individual Property, collectively (a) the Liens and security interests created by the Mortgage Loan Documents; (b) all Liens, encumbrances and other matters disclosed in the Title Insurance Policies relating to such Individual Property or any part thereof; (c) Liens, if any, for Taxes and Other Charges imposed by any Governmental Authority not yet due or delinquent; (d) the Operating Lease; (e) such other title and survey exceptions as Lender has approved or may approve in writing in Lender’s reasonable discretion; (f) any Lien being contested by Borrower in good faith by appropriate proceedings, provided that (i) no Default or Event of Default has occurred and remains uncured, (ii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any applicable material instrument to which Mortgage Borrower is subject and shall not constitute a default thereunder and such proceeding shall be conducted in accordance with all applicable statutes, laws and ordinances, (iii) no Individual Property nor any part thereof or interest therein will be in imminent danger of being sold, forfeited, terminated, cancelled or lost, (iv) such proceeding shall suspend the enforcement of the contested Lien against Mortgage Borrower and any Individual Property, and (v) Borrower shall furnish such security as may be required by GAAP or as may be reasonably requested by Lender; (g) statutory Liens for amounts not yet due and payable, provided that no Individual Property nor any part thereof or interest therein will be in imminent danger of being sold, forfeited, terminated, cancelled or lost; (h) Liens incurred in the ordinary course of business in connection with workers’ compensation, unemployment insurance and other types of social security; (i) any Lien securing the financing of FF&E (including equipment leases) entered into by Mortgage Borrower or Operating Company in the ordinary course of business, subject to the limitations specified in the definitions of “Permitted Indebtedness” and “Permitted Indebtedness (Operating Company)”, as applicable; (j) rights of tenants under Leases, as tenants only; (k) rights of hotel guests at the Hotel Components of the Properties; (l) zoning restrictions, easements, rights-of-way, restrictions on use of real property and other similar encumbrances incurred or entered into in the ordinary course of business which do not, in each case, have an Individual Material Adverse Effect; and (m) liens granted by Operating Company securing equipment financing leases and/or equipment

acquisition financings permitted hereunder as “Permitted Indebtedness (Operating Company),” subject to the final sentence of said definition, or as “Permitted Indebtedness”.

“**Permitted Fund Manager**” means any Person that on the date of determination (a) is one of the entities listed on Schedule VII or any other nationally-recognized manager of investment funds investing in debt or equity interests relating to commercial real estate, (b) is investing through a fund with committed capital of at least \$1,000,000,000, (c) is not subject to a Bankruptcy Action, (d) has not been, and none of its material subsidiaries has been, subject to a Bankruptcy Action for the preceding 5 years, (e) has not been convicted and is not under current indictment for a felony or crime involving moral turpitude, (f) has not been found by a court of competent jurisdiction to have violated federal or state securities laws, and (g) is not an organized crime figure (as determined by Lender in its reasonable discretion).

“**Permitted Indebtedness**” shall have the meaning assigned to such term in the Mortgage Loan Agreement.

“**Permitted Indebtedness (Operating Company)**” shall mean, collectively, (a) trade and operational debt (including equipment financing leases, such as leases with providers of Gaming Equipment) relating to the operation of the Properties and the routine administration of Operating Company incurred in the ordinary course of business with trade creditors and in amounts as are normal and reasonable under the circumstances, are not evidenced by a note, are required to be paid within ninety (90) days after same are incurred (except in the case of operating leases) and are paid when due, (b) accrued and unpaid payroll, benefits and payroll taxes with respect to employees of Operating Company or its Affiliates engaged with respect to the Properties incurred in the ordinary course of business and paid when due, (c) debt owed to affiliates, provided such debt is made subject to an intercreditor and standstill agreement in favor of Lender in form and substance reasonably satisfactory to Lender, and (d) such other Indebtedness specifically permitted pursuant to the Operating Lease (including the Gaming Equipment Facility Agreements (as defined in the Mortgage Loan Agreement)). In no event shall the Permitted Indebtedness (Operating Company) and Permitted Indebtedness of each Operating Company and Mortgage Borrower on an aggregate basis, excluding for purposes of this sentence the Indebtedness described in subclause (b) of the preceding sentence, exceed five percent (5%) of the sum of the Loan Amount, the Mortgage Loan Amount and the Other Mezzanine Loan Amounts in the aggregate (each as determined from time to time).

“**Permitted Investments**” shall have the meaning set forth in the Mortgage Loan Agreement.

“**Permitted Mezzanine Debt Loan-to-Value Ratio**” shall mean the ratio, as of a particular date, in which (a) the numerator is equal to the sum of (i) the outstanding principal amount of the Mortgage Loan, (ii) the outstanding principal amount of the Mezzanine Loans, and any New Mezzanine Loan, plus (iii) the amount of the Permitted Mezzanine Loan, and (b) the denominator is equal to the appraised value of the Properties subject to the Lien of the Mortgage as determined by Lender based on Appraisals obtained by Lender (at Borrower’s sole cost and expense) and satisfactory to Lender and dated no earlier than ninety (90) days prior to the date of determination or such other Appraisals as are approved by Lender in its sole discretion.

**“Permitted Mezzanine Debt Service”** shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Permitted Mezzanine Loan Documents.

**“Permitted Mezzanine DSCR”** shall mean, for the applicable period, the ratio of (a) EBITDAR for such period from the Properties to (b) the sum of (i) the Mortgage Debt Service and Mezzanine Debt Service for such period, plus (ii) principal and/or interest due and payable (or, for purposes of the calculation to be made pursuant to Section 2.8(d), that would have been due and payable had the Permitted Mezzanine Loan then been in place) for such period on the Permitted Mezzanine Loan at the interest rate set forth in the Permitted Mezzanine Loan Documents or, if the Permitted Mezzanine Loan is a floating rate loan, assuming that (A) the spread on the Permitted Mezzanine Loan is the “Spread” as defined in the documents evidencing the Permitted Mezzanine Loan and (B) LIBOR is equal to the lesser of (y) LIBOR on the date of determination, or (z) the strike price under the related interest rate cap purchased in connection with the Permitted Mezzanine Loan.

**“Permitted Mezzanine Loan”** shall have the meaning set forth in Section 2.8 hereof.

**“Permitted Mezzanine Loan Documents”** shall have the meaning set forth in Section 2.8(g) hereof.

**“Permitted Mezzanine Loan Election”** shall have the meaning set forth in Section 2.8 hereof.

**“Permitted Mezzanine Loan Lender”** shall have the meaning set forth in Section 2.8 hereof.

**“Person”** shall mean any individual, corporation, partnership, joint venture, limited liability company, estate, trust, unincorporated association, any federal, state, county or municipal government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

**“Physical Conditions Report”** shall mean, with respect to each Individual Property, a report prepared by a company satisfactory to Lender regarding the physical condition of such Individual Property, satisfactory in form and substance to Lender in its sole discretion.

**“Pledge Agreement”** shall mean that certain Pledge and Security Agreement (Loan), dated as of the date hereof, between Borrower and Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**“Pledged Company Interests”** shall have the meaning set forth in the Pledge Agreement.

**“Policies”** shall have the meaning specified in Section 6.1(b) hereof.

**“Prepayment Date”** shall have the meaning specified in Section 2.4.1 hereof.

**“Prescribed Laws”** shall mean, collectively, (a) the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56) (The USA PATRIOT Act), as amended, (b) Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, and relating to Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, (c) the International Emergency Economic Power Act, 50 U.S.C. § 1701 et seq. and (d) all other Legal Requirements relating to money laundering or terrorism.

**“Prime Rate”** shall mean the annual rate of interest publicly announced by Citibank, N.A. in New York, New York, as its base rate, as such rate shall change from time to time. If Citibank, N.A. ceases to announce a base rate, Prime Rate shall mean the rate of interest published in The Wall Street Journal from time to time as the “Prime Rate.” If more than one “Prime Rate” is published in The Wall Street Journal for a day, the average of such “Prime Rates” shall be used, and such average shall be rounded up to the nearest one-eighth of one percent (0.125%). If The Wall Street Journal ceases to publish the “Prime Rate,” Lender shall select an equivalent publication that publishes such “Prime Rate,” and if such “Prime Rates” are no longer generally published or are limited, regulated or administered by a governmental or quasi-governmental body, then Lender shall select a comparable interest rate index.

**“Prime Rate Loan”** shall mean the Loan at such time as interest thereon accrues at a rate of interest based upon the Prime Rate.

**“Prime Rate Spread”** shall mean the difference (expressed as the number of basis points) between (a) LIBOR plus the Spread on the date LIBOR was last applicable to the Loan and (b) the Prime Rate on the date that LIBOR was last applicable to the Loan; provided, however, in no event shall such difference be a negative number.

**“Principal”** shall mean Seventh Mezzanine Borrower.

**“Projections”** shall have the meaning set forth in Section 9.10 hereof.

**“Properties”** shall mean, collectively, each and every Individual Property which is subject to the terms of this Agreement.

**“Provided Information”** shall mean any and all financial and other information provided at any time by, or on behalf of, Borrower, Senior Mezzanine Borrower, or Mortgage Borrower with respect to the Properties, Borrower, any Affiliates of Borrower, including Holdings, Guarantor and/or Operating Company.

**“Qualified Transferee”** means (a) any of the Mezzanine Lenders, (b) Apollo Management, L.P., TPG Capital, L.P. f/k/a Texas Pacific Group, their respective Affiliates and senior or executive principals of Apollo Management, L.P. or TPG Capital, L.P. who are the holders from time to time of voting interests in Holdings, and investment funds Controlled by either of them (but excluding for purposes of this clause (b) “portfolio companies” of the foregoing), or (c) one or more of the following:

(i) a real estate investment trust, bank, saving and loan association, investment bank, insurance company, trust company, commercial credit corporation,

pension plan, pension fund or pension advisory firm, mutual fund, government entity or plan, provided that any such Person referred to in this clause (i) satisfies the Eligibility Requirements;

(ii) an investment company, money management firm or “qualified institutional buyer” within the meaning of Rule 144A under the Securities Act of 1933, as amended, or an institutional “accredited investor” within the meaning of Regulation D under the Securities Act of 1933, as amended, provided that any such Person referred to in this clause (ii) satisfies the Eligibility Requirements;

(iii) an institution substantially similar to any of the foregoing entities described in clauses (c)(i) or (c)(ii) that satisfies the Eligibility Requirements;

(iv) any entity Controlled by any of the entities described in clause (a) or clauses (c)(i) or (c)(iii) above, or Holdings or any entity Controlled by Holdings (provided in each case there shall have occurred no Change in Control);

(v) a Qualified Trustee in connection with a securitization of, the creation of collateralized debt obligations (“CDO”) secured by or financing through an “owner trust” of, any Mezzanine Loan (collectively, “**Securitization Vehicles**”), so long as (A) the special servicer or manager of such Securitization Vehicle has the Required Special Servicer Rating and (B) the entire “controlling class” of such Securitization Vehicle, other than with respect to a CDO Securitization Vehicle, is held by one or more entities that are otherwise Qualified Transferees under clauses (c)(i), (ii), (iii) or (iv) of this definition; provided that the operative documents of the related Securitization Vehicle require that (1) in the case of a CDO Securitization Vehicle, the “equity interest” in such Securitization Vehicle is owned by one or more entities that are Qualified Transferees under clauses (c)(i), (ii), (iii) or (iv) of this definition and (2) if any of the relevant trustee, special servicer, manager fails to meet the requirements of this clause (v), such Person must be replaced by a Person meeting the requirements of this clause (v) within thirty (30) days; or

(vi) an investment fund, limited liability company, limited partnership or general partnership where a Permitted Fund Manager or an entity that is otherwise a Qualified Transferee under clauses (c)(i), (ii), (iii) or (iv) of this definition acts as the general partner, managing member or fund manager and at least 50% of the equity interests in such investment vehicle are owned, directly or indirectly, by one or more entities that are otherwise Qualified Transferees under clauses (c)(i), (ii), (iii) or (iv) of this definition;

provided, however, that no Transferee shall be a Qualified Transferee if (and for so long as) such Transferee is, or is Controlled by, an Embargoed Person or a Person that has been found “unsuitable,” for any reason, by a Gaming Authority.

“**Qualified Trustee**” means (a) a corporation, national bank, national banking association or a trust company, organized and doing business under the laws of any state or the United States of America, authorized under such laws to exercise corporate trust powers and to

accept the trust conferred, having a combined capital and surplus of at least \$100,000,000 and subject to supervision or examination by federal or state authority, (b) an institution insured by the Federal Deposit Insurance Corporation or (c) an institution whose long-term senior unsecured debt is rated either of the then in effect top two rating categories of each of the Rating Agencies.

“**Rating Agencies**” shall mean each of S&P, Moody’s and Fitch, or any other nationally recognized statistical rating agency which has been approved by Lender and that rates a Securitization of the Loan (or any component thereof).

“**Rating Agency Confirmation**” means, collectively, a written affirmation from each of the Rating Agencies that the credit rating of the Securities given by such Rating Agency of such Securities immediately prior to the occurrence of the event with respect to which such Rating Agency Confirmation is sought will not be qualified, downgraded or withdrawn as a result of the occurrence of such event, which affirmation may be granted or withheld in such Rating Agency’s sole and absolute discretion. In the event that, at any given time, no such Securities shall have been issued and are then outstanding, then the term Rating Agency Confirmation shall be deemed instead to require the written approval of Lender based on its good faith determination of whether the Rating Agencies would issue a Rating Agency Confirmation if any such Securities were outstanding.

“**Regulation AB**” shall have the meaning set forth in Section 5.1.11(f) hereof.

“**Regulation S-K**” shall mean Regulation S-K under the Securities Act of 1933 and the Securities Exchange Act of 1934, as amended.

“**Regulation S-X**” shall mean Regulation S-X under the Securities Act of 1933 and the Securities Exchange Act of 1934, as amended.

“**Related Loan**” shall have the meaning set forth in Section 5.1.11(f) hereof.

“**Related Property**” shall have the meaning set forth in Section 5.1.11(f) hereof.

“**Release**” shall have the meaning set forth in Section 2.5.1 hereof.

“**Release Borrower**” shall have the meaning set forth in Section 2.5.1 hereof.

“**Release Price**” shall mean, in connection with a release of an Individual Property from the Lien of a Mortgage as provided in Section 2.5, an amount equal to one hundred ten percent (110%) of the applicable Allocated Loan Amount for the first and second Individual Properties released, 115% of the applicable Allocated Loan Amount for the third and fourth Individual Properties released and (110%) of the applicable Allocated Loan Amount for any Individual Property thereafter released; provided if the Paris Las Vegas property becomes an Individual Property as contemplated by the last paragraph of Section 2.5.2, then such Individual Property shall have a Release Price of 120% of its Allocated Loan Amount and each other Individual Property shall have a Release Price of 110% of its Allocated Loan Amount.

“**Rents**” shall mean, with respect to each Individual Property, and without duplication, all rents, rent equivalents, moneys payable as damages or in lieu of rent or rent

equivalents, royalties (including, without limitation, all oil and gas-or other mineral royalties and bonuses), income, receivables, receipts, revenues, deposits (including, without limitation, security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, and other consideration of whatever form or nature received by or paid to or for the account of or benefit of Mortgage Borrower or the Operating Company (or employees of Mortgage Borrower or the Operating Company) from any and all sources arising from or attributable to such Individual Property, and proceeds, if any, from business interruption or other loss of income or insurance, including, without limitation, all hotel receipts, revenues and credit card receipts collected from guest rooms, restaurants, bars, meeting rooms, banquet rooms and recreational facilities, all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of property or rendering of services by Mortgage Borrower or any operator or manager of the Hotel Components or the commercial spaces located in the Improvements or acquired from others (including, without limitation, from the rental of any office space, retail space, guest rooms or other space, halls, stores and offices, and deposits securing reservations of such space), license, lease, sublease and concession fees and rentals, health club membership fees, food and beverage wholesale and retail sales, service charges, vending machine sales and proceeds, if any, from business interruption or other loss of income insurance.

**“Replacement Interest Rate Cap Agreement”** means an interest rate cap agreement from an Acceptable Counterparty with terms identical to the Interest Rate Cap Agreement except that the same shall be effective in connection with replacement of the Interest Rate Cap Agreement following a downgrade, withdrawal or qualification of the long-term unsecured debt rating of the Counterparty; provided that to the extent any such interest rate cap agreement does not meet the foregoing requirements, a “Replacement Interest Rate Cap Agreement” shall be such interest rate cap agreement approved in writing by each of the Rating Agencies and Lender with respect thereto.

**“Reserve Account”** shall mean any one of the Tax and Insurance Escrow Account, the FF&E Reserve Account, the Ground Rent Reserve Account and any other escrow fund or reserve account established pursuant to the Loan Documents.

**“Reserve Funds”** shall mean, collectively, the Tax and Insurance Escrow Fund, the FF&E Reserve Fund, the Ground Rent Reserve Fund, the Ground Lease Estoppel Reserve Amount and any other escrow fund established pursuant to the Loan Documents.

**“Restoration”** shall mean the repair and restoration of an Individual Property after a Casualty or Condemnation as nearly as possible to the condition the Individual Property was in immediately prior to such Casualty or Condemnation, with such alterations as may be reasonably approved by Lender.

**“Revenue”** shall mean all Rents and items of income or revenue (of any kind) collected by Mortgage Borrower or Operating Company.

**“S&P”** shall mean Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc.

“**Sale or Pledge**” shall mean a voluntary or involuntary sale, conveyance, assignment, transfer, encumbrance or pledge of a legal or beneficial interest.

“**Scheduled Maturity Date**” shall mean February 13, 2013.

“**Second Mezzanine Borrower**” shall mean, collectively, the entities set forth on Schedule XIV hereto, each a Delaware limited liability company, together with their respective successors and permitted assigns. As used herein, the term “Second Mezzanine Borrower” shall mean one of the Second Mezzanine Borrowers individually, or the Second Mezzanine Borrowers collectively, as the context shall require.

“**Second Mezzanine Debt Service**” shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Second Mezzanine Note.

“**Second Mezzanine Lender**” shall mean JPMorgan Chase Bank, N.A., in its capacity as the holder of the Second Mezzanine Loan, together with its successors and assigns.

“**Second Mezzanine Loan**” shall mean that certain loan in the original principal amount of Two Hundred Seventy Five Million and No/100 Dollars (\$275,000,000) of even date herewith made by Second Mezzanine Lender to Second Mezzanine Borrower.

“**Second Mezzanine Loan Agreement**” shall mean that certain Second Mezzanine Loan Agreement, dated as of the date hereof, between Second Mezzanine Borrower and Second Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Second Mezzanine Loan Documents**” shall mean the Second Mezzanine Loan Agreement, the Second Mezzanine Notes and all other documents and instruments executed and delivered in connection with the Second Mezzanine Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

“**Second Mezzanine Notes**” shall mean the “Notes” as defined in the Second Mezzanine Loan Agreement.

“**Securities**” shall have the meaning set forth in Section 9.1 hereof.

“**Securities Act**” shall have the meaning set forth in Section 9.2(a) hereof.

“**Securitization**” shall have the meaning set forth in Section 9.1 hereof.

“**Senior Mezzanine Borrower**” shall mean, collectively, First Mezzanine Borrower, Second Mezzanine Borrower, Third Mezzanine Borrower, Fourth Mezzanine Borrower and Fifth Mezzanine Borrower.

“**Senior Mezzanine Collateral**” shall mean, collectively, the “Collateral” as defined in each Senior Mezzanine Loan Agreement.

“**Senior Mezzanine Lender**” shall mean First Mezzanine Lender, Second Mezzanine Lender, Third Mezzanine Lender, Fourth Mezzanine Lender and Fifth Mezzanine Lender.

“**Senior Mezzanine Loan**” shall mean the First Mezzanine Loan, the Second Mezzanine Loan, the Third Mezzanine Loan, the Fourth Mezzanine Loan and the Fifth Mezzanine Loan.

“**Senior Mezzanine Loan Agreement**” shall mean the First Mezzanine Loan Agreement, the Second Mezzanine Loan Agreement, the Third Mezzanine Loan Agreement, the Fourth Mezzanine Loan Agreement and the Fifth Mezzanine Loan Agreement.

“**Senior Mezzanine Loan Default**” shall mean, collectively, a “Default” under any of the Senior Mezzanine Loan Documents.

“**Senior Mezzanine Loan Documents**” shall mean, collectively, the First Mezzanine Loan Documents, the Second Mezzanine Loan Documents, the Third Mezzanine Loan Documents, the Fourth Mezzanine Loan Documents and the Fifth Mezzanine Loan Documents.

“**Senior Mezzanine Loan Event of Default**” shall mean, collectively, an “Event of Default” under any of the Senior Mezzanine Loan Documents.

“**Senior Mezzanine Loan Reserve Funds**” shall mean, collectively, the “Reserve Funds” as defined in the Senior Mezzanine Loan Agreement.

“**Servicer**” shall have the meaning set forth in Section 9.4 hereof.

“**Servicing Agreement**” shall have the meaning set forth in Section 9.4 hereof.

“**Seventh Mezzanine Borrower**” shall mean, collectively, the entities set forth on Schedule XIX hereto, each a Delaware limited liability company, together with their respective successors and permitted assigns. As used herein, the term “Seventh Mezzanine Borrower” shall mean one of the Seventh Mezzanine Borrowers individually, or the Seventh Mezzanine Borrowers collectively, as the context shall require.

“**Seventh Mezzanine Debt Service**” shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Seventh Mezzanine Notes.

“**Seventh Mezzanine Lender**” shall mean JPMorgan Chase Bank, N.A., in its capacity as the holder of the Seventh Mezzanine Loan, together with its successors and assigns.

“**Seventh Mezzanine Loan**” shall mean that certain loan in the original principal amount of Two Hundred Seventy Five Million and No/100 Dollars (\$275,000,000) of even date herewith made by Seventh Mezzanine Lender to Seventh Mezzanine Borrower.

**“Seventh Mezzanine Loan Agreement”** shall mean that certain Seventh Mezzanine Loan Agreement, dated as of the date hereof, between Seventh Mezzanine Borrower and Seventh Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**“Seventh Mezzanine Loan Documents”** shall mean the Seventh Mezzanine Loan Agreement, the Seventh Mezzanine Notes and all other documents and instruments executed and delivered in connection with the Seventh Mezzanine Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

**“Seventh Mezzanine Notes”** shall mean the “Notes” as defined in the Seventh Mezzanine Loan Agreement.

**“Severed Loan Documents”** shall have the meaning set forth in Section 8.2(c) hereof.

**“Significant Obligor”** shall have the meaning set forth in Section 5.1.11(f) hereof.

**“Special Member”** shall mean a Springing Member in a given Delaware limited liability company who has become a member in such limited liability company to the extent so provided in such limited liability company’s operating agreement.

**“Special Purpose Entity”** shall mean a corporation, limited partnership or limited liability company which at all times on and after the date hereof:

(a) is organized solely for the purpose of (i) owning, holding, selling, transferring, exchanging, managing and operating the Collateral, entering into this Agreement with the Lender, refinancing the Collateral in connection with a permitted repayment of the Loan, and transacting lawful business that is incident, necessary and appropriate to accomplish the foregoing; or (ii) acting as a general partner of the limited partnership that owns the Collateral or member of the limited liability company that owns the Collateral;

(b) is not engaged and will not engage in any business unrelated to (i) the ownership of the Collateral, (ii) acting as general partner of the limited partnership that owns the Collateral or (iii) acting as a member of the limited liability company that owns the Collateral, as applicable;

(c) does not have and will not have any assets other than those related to the Collateral or its partnership interest in the limited partnership or the member interest in the limited liability company that owns the Collateral or acts as the general partner or managing member thereof, as applicable;

(d) has not engaged, sought or consented to and will not engage in, seek or consent to any dissolution, winding up, liquidation, consolidation, merger, sale of all or substantially all of its assets, transfer of partnership or membership interests (if such entity is a general partner in a limited partnership or a member in a limited liability

company) or amendment of its limited partnership agreement, articles of incorporation, articles of organization, certificate of formation or operating agreement (as applicable) with respect to the matters set forth in this definition;

(e) if such entity is a limited partnership, has, as its only general partners, Special Purpose Entities that are corporations, limited partnerships or limited liability companies;

(f) if such entity is a corporation, has at least two (2) Independent Directors, and has not caused or allowed and will not cause or allow the board of directors of such entity to take any action requiring the unanimous affirmative vote of one hundred percent (100%) of the members of its board of directors unless two (2) Independent Directors shall have participated in such vote;

(g) if such entity is a limited liability company with more than one member, has at least one member that is a Special Purpose Entity that is a Delaware corporation or limited liability company that has at least two (2) Independent Directors;

(h) if such entity is a limited liability company with only one member, is a limited liability company organized in the State of Delaware that has (i) as its only member a non-managing member, (ii) at least two (2) Independent Managers and has not caused or allowed and will not cause or allow the board of managers of such entity to take any action requiring the unanimous affirmative vote of one hundred percent (100%) of the managers unless two (2) Independent Managers shall have participated in such vote and (iii) at least one springing member that will become the non-managing member of such entity upon the dissolution of the existing non-managing member;

(i) if such entity is (i) a limited liability company, has articles of organization, a certificate of formation and/or an operating agreement, as applicable, (ii) a limited partnership, has a limited partnership agreement, or (iii) a corporation, has a certificate of incorporation or articles that, in each case, provide that such entity will not, while any obligations remain outstanding under the Loan Documents: (A) dissolve, merge, liquidate, consolidate; (B) sell all or substantially all of its assets or the assets of the Borrower (as applicable), except as permitted in connection with the release of an Individual Property as provided in Section 2.5.1; (C) engage in any other business activity, or amend its organizational documents with respect to the matters set forth in this definition without the consent of the Lender; or (D) without the affirmative vote of two (2) Independent Directors and of all other directors of the corporation (that is such entity or the general partner or managing or co-managing member of such entity), file a bankruptcy or insolvency petition or otherwise institute insolvency proceedings with respect to itself or to any other entity in which it has a direct or indirect legal or beneficial ownership interest;

(j) is and will remain solvent and pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from and to the extent of its assets as the same shall become due, and is maintaining and will maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and

in light of its contemplated business operations; provided, however, that the foregoing shall not require the Member to make additional capital contributions to the company;

(k) has not failed and will not fail to correct any known misunderstanding regarding the separate identity of such entity;

(l) has maintained and will maintain its bank accounts, books and records separate from any other Person and will file its own tax returns separate from those of any other Person, except to the extent the company is treated as a "disregarded entity" for tax purposes and is not required to file tax returns under applicable law;

(m) has maintained and will maintain its own records, books, resolutions and agreements;

(n) has not commingled and will not commingle its funds or assets with assets of any other Person;

(o) has held and will hold its assets in its own name;

(p) has conducted and will conduct its business in its own name;

(q) has maintained and will maintain its financial statements, accounting records and other entity documents separate and apart from any other Person and will have its assets listed on the financial statement of any other Person; provided, however, that the company's assets may be included in a consolidated financial statement of its Affiliate, provided, that, (i) appropriate notation shall be made on such consolidated financial statements to indicate the separateness of the company from such Affiliate and to indicate the company's assets and credit are not available to satisfy the debts and other obligations of such Affiliate or any other Person and (ii) such assets shall also be listed on the company's own separate balance sheet;

(r) has paid and will pay its own liabilities and expenses, including the salaries of its own employees (if any), out of its own funds and assets, and has maintained and will maintain a sufficient number of employees (if any) in light of its contemplated business operations;

(s) has observed and will observe all partnership, corporate or limited liability company formalities necessary to maintain its separate existence;

(t) has and will not incur, create, or assume any Indebtedness other than (i) the Loan and (ii) certain Indebtedness to Affiliates that was incurred in connection with the formation of Borrower and Operating Company and the transfer of the Properties to Mortgage Borrower and was satisfied and/or released in full prior to the funding of the Loan hereunder;

(u) has not and will not assume or guarantee or become obligated for the debts of any other Person or hold out its credit as being available to satisfy the obligations of any other Person except as co-borrowers of the Loan;

- (v) has not and will not acquire obligations or securities of its partners, members or shareholders or any Affiliate (other than Mortgage Borrower);
- (w) has allocated and will allocate fairly and reasonably any overhead expenses that are shared with any Affiliate, including, but not limited to, paying for shared office space and services performed by any employee of an Affiliate;
- (x) maintains and uses and will maintain and use separate stationery, invoices and checks, if any, bearing its name. The stationery, invoices, and checks, if any, utilized by the Special Purpose Entity or utilized to collect its funds or pay its expenses shall bear its own name and shall not bear the name of any other entity unless such entity is clearly designated as being the Special Purpose Entity's agent;
- (y) has not pledged and will not pledge its assets for the benefit of any Person except as co-borrowers of the Loan;
- (z) has held itself out and identified itself and will hold itself out to the public and all other Persons and identify itself as a separate and distinct entity under its own name or in a name franchised or licensed to it by an entity other than an Affiliate of Borrower and not as a division or part of any other Person;
- (aa) has maintained and will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;
- (bb) has not made and will not make loans to any Person or hold evidence of indebtedness issued by any other Person or entity (other than cash and investment-grade securities issued by an entity that is not an Affiliate of or subject to common ownership with such entity);
- (cc) correct any known misunderstanding regarding its separate identity and has not identified and will not identify its partners, members or shareholders, or any Affiliate of any of them, as a division or part of it, and has not identified itself and shall not identify itself as a division of any other Person;
- (dd) except for capital contributions or capital distributions permitted under the terms and conditions of this Agreement and properly reflected on the books and records of this company, has not entered into or been a party to, and will not enter into or be a party to, any transaction with its partners, members, shareholders or Affiliates except in the ordinary course of its business and on terms which are commercially reasonable and are no less favorable to it than would be obtained in a comparable arm's-length transaction with an unrelated third party (including an appropriate shared services agreement with Affiliates);
- (ee) has not and will not have any obligation to, and will not, indemnify its partners, officers, directors or members, as the case may be, unless such an obligation is fully subordinated to the Debt and will not constitute a claim against it in the event that

cash flow in excess of the amount required to pay the Debt is insufficient to pay such obligation;

(ff) if such entity is a corporation, it shall consider the interests of its creditors in connection with all corporate actions;

(gg) does not and will not have any of its obligations guaranteed by any Affiliate (except each Borrower as a co-borrower under the Loan);

(hh) has complied and will comply with all of the terms and provisions contained in its organizational documents. The statement of facts contained in its organizational documents are true and correct and will remain true and correct; and

(ii) form, acquire, or hold any subsidiary (whether corporate, partnership, limited liability company, or other) or own any equity interest in any other entity (other than, with respect to Borrower, its interest in Sixth Mezzanine Borrower, and with respect to Principal, its interest in Borrower).

“**SPE Party**” shall mean Borrower and any other Person that is required to be a “Special Purpose Entity” under applicable Rating Agency criteria so as to make Borrower a Special Purpose Entity.

“**Spread**” shall mean (i) unless and until a Ground Lease Estoppel Trigger Event exists, 3.00% and (ii) upon the occurrence of a Ground Lease Estoppel Trigger Event, the Ground Lease Estoppel Trigger Spread.

“**Spread Maintenance Outside Date**” shall mean February 10, 2009.

“**Spread Maintenance Premium**” shall mean, in connection with any repayment of any of the outstanding principal amount of the Loan prior to and including the Spread Maintenance Outside Date (whether a voluntary or mandatory prepayment), an amount equal to the product of (a) the principal amount of such prepayment, (b) the Spread and (c) a fraction, the numerator of which shall be the actual number of days from (but excluding) the date of such prepayment (or, if later, the last date of the Interest Period during which interest on the amount of such payment shall have been paid by Borrower, as required in this Agreement) through (and including) the Spread Maintenance Outside Date and the denominator of which is three hundred sixty (360).

“**Springing Member**” shall mean a Person who has signed the limited liability company agreement of a given Delaware limited liability company, which agreement provides that, upon the withdrawal, dissolution or disassociation of the last remaining member of such limited liability company (subject to applicable Gaming Laws), such Person shall become a member of such limited liability company having no economic interest therein.

“**State**” shall mean, with respect to an Individual Property, the State or Commonwealth in which such Individual Property or any part thereof is located.

“**Strike Price**” shall mean four and one-half percent (4.5%).

“**Survey**” shall mean a survey of the Individual Property in question prepared pursuant to the requirements contained in Section 3.1.3(c) hereof.

“**Syndication**” shall have the meaning set forth in Section 9.5 hereof.

“**Tax and Insurance Escrow Fund**” shall have the meaning set forth in Section 7.2 hereof.

“**Taxes**” shall mean all real estate and personal property taxes, assessments, water rates or sewer rents, now or hereafter levied or assessed or imposed against any Individual Property or part thereof.

“**Third Mezzanine Borrower**” shall mean, collectively, the entities set forth on Schedule XV hereto, each a Delaware limited liability company, together with their respective successors and permitted assigns. As used herein, the term “Third Mezzanine Borrower” shall mean one of the Third Mezzanine Borrowers individually, or the Third Mezzanine Borrowers collectively, as the context shall require.

“**Third Mezzanine Debt Service**” shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Third Mezzanine Notes.

“**Third Mezzanine Lender**” shall mean JPMorgan Chase Bank, N.A., in its capacity as the holder of the Third Mezzanine Loan, together with its successors and assigns.

“**Third Mezzanine Loan**” shall mean that certain loan in the original principal amount of Two Hundred Seventy Five Million and No/100 Dollars (\$275,000,000) of even date herewith made by Third Mezzanine Lender to Third Mezzanine Borrower.

“**Third Mezzanine Loan Agreement**” shall mean that certain Third Mezzanine Loan Agreement, dated as of the date hereof, between Third Mezzanine Borrower and Third Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Third Mezzanine Loan Documents**” shall mean the Third Mezzanine Loan Agreement, the Third Mezzanine Notes and all other documents and instruments executed and delivered in connection with the Third Mezzanine Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

“**Third Mezzanine Notes**” shall mean the “Notes” as defined in the Third Mezzanine Loan Agreement.

“**Third Mezzanine Pledge Agreement**” shall mean that certain Pledge and Security Agreement (Third Mezzanine Loan), dated as of the date hereof, between Third Mezzanine Borrower and Third Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Threshold Amount**” shall have the meaning set forth in the definition of Material Alteration.

“**Title Insurance Policies**” shall mean, with respect to each Individual Property, an ALTA mortgagee title insurance policy in a form acceptable to Lender (or, if an Individual Property is in a State which does not permit the issuance of such ALTA policy, such form as shall be permitted in such State and acceptable to Lender) issued with respect to such Individual Property and insuring the lien of the Mortgage encumbering such Individual Property.

“**Tower Project**” shall mean that certain “New Atlantic City Tower Project” more fully described in (a) the Site, Design and Floor Plans, dated October 5, 2005, and prepared by Paul Steelman Design Group, and (b) Harrah’s Hotel/Podium/Garage Expansion: Summary of Project Costs, each delivered to Lender. The Tower Project will include a podium (of approximately 175,000 square feet) connecting the current Bayview Tower to a new approximately nine hundred (900) room tower to be built. The Tower Project will not be funded with the proceeds of the Loan (but will be funded by Mortgage Borrower or Operating Company, including with capital contributions).

“**Transfer**” shall mean to, directly or indirectly, sell, assign, convey, mortgage, transfer, pledge, hypothecate, encumber, grant a security interest in, exchange or otherwise dispose of any beneficial interest or grant any option or warrant with respect to, or where used as a noun, a direct or indirect sale, assignment, conveyance, transfer, pledge or other disposition of any beneficial interest by any means whatsoever whether voluntary, involuntary, by operation of law or otherwise. A Transfer shall include, but not be limited to, (a) an installment sales agreement wherein Mortgage Borrower agrees to sell an Individual Property or any part thereof or Borrower agrees to sell the Collateral, in each case, for a price to be paid in installments; (b) an agreement by Mortgage Borrower leasing all or a substantial part of an Individual Property for other than actual occupancy by a space tenant thereunder or a sale, assignment or other transfer of, or the grant of a security interest in, Mortgage Borrower’s right, title and interest in and to any Leases or any Rents; (c) if a Person restricted or affected by the provisions of this Agreement is a corporation, any merger, consolidation or sale or pledge of such corporation’s stock or the creation or issuance of new stock; (d) if a Person restricted or affected by the provisions of this Agreement is a limited or general partnership or joint venture, any merger or consolidation or the change, removal, resignation or addition of a general partner or the sale or pledge of the partnership interest of any general partner or any profits or proceeds relating to such partnership interest, or the sale or pledge of limited partnership interests or any profits or proceeds relating to such limited partnership interest or the creation or issuance of new limited partnership interests; (e) if a Person restricted or affected by the provisions of this Agreement is a limited liability company, any merger or consolidation or the change, removal, resignation or addition of a managing member or non-member manager (or if no managing member, any member) or the sale or pledge of the membership interest of a managing member (or if no managing member, any member) or any profits or proceeds relating to such membership interest, or the sale or pledge of non-managing membership interests or the creation or issuance of new non-managing membership interests; (f) if a Person restricted or affected by the provisions of this Agreement is a trust or nominee trust, any merger, consolidation or the sale or pledge of the legal or beneficial interest in such Person or the creation or issuance of new legal or beneficial interests; or (g) any direct or indirect sale, assignment, conveyance, transfer, pledge or

other disposition (by any means whatsoever whether voluntary, involuntary, by operation of law or otherwise) of the Collateral, the Senior Mezzanine Collateral or any part thereof or any legal or beneficial interest therein.

“**Transferee**” shall mean the Person to whom a Transfer is being effected.

“**Trigger Event**” shall mean, as of the end of any calendar quarter, any period of time during which EBITDAR from the Properties, calculated for the trailing twelve (12) month period immediately prior to the applicable calculation date, is less than eighty-five percent (85%) of the EBITDAR (Closing Date), as determined by Lender.

“**Trigger Event Cure**” shall mean that EBITDAR (excluding, in making such calculation, any capital contributions made to or for the benefit of Borrower, Mortgage Borrower or Operating Company, or payments made on the account of Borrower, Mortgage Borrower or Operating Company by any Affiliate of Borrower, Mortgage Borrower or Operating Company) from the Properties, calculated for the trailing twelve (12) month period immediately prior to the applicable calculation date, is equal to or greater than eighty-five percent (85%) of the EBITDAR (Closing Date) for two (2) consecutive calendar quarters.

“**True-Lease Opinion**” shall mean that certain true lease opinion letter dated the date hereof delivered by Cleary Gottlieb Steen & Hamilton LLP in connection with the Loan.

“**UCC**” or “**Uniform Commercial Code**” shall mean the Uniform Commercial Code as in effect in the applicable State in which an Individual Property is located.

“**UCC Title Insurance Policy**” shall have the meaning set forth in Section 3.13(b) hereof.

“**U.S. Obligations**” shall mean non-redeemable securities evidencing an obligation to timely pay principal and/or interest in a full and timely manner that are direct obligations of the United States of America for the payment of which its full faith and credit is pledged or other “government securities” within the meaning of Section 2(a)(16) of the Investment Company Act of 1940, as amended.

“**Windstorm Insurance Intercreditor Agreement**” means that certain Windstorm Insurance Intercreditor Agreement, dated as of the date hereof, by and among Lender, the Mortgage Lender, the Other Mezzanine Lenders, each of the “Other Owners” named therein and made a party thereto, Holdings, Bank of America, N.A., and the “Other Secured Parties named therein and made a party thereto, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**Section 1.2. Principles of Construction.** All references to sections and schedules are to sections and schedules in or to this Agreement unless otherwise specified. All uses of the word “including” shall mean “including, without limitation” unless the context shall indicate otherwise. Unless otherwise specified, the words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. Unless otherwise specified, all meanings attributed to defined terms herein shall be equally applicable to both the singular and

plural forms of the terms so defined. With respect to cross-references contained herein to the Mortgage Loan Documents or to the Other Mezzanine Loan Documents (including with respect to any cross-references to defined terms therein), unless otherwise specifically provided herein, such cross-references shall be with respect to the Mortgage Loan Documents or the Other Mezzanine Loan Documents as the case may be, in existence as of the date hereof, and no modification or amendment to such cross-referenced sections of the Mortgage Loan Documents or the Other Mezzanine Loan Documents shall be binding upon Lender unless Lender shall have expressly agreed in writing to be bound by such modification or amendment. Terms used herein and not otherwise defined herein (but defined in the Mortgage Loan Agreement) shall have the meaning set forth in the Mortgage Loan Agreement as of the Closing Date, notwithstanding any subsequent amendment of the Mortgage Loan Agreement to such defined terms unless Lender shall have consented to such amendment. The words “Borrower shall cause Mortgage Borrower to”, “Borrower shall not permit Mortgage Borrower to”, “Borrower shall cause Senior Mezzanine Borrower to”, “Borrower shall not permit Senior Mezzanine Borrower to”, “Borrower shall cause Operating Company to” or “Borrower shall not permit Operating Company to” (or words of similar meaning) shall mean Borrower shall cause Mortgage Borrower, Senior Mezzanine Borrower or Operating Company (subject to the provisions of Section 5.3), as applicable, to so act or not to so act, as applicable.

**Section 1.3. Direction of Mortgage Borrower or with Respect to the Properties.** Borrower and Lender hereby acknowledge and agree that, as to any clauses or provisions contained in this Agreement or any of the other Loan Documents to the effect that (i) Borrower shall cause Mortgage Borrower and/or Senior Mezzanine Borrower to act or to refrain from acting in any manner or (ii) Borrower shall cause to occur or not to occur, or otherwise be obligated in any manner with respect to, any matters pertaining to Mortgage Borrower, Senior Mezzanine Borrower or any of the Properties, such clause or provision, in each case, is intended to mean, and shall be construed as meaning, that Borrower has undertaken to act and is obligated to act only in Borrower’s capacity as the sole member of Senior Mezzanine Borrower but not directly with respect to Senior Mezzanine Borrower, Mortgage Borrower or any of the Properties or in any other manner which would violate any of the covenants contained in Section 4.1.30 (Special Purpose Entity) hereof or other similar covenants contained in Borrower’s organizational documents.

## II. GENERAL TERMS

### **Section 2.1. Loan Commitment; Disbursement to Borrower.**

**2.1.1 Agreement to Lend and Borrow.** Subject to and upon the terms and conditions set forth herein, Lender hereby agrees to make and Borrower hereby agrees to accept the Loan on the Closing Date.

**2.1.2 Single Disbursement to Borrower.** Borrower may request and receive only one borrowing hereunder in respect of the Loan and any amount borrowed and repaid hereunder in respect of the Loan may not be reborrowed.

**2.1.3 The Note, the Pledge Agreement and Loan Documents.** The Loan shall be evidenced by the Note (in the aggregate principal amount of Two Hundred

Seventy Five and no/100 Dollars (\$275,000,000) and secured by the Pledge Agreement and the other Loan Documents.

**2.1.4 Use of Proceeds.** Borrower shall use the proceeds of the Loan solely to (a) make an equity contribution to Mortgage Borrower (through each Senior Mezzanine Borrower) in order to cause Mortgage Borrower to use such amounts for any use permitted pursuant to Section 2.1.4 of the Mortgage Loan Agreement, (b) pay costs and expenses incurred in connection with the closing of the Loan, as approved by Lender, and (c) distribute the balance, if any, to Borrower.

**2.1.5 Component Notes.** Lender shall have the right at any time to modify the Loan in order to create an additional note or additional notes, adjust the interest rate spread on the Notes or notes, reduce the number of notes, reallocate the principal balances of the Notes or notes or eliminate the component note structure of the Loan provided that (a) the aggregate stated principal amount of the Loan on the date of each such adjustment shall equal the aggregate stated principal amount of the Loan immediately prior to such adjustment, and (b) the weighted average spread of the Loan on the date of such adjustment shall equal the weighted average spread which was applicable to the Loan immediately prior to such adjustment (Borrower acknowledging that such new notes or modified notes may, in connection with the application of principal to such new notes or modified note following the occurrence of an Event of Default, but not otherwise, subsequently cause the weighted average spread of such new notes or modified notes to change). In connection with any such modification of the Note and notes, or the creation of additional note(s), (i) Borrower shall cooperate with all reasonable requests of Lender and shall execute and deliver such documents as shall reasonably be requested by Lender in connection therewith, all in form and substance reasonably satisfactory to Lender and, to the extent applicable, the Rating Agencies, including, without limitation, (y) revised title insurance policies and Interest Rate Protection Agreements, and (z) such amendments to the Loan Documents as are reasonably requested; (ii) Lender shall have received opinions of legal counsel with respect to due execution, authority and enforceability of the amended Loan Documents, and additional or updated nonconsolidation opinions for the Loan, each in form reasonably acceptable to Lender and prospective investors and in form acceptable to the Rating Agencies; and (iii) Lender shall pay the actual, reasonable out-of-pocket costs and expenses incurred by Borrower in connection with the foregoing, including, without limitation, the actual, reasonable out-of-pocket legal fees incurred by Borrower in connection with any of the foregoing matters. For the avoidance of doubt, and notwithstanding anything to the contrary contained herein, such modifications and any modifications under Sections 2.1.6 and 2.1.7 below shall not, absent an Event of Default, adversely affect the overall economics to Borrower of the Loan, taken as a whole, or expose Borrower to any additional costs (other than as set forth above) or increased risk of any liability (beyond that or greater than that existing in the Loan Documents in effect on the date hereof), and Borrower shall not be required to execute any document or agreement which would materially decrease its rights or materially increase its obligations relative to those set forth herein and in the other Loan Documents.

**2.1.6 Adjustment of Mortgage Loan and Mezzanine Loans.** Lender shall have the right at any time to adjust the respective principal amounts of the Mortgage Loan and the Mezzanine Loans (or either one of them) and/or to adjust the interest rate spread on the Mortgage Loan and the Mezzanine Loans (or either one of them) (such adjustment, a “**Loan**

**Adjustment**”), provided that (a) the aggregate stated principal amount of the Mortgage Loan and the Mezzanine Loans on the date of each such Loan Adjustment shall equal the aggregate stated principal amount of the Mortgage Loan and the Mezzanine Loans immediately prior to such Loan Adjustment, and (b) Lender shall have the right to adjust the interest rate spread on the Mortgage Loan and the Mezzanine Loans, provided that the weighted average spread of the Mortgage Loan and the Mezzanine Loans on the date of each such Loan Adjustment shall equal the weighted average spread which was applicable to the Mortgage Loan and the Mezzanine Loans immediately prior to such Loan Adjustment (it being acknowledged that the weighted average spread will remain constant except in connection with the application of principal to such new notes or modified notes following the occurrence of an Event of Default). In connection with any Loan Adjustment, (i) Mortgage Borrower and Mezzanine Borrowers shall cooperate with all reasonable requests of Lender and shall execute and deliver such documents as shall reasonably be requested by Lender in connection therewith, all in form and substance reasonably satisfactory to Lender and, to the extent applicable, the Rating Agencies, including, without limitation, (y) revised title insurance policies, mezzanine endorsements, UCC policies and Interest Rate Protection Agreements, and (z) such amendments to the Mortgage Loan Documents and the Mezzanine Loan Documents as are reasonably requested in connection with the Loan Adjustment (provided that such amendments do not or would not (i) materially decrease the rights of the Mortgage Borrower or Mezzanine Borrowers, or, absent an Event of Default, materially increase the obligations of the Mortgage Borrower or the Mezzanine Borrowers, as the case may be, under the Mortgage Loan Documents or the Mezzanine Loan Documents (as applicable) or (ii) absent an Event of Default, expose the Mortgage Borrower or any of the Mezzanine Borrowers to additional costs or increased risk of any liability under the Mortgage Loan Documents or the Mezzanine Loan Documents (as applicable) (beyond that or greater than that existing in the Mortgage Loan Documents, or the Mezzanine Loan Documents, as applicable, on the date hereof); (ii) Lender shall have received opinions of legal counsel with respect to due execution, authority and enforceability of the amended Mortgage Loan Documents or Mezzanine Loan Documents, as appropriate, and additional or updated nonconsolidation opinions for the Mortgage Loan and the Mezzanine Loans, each in form reasonably acceptable to Lender and prospective investors and in form acceptable to the Rating Agencies; and (iii) Lender shall pay the actual, reasonable out-of-pocket costs and expenses incurred by Borrower in connection with the foregoing, including, without limitation, the actual, reasonable out-of-pocket legal fees incurred by Borrower in connection with any of the foregoing matters.

**2.1.7 Creation of New Mezzanine Loans.** Lender shall at all times have the right to create one or more additional mezzanine loans (each, a **“New Mezzanine Loan”**), adjust the respective principal amounts of the Mortgage Loan and the Mezzanine Loans (or any one of them) upon the creation of the New Mezzanine Loan and/or to adjust the interest rate spread on the Mortgage Loan and the Mezzanine Loans (or any one of them) upon the creation of the New Mezzanine Loan, and to reallocate the principal balance and the interest rate spreads of the Mortgage Loan, the Mezzanine Loans and any New Mezzanine Loan amongst each other (or any one of them), provided that (a) the aggregate stated principal amount of the Mortgage Loan, the Mezzanine Loans and the New Mezzanine Loans on the date of such adjustment (and the creation of the New Mezzanine Loan) shall equal the aggregate stated principal amount of the Mortgage Loan, the Mezzanine Loans and the New Mezzanine Loan(s) immediately prior to such adjustment, (b) Lender shall have the right to adjust the interest rate spread on the Mortgage Loan, the Mezzanine Loans and the New Mezzanine Loan(s), provided that the weighted average

spread of the Mortgage Loan, the Mezzanine Loans and the New Mezzanine Loan(s) on the date of such adjustment shall equal the weighted average spread which was applicable to the Mortgage Loan and the Mezzanine Loans (and the New Mezzanine Loans, if applicable) immediately prior to such adjustment (it being acknowledged that the weighted average spread will remain constant except in connection with the application of principal to such new notes or modified notes following the occurrence of an Event of Default), and (c) the terms and provisions of each of the Mortgage Loan and the Mezzanine Loans (and the New Mezzanine Loans, if applicable) shall otherwise remain unchanged. In connection with any New Mezzanine Loan, (i) Borrower shall cause the formation of one or more special purpose, bankruptcy remote entities as required by Lender in order to serve as the borrower under any New Mezzanine Loan (each, a “**New Mezzanine Borrower**”) and the applicable organizational documents of Mortgage Borrower and each Mezzanine Borrower (and of each previously created New Mezzanine Borrower, if applicable) shall be amended and modified as necessary or required in the formation of any New Mezzanine Borrower; (ii) Mortgage Borrower and Mezzanine Borrowers (and each previously created New Mezzanine Borrower, if applicable) shall cooperate with all reasonable requests of Lender and shall execute and deliver such documents as shall reasonably be requested by Lender in connection therewith, all in form and substance reasonably satisfactory to Lender and, to the extent applicable, the Rating Agencies, including, without limitation, (x) revised title insurance policies, mezzanine endorsements, UCC policies and Interest Rate Protection Agreements, (y) in connection with the creation of any New Mezzanine Loan, a promissory note and loan documents necessary to evidence such New Mezzanine Loan, and (z) such amendments to the Mortgage Loan Documents and the Mezzanine Loan Documents (and the loan documents of any previously created New Mezzanine Borrower, if applicable) as are reasonably necessary in connection with the creation of such New Mezzanine Loan (provided that such amendments do not or would not (i) materially decrease the rights of the Mortgage Borrower or Mezzanine Borrowers (and any previously created New Mezzanine Borrowers, if applicable), or, absent an Event of Default, materially increase the obligations of the Mortgage Borrower or the Mezzanine Borrowers (and any previously created New Mezzanine Borrowers, if applicable), as the case may be, under such borrower’s applicable loan documents, or (ii) absent an Event of Default, expose the Mortgage Borrower or any of the Mezzanine Borrowers (or any previously created New Mezzanine Borrowers, if applicable) to additional costs or increased risk of any liability under such borrower’s applicable loan documents (beyond that or greater than that existing in the existing loan documents on the date hereof)); (iii) Lender shall have received opinions of legal counsel with respect to due execution, authority and enforceability of the amended Mortgage Loan Documents, the amended Mezzanine Loan Documents and the loan documents for the New Mezzanine Loan, as appropriate, and additional or updated nonconsolidation opinions for the Mortgage Loan, the Mezzanine Loans and each such New Mezzanine Loan, as appropriate, each in form reasonably acceptable to Lender and prospective investors and in form acceptable to the Rating Agencies; and (iv) Lender shall pay the actual, reasonable out-of-pocket costs and expenses incurred by Borrower in connection with the foregoing, including, without limitation, the actual, reasonable out-of-pocket legal fees incurred by Borrower in connection with any of the foregoing matters.

**Section 2.2. Interest Rate.**

**2.2.1 Interest Generally.** Except as herein provided with respect to interest accruing at the Default Rate, interest on the principal balance of the Loan outstanding

from time to time shall accrue from the Closing Date up to and including the Maturity Date (including, without limitation, all interest that would accrue on the outstanding principal balance of the Loan through the end of the Interest Period during which the Maturity Date occurs (even if such period extends beyond the Maturity Date)) at the Applicable Interest Rate. Interest on the outstanding principal balance of the Loan existing on the commencement of an Interest Period shall accrue for the entire Interest Period and shall be owed by Borrower for the entire Interest Period regardless of whether any principal portion of the Loan is repaid prior to the expiration of such Interest Period.

**2.2.2 Interest Calculation.** Interest on the outstanding principal balance of the Loan shall be calculated by multiplying (a) the actual number of days elapsed in the period for which the calculation is being made by (b) a daily rate based on a three hundred sixty (360) day year (that is, the Applicable Interest Rate or the Default Rate, as then applicable, expressed as an annual rate divided by 360) by (c) the outstanding principal balance.

**2.2.3 Determination of Interest Rate.** (a) The Applicable Interest Rate with respect to the Loan shall be: (i) LIBOR plus the Spread with respect to the applicable Interest Period for a LIBOR Loan or (ii) the Prime Rate plus the Prime Rate Spread for a Prime Rate Loan if the Loan is converted to a Prime Rate Loan pursuant to the provisions of Section 2.2.3(c) or Section 2.2.3(f).

(b) Subject to the terms and conditions of this Section 2.2.3, the Loan shall be a LIBOR Loan and Borrower shall pay interest on the outstanding principal amount of the Loan at LIBOR plus the Spread for the applicable Interest Period. Any change in the rate of interest hereunder due to a change in the Applicable Interest Rate shall become effective as of the opening of business on the first day on which such change in the Applicable Interest Rate shall become effective. Each determination by Lender of the Applicable Interest Rate shall be conclusive and binding for all purposes, absent manifest error.

(c) In the event that Lender shall have determined (which determination shall be conclusive and binding upon Borrower absent manifest error) that by reason of circumstances affecting the interbank eurodollar market, adequate and reasonable means do not exist for ascertaining LIBOR, then Lender shall forthwith give notice by telephone of such determination, confirmed in writing, to Borrower at least one (1) Business Day prior to the last day of the related Interest Period. If such notice is given, the related outstanding LIBOR Loan shall be converted, on the last day of the then current Interest Period, to a Prime Rate Loan.

(d) If, pursuant to the terms of this Agreement, any portion of the Loan has been converted to a Prime Rate Loan and Lender shall determine (which determination shall be conclusive and binding upon Borrower absent manifest error) that the event(s) or circumstance(s) which resulted in such conversion shall no longer be applicable, Lender shall give notice by telephone of such determination, confirmed in writing, to Borrower at least one (1) Business Day prior to the last day of the related Interest Period. If such notice is given, the related outstanding Prime Rate Loan shall be converted to a LIBOR Loan on the last day of the then current Interest Period.

(e) With respect to a LIBOR Loan, all payments made by Borrower hereunder shall be made free and clear of, and without reduction for or on account of, income, stamp or other taxes, levies, imposts, duties, charges, fees, deductions, reserves or withholdings imposed, levied, collected, withheld or assessed by any Governmental Authority and imposed on any non-U.S. Lender due to a change in U.S. law after the date such non-U.S. Lender acquired its interest in the Loan (such non-excluded taxes, levies, imposts, duties, charges, fees, deductions, reserves or withholdings being referred to collectively as “**Foreign Taxes**”), excluding (i) income and franchise taxes, (ii) any Taxes imposed by reason of any connection between the non-U.S. Lender and the taxing jurisdiction other than entering into this Agreement and receiving payments hereunder, and (iii) any Taxes imposed by reason of the non-U.S. Lender’s failure to complete and deliver to the Borrower, prior to the date on which the first payment to such Lender is due hereunder and (so long as it remains eligible to do so) from time to time thereafter, (x) (i) an Internal Revenue Service Form W-9 (or successor form) establishing that the Lender is not subject to U.S. backup withholding tax, (ii) an Internal Revenue Service Form W-8BEN (or successor form) certifying that such Lender is entitled to benefits under an income tax treaty to which the United States is a party that reduces the rate of withholding tax on payments of interest to zero, or (iii) an Internal Revenue Service Form W-8ECI certifying that the income receivable pursuant to this Agreement is effectively connected with the conduct of a trade or business in the United States, as appropriate; and (y) any successor or additional form required by the Internal Revenue Service or any taxing authority reasonably requested by the Borrower in order to secure an exemption from, or reduction in the rate of, Foreign Taxes. If any Foreign Taxes are required to be withheld from any amounts payable to Lender hereunder, the amounts so payable to Lender shall be increased to the extent necessary to yield to Lender (after payment of all Foreign Taxes) interest or any such other amounts payable hereunder at the rate or in the amounts specified hereunder. Whenever any Foreign Tax is payable pursuant to applicable law by Borrower, as promptly as possible thereafter, Borrower shall send to Lender an original official receipt, if available, or certified copy thereof showing payment of such Foreign Tax. Borrower hereby indemnifies Lender for any incremental Foreign Taxes, interest or penalties that may become payable by Lender which may result from any failure by Borrower to pay any such Foreign Tax when due to the appropriate taxing authority or any failure by Borrower to remit to Lender the required receipts or other required documentary evidence thereof (provided such documents are reasonably available to the Borrower).

(f) If any requirement of law or any change therein or in the interpretation or application thereof, shall hereafter make it unlawful for Lender to make or maintain a LIBOR Loan as contemplated hereunder and the events giving rise thereto affect similarly situated banks or financial institutions generally, (i) the obligation of Lender hereunder to make a LIBOR Loan or to convert a Prime Rate Loan to a LIBOR Loan shall be canceled forthwith and (ii) any outstanding LIBOR Loan shall be converted automatically to a Prime Rate Loan on the next succeeding Payment Date or within such earlier period as required by law.

(g) In the event that any change in any requirement of law or in the interpretation or application thereof, or compliance by Lender with any request or directive (whether or not having the force of law) hereafter issued from any central bank or other Governmental Authority and the events giving rise thereto affect similarly situated banks or financial institutions generally:

(i) shall hereafter impose, modify or hold applicable any reserve, special deposit, compulsory loan or similar requirement against assets held by, or deposits or other liabilities in or for the account of, advances or loans by, or other credit extended by, or any other acquisition of funds by, the office of Lender that holds the Loan which is not otherwise included in the determination of LIBOR hereunder;

(ii) shall hereafter require the Lender to hold additional capital against the Loan in excess of that currently required by Governmental Authorities to be held against loans similar in nature to the Loan; or

(iii) shall hereafter impose on Lender any other condition affecting loans to borrowers subject to LIBOR-based interest rates and Lender determines that, by reason thereof, the cost to Lender of making or maintaining the Loan to Borrower is increased, or any amount received by Lender hereunder in respect of any portion of the Loan is reduced, in each case by an amount deemed by Lender in good faith to be material;

then, in any such case, Borrower shall promptly pay Lender, upon demand, any additional amounts necessary to compensate Lender for such additional cost or reduced amount receivable which Lender deems to be material as determined in good faith by Lender. If Lender becomes entitled to claim any additional amounts pursuant to this Section 2.2.3(g), Lender shall provide Borrower with not less than ninety (90) days notice specifying in reasonable detail the event by reason of which it has become so entitled and the additional amount required to fully compensate Lender for such additional cost or reduced amount. A certificate as to any additional costs or amounts payable pursuant to the foregoing sentence submitted by Lender to Borrower shall be conclusive in the absence of manifest error. This provision shall survive payment of the Note and the satisfaction of all other obligations of Borrower under this Agreement and the Loan Documents.

(h) Lender shall not be entitled to claim compensation pursuant to this Section 2.2.3 for any Foreign Taxes or other amounts incurred or which accrued more than ninety (90) days before the date Lender notified Borrower of the change in law or other circumstance on which such claim of compensation is based and delivered to Borrower a written statement setting forth in reasonable detail the basis for calculating the additional amounts owed to Lender under this Section 2.2.3, which statement shall be conclusive and binding upon all parties hereto absent manifest error.

(i) For purposes of this Section 2.2.3, the term "Lender" shall be deemed to include each Noteholder and Lender's (as well as each Noteholder's) present and future participants in the Loan to the extent of Foreign Taxes imposed by reason of such Noteholder or participant's interest in the Loan and each such Noteholder's or participant's increased costs or reduction in amount received or receivable hereunder or any reduced rate of return, in each case payable by Borrower under this Section 2.2.3.

**2.2.4 Additional Costs.** Lender will use reasonable efforts (consistent with legal and regulatory restrictions) to maintain the availability of the LIBOR Loan and to avoid or reduce any increased or additional costs payable by Borrower under Section 2.2.3, including, if requested by Borrower, a transfer or assignment of the Loan to a branch, office or

Affiliate of Lender in another jurisdiction, or a redesignation of its lending office with respect to the Loan, in order to maintain the availability of the LIBOR Loan or to avoid or reduce such increased or additional costs, provided that the transfer or assignment or redesignation (a) would not result in any material additional costs, expenses or risk to Lender that are not reimbursed by Borrower and (b) would not be disadvantageous in any other material respect to Lender as determined by Lender in its sole, but reasonable discretion.

**2.2.5 Default Rate.** In the event that, and for so long as, any Event of Default shall have occurred and be continuing, the outstanding principal balance of the Loan and, to the extent permitted by law, all accrued and unpaid interest in respect of the Loan and any other amounts due pursuant to the Loan Documents, shall accrue interest at the Default Rate, calculated from the date such payment was due without regard to any grace or cure periods contained herein.

**2.2.6 Usury Savings.** This Agreement, the Note and the other Loan Documents are subject to the express condition that at no time shall Borrower be obligated or required to pay interest on the principal balance of the Loan at a rate which could subject Lender to either civil or criminal liability as a result of being in excess of the Maximum Legal Rate. If, by the terms of this Agreement or the other Loan Documents, Borrower is at any time required or obligated to pay interest on the principal balance due hereunder at a rate in excess of the Maximum Legal Rate, the Applicable Interest Rate or the Default Rate, as the case may be, shall be deemed to be immediately reduced to the Maximum Legal Rate and all previous payments in excess of the Maximum Legal Rate shall be deemed to have been payments in reduction of principal and not on account of the interest due hereunder. All sums paid or agreed to be paid to Lender for the use, forbearance, or detention of the sums due under the Loan, shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Loan until payment in full so that the rate or amount of interest on account of the Loan does not exceed the Maximum Legal Rate of interest from time to time in effect and applicable to the Loan for so long as the Loan is outstanding.

**2.2.7 Interest Rate Cap Agreement.** (a) On or prior to 5:00 p.m. (New York time) on the Closing Date, Borrower shall enter into an Interest Rate Cap Agreement with a LIBOR strike price equal to the required Strike Price. The Interest Rate Cap Agreement (i) shall be in a form and substance reasonably acceptable to Lender, (ii) shall be with an Acceptable Counterparty, (iii) shall direct such Acceptable Counterparty to deposit directly with Lender (or into an account or otherwise as directed by Lender) any amounts due Borrower under such Interest Rate Cap Agreement unless and until otherwise instructed by Lender (it being agreed as between Lender and Borrower that Lender will so instruct the Counterparty at such time as the Debt shall no longer exist, provided that the Debt shall be deemed to exist if the Collateral is transferred by secured party sale or otherwise), (iv) shall be for a period equal to the initial term of the Loan and (v) shall have an initial notional amount equal to the principal balance of the Loan. Borrower shall collaterally assign to Lender, pursuant to the Collateral Assignment of Interest Rate Cap Agreement, all of its right, title and interest to receive any and all payments under the Interest Rate Cap Agreement, and shall deliver to Lender an executed counterpart of such Interest Rate Cap Agreement (which shall, by its terms, authorize the assignment to Lender and require that payments be paid directly into an account pledged to Lender as provided above in this Section 2.2.7). Provided no Event of Default has occurred and is continuing, amounts

contained in the foregoing pledged account shall be released to Borrower on a monthly basis to the extent not applied toward debt service on the Loan.

(b) Borrower shall comply with all of its obligations under the terms and provisions of the Interest Rate Cap Agreement. All amounts paid by the Counterparty under the Interest Rate Cap Agreement to Borrower or Lender shall be paid to Lender (or into an account or otherwise as directed by Lender). Borrower shall take all actions reasonably requested by Lender to enforce Lender's rights under the Interest Rate Cap Agreement in the event of a default by the Counterparty and shall not waive, amend or otherwise modify any of its rights thereunder.

(c) In the event of any downgrade, withdrawal or qualification of the rating of the Counterparty by S&P or Moody's to below the ratings set forth in the definition of "Acceptable Counterparty", Borrower (i) shall replace the Interest Rate Cap Agreement with a Replacement Interest Rate Cap Agreement (or cause the Counterparty or an Affiliate thereof to post collateral acceptable to Lender and the Rating Agencies) not more than fifteen (15) Business Days following receipt of notice of such downgrade, withdrawal or qualification (and meeting the requirements set forth in this [Section 2.2.7](#)) from an Acceptable Counterparty, (ii) if a new cap is provided to Lender, then if requested by Lender shall provide to Lender an opinion of counsel to such Acceptable Counterparty in the form and containing the substance of the form of opinion set forth in Exhibit A to the Mortgage Loan Agreement (which such changes as shall be reasonably approved by Lender), and (iii) shall collaterally assign to Lender, pursuant to an assignment in the form of the Collateral Assignment of Interest Rate Cap Agreement, all of its right, title and interest to receive any and all payments under the Replacement Interest Rate Cap Agreement.

(d) In the event that Borrower fails to purchase and deliver to Lender the Interest Rate Cap Agreement or fails to maintain the Interest Rate Cap Agreement in accordance with the terms and provisions of this Agreement, Lender may purchase the Interest Rate Cap Agreement and the cost incurred by Lender in purchasing such Interest Rate Cap Agreement shall be paid by Borrower to Lender with interest thereon at the Default Rate from the date such cost was incurred by Lender until such cost is reimbursed by Borrower to Lender.

(e) In connection with any Interest Rate Cap Agreement provided to Lender as herein required, if requested by Lender, Borrower shall obtain and deliver to Lender an opinion from counsel (which counsel may be in-house counsel for the Counterparty) for the Counterparty (upon which Lender and its successors and assigns may rely) in the form and containing the substance of the form of opinion set forth in Exhibit A to the Mortgage Loan Agreement (which such changes as shall be reasonably approved by Lender).

(f) In connection with any prepayment of the Loan, provided no Event of Default shall have occurred and be continuing, Borrower may reduce the amount of any Interest Rate Cap Agreement (so that the same shall be in an initial notional amount equal to the principal balance of the Loan following such prepayment), provided that such reduction shall not affect any of the other terms of the Interest Rate Cap Agreement or the Collateral Assignment of Interest Rate Cap Agreement (or Lender's rights in respect thereof).

### **Section 2.3. Loan Payment.**

**2.3.1 Payments Generally.** Borrower shall make a payment to Lender of interest only on the Closing Date for the initial Interest Period. On the date hereof, Borrower shall make a payment to Lender of interest accruing hereunder during the period from the Closing Date up to and including the initial Interest Period, calculated in the manner set forth herein, and on the Payment Date occurring in March 2008 and on each Payment Date thereafter to and including the Maturity Date, Borrower shall make a payment to Lender of interest accruing hereunder during the entire Interest Period in which such Payment Date occurs, calculated in the manner set forth herein. All amounts due pursuant to this Agreement and the other Loan Documents shall be payable without setoff, counterclaim, defense or any other deduction whatsoever. Each payment shall be applied *pro rata* and *pari passu* (a) first to accrued and unpaid interest on all of the Notes and (b) the balance shall be applied to principal of all the Notes.

**2.3.2 Payment on Maturity Date.** Borrower shall pay to Lender on the Maturity Date the outstanding principal balance of the Loan, all accrued and unpaid interest and all other amounts due hereunder and under the Note, the Pledge Agreement and the other Loan Documents, including, without limitation, all interest that would accrue on the outstanding principal balance of the Loan through and including the end of the Interest Period in which the Maturity Date occurs (even if such Interest Period extends beyond the Maturity Date).

**2.3.3 Late Payment Charge.** If any principal, interest or any other sums due under the Loan Documents, other than the payment of principal due on the Maturity Date, is not paid by Borrower by the date on which it is due, Borrower shall pay to Lender upon demand an amount equal to the lesser of one percent (1%) of such unpaid sum or the maximum amount permitted by applicable law in order to defray the expense incurred by Lender in handling and processing such delinquent payment and to compensate Lender for the loss of the use of such delinquent payment; provided, however, that, except with respect to the payment of any monthly Debt Service payments with respect to which no notice or demand shall be required, no such late payment charge shall be due unless such payment of principal, interest or other sum shall be delinquent for more than five (5) Business Days following the date of demand therefor. Any such amount shall be secured by the Pledge Agreement and the other Loan Documents to the extent permitted by applicable law.

**2.3.4 Method and Place of Payment.** Except as otherwise specifically provided herein, all payments and prepayments under this Agreement and the Note shall be made to Lender not later than 3:00 p.m., New York City time, on the date when due and shall be made in lawful money of the United States of America in immediately available funds at Lender's office or as otherwise directed by Lender, and any funds received by Lender after such time shall, for all purposes hereof, be deemed to have been paid on the next succeeding Business Day.

### **Section 2.4. Prepayments.**

**2.4.1 Voluntary Prepayments.** Borrower may, at its option, prepay the Debt in whole or in part, provided, the following conditions are satisfied:

(a) No Event of Default shall have occurred and be continuing (unless, in the case of a prepayment upon the release of an Individual Property, the Event of Default relates solely to such Individual Property and therefore would be fully cured by the release of such Individual Property);

(b) Borrower shall provide prior written notice to Lender specifying the date upon which the prepayment is to be made (the "**Prepayment Date**"), which notice shall be delivered to Lender not less than ten (10) days prior to such Prepayment Date, and which notice shall be irrevocable (or such shorter period of time as may be permitted by Lender in its sole discretion) (Lender hereby agreeing that Borrower may revoke any notice of prepayment up until the date that is one (1) Business Day prior to the proposed Prepayment Date (provided that Borrower shall be required to pay Lender, promptly upon demand, any actual, out-of-pocket expenses incurred by Lender resulting from any such revocation));

(c) each such prepayment, in the case of partial prepayments, shall be in an amount not less than Five Million and no/100 Dollars (\$5,000,000.00), unless the outstanding principal balance of the Loan (prior to such prepayment) shall be less than Five Million and no/100 Dollars (\$5,000,000.00), in which event the amount of the prepayment shall be in such amount as shall prepay the Debt and all other amounts due in connection therewith in full, as more fully provided herein;

(d) if such prepayment is made on or prior to the Payment Date occurring in the Interest Period in which such prepayment was made, then, in connection with such prepayment Borrower shall pay to Lender, simultaneously with such prepayment, all interest on the principal balance of the Note then being prepaid which would have accrued through the end of the Interest Period then in effect notwithstanding that such Interest Period extends beyond the Prepayment Date;

(e) if such prepayment is made after a Payment Date occurring in the Interest Period in which such prepayment was made, but prior to the last two (2) Business Days in such Interest Period, Borrower shall make such prepayment without paying any interest thereon (Borrower having already paid interest on such amount on the Payment Date occurring in such Interest Period);

(f) if such prepayment is made on either of the last two (2) Business Days in an Interest Period, Borrower will pay to Lender, simultaneously with such prepayment, interest on the principal amount of the Loan prepaid through the last day of the Interest Period immediately following the Interest Period in which such prepayment occurs, calculated at the Applicable Interest Rate;

(g) if such prepayment is a prepayment of the Loan in full, Lender shall have received a written consent to the repayment from the lender under each Other Mezzanine Loan (and, if any, a Permitted Mezzanine Loan) or receipt by Lender of other evidence satisfactory to Lender that all conditions imposed under the terms of each Other Mezzanine Loan and Permitted Mezzanine Loan shall have been complied with by the borrower thereunder or otherwise waived by the applicable lender, including the simultaneous *pro rata* prepayment of each Other Mezzanine Loan and Permitted Mezzanine Loan if required thereunder; and

(h) if such prepayment is made on or prior to the Spread Maintenance Outside Date, then in connection with any such prepayment, Borrower shall pay to Lender, simultaneously with such prepayment, the Spread Maintenance Premium in respect of such prepayment.

Any prepayment received by Lender on other than a Payment Date (but not any amount received between a Payment Date and the second to last Business Day in an Interest Period) shall be held by Lender in an interest-bearing account as collateral security for the Loan and shall be applied to the Debt on the next occurring Payment Date (with all interest and other income earned on such amount being for the account of Borrower and being remitted by Lender to Borrower promptly following such next Payment Date). Any prepayment made pursuant to this Section 2.4.1 shall be applied *pro rata* and *pari passu* (a) first to accrued and unpaid interest on all of the Notes and (b) the balance shall be applied to principal of all the Notes. Lender agrees that it shall provide a written consent to the repayment of the Loan upon satisfaction of the conditions set forth in clauses (a) through (f) and clause (h) of this Section 2.4.1.

**2.4.2 Mandatory Prepayments from Net Proceeds.** (a) On the next occurring Payment Date following the date on which Lender actually receives any Net Proceeds, if Lender is not obligated to make such Net Proceeds available to Borrower for the Restoration of any Individual Property, Borrower shall prepay, or authorize Lender to apply Net Proceeds as a prepayment of, the outstanding principal balance of the Note in an amount equal to, (x) if no Event of Default shall have occurred and be continuing, the product of (i) a fraction, the numerator of which is outstanding principal amount of the Loan and the denominator is the outstanding principal amount of the Mortgage Loan, the Loan and the Other Mezzanine Loans times (ii) the Net Proceeds, together with interest accruing on such amount calculated through and including the end of the Interest Period in which such Payment Date occurs (with the balance of the Net Proceeds to be paid over to the Seventh Mezzanine Lender, for application in accordance with the Seventh Mezzanine Loan Agreement), and (y) if an Event of Default shall have occurred and be continuing, 100% of the Net Proceeds. No Spread Maintenance Premium shall be due in connection with any prepayment made pursuant to this Section 2.4.2(a). Any prepayment received by Lender pursuant to this Section 2.4.2(a) on a date other than a Payment Date shall be held by Lender as collateral security for the Loan in an interest bearing account, with such interest accruing to the benefit of Borrower, and shall be applied by Lender on the next Payment Date. Following the prepayment made as described in this Section 2.4.2(a), the Allocated Loan Amount for the affected Individual Property, as set forth in this Agreement, shall be reduced in an amount equal to such prepayment. Any prepayment of the Notes made pursuant to this Section 2.4.2(a) shall be applied *pro rata* and *pari passu* (a) first to accrued and unpaid interest on all of the Notes and (b) the balance shall be applied to principal of all the Notes.

(b) In the event of (i) a Transfer of any Individual Property or any Senior Mezzanine Collateral in connection with the realization thereon following a Mortgage Loan Default or a Senior Mezzanine Loan Default, as applicable, (ii) any refinancing of any Individual Property, any Senior Mezzanine Collateral, any Senior Mezzanine Loan or the Mortgage Loan, or (iii) the receipt by Mortgage Borrower of any excess proceeds realized under its owner's title insurance policy after application of such proceeds by Mortgage Borrower to cure any title defect (each, a "**Liquidation Event**"), Borrower shall cause the related Net Liquidation Proceeds After

Debt Service to be remitted directly to Lender (or as directed by Lender). On each date on which Lender actually receives a distribution of Net Liquidation Proceeds After Debt Service, Borrower shall prepay the outstanding principal balance of the Note in an amount equal to one hundred percent (100%) of such Net Liquidation Proceeds After Debt Service, together with interest accruing on such amount calculated through and including the end of the Interest Period in which such payment occurs. Any amounts of Net Liquidation Proceeds After Debt Service in excess of the Debt shall be remitted to Seventh Mezzanine Lender (or to an account designated by Seventh Mezzanine Lender). Any prepayment received by Lender pursuant to this Section 2.4.2(b) on a date other than a Payment Date shall be held by Lender as collateral security for the Loan in an interest bearing account, with such interest accruing to the benefit of Borrower, and shall be applied by Lender on the next Payment Date. A Spread Maintenance Premium or fee may be due in connection with any prepayment made pursuant to this Section 2.4.2(b) if made prior to the Spread Maintenance Outside Date. Following the prepayment made as described in this Section 2.4.2(b), the Allocated Loan Amount for the affected Individual Property, as set forth in this Agreement, shall be reduced in an amount equal to such prepayment. Any prepayment of the Notes made pursuant to this Section 2.4.2(b) shall be applied *pro rata* and *pari passu* (a) first to accrued and unpaid interest on all of the Notes and (b) the balance shall be applied to principal of all the Notes.

(c) Borrower shall immediately notify Lender of any Liquidation Event once Borrower has knowledge of such event. Borrower shall be deemed to have knowledge of (i) a sale (other than a foreclosure sale) of any Individual Property on the date on which a contract of sale for such sale is entered into, and a foreclosure sale, on the date notice of such foreclosure sale is given, and (ii) a refinancing of any Individual Property, on the date on which a commitment for such refinancing has been entered into. The provisions of this Section 2.4.2(c) shall not be construed to contravene in any manner the restrictions and other provisions regarding refinancing of the Mortgage Loan or Transfer of any Individual Property set forth in this Agreement, the other Loan Documents and the Mortgage Loan Documents.

**2.4.3 Prepayments After Default.** If, following the occurrence and during the continuance of an Event of Default, payment of all or any part of the Debt is tendered by Borrower or any other Person and accepted by Lender or otherwise recovered by Lender (including through application of any Reserve Funds), Borrower shall pay to Lender, in addition to the outstanding principal balance, (a) all accrued and unpaid interest at the Default Rate (including, without limitation, (i) in the event that such prepayment is received on a Payment Date or on any date in any Interest Period prior to a Payment Date, interest accruing (at the Default Rate) on such amount calculated through and including the end of the Interest Period in which such payment occurs, or (ii) in the event that such prepayment is received on a date after a Payment Date up to (and including) the last day of the Interest Period in which such Payment Date occurs, interest accruing (at the Default Rate) on such amount calculated through and including the end of the Interest Period in which the next Payment Date occurs, (b) the Spread Maintenance Premium, if such prepayment is made prior to the Spread Maintenance Outside Date, and (c) any and all other amounts payable under the Loan Documents. Any payment under this Section 2.4.3 shall be applied in such order, priority and proportions as Lender may direct in its sole and absolute discretion.

**Section 2.5. Release of Collateral.** Except as set forth in this Section 2.5, no repayment or prepayment of all or any portion of the Note shall cause, give rise to a right to require, or otherwise result in, the release or assignment of any Lien of the Pledge Agreement on the Collateral.

**2.5.1 Release of Individual Property.** Concurrently with the release of an Individual Property from the Lien of the Mortgage (and related Mortgage Loan Documents) pursuant to Section 2.5.1 of the Mortgage Loan Agreement (a “**Release**” and such Individual Property, a “**Release Property**”), Borrower may obtain the release of the related Individual Borrower with an indirect ownership interest in such Individual Property (a “**Release Borrower**”) and such Release Borrower’s obligations under the Loan Documents with respect to the Release Property (other than those expressly stated to survive), upon the satisfaction of each of the following conditions:

(a) No Event of Default shall have occurred and be continuing (unless, in the case of a prepayment upon the release of an Individual Property, the Event of Default relates solely to such Individual Property and therefore would be fully cured by the release of such Individual Property);

(b) Borrower shall submit to Lender, not less than ten (10) Business Days prior to the date of such release, a release of Lien of the Pledge Agreement (and related Loan Documents), only with respect to such Release Borrower, for execution by Lender. Such release shall contain standard provisions, if any, protecting the rights of the releasing lender;

(c) After giving effect to such release, the Debt Service Coverage Ratio for the Properties then remaining subject to the Liens of the Mortgages (including giving pro forma effect to the payment of the Release Price and any additional prepayment(s) made by Borrower in connection with such release) shall be equal to or greater than the greatest of (i) the Debt Service Coverage Ratio for the twelve (12) full calendar months immediately preceding the release of the Individual Property (assuming the contemplated release had not occurred, i.e., for all Properties subject to the Liens of the Mortgage prior to the proposed release), (ii) 90% of the Debt Service Coverage Ratio as of the Closing Date, and (iii) 1.0;

(d) (i) The Individual Property to be released shall be conveyed to a Person other than a Mortgage Borrower or Mezzanine Borrower, and other than to an Affiliate of Mortgage Borrower unless, in the latter case, such Affiliate is refinancing the Loan with a construction or development loan (or repaying the Loan with equity contributions to such Affiliate) and (ii) it is such Affiliate’s immediate intention to materially redevelop such Individual Property, which loan (or equity contribution) and intention shall be described in reasonable detail and represented to in an Officer’s Certificate submitted to Lender concurrently with (or prior to) the materials described in clause (b) of this Section 2.5.1;

(e) Lender shall have received a wire transfer of immediately available federal funds in an amount equal to the Release Price for the applicable Individual Property, together with (i) all accrued and unpaid interest calculated at the Applicable Interest Rate on the amount of principal being prepaid as provided in Section 2.4.1(d) or (e), as applicable, (ii) the Spread

Maintenance Premium, if applicable and (iii) all other sums due under this Agreement, the Note or the other Loan Documents in connection with a partial prepayment;

(f) Lender shall have received a written consent to the transfer from the lender under the Mortgage Loan and each of the Other Mezzanine Loans (and, if any, a Permitted Mezzanine Loan) or receipt by Lender of other evidence satisfactory to Lender that all conditions imposed under the terms of the Mortgage Loan, each of the Other Mezzanine Loans and Permitted Mezzanine Loan shall have been complied with by the borrower thereunder or otherwise waived by the applicable lender, including the simultaneous pro rata prepayment of each Mortgage Loan, the Other Mezzanine Loans and Permitted Mezzanine Loan if required thereunder; and

(g) Lender shall have received payment of all Lender's reasonable out-of-pocket costs and expenses, including reasonable counsel fees and disbursements incurred in connection with the release of the Individual Property and or Release Borrower from the lien of the Pledge Agreement and the review and approval of the documents and information required to be delivered in connection therewith. Lender acknowledges that it shall not charge any fee (other than costs and expenses, as provided in the preceding sentence) in connection with the release of an Individual Property or Release Borrower.

Lender agrees that it shall provide a written consent to the transfer upon satisfaction of the conditions set forth in clauses (a) through (e) and clause (g) of this Section 2.5.1.

**2.5.2 Release of Convention Center Parcel; Property Swap.** At any time after the date hereof, Mortgage Borrower may obtain the release of the Convention Center Parcel pursuant to the Mortgage Loan Agreement, without the payment of a Release Price and upon the satisfaction by Borrower of each of the following conditions:

(a) No Event of Default shall have occurred and be continuing (unless, in the case of a release of the Convention Center Parcel, the Event of Default relates solely to such parcel and therefore would be fully cured by the release of the Convention Center Parcel);

(b) The Convention Center Parcel shall be conveyed to a Person other than a Mortgage Borrower or any Mezzanine Borrower;

(c) Mortgage Borrower will enter into a restrictive covenant agreement, restricting the use of the Convention Center Parcel to the development of a Convention Center and ancillary uses which agreement shall be in form and substance reasonably satisfactory to Lender;

(d) Prior to the transfer and release of the Convention Center Parcel, each applicable municipal authority exercising jurisdiction over the Convention Center Parcel shall have approved, a lot-split ordinance or other applicable action under local law dividing the Convention Center Parcel from the remainder of the Harrah's Atlantic City Property, and a separate tax identification number has been issued for the Convention Center Parcel (with the result that, upon the transfer and release of the Convention Center Parcel, no part of the remaining Harrah's Atlantic City Property shall be part of a tax lot which includes any portion of the Convention Center Parcel);

(e) All requirements under all laws, statutes, rules and regulations (including, without limitation, all zoning and subdivision laws, setback requirements, sideline requirements, parking ratio requirements, use requirements, building and fire code requirements, environmental requirements and wetlands requirements) applicable to the Harrah's Atlantic City Property necessary to accomplish the lot split shall have been fulfilled, and all necessary variances, if any, shall have been obtained, and Borrower shall have delivered to Lender either (1) letters or other evidence from the appropriate municipal authorities confirming such compliance with laws, or (2) a zoning report or legal opinion confirming such compliance with laws, in each case in substance reasonably satisfactory to Lender;

(f) As a result of the lot split, the remaining Harrah's Atlantic City Property with all easements appurtenant and other Permitted Encumbrances thereto will not be in violation of any then applicable law, statute, rule or regulation (including, without limitation, all zoning and subdivision laws, setback requirements, sideline requirements, parking ratio requirements, use requirements, building and fire code requirements, environmental requirements and wetland requirements) and all necessary variances, if any, shall have been obtained and evidence thereof has been delivered to Lender which in form and substance is appropriate for the jurisdiction in which the Harrah's Atlantic City Property is located;

(g) If reasonably necessary, appropriate reciprocal easement agreements for the benefit and burden of the remaining Harrah's Atlantic City Property and the Convention Center Parcel requiring no cost or expense to Mortgage Borrower regarding the use of common facilities of such parcels, including, but not limited to, roadways, parking areas, utilities and community facilities, in a form and substance that would be reasonably acceptable to an ordinary prudent lender and which easements will not materially adversely affect the remaining Harrah's Atlantic City Property, shall be declared and recorded, and the remaining Harrah's Atlantic City Property and the Convention Center Parcel shall be in compliance with all applicable covenants under all easements and property agreements contained in the Permitted Encumbrances for the Harrah's Atlantic City Property;

(h) Borrower has delivered an Officer's Certificate to the effect that, to such officer's knowledge after diligent inquiry, the conditions in subsection (a)-(g) hereof have occurred or shall occur concurrently with the transfer and release of the Convention Center Parcel;

(i) Borrower shall execute such documents and instruments and obtain such opinions of counsel as are typical for similar transactions;

(j) Lender shall have received payment of all Lender's reasonable out-of-pocket costs and expenses, including reasonable counsel fees and disbursements incurred in connection with the review and approval of the documents and information required to be delivered in connection with the release of the Convention Center Parcel from the Lien of the related Mortgage. Lender acknowledges that it shall not charge any fee (other than costs and expenses, as provided in the preceding sentence) in connection with the release of the Convention Center Parcel;

(k) Lender shall have received evidence reasonably satisfactory to it that Mortgage Borrower and each Other Mezzanine Borrower shall have satisfied all of the conditions to the proposed Release set forth in the Mortgage Loan Agreement and each Other Mezzanine Loan Agreement, as applicable; and

(l) There shall be no release of any portion of the Lien of the Pledge Agreement in connection with this Section 2.5.2.

Borrower agrees that it shall promptly use all reasonable best efforts to substitute, and Lender agrees (subject to the terms set forth below in this paragraph) that it shall accept the substitution of, the properties commonly known as “Paris Las Vegas” and “Harrah’s Laughlin” for the Individual Properties referred to as “Harrah’s Lake Tahoe”, “Harvey’s Lake Tahoe”, “Bill’s Lake Tahoe” and “Showboat Atlantic City” and the portion of the Flamingo Las Vegas Property known as O’Shea’s in a reasonably satisfactory manner, provided that Lender’s obligation to accept such substitution shall be conditioned on the following:

(i) that no Event of Default shall exist, either before or after giving effect to such substitution (unless such Event of Default would be fully cured by the substitution);

(ii) the satisfaction, with respect to both “Paris Las Vegas” and “Harrah’s Laughlin”, of the closing conditions set forth in Article III hereof and of the Mortgage Loan Agreement, except that references therein to the Closing Date shall be to the date of such substitution;

(iii) delivery of such agreements, instruments, title insurance policies, surveys, resolutions, certificates and opinions (including, without limitation, substitute notes, amendments to the Loan Documents (including amendments to adjust the Allocated Loan Amounts, the EBITDAR (Closing Date) and any other items that need to be adjusted to reflect the substitution), the Operating Lease, the Operating Lease Guaranty and the Windstorm Insurance Intercreditor Agreement, an appropriate subdivision and a reciprocal easement agreement in respect of O’Shea’s, written assurances that the substitution will have no negative effects on the existing Title Policies, updated “tie-in” endorsements for the Title Policies, an Additional True Lease Opinion and an Additional Insolvency Opinion), in each case as are reasonably required by Lender in connection with such substitution;

(iv) with respect to the release of O’Shea’s, delivery of evidence reasonably satisfactory to Lender that such release will not have either an Individual Material Adverse Effect on the remainder of the Flamingo Las Vegas Property or an Aggregate Material Adverse Effect (it being understood that, for purposes of such determinations, O’Shea’s shall be deemed to have closed as of the Closing Date and to have no value) and that the remainder of the Flamingo Las Vegas Property satisfies the conditions set forth in Sections 3.1.3(b), (c) and (f) of the Mortgage Loan Agreement and the representations and warranties set forth in Sections 4.1.4, 4.1.16, 4.1.22, 4.1.39 and 4.1.40 of the Mortgage Loan Agreement shall continue to be true and complete with respect to the remainder of the Flamingo Las Vegas Property, and satisfaction of

conditions similar to those set forth in clauses (c), (d), (e), (f), (g) and (h) of Section 3.1.3 hereof, as applicable, with respect to O'Shea's;

(v) the satisfaction, with respect to "Harrah's Lake Tahoe", "Harvey's Lake Tahoe", "Bill's Lake Tahoe", "Showboat Atlantic City" and O'Shea's, of the conditions set forth above in Section 2.5.1(b) and (f) with respect to released Individual Properties to the extent applicable;

(vi) the conveyance of "Harrah's Lake Tahoe", "Harvey's Lake Tahoe", "Bill's Lake Tahoe", "Showboat Atlantic City" and O'Shea's to a Person other than a Mortgage Borrower or Mezzanine Borrower;

(vii) unless otherwise extended by Lender, the substitution shall be completed on or prior to May 28, 2008;

(viii) the payment by Borrower of all Lender's reasonable out-of-pocket costs and expenses in connection with the substitution contemplated by this paragraph, including reasonable counsel fees and disbursements, up to an aggregate amount of \$300,000, it being acknowledged that costs incurred to obtain title insurance and surveys in respect of the substituted properties shall be paid by Borrower directly and shall not be taken into account for purposes of the foregoing limitation on the reimbursement of Lender's expenses.

Lender acknowledges that it shall not charge any fee (other than costs and expenses, as provided in the preceding sentence) in connection with the release of an Individual Property in accordance with this paragraph. In addition, if all of "Harrah's Lake Tahoe", "Harvey's Lake Tahoe", "Bill's Lake Tahoe" and "Showboat Atlantic City" can be transferred from Mortgage Borrower as contemplated above, but O'Shea's cannot (including by reason of an inability to get a separate gaming license for O'Shea's independent of the "Flamingo Las Vegas"), then Borrower shall cause Mortgage Borrower to nevertheless proceed to consummate the swap without transferring O'Shea's (subject to Borrower's ongoing right to obtain the release of O'Shea's from the Lien of the Mortgage in accordance with the following sentence). Upon the satisfaction of such conditions set forth above in this paragraph (including clauses (i) through (viii) hereof), Borrower will have the right to choose between an immediate release of "O'Shea's" from the Lien of the Mortgage on the date of the swap or a free release subsequent to the date of the swap without conditions (in either case, subject to the conditions set forth above in this Section 2.5.2), except that the limitation on Borrower's payment of Lender's costs and expenses set forth in clause (viii) above shall not apply to any such costs and expenses incurred by Lender in connection with such release), and, pending such release, EBITDAR shall be computed without regard to O'Shea's; provided, further, the Operating Company in respect of the "Flamingo Las Vegas" Individual Property, both before and after such release, shall be permitted to provide management and other similar services for O'Shea's and shall be reimbursed for the allocable share of expenses attributable to O'Shea's.

**2.5.3 Release on Payment in Full.** Lender shall, upon the written request and at the expense of Borrower, upon payment in full of all principal and interest due on the Loan and all other amounts due and payable under the Loan Documents in accordance with the

terms and provisions of the Note and this Agreement, release the Lien of the Pledge Agreement on the Collateral.

**Section 2.6. Cash Management.**

**2.6.1 Establishment of Collection Accounts.**

(a) In accordance with the provisions of the Operating Lease, (i) Operating Company will establish within thirty (30) days after the Closing Date and will maintain for the benefit of Mortgage Borrower, as lessor under the Operating Lease, the Collection Accounts with Collection Banks throughout the term of the Mortgage Loan and (ii) the rights of Mortgage Borrower (as landlord) under the Operating Lease will be collaterally assigned to Mortgage Lender within such 30-day period. All Revenues, other than amounts retained on-site by each Operating Company as a Gaming Operating Reserve and amounts collected and maintained in Off-Shore Accounts, will be deposited in the Collection Accounts.

(b) Borrower hereby represents and warrants as follows: when established, the Collection Accounts will be the only accounts maintained by Operating Company in any jurisdiction that include funds arising out of, or are otherwise attributable to, the Properties or relate to the operation and management of any of the Properties (other than accounts (collectively, the “OC Accounts”) that contain amounts theretofore released from Collection Accounts in accordance herewith, and other than Off-Shore Accounts, which shall not be subject to this Agreement; and neither Borrower nor Mortgage Borrower maintains any accounts that include funds arising out of, or are otherwise attributable to, any of the Properties or relate to the operation and management of any of the Properties or otherwise (except for accounts containing funds released from the Collection Accounts as herein provided and the Off-Shore Accounts). None of Mortgage Borrower, Senior Mezzanine Borrower, Borrower or Operating Company may (and Borrower shall not permit Mortgage Borrower, Senior Mezzanine Borrower or Operating Company to), without the prior consent of Lender (not to be unreasonably withheld, conditioned or delayed), open any accounts or new accounts or in any way alter the flow of funds and payment into such Collection Accounts, including, without limitation, changing the source, type or currency of any payments currently deposited and maintained in any such account (it being understood that the foregoing restriction shall not preclude Operating Company, Mortgage Borrower, Senior Mezzanine Borrower or Borrower from accepting and depositing in any Collection Accounts any capital contributions, or any disbursements from any Collection Accounts in accordance with the provisions of the Mortgage Loan Agreement, this Agreement and the Senior Mezzanine Loan Agreements. None of Mortgage Borrower, Senior Mezzanine Borrower, Borrower or Operating Company may (and Borrower shall not permit Mortgage Borrower, Senior Mezzanine Borrower, or Operating Company to), without the prior consent of Lender (not to be unreasonably withheld, conditioned or delayed), establish and maintain any accounts with financial institutions outside of the United States of America, other than the Off-Shore Accounts).

(c) Borrower shall cause Mortgage Borrower, Senior Mezzanine Borrower and Operating Company to comply with Section 2.6.1 of the Mortgage Loan Agreement and Senior Mezzanine Loan Agreement (as applicable) in all respects.

(d) Borrower hereby agrees that in the event that (i) the Mortgage Loan Documents require Mortgage Borrower and/or Operating Company to maintain the Collection Accounts, but (due to repayment of the Mortgage Loan, waiver of the requirement by Mortgage Lender, or otherwise) the Collection Accounts are not being maintained and (ii) the Collection Accounts are not being maintained under Section 2.6.1(d) of the Senior Mezzanine Loan Agreement, Borrower shall establish or cause the Operating Company to establish or cause the Operating Company to establish collection accounts substantially the same as that required under the Mortgage Loan Documents (and shall otherwise comply with the provisions of Section 2.6.1 of the Mortgage Loan Documents, and grant to Lender security interests in such accounts for the benefit of Lender, as if such provisions were incorporated herein for the benefit of Lender). In addition, if Borrower is required to deposit amounts with Lender pursuant to Article VII hereof but (due to repayment of the Mortgage Loan, waiver of the requirement by Mortgage Lender, or otherwise) the Collection Accounts and Cash Management Account are not being maintained, Borrower shall establish collection accounts and a cash management account and system with Lender substantially the same as that required under the Mortgage Loan Documents (and shall otherwise comply with the provisions of Sections 2.6.1 and 2.6.2 of the Mortgage Loan Documents, and grant to Lender security interests in such accounts for the benefit of Lender, as if such provisions were incorporated herein for the benefit of Lender). In addition, if Mortgage Borrower is required to provide security or other collateral to the Mortgage Lender pursuant to the terms of the Mortgage Loan Agreement (excluding any mortgage lien on the Properties or assignment of leases and rents with respect to the Properties) but (due to repayment of the Mortgage Loan, waiver of the requirement by Mortgage Lender, or otherwise) such security or other collateral was not provided to Mortgage Lender, Borrower shall provide such security or other collateral to Lender in substantially the same form and amount as that required under the Mortgage Loan Documents.

**2.6.2 Disbursements from, Security Interest in, Collection Accounts.** The Operating Lease provides, among other things, that all Revenues shall be collaterally assigned by Operating Company to Mortgage Borrower as additional security for Operating Company's obligations under the Operating Lease and that Mortgage Borrower shall have the right to collaterally assign and pledge such Revenues to Lender as additional security for the Loan. In furtherance thereof, Lender and Borrower agree as follows:

(a) Except as otherwise provided in subparagraphs (b) and (c) hereof, all amounts collected in the Collection Accounts shall be transferred on each Business Day to (or as directed by) Operating Company for use or distribution by the Operating Company in its discretion free of any rights or encumbrances of Lender.

(b) Upon the occurrence and during the continuance of an Event of Default hereunder, under the Mortgage Loan Documents or under any of the Other Mezzanine Loan Documents, and provided no Event of Default (as such term is defined in the Operating Lease) shall have occurred and be continuing under any Operating Lease, Borrower shall cause Mortgage Borrower to direct and cause Collection Bank to deposit directly into the Cash Management Account, all Rent payable under the Operating Lease for the next thirty (30) days (it being the intent and agreement that, during the continuance of an Event of Default, the Cash Management Account shall at all times contain such amounts sufficient to cover the ensuing 30-day period), including the Monthly Tax and Insurance Amount, the Monthly Ground Rent

Amount and Monthly FF&E Reserve Amount (the amounts described in the preceding sentence, collectively, the “**Monthly Disbursements**”); provided that, notwithstanding the foregoing, Lender may not apply such Monthly Disbursements to the payment of amounts due hereunder in an amount in excess of the amounts owed by the Operating Company under the Operating Lease. In the event Borrower shall have failed to cause Mortgage Borrower to so instruct Collection Bank, Lender shall have the right to so direct the Collection Bank on behalf of Mortgage Borrower. Any amounts not required to be so deposited into the Cash Management Account shall be transferred on each Business Day thereafter to (or as directed by) Operating Company for use or distribution by the Operating Company in its discretion free of any rights or encumbrances of Lender. If no Event of Default has occurred and is continuing hereunder, to the extent Monthly Disbursements are not applied to the payment of amounts due hereunder, such excess shall be remitted to Seventh Mezzanine Lender (or to an account designated by Seventh Mezzanine Lender); provided that, notwithstanding the foregoing, Lender shall not remit any such amounts in excess of the amounts owed by the Operating Company under the Operating Lease. If an Event of Default has occurred and is continuing hereunder, to the extent Monthly Disbursements are not applied to the payment of amounts due hereunder, Lender shall have the right to retain the amount so remitted to the Collection Account as collateral for the Loan and/or apply such amount to the payment of the Debt.

(c) Upon the occurrence and during the continuance of an Event of Default (as such term is defined in the Operating Lease) under any Operating Lease, Borrower shall cause Mortgage Borrower to notify Collection Bank to transfer to the Cash Management Account on each Business Day in immediately available funds by federal wire transfer all amounts on deposit in each Collection Account and, in the event Mortgage Borrower shall have failed to do so, Mortgage Lender (or Lender in the event of Mortgage Lender’s failure to so instruct) shall have the right to so direct the Collection Bank on behalf of Mortgage Borrower. Lender shall have the right to retain all amounts to be paid into the Cash Management Account in accordance with the first sentence of this Section 2.6.2(c) as collateral for the Loan and/or apply such excess to the payment of the Debt.

(d) Borrower and its Affiliates shall (and Borrower shall cause Operating Company to) execute and deliver such documents, instruments, certificates, assignments and other writings, and do such other acts necessary or desirable, to evidence, preserve and/or protect, maintain and perfect Lender’s security interest in the Collection Accounts, if any.

**2.6.3 Cash Management Account.** (a) During the term of the Loan, Borrower shall cause Mortgage Borrower and Senior Mezzanine Borrower to comply with Section 2.6.3 of the Mortgage Loan Agreement and Senior Mezzanine Loan Agreement (as applicable) which may require the establishment of the Cash Management Account to be held by and in trust for the benefit of Mortgage Lender. All costs and expenses for establishing and maintaining the Cash Management Account shall be paid by Mortgage Borrower.

(b) Borrower shall not cause or permit Mortgage Borrower or Operating Company to further pledge, assign or grant any security interest in the Cash Management Account or the monies deposited therein or permit any lien or encumbrance to attach thereto, or any levy to be made thereon, or any UCC-1 Financing Statements, except those naming Mortgage Lender as the secured party, to be filed with respect thereto.

(c) Borrower hereby agrees that in the event that (i) the Mortgage Loan Documents require Mortgage Borrower and/or Operating Company to maintain the Cash Management Account, but (due to repayment of the Mortgage Loan, waiver of the requirement by Mortgage Lender, or otherwise) the Cash Management Account is not being maintained and (ii) the Cash Management Account is not being maintained under Section 2.6.3 of the Senior Mezzanine Loan Agreement, Borrower shall establish a cash management account and system with Lender substantially the same as that required under the Mortgage Loan Documents. If Borrower is required to deposit amounts with Lender pursuant to Article VII hereof, Borrower shall establish a cash management account and system with Lender substantially the same as that required under the Mortgage Loan Documents (and shall otherwise comply with the provisions of Section 2.6.2 of the Mortgage Loan Documents, and grant to Lender security interests in such accounts for the benefit of Lender, as if such provisions were incorporated herein for the benefit of Lender).

**2.6.4 Mezzanine Collection Account.** (a) Lender or Servicer may establish and maintain, to collect all amounts distributed to Lender under Section 2.6.3 of the Mortgage Loan Agreement, a segregated Eligible Account (the “**Mezzanine Collection Account**”) to be held by Servicer in trust for the benefit of Lender, which Mezzanine Collection Account shall be under the sole dominion and control of Lender (which may be exercised through Servicer). Lender (and its agents, including Servicer) shall have the sole right to make withdrawals from the Mezzanine Collection Account in accordance with the terms and conditions of this Agreement and the other Loan Documents, except as otherwise expressly provided in this Agreement or the other Loan Documents. Borrower shall cause Senior Mezzanine Borrower to comply with Section 2.6.4 of the Senior Mezzanine Loan Agreements.

(b) Borrower hereby grants to Lender a first priority security interest in the Mezzanine Collection Account and all deposits at any time contained therein and the proceeds thereof and will take all actions necessary to maintain in favor of Lender a perfected first priority security interest in the Mezzanine Collection Account, including, without limitation, executing and filing UCC 1 Financing Statements and continuations thereof upon Lender’s request therefor. All costs and expenses for establishing and maintaining the Mezzanine Collection Account (and any sub account thereof) shall be at Borrower’s sole cost and expense.

(c) Borrower shall be responsible for payment of any federal, state or local income or other tax applicable to the interest or income earned on the Mezzanine Collection Account and any sub-account thereof. The Mezzanine Collection Account and any sub-account thereof shall be assigned the federal tax identification numbers of each Borrower set forth on Schedule I attached hereto. Borrower shall provide Lender, at any time upon request of Lender, with a Form W-8 or W-9 to evidence that Borrower is not subject to any back-up withholding under the Code.

(d) Upon the occurrence and during the continuance of an Event of Default, all funds on deposit in the Mezzanine Collection Account shall be applied by Lender in such order and priority as Lender shall determine.

(e) The insufficiency of funds on deposit in the Mezzanine Collection Account shall not relieve Borrower from the obligation to make any payments, as and when due

pursuant to this Agreement and the other Loan Documents, and such obligations shall be separate and independent, and not conditioned on any event or circumstance whatsoever.

**Section 2.7. Intentionally Omitted.**

**Section 2.8. Permitted Mezzanine Loan.** Borrower shall have the one-time right, upon thirty (30) days prior written notice to Lender (the “**Permitted Mezzanine Loan Election**”), to obtain a loan (“**Permitted Mezzanine Loan**”) secured by a pledge of the ownership interests in the indirect owners of Borrower (above the level of the Ninth Mezzanine Borrower) provided that the following conditions precedent are satisfied:

(a) no Default or Event of Default shall have occurred and remains uncured;

(b) as of the date the Permitted Mezzanine Loan is advanced, the Permitted Mezzanine Debt Loan-to-Value Ratio for the Properties subject to the Lien of the Mortgage is equal to or less than eighty percent (80%);

(c) as of the date the Permitted Mezzanine Loan is advanced, Permitted Mezzanine DSCR for the four-quarter period preceding such date for the Properties then subject to the Lien of the Mortgage(s) is equal to or greater than 1.2 to 1.0;

(d) the Permitted Mezzanine Loan shall be evidenced by one (1) Loan, that may be advanced in multiple draws provided that Borrower complies with the requirements set forth in this Section 2.8 with respect to each draw;

(e) the Permitted Mezzanine Loan shall be issued by one (1) lender (the “**Permitted Mezzanine Loan Lender**”) which shall be an Institutional Lender; provided, however, that such single Lender that is an Institutional Lender may grant participations in such Permitted Mezzanine Loan or syndicate the Permitted Mezzanine Loan to multiple lenders so long as at least fifty-one percent (51%) of such participants and syndicate lenders are Institutional Lenders and, in addition, so long a single lender serves as agent with respect to all approvals, consents and other matters relating to the Permitted Mezzanine Loan;

(f) the Permitted Mezzanine Loan shall have the same maturity date as the Maturity Date under the Loan, or a maturity date extending beyond the Maturity Date under the Loan;

(g) the Permitted Mezzanine Loan (including all of the terms, provisions and conditions of the Permitted Mezzanine Loan, including, without limitation, the loan documents evidencing and securing the Permitted Mezzanine Loan (“**Permitted Mezzanine Loan Documents**”)) shall be acceptable to Lender in its reasonable discretion (it being agreed that with respect (only) to Lender’s approval of the form of loan documents that loan documents in substantially the same form as the Ninth Mezzanine Loan Documents, appropriately modified to reflect subordination to the Mezzanine Loans still outstanding, shall be deemed to be acceptable);

(h) the Permitted Mezzanine Loan Lender shall enter into a co-lender or intercreditor agreement substantially on the standard CMSA form (or the form entered into by

Lender, Other Mezzanine Lenders and Mortgage Lender in connection with the closing of the Loan) or in form and substance reasonably acceptable to Lender, acknowledging the subordination of the Permitted Mezzanine Loan in all respects to each of the Mezzanine Loans and the Mortgage Loan (and Lender agrees to enter into such co-lender or intercreditor agreement upon request);

(i) the Permitted Mezzanine Loan shall be a fixed rate loan, or a floating rate loan containing an interest rate that is capped at an amount that satisfies the debt service coverage ratio requirement set forth in subparagraph (c) above, with interest due and payable monthly (i.e., interest does not accrue) and such interest rate shall not be subject to adjustment except after an event of default (Borrower agreeing to cause the purchase of an interest rate cap to reflect the foregoing);

(j) if requested by Lender, Borrower shall execute amendments to the Loan Documents reasonably requested by Lender, to reflect the existence of such Permitted Mezzanine Loan, provided that any such amendments or agreements will not alter the payment terms of the Loan set forth in this Agreement or the other Loan Documents or materially and adversely affect Borrower or impose additional material obligations or liabilities upon Borrower;

(k) if required by Lender, Borrower shall deliver (i) Additional Insolvency Opinions and, if the Loan Documents are amended pursuant to Section 2.8(k), opinions regarding due execution and enforceability with respect to the Properties, Mortgage Borrower, Mezzanine Borrowers, Holdings, Guarantor and their respective Affiliates and the Loan Documents, and such related matters as Lender shall reasonably require, and (ii) revised organizational documents for Borrower, which opinions and organizational documents shall be reasonably satisfactory to Lender;

(l) all necessary or appropriate governmental or other third party consents (including any approvals, notices, filings or other actions under or pursuant to the Gaming Laws or other Legal Requirements) required to be obtained or taken by Borrower, Mortgage Borrower, any Mezzanine Borrower or the Permitted Mezzanine Borrower for the execution, delivery and performance by the Permitted Mezzanine Borrower of the Permitted Mezzanine Loan shall have been obtained or taken; and

(m) all reasonable out-of-pocket costs and expenses (including reasonable attorneys' fees and expenses) incurred by Lender in connection with this Section 2.8 shall be paid by Borrower (but no approval or consent fees shall be payable in connection therewith).

### III. CONDITIONS PRECEDENT

**Section 3.1. Conditions Precedent to Closing.** The obligation of Lender to make the Loan hereunder is subject to the fulfillment by Borrower or waiver by Lender of the following conditions precedent no later than the Closing Date:

**3.1.1 Representations and Warranties; Compliance with Conditions.** The representations and warranties of Borrower contained in this Agreement and the other Loan Documents shall be true and correct in all material respects on and as of the Closing Date with

the same effect as if made on and as of such date, and no Default or an Event of Default shall have occurred and be continuing; and Borrower shall be in compliance in all material respects with all terms and conditions set forth in this Agreement and in each other Loan Document on its part to be observed or performed.

**3.1.2 Loan Agreement and Note.** Lender shall have received a copy of this Agreement and the Note, in each case, duly executed and delivered on behalf of Borrower.

**3.1.3 Delivery of Loan Documents; Title Insurance; Reports; Leases.**

(a) **Pledge Agreement.** Lender shall have received from Borrower fully executed and acknowledged counterparts of the Pledge Agreement and delivery of the Pledged Company Interests, the UCC Financing Statements, and such other documents required pursuant to the Pledge Agreement, in the reasonable judgment of Lender, so as to effectively create valid and enforceable Liens upon the Collateral, of the requisite priority, in favor of Lender, subject only to the Permitted Encumbrances and such other Liens as are permitted pursuant to the Loan Documents. Lender shall have also received from Borrower fully executed counterparts of the other Loan Documents.

(b) **Title Insurance.** Lender shall have received a UCC Title Insurance Policy (the “**UCC Title Insurance Policy**”) issued by a title company acceptable to Lender and dated as of the Closing Date, with reinsurance and direct access agreements acceptable to Lender. Such UCC Title Insurance Policy shall (i) provide coverage in amounts reasonably satisfactory to Lender, (ii) insure Lender that the Pledge Agreement and the documents executed and delivered in connection therewith create a valid lien on the Collateral of the requisite priority, free and clear of all exceptions from coverage other than Permitted Encumbrances and standard exceptions and exclusions from coverage (as modified by the terms of any endorsements), (iii) contain such endorsements and affirmative coverages as Lender may reasonably request, and (iv) name Lender as the insured. The UCC Title Insurance Policy shall be assignable. Lender also shall have received evidence that all premiums in respect of such UCC Title Insurance Policy have been paid. Lender shall have received each Owner’s Title Policy in an amount equal to the value of the Property, together with an endorsement in favor of Lender and in form and substance reasonably satisfactory to Lender.

(c) **Survey.** Lender shall have received a current Survey for each Individual Property, certified to the title company and Lender and their successors and assigns, in form and content reasonably satisfactory to Lender and prepared by a professional and properly licensed land surveyor satisfactory to Lender in accordance with the Accuracy Standards for ALTA/ACSM Land Title Surveys as adopted by ALTA, American Congress on Surveying & Mapping and National Society of Professional Surveyors in 2005. Each such Survey shall reflect the same legal description contained in the Title Insurance Policies relating to such Individual Property and shall include, among other things, a metes and bounds description (or other description reasonably satisfactory to Lender) of the real property comprising part of such Individual Property reasonably satisfactory to Lender. The surveyor’s seal shall be affixed to each Survey and the surveyor shall provide a certification for each Survey in form and substance reasonably acceptable to Lender.

(d) **Insurance.** Lender shall have received valid certificates of insurance for the Policies required hereunder, satisfactory to Lender in its reasonable discretion. Lender shall be included as an “additional insured” under such Policies and Lender shall have received evidence of the payment of all Insurance Premiums payable for the existing policy period.

(e) **Environmental Reports.** Lender shall have received a Phase I environmental report (and, if recommended by the Phase I environmental report, a Phase II environmental report) in respect of each Individual Property, in each case satisfactory in form and substance to Lender. Lender acknowledges that the foregoing condition has been satisfied, provided that the underground storage tank at Harrah’s Las Vegas shall be registered if and to the extent the same is required under Legal Requirements and Lender shall have received and reasonably approved the O&M Plans contemplated pursuant to the above-referenced environmental reports in respect of Flamingo Las Vegas and Harrah’s Las Vegas.

(f) **Zoning.** With respect to each Individual Property, Lender shall have received, at Lender’s option, either (i) (A) letters or other evidence with respect to each Individual Property from the appropriate municipal authorities (or other Persons) concerning applicable zoning and building laws, and (B) an ALTA 3.1 zoning endorsement for the applicable Title Insurance Policy or (ii) a zoning report, in each case in substance reasonably satisfactory to Lender.

(g) **Encumbrances.** Borrower shall have taken or caused to be taken such actions in such a manner so that Lender has a valid and perfected first priority Lien as of the Closing Date on the Collateral and with respect to the Pledge Agreement and Lender shall have received satisfactory evidence thereof.

(h) **Senior Loan Documents.** The Mortgage Loan Documents and Senior Mezzanine Loan Documents shall have been duly authorized, executed and delivered by all parties thereto, the Mortgage Loan and Senior Mezzanine Loan shall have been contemporaneously funded and Lender shall have received and approved certified copies thereof. All of the conditions precedent set forth in Article III of the Mortgage Loan Agreement and Senior Mezzanine Loan Agreements shall have been satisfied and the Mortgage Loan and Senior Mezzanine Loans shall have closed and been fully advanced in accordance therewith.

**3.1.4 Related Documents.** Each additional document not specifically referenced herein, but relating to the transactions contemplated herein, shall be in form and substance reasonably satisfactory to Lender, and shall have been duly authorized, executed and delivered by all parties thereto and Lender shall have received and approved certified copies thereof.

**3.1.5 Delivery of Organizational Documents.** Borrower shall deliver or cause to be delivered to Lender copies certified by Borrower of all organizational documentation related to Borrower and each Loan Party and/or the formation, structure, existence, good standing and/or qualification to do business, as Lender may request in its sole discretion, including, without limitation, good standing certificates, qualifications to do business in the appropriate jurisdictions, resolutions authorizing the entering into of the Loan and incumbency certificates as may be requested by Lender.

**3.1.6 Opinions of Borrower's Counsel.** Lender shall have received opinions from Borrower's counsel with respect to non-consolidation and the due execution, authority, enforceability of the Loan Documents and such other matters as Lender may require, including True-Lease Opinions, an opinion with respect to the priority and perfection of the Collateral and all such opinions shall be in form, scope and substance satisfactory to Lender and Lender's counsel in their reasonable discretion.

**3.1.7 Budgets.** Borrower shall have delivered, and Lender shall have approved in its reasonable discretion, the Annual Budget for the current Fiscal Year.

**3.1.8 Basic Carrying Costs.** Borrower shall have caused Mortgage Borrower to have paid all Basic Carrying Costs relating to the Properties which are in arrears, including, without limitation, (a) accrued but unpaid Insurance Premiums, (b) currently due Taxes (including any in arrears) and (c) currently due Other Charges, which amounts shall be funded with proceeds of the Loan.

**3.1.9 Completion of Proceedings.** All corporate and other proceedings taken or to be taken in connection with the transactions contemplated by this Agreement and other Loan Documents and all documents incidental thereto shall be satisfactory in form and substance to Lender, and Lender shall have received all such counterpart originals or certified copies of such documents as Lender may reasonably request.

**3.1.10 Payments.** All payments, deposits or escrows required to be made or established by Borrower under this Agreement, the Note and the other Loan Documents on or before the Closing Date shall have been paid.

**3.1.11 Windstorm Insurance Intercreditor Agreement.** The Windstorm Insurance Intercreditor Agreement shall have been executed by all parties thereto and delivered to Lender.

**3.1.12 Transaction Costs.** Borrower shall have paid or reimbursed Lender for all UCC Title Insurance Policy premiums, all Owner's Title Policy premiums, costs of obtaining recording and filing fees, costs of environmental reports, Physical Conditions Reports, appraisals and other reports, the reasonable fees and costs of Lender's counsel and all other third party out-of-pocket expenses reasonably incurred in connection with the origination of the Loan to the extent such costs and expenses relating to third party costs have not already been paid or reimbursed by Mortgage Borrower to Mortgage Lender.

**3.1.13 Material Adverse Change.** There shall have been no material adverse change in the financial condition or business condition of Borrower, any Loan Party, the Collateral, the Senior Mezzanine Collateral or the Properties since the date of the most recent financial statements delivered to Lender. The income and expenses of the Properties, the occupancy thereof, and all other features of the transaction shall be as represented to Lender without material adverse change. None of Borrower, any Loan Party, or any of their respective constituent Persons shall be the subject of any bankruptcy, reorganization, or insolvency proceeding.

**3.1.14 Leases and Rent Roll.** Lender shall have received copies of all Leases and certified copies of any Leases as requested by Lender. Lender shall have received a current certified rent roll of the Properties, reasonably satisfactory in form and substance to Lender.

**3.1.15 Tax Lot.** Lender shall have received evidence that each Individual Property constitutes one (1) or more separate tax lots, which evidence shall be reasonably satisfactory in form and substance to Lender.

**3.1.16 Physical Conditions Reports.** Lender shall have received Physical Conditions Reports with respect to each Individual Property, which reports shall be reasonably satisfactory in form and substance to Lender. Lender acknowledges that the foregoing condition has been satisfied.

**3.1.17 Operating Leases; Operating Lease Guaranty.** Lender shall have received copies of the Operating Leases, each Operating Lease Guaranty and the Gaming Equipment Facility Agreements, which shall be reasonably satisfactory in form and substance to Lender.

**3.1.18 Appraisal.** Lender shall have received an appraisal of each Individual Property, which shall be reasonably satisfactory in form and substance to Lender.

**3.1.19 Financial Statements.** Lender shall have received a balance sheet with respect to each Individual Property for the two most recent Fiscal Years and statements of income and statements of cash flows with respect to each Individual Property for the three most recent Fiscal Years, each in form and substance reasonably satisfactory to Lender.

**3.1.20 Further Documents.** Lender or its counsel shall have received a fully executed Interest Rate Cap Agreement and a Collateral Assignment of Interest Rate Cap Agreement, together with an opinion of counsel in form and substance satisfactory to it, or shall have received reasonably satisfactory evidence that same will be delivered promptly following the Closing Date.

**3.1.21 Gaming Authority Approvals.** Mortgage Borrower and Operating Company shall have obtained all Operating Permits from Gaming Authorities that are required in order to permit the closing of the Mortgage Loan and the Mezzanine Loans (if required), or in connection with the Operating Lease or the Operating Lease Guaranty (if required), or to permit the conveyances of any of the Properties to Mortgage Borrower (effected immediately prior hereto) and the operation of the Properties as currently conducted.

#### **IV. REPRESENTATIONS AND WARRANTIES**

**Section 4.1. Borrower Representations.** Borrower represents and warrants as of the date hereof and as of the Closing Date, except as disclosed in Schedule XXIII, that:

**4.1.1 Organization.** (a) Borrower has been duly organized and is validly existing and in good standing with requisite power and authority to own the Individual Properties

and to transact the businesses in which it is (or each of them is) now engaged. Borrower is duly qualified to do business and is in good standing in each jurisdiction where it is required to be so qualified in connection with its properties, businesses and operations. Borrower possesses all rights, licenses, permits and authorizations (governmental or otherwise) necessary to entitle it to own its properties and to transact the businesses in which it is now engaged and the failure to possess which would reasonably be expected to have an Individual Material Adverse Effect. The sole business of Borrower is the ownership of Senior Mezzanine Borrower. The ownership interests of Borrower are as set forth on the organizational chart attached hereto as Schedule VIII.

(b) Each Operating Company has been duly organized and is validly existing and in good standing with requisite power and authority to own its properties or assets, including the Gaming Equipment, and to transact the businesses in which it is now engaged. Each Operating Company is duly qualified to do business and is in good standing in each jurisdiction where it is required to be so qualified in connection with its properties, businesses and operations, including the operation of the Casino Components at each Individual Property. Each Operating Company possesses all rights, licenses, permits and authorizations (governmental or otherwise) necessary to entitle it to operate the Properties currently operated by each such Operating Company and to transact the businesses in which it is now engaged and the failure to possess which would reasonably be expected to have an Individual Material Adverse Effect. The sole business of each Operating Company is the management and operation of the Individual Property or Properties currently operated by each such Operating Company. The ownership interests of each Operating Company are as set forth on the organizational chart attached hereto as Schedule VIII.

(c) Borrower has the power and authority and the requisite ownership interests in Senior Mezzanine Borrower and Mortgage Borrower to control the actions of Senior Mezzanine Borrower and Mortgage Borrower, and upon the realization of the Collateral under the Pledge Agreement, Lender or any other party succeeding to the Borrower's interest in the Collateral described in the Pledge Agreement would have such control. Without limiting the foregoing, Borrower has sufficient control over Senior Mezzanine Borrower and Mortgage Borrower to cause Senior Mezzanine Borrower and Mortgage Borrower to (i) take any action on Senior Mezzanine Borrower's or Mortgage Borrower's part required by the Loan Documents and (ii) refrain from taking any action prohibited by the Loan Documents.

**4.1.2 Proceedings.** Borrower and Operating Company have taken all necessary action to authorize the execution, delivery and performance of this Agreement and the other Loan Documents. This Agreement and such other Loan Documents have been duly executed and delivered by or on behalf of Borrower and Operating Company and constitute legal, valid and binding obligations of Borrower and Operating Company enforceable against Borrower and Operating Company (as applicable) in accordance with their respective terms, subject only to applicable bankruptcy, insolvency and similar laws affecting rights of creditors generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

**4.1.3 No Conflicts; Approvals.** (a) The execution, delivery and performance of this Agreement and the other Loan Documents by Borrower and Operating

Company will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance (other than pursuant to the Loan Documents) upon any of the property or assets of Borrower or Operating Company pursuant to the terms of any indenture, mortgage, deed of trust, loan agreement, partnership agreement, management agreement, material lease or other material agreement or instrument to which Borrower or Operating Company (as applicable) is a party or by which any of Borrower's or Operating Company's property or assets is or are subject, nor will such action result in any violation of the provisions of any statute or any order, rule or regulation of any Governmental Authority having jurisdiction over Borrower or Operating Company any of Borrower's or Operating Company's properties or assets, and any consent, approval, authorization, order, registration or qualification of or with any such Governmental Authority required for the execution, delivery and performance by Borrower and Operating Company of this Agreement or any other Loan Documents (and the execution by Lender of the remedies provided in the Loan Documents, subject to the limitations thereon pursuant to applicable Gaming Laws) has been obtained and is in full force and effect.

(b) Borrower, Senior Mezzanine Borrower, Mortgage Borrower and Operating Company have obtained all consents and approvals, including all approvals of Governmental Authorities including Gaming Authorities, if required, in connection with the execution, delivery and performance of the Loan Documents (including by Mortgage Lender and each Mezzanine Lender), the Operating Lease, the Operating Lease Guaranty and the operation of the business currently conducted at any of the Properties, and shall promptly execute any and all such instruments and documents, deliver any certificates and do all such other acts or things required by the Gaming Authorities to maintain or keep current such approvals.

**4.1.4 Litigation.** There are no actions, suits or proceedings at law or in equity by or before any Governmental Authority or other agency now pending or, to Borrower's knowledge, threatened against or affecting any Loan Party, any Affiliates of Borrower, including Holdings, Operating Company or any Individual Property, or any prior owner or other holder of any interest in any Individual Property, which actions, suits or proceedings, if determined against any Loan Party, Holdings, Operating Company, any other Affiliate or any Individual Property (taking into account the reasonably estimated damages payable in connection therewith), is reasonably likely to materially adversely affect the condition (financial or otherwise) or business of any Loan Party, any Affiliate of Borrower that is a direct or indirect owner of Mortgage Borrower, including Holdings and Operating Company, or the condition or ownership of any Individual Property, or any of the material rights, interests and remedies of Lender under the Loan Documents (taken as a whole). None of the actions described on Schedule XXIV, if determined adversely to Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company and/or any of their respective Affiliates, as applicable, would result in the payment by Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or such Affiliate of an amount in excess of Ten Million and no/100 Dollars (\$10,000,000.00), except to the extent covered by insurance.

**4.1.5 Agreements.** None of Borrower, Senior Mezzanine Borrower, Mortgage Borrower or Operating Company is in default, in any material respect, in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any material agreement or instrument to which it is a party or by which Borrower,

Senior Mezzanine Borrower, Mortgage Borrower, Operating Company, the Collateral, the Senior Mezzanine Collateral or any of the Properties are bound. None of Borrower, Senior Mezzanine Borrower, Mortgage Borrower or Operating Company has any material financial obligation under any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which Borrower, Senior Mezzanine Borrower, Mortgage Borrower or Operating Company is a party or by which Borrower, Senior Mezzanine Borrower, Mortgage Borrower, Operating Company, the Collateral, the Senior Mezzanine Collateral or the Properties is otherwise bound, other than (a) with respect to Mortgage Borrower, obligations incurred in the ordinary course of the operation of the Properties as permitted pursuant to clause (t) of the definition of "Special Purpose Entity" set forth in Section 1.1 of the Mortgage Loan Agreement, (b) with respect to Borrower, obligations under the Loan Documents, (c) with respect to Senior Mezzanine Borrower, obligations under the Senior Mezzanine Loan Documents, and (d) with respect to Operating Company, the Operating Lease and Permitted Indebtedness (Operating Company).

**4.1.6 Title.** (a) The Borrower (as pledgor under the Pledge Agreement) is the record and beneficial owner of, and Borrower has good and marketable title to the Collateral, free and clear of all Liens whatsoever except the Liens created by the Loan Documents. The Permitted Encumbrances in the aggregate do not materially and adversely affect the value, operation or use of any of the Properties (as currently used) or Borrower's ability to repay the Loan. The Pledge Agreement, together with the delivery of the certificates evidencing ownership of the Pledged Company Interests and the endorsement in blank, as being delivered concurrently herewith, will create a valid perfected, first priority lien on, and security interest in and to, the Collateral, all in accordance with the terms thereof. There are no claims for payment for work, labor or materials affecting any of the Properties which are or may become a Lien prior to, or of equal priority with, the Liens created by the Mortgage Loan Documents.

(b) Each Operating Company has good, marketable title to the Gaming Equipment, free and clear of all Liens whatsoever (except equipment financing and leasing arrangements entered into by Operating Company in the ordinary course of its business (subject to the limitations set forth in the definition of "Permitted Indebtedness (Operating Company)").

**4.1.7 Solvency.** Borrower has (a) not entered into the transaction or executed the Note, this Agreement or any other Loan Documents with the actual intent to hinder, delay or defraud any creditor and (b) received reasonably equivalent value in exchange for its obligations under such Loan Documents. The fair saleable value of Borrower's assets exceeds and will, immediately following the making of the Loan, exceed Borrower's total liabilities, including, without limitation, subordinated, unliquidated, disputed and contingent liabilities. The fair saleable value of Borrower's assets is and will, immediately following the making of the Loan, be greater than Borrower's probable liabilities, including the maximum amount of its contingent liabilities on its debts as such debts become absolute and matured. Borrower's assets do not and, immediately following the making of the Loan will not, constitute unreasonably small capital to carry out its business as conducted or as proposed to be conducted. Borrower does not intend to, and does not believe that it will, incur debt and liabilities (including contingent liabilities and other commitments) beyond its ability to pay such debt and liabilities as they mature (taking into account the timing and amounts of cash to be received by Borrower and the amounts to be payable on or in respect of obligations of Borrower). No petition in bankruptcy has been filed against Borrower, Operating Company, any Loan Party or any

constituent Person, and none of Borrower, Operating Company, any Loan Party or any constituent Person has ever made an assignment for the benefit of creditors or taken advantage of any insolvency act for the benefit of debtors. None of Borrower, Operating Company, any Loan Party or any of their respective constituent Persons are contemplating either the filing of a petition by it under any state or federal bankruptcy or insolvency laws or the liquidation of all or a major portion of Borrower's, Operating Company's, or any Loan Party's assets or properties, and Borrower has no knowledge of any Person contemplating the filing of any such petition against it, Operating Company, any Loan Party or such constituent Persons.

**4.1.8 Full and Accurate Disclosure.** No statement of fact made by Borrower in this Agreement or in any of the other Loan Documents contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained herein or therein not misleading. There is no material fact presently known to Borrower which has not been disclosed to Lender which has, nor as far as Borrower can foresee, might reasonably be expected to have an Individual Material Adverse Effect or an Aggregate Material Adverse Effect.

**4.1.9 No Plan Assets.** Borrower is not an "employee benefit plan," as defined in Section 3(3) of ERISA, subject to Title I of ERISA, and none of the assets of Borrower constitutes or will constitute "plan assets" of one or more such plans within the meaning of 29 C.F.R. Section 2510.3-101. In addition, (a) Borrower is not a "governmental plan" within the meaning of Section 3(32) of ERISA and (b) transactions by or with Borrower are not subject to any state statute regulating investments of, or fiduciary obligations with respect to, governmental plans similar to the provisions of Section 406 of ERISA or Section 4975 of the Code currently in effect, which prohibit or otherwise restrict the transactions contemplated by this Loan Agreement.

**4.1.10 Compliance.** Except as disclosed in the zoning reports obtained by Lender in connection with the origination of the Loan, Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company and each Individual Property (including the use thereof) comply in all material respects with all applicable Legal Requirements, including, without limitation, building and zoning ordinances and codes and Prescribed Laws. Borrower, Mortgage Borrower, Senior Mezzanine Borrower and Operating Company are not in default or violation of (i) any material order, writ, injunction, decree or demand of any Gaming Authority or (ii) any material order, writ, injunction, decree or demand of any other Governmental Authority. There has not been committed by Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any other Person in occupancy of or involved with the operation or use of the Properties any act or omission affording the federal government or any other Governmental Authority the right of forfeiture as against any Individual Property or any part thereof or any monies paid in performance of Borrower's obligations under any of the Loan Documents.

**4.1.11 Financial Information.** All financial data, including, without limitation, the statements of cash flow and income and operating expense, that have been delivered to Lender in connection with the Loan, the Collateral, the Senior Mezzanine Collateral, the Properties and each Loan Party (i) are true, complete and correct in all material respects, (ii) accurately represent in all material respects the financial condition of the Properties as of the

date of such reports, and (iii) to the extent prepared or audited by an independent certified public accounting firm, have been prepared in accordance with GAAP throughout the periods covered, except as disclosed therein. Except for Permitted Encumbrances, Borrower does not have any contingent liabilities, liabilities for taxes, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments that are known to Borrower and reasonably likely to have a materially adverse effect on the Collateral, the Senior Mezzanine Collateral, Borrower, any Loan Party, any Individual Property or the operation thereof as mixed-use hotel and casino properties, except as referred to or reflected in said financial statements. Borrower has no Indebtedness other than the Loan. Except for Permitted Indebtedness (Operating Company), Operating Company does not have any Indebtedness or contingent liabilities, or due and unpaid liabilities for taxes, that are known to Borrower, Mortgage Borrower, Senior Mezzanine Borrower or Operating Company and reasonably likely to have a materially adverse effect on the Collateral, any Senior Mezzanine Collateral, Borrower, any Loan Party, any Individual Property or the operation thereof as mixed-use hotel and casino properties, except as referred to or reflected in said financial statements. Since the date of such financial statements, there has been no material adverse change in the financial condition, operation or business of Borrower or Operating Company from that set forth in said financial statements.

**4.1.12 Condemnation.** No Condemnation or other similar proceeding has been commenced or, to Borrower's best knowledge, is threatened or contemplated with respect to all or any portion of any Individual Property or for the relocation of roadways providing access to any Individual Property.

**4.1.13 Federal Reserve Regulations.** No part of the proceeds of the Loan will be used for the purpose of purchasing or acquiring any "margin stock" within the meaning of Regulation U of the Board of Governors of the Federal Reserve System or for any other purpose which would be inconsistent with such Regulation U or any other Regulations of such Board of Governors, or for any purposes prohibited by Legal Requirements or by the terms and conditions of this Agreement or the other Loan Documents.

**4.1.14 Utilities and Public Access.** Each Individual Property has rights of access to public ways and is served by water, sewer, sanitary sewer and storm drain facilities adequate to service such Individual Property for its respective intended uses. All public utilities necessary or convenient to the full use and enjoyment of each Individual Property are located either in the public right-of-way abutting such Individual Property (which are connected so as to serve such Individual Property without passing over other property) or in recorded easements serving such Individual Property and such easements are set forth in and insured by the Title Insurance Policies. All roads necessary for the use of each Individual Property for their current respective purposes have been completed and dedicated to public use and accepted by all Governmental Authorities.

**4.1.15 Not a Foreign Person.** Borrower is not a "foreign person" within the meaning of § 1445(f)(3) of the Code.

**4.1.16 Separate Lots.** Each Individual Property is comprised of one (1) or more parcels which constitute a separate tax lot or lots and does not constitute a portion of any other tax lot not a part of such Individual Property.

**4.1.17 Assessments.** There are no pending or, to Borrower's knowledge, proposed special or other assessments for public improvements or otherwise affecting any Individual Property, nor are there any contemplated improvements to any Individual Property that may result in such special or other assessments.

**4.1.18 Enforceability.** The Loan Documents are not subject to any right of rescission, set-off, counterclaim or defense by Borrower, any Affiliates of Borrower including Holdings, Operating Company or Guarantor, including the defense of usury, nor would the operation of any of the terms of the Loan Documents, or the exercise of any right thereunder, render the Loan Documents unenforceable (subject to principles of equity and bankruptcy, insolvency and other laws generally affecting creditors' rights and the enforcement of debtors' obligations), and Borrower, any Affiliates of Borrower including Holdings, Operating Company and Guarantor have not asserted any right of rescission, set-off, counterclaim or defense with respect thereto.

**4.1.19 No Prior Assignment.** There are no prior assignments of the Leases (including the Operating Leases) or of the Rents (or any Revenue) due and payable or to become due and payable which are presently outstanding. There are no prior assignments of the Collateral which are presently outstanding except in accordance with the Loan Documents.

**4.1.20 Insurance.** Borrower (or Mortgage Borrower or Operating Company) has obtained and has delivered to Lender certified copies of all Policies reflecting the insurance coverages, amounts and other requirements set forth in this Agreement. No material claims have been made under any such Policies except such as have been disclosed to Lender, and no Person, including Borrower, Mortgage Borrower, Senior Mezzanine Borrower and Operating Company, has done, by act or omission, anything which would impair the coverage of any such Policies.

**4.1.21 Use of Property.** Each Individual Property is used exclusively as a mixed-use hotel and casino operation, and other appurtenant and related uses.

**4.1.22 Gaming Licenses and Operating Permits.** (a) Schedule IX contains a correct and complete list of all Gaming Licenses and other material licenses, certification and permits for each of the Properties (and the holder thereof).

(b) Borrower possesses all licenses, permits, franchises, authorizations, certificates, approvals and consents which are material to the ownership of the Collateral. Mortgage Borrower possesses all licenses, permits, franchises, authorizations, certificates, approvals and consents, including, without limitation, all certificates of occupancy, which are material to the ownership and use of each of the Properties, and Operating Company possesses all licenses, permits, franchises, authorizations, certificates, approvals and consents, including, without limitation, all environmental, liquor, Gaming Licenses, health and safety licenses of all Governmental Authorities which are material to the conduct of their business and the use,

occupation and operation of each of the Properties and the failure to possess which would have an Individual Material Adverse Effect (collectively, “**Operating Permits**”); each such Operating Permit is and will be in full force and effect (unless, in the case of any Operating Permit, such Operating Permit is no longer necessary or advisable for the conduct of Borrower’s, Senior Mezzanine Borrower’s, Mortgage Borrower’s or Operating Company’s business); Borrower, Senior Mezzanine Borrower, Mortgage Borrower, Operating Company and each of its Affiliates are in compliance in all material respects with all such Operating Permits, and no event (including, without limitation, any material violation of any law, rule or regulation) has occurred which would be reasonably likely to lead to the revocation or termination of any such Operating Permit or the imposition of any material restriction thereon.

(c) Operating Company and each of its Affiliates possesses all Gaming Licenses which are material to the conduct of their business and the ownership, use, occupation and operation of each of the Properties. Further, Borrower hereby represents and warrants as follows:

(i) Each Gaming License is in full force and effect (except for such Gaming Licenses as are no longer necessary or advisable for the conduct of Borrower’s, Senior Mezzanine Borrower’s, Mortgage Borrower’s or Operating Company’s business); Operating Company and each of its Affiliates, respective directors, members, managers, officers, key personnel and Persons holding a five percent (5%) or greater equity or economic interests directly or indirectly in Operating Company is in compliance in all material respects with all such Gaming Licenses (to the extent required by Legal Requirements), and no event (including, without limitation, any material violation of any Legal Requirements) has occurred which would be reasonably likely to lead to the revocation or termination of any such Gaming Licenses or the imposition of any restriction thereon;

(ii) Borrower has no reason to believe Mortgage Borrower and Operating Company will not be able to maintain in effect all Gaming Licenses necessary for the lawful conduct of their respective businesses or operations wherever now conducted and as planned to be conducted, including the ownership and operation of the Casino Components, pursuant to all applicable Legal Requirements;

(iii) All Gaming Licenses are in full force and effect and have not been amended or otherwise modified, rescinded, revoked or assigned in any manner that would reasonably be expected to have an Individual Material Adverse Effect;

(iv) Neither Mortgage Borrower nor Operating Company is in default in any material respect under, or in violation in any material respect of, any Gaming License (and no event has occurred, and no condition exists, which, with the giving of notice or passage of time or both, would constitute a default thereunder or violation thereof that has caused or would reasonably be expected to cause the loss of any Gaming License) (unless, in the case of any Gaming License, such Gaming License is no longer necessary or advisable for the conduct of Borrower’s or Operating Company’s business);

(v) Neither Mortgage Borrower nor Operating Company has received any notice of any violation of Legal Requirements which has caused or would reasonably be expected to cause any Gaming License to be suspended, forfeited, modified in any manner that would have an Individual Material Adverse Effect, not renewed, rescinded or revoked (unless, in the case of any Gaming License, such Gaming License is no longer necessary or advisable for the conduct of Mortgage Borrower's or Operating Company's business);

(vi) No condition exists or event has occurred which would reasonably be expected to result in the suspension, revocation, impairment, forfeiture, rescission or non-renewal of any Gaming License (unless, in the case of any Gaming License, such Gaming License is no longer necessary or advisable for the conduct of Mortgage Borrower's or Operating Company's business); and

(vii) The continuation, validity and effectiveness of all Gaming Licenses will not be adversely affected by the transactions contemplated by this Agreement.

(d) There is no proceeding, investigation, or disciplinary action (including, without limitation, before any Gaming Authority, under any Gaming Law or under any Gaming License or other Operating Permit) pending or, to Borrower's knowledge, threatened against any of Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or, to Borrower's knowledge, any of their respective directors, members, managers, officers, key personnel or Persons holding a five percent (5%) or greater direct or indirect equity or economic interest in Mortgage Borrower, Senior Mezzanine Borrower or Operating Company and that could reasonably be expected to have an Individual Material Adverse Effect.

(e) There is no proceeding (including, without limitation, before any Gaming Authority, under any Gaming Law or under any Gaming License or other Operating Permit) pending or, to Borrower's knowledge, threatened either (a) in connection with, or that seeks to restrain, enjoin, prevent the consummation of or otherwise challenge, any of the Loan Documents or any of the transactions contemplated therein, or (b) that could reasonably be expected to have an Individual Material Adverse Effect.

(f) Neither the execution, delivery or performance of any of the Loan Documents (nor the Securitization or any participations in the Loan, or the creation or sale of any of the Mortgage Loan or Mezzanine Loans) will (i) require the consent of any Gaming Authority not heretofore obtained or (ii) allow or result in the imposition of any material penalty under, or the revocation or termination of, any Gaming License or any material impairment of the rights of the holder of any Gaming License.

**4.1.23 Intentionally Omitted.**

**4.1.24 Intentionally Omitted.**

**4.1.25 Intentionally Omitted.**

**4.1.26 Leases.** (a) The Operating Leases (together with any certificates and notifications entered into in connection therewith) and the Operating Lease Guaranty

provided to Lender on the Closing Date are true, correct, accurate and complete copies of such documents and constitute the entire agreement between the parties thereto with respect to the subject matter therein and there are no written agreements modifying, amending, supplementing or restating such documents. Except as set forth on Schedule X, the Properties are not subject to any space Leases other than the Operating Lease and space Leases providing for occupancy of less than one hundred (100) square feet. Each Operating Lease is a "true lease" for all purposes of the Bankruptcy Code (including Section 365(d) and 502(b)(6) thereof) and applicable Legal Requirements, and no Operating Lease constitutes a financing or conveys any interest in the Properties other than the leasehold interest therein demised thereby. Mortgage Borrower is the owner and lessor of landlord's interest in the Operating Lease and the Operating Lease Guaranty. Currently, no Person has any possessory interest in any Individual Property or right to occupy the same except under and pursuant to the provisions of the Operating Lease, any other space Leases listed on Schedule X and, with respect to a right to occupancy only (and not a possessory interest), hotel guests. Each Operating Lease and Operating Lease Guaranty is in full force and effect and there are no material events of default thereunder by any party thereto and there are no conditions that, with the passage of time or the giving of notice, or both, would constitute a default thereunder. No Rent under any Operating Lease has been paid more than one (1) month in advance of its due date and no Rents or charges under the Operating Lease have been waived, released or otherwise discharged or compromised. There has been no prior sale, transfer or assignment, hypothecation or pledge of any Operating Lease, any Operating Lease Guaranty or of the Rents. No Operating Company has assigned the Operating Lease or sublet all or any portion of any Individual Property except pursuant to the Operating Lease and the terms hereof.

(b) The Properties are not subject to any space Leases other than the Leases described in Schedule X attached hereto. Operating Company is the owner and lessor of landlord's interest in all such space Leases. No Person has any possessory interest in any Individual Property except under and pursuant to the provisions of the space Leases, and no Person has any right to occupy any portion of any Individual Property except under and pursuant to the provisions of the space Leases and hotel guests. The current space Leases are in full force and effect and, except as shown in Schedule X attached hereto, to Borrower's knowledge, there are no material defaults thereunder by either party and there are no conditions that, with the passage of time or the giving of notice, or both, would constitute defaults thereunder. No Rent has been paid more than one (1) month in advance of its due date. Except as shown in Schedule X attached hereto, all work to be performed by Mortgage Borrower (or Operating Company) under each space Lease has been performed as and to the extent required and has been accepted by the applicable tenant, and any payments, free rent, partial rent, rebate of rent or other payments, credits, allowances or abatements required to be given by Mortgage Borrower (or Operating Company) to any tenant has already been received by such tenant. There has been no prior sale, transfer or assignment, hypothecation or pledge of any space Lease or of the Rents received therein which is still in effect. To Borrower's knowledge, except as shown on Schedule X, no tenant listed on Schedule X has assigned its space Lease or sublet all or any portion of the premises demised thereby, no such tenant holds its leased premises under assignment or sublease, nor does anyone except such tenant and its employees occupy such leased premises. No tenant under any space Lease has a right or option pursuant to such Lease or otherwise to purchase all or any part of the leased premises or the building of which the leased premises are a part. No tenant under any space Lease has any right or option for additional space in the Improvements except pursuant to such tenant's space Lease.

**4.1.27 Intentionally Omitted.**

**4.1.28 Principal Place of Business; State of Organization.** (a) Borrower's principal place of business as of the date hereof is the address set forth in Schedule I. Each Borrower is organized under the laws of the State of Delaware.

(b) Operating Company's principal place of business as of the date hereof is the address set forth in Schedule I. Each Operating Company is organized under the laws of the state of Delaware.

**4.1.29 Filing and Recording Taxes.** All transfer taxes, deed stamps, intangible taxes or other amounts in the nature of transfer taxes required to be paid by any Person under applicable Legal Requirements currently in effect in connection with the transfer of the Collateral to Borrower have been paid. All recording, stamp, intangible or other similar tax required to be paid by any Person under applicable Legal Requirements currently in effect in connection with the execution, delivery, recordation, filing, registration, perfection or enforcement of any of the Loan Documents, including, without limitation, the Pledge Agreement, have been paid, and, under current Legal Requirements, the Pledge Agreement is enforceable in accordance with their respective terms by Lender (or any subsequent holder thereof), subject to principles of equity and bankruptcy, insolvency and other laws generally applicable to creditors' rights and the enforcement of debtors' obligations.

**4.1.30 Special Purpose Entity/Separateness.** (a) Until the Debt has been paid in full, Borrower hereby represents, warrants and covenants that Borrower and each SPE Party is, shall be and shall continue to be a Special Purpose Entity.

(b) The representations, warranties and covenants set forth in Section 4.1.30(a) shall survive for so long as any amount remains payable to Lender under this Agreement or any other Loan Document.

(c) All of the assumptions made in the Insolvency Opinion, including, but not limited to, any exhibits attached thereto, are true and correct and any assumptions made in any subsequent non-consolidation opinion required to be delivered in connection with the Loan Documents (an "**Additional Insolvency Opinion**"), including, but not limited to, any exhibits attached thereto, will have been and shall be true and correct. Borrower has complied and will comply with, and Borrower shall cause each SPE Party and Operating Company to comply with, all of the assumptions made with respect to the SPE Parties and Operating Company in the Insolvency Opinion. The SPE Parties will have complied and will comply with all of the assumptions made with respect to the SPE Parties in any Additional Insolvency Opinion. Each entity with respect to which an assumption shall be made in any Additional Insolvency Opinion will have complied and will comply with all of the assumptions made with respect to it in any Additional Insolvency Opinion.

(d) All of the assumptions made in the True Lease Opinion, including, but not limited to, any exhibits attached thereto, are true and correct and any assumptions made in any subsequent true lease opinion required to be delivered in connection with the Loan Documents (an "**Additional True Lease Opinion**"), including, but not limited to, any exhibits attached

thereto, will have been and shall be true and correct. Each SPE Party has complied and will comply with, and Borrower shall cause Operating Company to comply with, all of the assumptions made with respect to such SPE Parties and Operating Company in the True Lease Opinion. Each SPE Party will have complied and will comply with all of the assumptions made with respect to such SPE Parties in any Additional True Lease Opinion. Each entity with respect to which an assumption shall be made in any Additional True Lease Opinion will have complied and will comply with all of the assumptions made with respect to it in any Additional True Lease Opinion.

**4.1.31 Operating Leases; Operating Lease Guaranty.** The Operating Leases and the Operating Lease Guaranty are in full force and effect and there is no default thereunder by any party thereto and no event has occurred that, with the passage of time and/or the giving of notice would constitute a default thereunder.

**4.1.32 Illegal Activity.** No portion of any Individual Property or the Collateral has been or will be purchased with proceeds of any illegal activity.

**4.1.33 Intentionally Omitted.**

**4.1.34 Investment Company Act.** Borrower is not an “investment company” or a company “controlled” by an “investment company,” within the meaning of the Investment Company Act of 1940, as amended.

**4.1.35 Embargoed Person.** At all times throughout the term of the Loan, including after giving effect to any Transfers permitted pursuant to the Loan Documents, (a) none of the funds or other assets of Borrower, Senior Mezzanine Borrower, Mortgage Borrower, Holdings, Operating Company and Guarantor constitute property of, or are beneficially owned, directly or indirectly, by any person, entity or government subject to trade restrictions under U.S. law, including, but not limited to, the International Emergency Economic Powers Act, 50 U.S.C. § 1701 et seq., The Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., and any Executive Orders or regulations promulgated thereunder with the result that the investment in any Loan Party or Operating Company, as applicable (whether directly or indirectly), is prohibited by law or the Loan made by the Lender is in violation of law (“**Embargoed Person**”); (b) no Embargoed Person has any interest of any nature whatsoever in any Loan Party, Holdings or Operating Company, as applicable, with the result that the investment in any Loan Party, Holdings or Operating Company, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law; and (c) none of the funds of any Loan Party, Holdings or Operating Company, as applicable, have been derived from any unlawful activity with the result that the investment in any Loan Party, Borrower, Holdings or Operating Company, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law.

**4.1.36 Operating Lease Subsidiary.** Tahoe Propco, LLC is the owner of one hundred percent (100%) of the equity interests of Ground Lease Subsidiary; Ground Lease Subsidiary does not own any assets other than its interests in the Ground Lease and does not have any liabilities other than liabilities under the Ground Lease; Ground Lease Subsidiary does

not engage in any business other than that related to its ownership of interests in the Ground Lease.

**4.1.37 Taxes including Gaming Taxes and Fees.** Mortgage Borrower, Borrower and each of their respective Affiliates, and Operating Company and each of its Affiliates, have filed or caused to be filed all Federal, state, local and foreign tax returns (including, without limitation, all reports relating to gaming taxes and fees to the Gaming Authorities) which are required to be filed by them, on or prior to the date hereof, other than tax returns in respect of taxes that (i) are not franchise, capital or income taxes, (ii) in the aggregate are not material and (iii) would not, if unpaid, result in the imposition of any material Lien on any property or assets of Mortgage Borrower, Senior Mezzanine Borrower, Borrower or Operating Company or any of their respective Affiliates. All such filed tax returns were, to Borrower's knowledge, true, correct and complete when filed. Mortgage Borrower, Senior Mezzanine Borrower, Borrower, Operating Company and each of their respective Affiliates, have paid or caused to be paid all taxes shown to be due and payable on such filed returns or on any assessments received by them, other than any taxes or assessments the validity of which Mortgage Borrower, Senior Mezzanine Borrower, Borrower, Operating Company or such Affiliate, as applicable) is contesting in good faith by appropriate proceedings, and with respect to which Mortgage Borrower, Senior Mezzanine Borrower, Borrower, Operating Company or such Affiliate, as applicable, shall have set aside adequate reserves. None of Mortgage Borrower, Senior Mezzanine Borrower, Borrower, Operating Company or any of their respective Affiliates, has as of the date hereof requested or been granted any extension of time to file any Federal, state, local or foreign tax return. None of Mortgage Borrower, Senior Mezzanine Borrower, Borrower or Operating Company is party to (or has any obligation under) any tax sharing agreement.

**4.1.38 Intentionally Omitted.**

**4.1.39 Intentionally Omitted.**

**4.1.40 Operation of Property.**

(a) The operation, management and use of each Individual Property by Mortgage Borrower and Operating Company is in compliance in all material respects with applicable Legal Requirements, including all applicable Gaming Laws, and all other federal, state, or local governmental authorities including, without limitation, those requirements relating to such Individual Property's physical structure and environment, except to the extent that non-compliance would not reasonably be expected to have an Individual Material Adverse Effect.

(b) The licenses, permits, and regulatory agreements, approvals and registrations relating to each Individual Property, including the Gaming Licenses, (i) may not be, and have not been, transferred to any location other than any Individual Property; have not been pledged as collateral security for any other loan or indebtedness; and are held free from restrictions or known conflicts that would materially impair the use or operation of any Individual Property as intended, (ii) are in full force and effect and in good standing and (iii) are not provisional, conditional or probationary in any manner.

(c) None of Mortgage Borrower, Senior Mezzanine Borrower, Borrower, Holdings, Guarantor or Operating Company is currently the subject of any proceeding by any Governmental Authority, and no notice of any violation has been received from a Governmental Authority that, in either case, would reasonably be expected to have an Individual Material Adverse Effect or an Aggregate Material Adverse Effect.

(d) None of Mortgage Borrower, Senior Mezzanine Borrower, Borrower or Operating Company has received a statement of charges or deficiencies and no penalty enforcement actions have been undertaken against any of them relating to any Individual Property by any Governmental Authority during the last three (3) calendar years which caused or could cause an Individual Material Adverse Effect or an Aggregate Material Adverse Effect.

(e) Each Operating Lease and Operating Lease Guaranty is in full force and effect and no party to either agreement has defaulted thereunder in any material respect.

(f) None of Mortgage Borrower or Operating Company has pledged its receivables relating to any of the Properties as collateral security for any other loan or indebtedness.

**4.1.41 Mortgage Loan Representations and Warranties.** All of the representations and warranties contained in the Mortgage Loan Documents and Senior Mezzanine Loan Documents are hereby incorporated into this Agreement and deemed made hereunder as and when made thereunder and shall remain incorporated without regard to any waiver, amendment or other modification thereof by the Mortgage Lender or Senior Mezzanine Lender or to whether the related Mortgage Loan Document or Senior Mezzanine Loan Document has been repaid or otherwise terminated, unless otherwise consented to in writing by Lender.

**4.1.42 Affiliates.** Effective as of the consummation of the transactions contemplated by this Agreement, the sole member of Borrower is Principal, which owns one hundred percent (100%) of the membership interests in Borrower. Borrower does not have any subsidiaries except as set forth in Schedule VIII.

**Section 4.2. Survival of Representations.** Borrower agrees that all of the representations and warranties of Borrower set forth in Section 4.1 and elsewhere in this Agreement and in the other Loan Documents shall survive for so long as any amount remains owing to Lender under this Agreement or any of the other Loan Documents by Borrower. All representations, warranties, covenants and agreements made in this Agreement or in the other Loan Documents by Borrower shall be deemed to have been relied upon by Lender notwithstanding any investigation heretofore or hereafter made by Lender or on its behalf.

## **V. BORROWER COVENANTS**

**Section 5.1. Affirmative Covenants.** From the date hereof and until payment and performance in full of all obligations of Borrower under the Loan Documents or the earlier release of the Liens of the Pledge Agreement (and all related obligations) in accordance

with the terms of this Agreement and the other Loan Documents, Borrower hereby covenants and agrees with Lender that:

**5.1.1 Existence; Compliance with Legal Requirements.** Borrower shall, and shall cause Mortgage Borrower, Senior Mezzanine Borrower and Operating Company to, do or cause to be done all things necessary to preserve, renew and keep in full force and effect their existence, rights, licenses, permits and franchises and comply with all Legal Requirements applicable to Borrower, Senior Mezzanine Borrower, Mortgage Borrower, the Collateral, the Senior Mezzanine Collateral, Operating Company and the Properties, including, without limitation, Prescribed Laws. There shall never be committed by Borrower and Borrower shall not permit Mortgage Borrower or Senior Mezzanine Borrower to permit any other Person in occupancy of or involved with the operation or use of the Properties, including Operating Company, to commit any act or omission affording the federal government or any state or local government the right of forfeiture against the Collateral, the Senior Mezzanine Collateral, any Individual Property or any part thereof or any monies paid in performance of Borrower's obligations under any of the Loan Documents. Borrower hereby covenants and agrees not to commit, permit or suffer to exist any act or omission affording such right of forfeiture. Borrower shall, and shall cause Mortgage Borrower to, at all times maintain, preserve and protect all franchises and trade names and preserve all the remainder of its property used or useful in the conduct of its business and shall keep the Properties in good working order and repair. Borrower shall cause Mortgage Borrower to keep the Properties insured at all times as (and in the amounts) provided elsewhere in this Agreement. Borrower shall cause Mortgage Borrower to operate any Individual Property that is the subject of the O&M Agreement in accordance with the terms and provisions thereof in all material respects. After prior notice to Lender, Borrower, at its own expense, may contest (or cause Mortgage Borrower to contest) by appropriate legal proceeding promptly initiated and conducted in good faith and with due diligence, the validity of any Legal Requirement, the applicability of any Legal Requirement to Borrower, Senior Mezzanine Borrower, Mortgage Borrower, the Collateral, the Senior Mezzanine Collateral or any Individual Property or any alleged violation of any Legal Requirement, provided that (i) no Event of Default has occurred and remains uncured; (ii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any applicable material instrument to which Borrower, Senior Mezzanine Borrower or Mortgage Borrower is subject and shall not constitute a default thereunder and such proceeding shall be conducted in accordance with all Legal Requirements; (iii) none of the Collateral, the Senior Mezzanine Collateral or any Individual Property nor any material part thereof or interest therein will be in imminent danger of being sold, forfeited, terminated, cancelled or lost; (iv) Borrower shall promptly upon receipt of a final, non-appealable determination thereof comply with any such Legal Requirement determined to be valid or applicable or cure any violation of any such Legal Requirement; (v) such proceeding shall suspend the enforcement of the contested Legal Requirement against Borrower, Senior Mezzanine Borrower, Mortgage Borrower, the Collateral, the Senior Mezzanine Collateral and any Individual Property; and (vi) Borrower shall furnish such security as may be required in the proceeding, or as may be reasonably requested by Lender, to insure compliance with such Legal Requirement, together with all interest and penalties payable in connection therewith. Lender may apply any such security, as necessary to cause compliance with such Legal Requirement at any time when, in the reasonable judgment of Lender, the validity, applicability or violation of such Legal Requirement is finally established or the Collateral, the Senior Mezzanine Collateral

or any Individual Property (or any part thereof or interest therein) shall be in imminent danger of being sold, forfeited, terminated, cancelled or lost.

**5.1.2 Taxes and Other Charges.** Borrower shall pay or shall cause Mortgage Borrower to pay or cause to be paid all Taxes and Other Charges now or hereafter levied or assessed or imposed against the Properties or any part thereof as the same become due and payable; provided, however, Borrower's obligation to cause Mortgage Borrower to directly pay or cause to be paid Taxes shall be suspended for so long as Borrower complies with the terms and provisions of Section 7.2 hereof. Borrower will deliver or cause to be delivered to Lender receipts for payment or other evidence satisfactory to Lender that the Taxes and Other Charges have been so paid or are not then delinquent no later than the date on which the Taxes and/or Other Charges would otherwise be delinquent if not paid. Borrower shall furnish or cause to be furnished to Lender receipts for the payment of the Taxes and the Other Charges prior to the date the same shall become delinquent provided, however, Borrower is not required to furnish such receipts for payment of Taxes in the event that such Taxes have been paid by Lender pursuant to Section 7.2 hereof. Borrower shall not suffer (and shall not permit Mortgage Borrower to suffer) and shall promptly pay or cause to be paid and discharged (or cause Mortgage Borrower to pay or cause to be paid and discharged any Lien or charge whatsoever which may be or become a Lien or charge against the Properties other than Permitted Encumbrances, and shall promptly pay or cause to be paid for all utility services provided to the Properties. After prior notice to Lender, Borrower, at its own expense, may contest (or cause Mortgage Borrower to contest) by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any Taxes or Other Charges, provided that (a) no Default or Event of Default has occurred and remains uncured; (b) such proceeding shall be permitted under and be conducted in accordance with the provisions of any applicable material other instrument to which Borrower or Mortgage Borrower is subject and shall not constitute a default thereunder and such proceeding shall be conducted in accordance with all Legal Requirements; (c) none of the Collateral, the Senior Mezzanine Collateral, any Individual Property or any part of either or interest in either will be in imminent danger of being sold, forfeited, terminated, cancelled or lost; (d) Borrower shall promptly upon receipt of a final, non-appealable determination thereof pay (or cause Mortgage Borrower to pay) the amount of any such Taxes or Other Charges, together with all costs, interest and penalties which may be payable in connection therewith; (e) such proceeding shall suspend the collection of such contested Taxes or Other Charges from the applicable Individual Property; and (f) Borrower shall furnish or cause Mortgage Borrower to furnish such security as may be required in the proceeding, or as may be reasonably requested by Lender, to insure the payment of any such Taxes or Other Charges, together with all interest and penalties thereon. Lender may pay over any such cash deposit or part thereof held by Lender to the claimant entitled thereto at any time when, in the judgment of Lender, the entitlement of such claimant is established or any Individual Property (or part thereof or interest therein) shall be in danger of being sold, forfeited, terminated, cancelled or lost or there shall be any danger of the Lien of any Mortgage being primed by any related Lien.

**5.1.3 Litigation.** Borrower shall give prompt notice to Lender of any litigation or governmental proceedings pending or, to Borrower's knowledge, threatened against Borrower, Senior Mezzanine Borrower, Mortgage Borrower, the Collateral, Operating Company, Holdings or Guarantor which, in any such case, might materially adversely affect Borrower's,

Senior Mezzanine Borrower's, Mortgage Borrower's, the Collateral's, Operating Company's, Holdings's or Guarantor's condition (financial or otherwise) or business or any Individual Property. Borrower shall not, without the prior written consent of Lender (which may be furnished or withheld at its sole and absolute discretion), give its consent or approval to the settlement of any claim against Borrower, other than a fully insured third party claim, in any amount greater than One Hundred Thousand and no/100 Dollars (\$100,000.00).

**5.1.4 Access to Properties.** Borrower shall cause Mortgage Borrower to permit agents, representatives and employees of Lender and any Noteholder, and prospective purchasers of any Note or any interest therein, to inspect the Properties or any part thereof at reasonable hours upon reasonable advance notice, and Borrower shall cause Operating Company to permit such access by Lender, in each case subject to the rights of tenants under Leases and Hotel guests.

**5.1.5 Notice of Default.** Borrower shall promptly advise Lender of any material Default or Event of Default of which Borrower has knowledge, including any Mortgage Loan Default, Senior Mezzanine Loan Default, Senior Mezzanine Loan Event of Default or Mortgage Loan Event of Default.

**5.1.6 Cooperate in Legal Proceedings.** Borrower shall cooperate fully with Lender with respect to any proceedings before any court, board or other Governmental Authority which may in any way affect the rights of Lender hereunder or any rights obtained by Lender under any of the other Loan Documents and, in connection therewith, permit Lender, at its election, to participate in any such proceedings.

**5.1.7 Perform Loan Documents.** Borrower shall observe, perform and satisfy all the terms, provisions, covenants and conditions of, and shall pay when due all costs, fees and expenses to the extent required under the Loan Documents executed and delivered by, or applicable to, Borrower.

**5.1.8 Award and Insurance Benefits.** Borrower shall cooperate with Lender in obtaining for Lender the benefits of any Awards or Insurance Proceeds lawfully or equitably payable in connection with any Individual Property, and Lender shall be reimbursed for any actual, reasonable out-of-pocket expenses incurred in connection therewith (including actual, reasonable out-of-pocket attorneys' fees and disbursements, and, if reasonably required, the payment by Borrower of the expense of an appraisal on behalf of Lender in case of Casualty or Condemnation affecting any Individual Property or any part thereof) out of such Insurance Proceeds.

**5.1.9 Further Assurances.** Borrower shall and shall cause Mortgage Borrower, Senior Mezzanine Borrower, Guarantor and Operating Company to, at Borrower's sole cost and expense:

(a) furnish to Lender all instruments, documents, boundary surveys, footing or foundation surveys, certificates, plans and specifications, appraisals, title and other insurance reports and agreements, and each and every other document, certificate, agreement and instrument, in each case in such party's possession, not subject to confidentiality restrictions

barring the delivery of such materials, and which are either required to be furnished by Borrower or Operating Company pursuant to the terms of the Loan Documents or which are reasonably requested by Lender in connection therewith;

(b) execute and deliver to Lender such documents, instruments, certificates, assignments and other writings, and do such other acts necessary or desirable, to evidence, preserve and/or protect the collateral at any time securing or intended to secure the obligations of Borrower under the Loan Documents, as Lender may reasonably require; and

(c) do and execute all and such further lawful and reasonable acts, conveyances and assurances for the better and more effective carrying out of the intents and purposes of this Agreement and the other Loan Documents, as Lender shall reasonably require from time to time.

**5.1.10 Mortgage Taxes.** Borrower represents that it has caused Mortgage Borrower to pay all state, county and municipal recording and all other taxes imposed upon the execution and recordation of the Mortgage.

**5.1.11 Financial Reporting.** (a) Borrower will keep or will cause to be kept and maintained on a Fiscal Year basis, in accordance with GAAP (or such other accounting basis acceptable to Lender), books, records and accounts reflecting all of the financial affairs of Borrower, Senior Mezzanine Borrower and Mortgage Borrower and all items of income and expense in connection with the operation on an individual basis of the Properties. Lender (at Lender's sole cost and expense) shall have the right from time to time at all times during normal business hours upon reasonable notice to examine the books, records and accounts of Borrower, Senior Mezzanine Borrower and Mortgage Borrower at the office of Borrower or any other Person maintaining such books, records and accounts and to make such copies or extracts thereof as Lender shall desire. After the occurrence and during the continuance of an Event of Default, Borrower shall pay any costs and expenses incurred by Lender to examine Borrower's, Senior Mezzanine Borrower's, Mortgage Borrower's or to the extent permitted under the Operating Lease, Operating Company's accounting records with respect to the Properties, as Lender shall determine to be necessary or appropriate in the protection of Lender's interest.

(b) Borrower will furnish or cause to be furnished to Lender annually, by no later than April 30, 2009, and thereafter within no more than one hundred twenty (120) days following the end of each Fiscal Year of Borrower, a complete copy of the annual financial statements of the Operating Companies, Mortgage Borrower, Senior Mezzanine Borrower and Borrower (and of no other entity or Person), audited by a "Big Four" accounting firm or other independent certified public accountant acceptable to Lender in accordance with GAAP (or such other accounting basis acceptable to Lender) covering the Properties on a combined basis for such Fiscal Year (and no other Persons, Properties or assets) and containing statements of profit and loss for the Operating Companies, Borrower, Senior Mezzanine Borrower, Mortgage Borrower and the Properties (on a combined basis) and a balance sheet for the Operating Companies, Borrower, Senior Mezzanine Borrower, Mortgage Borrower and the Properties (on a combined basis), in each case showing no other assets than the Properties (and the interests of Operating Companies, Mortgage Borrower, Senior Mezzanine Borrower and Borrower therein). In addition, Borrower will furnish or cause to be furnished to Lender by no later than April 30,

2008 (i) a “balance sheet only audit” prepared by a “Big Four” accounting firm or other independent certified public accountant acceptable to Lender (for the Fiscal Year ending December 31, 2007) and (ii) a complete copy of annual financial statements for the Operating Company, Mortgage Borrower, Senior Mezzanine Borrower and Borrower prepared in accordance with GAAP (or such other accounting basis acceptable to Lender) covering the Operating Companies, Mortgage Borrower, Borrower, Senior Mezzanine Borrower, and the Properties on a combined basis for such Fiscal Year (ending December 31, 2007) and containing statements of profit and loss for the Operating Companies, Mortgage Borrower, Senior Mezzanine Borrower, Borrower and the Properties (in each case, on a combined basis), and a balance sheet for the Operating Companies, Mortgage Borrower, Senior Mezzanine Borrower, Borrower and the Properties (in each case on a combined basis). All such statements (including statements for the Fiscal Year ending December 31, 2007, and thereafter for all statements provided yearly to Lender) shall set forth the financial condition and the results of operations for the Properties for such Fiscal Year, and shall include, but not be limited to, amounts representing Borrower’s reasonable and good faith determination of aggregate annual EBITDAR from all of the Properties and capital expenditures (allocated between maintenance and growth) at the Properties (it being acknowledged that Borrower’s statement of EBITDAR pursuant to the above provisions of this sentence and the balance of this Section 5.1.11 shall not be binding on Lender and shall be subject to Lender’s reasonable review). All such statements (including statements for the Fiscal Year ending December 31, 2007, and thereafter for all statements provided yearly to Lender) shall also set forth unaudited schedules for each Individual Property, detailing the statements of profit and loss and a balance sheet for each Individual Property, as well as gross revenues, gross hotel and casino revenues, EBITDAR and capital expenditures (allocated between maintenance and growth). The annual financial statements, as described above, shall be accompanied by (1) a comparison of the budgeted income and expenses and the actual income and expenses for the prior Fiscal Year, (2) in the case of any financial statements for Fiscal Year 2008 and thereafter, an unqualified opinion of a “Big Four” accounting firm or other independent certified public accountant reasonably acceptable to Lender, (3) room rate reports and RevPAR calculations, and (4) an Officer’s Certificate certifying (A) that each annual financial statement presents fairly the financial condition and the results of operations of the Operating Companies, Borrower, Mortgage Borrower, Senior Mezzanine Borrower and the Properties being reported upon, (B) that such financial statements have been prepared in accordance with GAAP (or such other accounting basis acceptable to Lender) and (C) as of the date thereof whether there exists an event or circumstance which constitutes a Default or Event of Default, and if such Default or Event of Default exists, the nature thereof, the period of time it has existed and the action then being taken to remedy the same. Any audits performed by Borrower (and any audited materials and other information provided to Lender, as required hereunder in order for Borrower to comply with the requirements of this subparagraph (b)) may be performed with respect to the Properties on a “combining basis” (so that a single audit of the Properties, rather than individual audits of each of the separate Properties, may be performed and provided).

(c) Borrower will furnish, or cause to be furnished, to Lender on or before sixty (60) days after the end of each fiscal quarter the following items, accompanied by an Officer’s Certificate stating that such items fairly present the financial condition and results of the Operating Companies, Mortgage Borrower, Senior Mezzanine Borrower, Borrower and the Properties, subject to normal year end adjustments, as applicable: (i) quarterly and year to date operating statements (including Capital Expenditures) noting such information as is necessary

and sufficient to fairly represent the financial position and results of operation of the Properties during such quarter, and containing a comparison of budgeted income and expenses and the actual income and expenses together with a detailed explanation of any variances of ten percent (10%) or more between budgeted and actual amounts for such periods, all in form reasonably satisfactory to Lender; and (ii) a calculation reflecting the Debt Service Coverage Ratio, gross revenues, gross hotel and casino revenues, EBITDAR and capital expenditures (allocated between maintenance and growth, in the case for the immediately preceding twelve (12) month period as of the last day of such quarter (it being acknowledged that Borrower's statement of EBITDAR pursuant to the above provisions of this sentence and the balance of this Section 5.1.11 shall not be binding on Lender and shall be subject to Lender's reasonable review). Borrower shall provide the statements and calculations required hereunder on both a "combined basis" for all Properties and on an Individual Property-by-Individual Property basis. In addition, such Officer's Certificate shall also state that the representations and warranties of Borrower set forth in Section 4.1.30 are true and correct as of the date of such certificate and that there are no trade payables outstanding for more than ninety (90) days. In addition, prior to a Securitization or Syndication, Borrower shall be obligated to provide the statements and calculations, as well as the Officer's Certificate, described in this subparagraph (c) to Lender on a monthly basis (such requirements to be modified as appropriate to reflect the fact that the information shall be required to be provided monthly (e.g., monthly rent rolls, monthly and year-to-date operating statements, a calculation reflecting the Debt Service Coverage Ratio for the immediately preceding twelve (12) month period as of the last day of such month), in each case within no more than thirty (30) days following the end of each calendar month.

(d) For the partial year period commencing on the date hereof, and for each Fiscal Year thereafter, Borrower shall submit to Lender for informational purposes only an Annual Budget not later than the commencement of such period or Fiscal Year in form reasonably satisfactory to Lender.

(e) Intentionally Omitted.

(f) If, at the time one or more Disclosure Documents are being prepared for a public Securitization, Lender expects that Borrower alone or Borrower and one or more Affiliates of Borrower collectively, or the Properties and Related Properties collectively, will be a "**Significant Obligor**", as that term is defined in Item 1101(k) of Regulation AB (as defined below), Borrower shall furnish to Lender upon request (i) the selected financial data or, if applicable, net operating income, required under Item 1112(b)(1) of Regulation AB, if Lender expects that the principal amount of the Loan together with any other loans made to an Affiliate of Borrower or secured by a Related Property, that is included in a Securitization with the Loan (each, a "**Related Loan**") as of the cut-off date for such Securitization may, or if the principal amount of the Loan together with any Related Loans as of the cut-off date for such Securitization and at any time during which the Loan and any Related Loans are included in a Securitization does, equal or exceed ten percent (10%) (but less than twenty percent (20%)) of the aggregate principal amount of all loans included or expected to be included, as applicable, in the Securitization or (ii) the financial statements required under Item 1112(b)(2) of Regulation AB, if Lender expects that the principal amount of the Loan together with any Related Loans as of the cut-off date for such Securitization may, or if the principal amount of the Loan together with any Related Loans as of the cut-off date for such Securitization and at any time during which the

Loan and any Related Loans are included in a Securitization does, equal or exceed twenty percent (20%) of the aggregate principal amount of all loans included or expected to be included, as applicable, in the Securitization. Such financial data or financial statements shall be furnished to Lender (A) within ten (10) Business Days after written notice from Lender in connection with the preparation of Disclosure Documents for the Securitization, (B) not later than thirty (30) days after the end of each fiscal quarter of Borrower and (C) not later than sixty (60) days after the end of each fiscal year of Borrower; provided, however, that Borrower shall not be obligated to furnish financial data or financial statements pursuant to clauses (B) or (C) of this sentence with respect to any period for which a filing pursuant to the Exchange Act in connection with or relating to the Securitization (an “**Exchange Act Filing**”) is not required. If requested by Lender, in writing, Borrower shall use commercially reasonable efforts to furnish to Lender financial data and/or financial statements for any tenant of any of the Properties (other than a tenant that is a reporting company under the Exchange Act) if, in connection with a Securitization, Lender expects there to be, with respect to such tenant or group of affiliated tenants, a concentration within all of the loans included or expected to be included, as applicable, in the Securitization such that such tenant or group of affiliated tenants would constitute a Significant Obligor. “**Related Property**” shall mean a parcel of real property, together with improvements thereon and personal property related thereto, that is “related”, within the meaning of the definition of Significant Obligor, to any of the Properties. “**Regulation AB**” shall mean Regulation AB under the Securities Act and the Exchange Act, as such Regulation may be amended from time to time.

(g) All financial data and financial statements provided by Borrower, Senior Mezzanine Borrower, Mortgage Borrower and Operating Company hereunder pursuant to Section 5.1.11(f) shall be prepared in accordance with GAAP, and all such financial statements shall meet the requirements of Regulation AB, Regulation S-X, Regulation S-K to the extent applicable and any other applicable legal requirements. All financial statements referred to in clause (ii) of Section 5.1.11(f) shall be audited by independent accountants of Borrower reasonably acceptable to Lender in accordance with Regulation AB, Regulation S-X, Regulation S-K to the extent applicable and all other applicable legal requirements, shall be accompanied by the manually executed report of the independent accountants thereon, which report shall meet the requirements of Regulation AB, Regulation S-X, Regulation S-K to the extent applicable and all other applicable legal requirements, and shall be further accompanied by a manually executed written consent of the independent accountants, in form and substance reasonably acceptable to Lender, to the inclusion of such financial statements in any Disclosure Document and any Exchange Act Filing and to the use of the name of such independent accountants and the reference to such independent accountants as “experts” in any Disclosure Document and Exchange Act Filing, all of which shall be provided at the same time as the related financial statements are required to be provided, in each case if applicable (i.e., in the case of a public securitization). All financial data and financial statements (audited or unaudited) provided by Borrower under this Section 5.1.11(g) shall be accompanied by an Officer’s Certificate which shall state that such financial statements meet the requirements set forth in the first sentence of this Section 5.1.11(g) to the extent applicable.

(h) If requested by Lender, Borrower shall provide Lender, promptly upon request, with any other or additional financial statements, or financial, statistical or operating information, as Lender shall reasonably determine to be required pursuant to Regulation AB,

Regulation S-X, Regulation S-K or any amendment, modification or replacement thereto or other legal requirements in connection with any Disclosure Document or any Exchange Act Filing or as shall otherwise be reasonably requested by the Lender.

(i) In the event Lender reasonably determines, in connection with a Securitization, that the financial data and financial statements required in order to comply with Regulation AB, Regulation S-X, Regulation S-K or any amendment, modification or replacement thereto or other legal requirements are other than as provided herein, then notwithstanding the provisions of Sections 5.1.11(f) and (g), Lender may request, and Borrower shall promptly provide, such other financial statements as Lender determines to be necessary or appropriate for such compliance.

(j) Any reports, statements or other information required to be delivered under this Agreement shall be delivered (i) in paper form, and (ii) if requested by Lender and within the capabilities of Borrower's data systems without change or modification thereto, in electronic form and prepared using a Microsoft Word for Windows or WordPerfect for Windows files (which files may be prepared using a spreadsheet program and saved as word processing files). Borrower agrees that Lender may disclose information regarding any of the Properties, the Collateral, the Senior Mezzanine Collateral, Mortgage Borrower, Senior Mezzanine Borrower, Borrower and Operating Company that is provided to Lender pursuant to this Section in connection with the Securitization to such parties reasonably requesting such information in connection with such Securitization.

**5.1.12 Business and Operations.** Borrower will, and will cause Mortgage Borrower and Operating Company to, continue to engage in the businesses presently conducted by it as and to the extent the same are necessary for the ownership, maintenance, management and operation of the Properties. Borrower will and will cause Senior Mezzanine Borrower, Mortgage Borrower and Operating Company to qualify to do business and will remain in good standing under the laws of each jurisdiction as and to the extent the same are required for the ownership, maintenance, management and operation of the Properties.

**5.1.13 Title to the Properties.** Borrower will cause Mortgage Borrower to warrant and defend (a) the title to each Individual Property and every part thereof, subject only to Liens permitted hereunder (including Permitted Encumbrances) and (b) the validity and priority of the Liens of the Mortgages and the Assignments of Leases, subject only to Liens permitted hereunder (including Permitted Encumbrances), in each case against the claims of all Persons whomsoever. Borrower shall reimburse Lender for any actual out-of-pocket losses, costs, damages or expenses (including reasonable attorneys' fees and court costs) incurred by Lender if an interest in any Individual Property, other than as permitted hereunder, is claimed by another Person. Borrower will warrant and defend (a) the title to the Collateral and every part thereof, subject only to Liens permitted hereunder and (b) the validity and priority of the Liens of the Pledge Agreement, in each case against the claims of all Persons whomsoever. Borrower shall reimburse Lender for any actual out-of-pocket losses, costs, damages or expenses (including reasonable attorneys' fees and court costs) incurred by Lender if an interest in any part of the Collateral, other than as permitted hereunder, is claimed by another Person.

**5.1.14 Costs of Enforcement.** In the event (a) that any Mortgage encumbering any Individual Property or the Lien of the Pledge Agreement is foreclosed in whole or in part or that any such Mortgage or Pledge Agreement is put into the hands of an attorney for collection, suit, action or foreclosure, (b) of the foreclosure of any mortgage prior to or subsequent to any Mortgage or any Lien prior to or subsequent to the Lien of the Pledge Agreement in which proceeding Mortgage Lender or Lender is made a party or exercises any or all of its rights or remedies under such Mortgage or the Pledge Agreement or any other Loan Documents as and when permitted thereby, or (c) of the bankruptcy, insolvency, rehabilitation or other similar proceeding in respect of Borrower, Senior Mezzanine Borrower, Mortgage Borrower or Operating Company or an assignment by Borrower, Senior Mezzanine Borrower, Mortgage Borrower or Operating Company for the benefit of its creditors, Borrower, its successors or assigns, shall be chargeable with and agrees to pay all reasonable out-of-pocket costs of collection and defense, including reasonable out-of-pocket attorneys' fees and costs, incurred by Lender, Mortgage Borrower, Senior Mezzanine Borrower or Borrower in connection therewith and in connection with any appellate proceeding or post-judgment action involved therein, together with all required service or use taxes.

**5.1.15 Estoppel Statement.** (a) After request by Lender, Borrower shall within ten (10) Business Days (but, provided there exists no Default or Event of Default, no more often than twice during the course of each fiscal year of Borrower) furnish Lender with a statement, duly acknowledged and certified, (i) with respect to the Loan, setting forth (A) the original principal amount of the Note, (B) the unpaid principal amount of the Loan, (C) the Interest Rate of the Loan, (D) the date installments of interest and/or principal were last paid, (E) any offsets or defenses to the payment of the Debt, if any, and (F) that the Note, this Agreement, the Pledge Agreement and the other Loan Documents are valid, legal and binding obligations and have not been modified or if modified, giving particulars of such modification, (ii) with respect to any Senior Mezzanine Loan, setting forth (A) the original principal amount of the applicable Senior Mezzanine Loan, (B) the unpaid principal amount of the Senior Mezzanine Loan, (C) the interest rate of the Senior Mezzanine Loan, (D) the date installments of interest and/or principal were last paid, (E) any offsets or defenses to the payment of the debt, if any, and (F) that the Senior Mezzanine Note, the Senior Mezzanine Loan Agreement and the other Senior Mezzanine Loan Documents are valid, legal and binding obligations and have not been modified or if modified, giving particulars of such modification and (iii) with respect to the Mortgage Loan, setting forth (A) the original principal amount of the Mortgage Loan, (B) the unpaid principal amount of the Mortgage Loan, (C) the interest rate of the Mortgage Loan, (D) the date installments of interest and/or principal were last paid, (E) any offsets or defenses to the payment of the debt, if any, and (F) that the Mortgage Note, the Mortgage Loan Agreement, the Security Instruments and the other Mortgage Loan Documents are valid, legal and binding obligations and have not been modified or if modified, giving particulars of such modification.

(b) Borrower shall exercise reasonable best efforts to deliver to Lender upon request, tenant estoppel certificates from each space tenant leasing space at the Properties, and shall exercise reasonable best efforts to deliver an estoppel certificate from each Ground Lessor, each in form and substance reasonably satisfactory to Lender provided that Borrower shall not be required to deliver such certificates more frequently than two (2) times in any calendar year.

(c) After request by Borrower, but not more than twice during the course of each year, Lender shall furnish Borrower with a statement setting forth (i) the original principal amount of the Loan, (ii) the unpaid principal amount of the Loan, (iii) the Interest Rate of the Loan, (iv) the date installments of interest and/or principal were last paid, and (v) that the Loan Documents have not been modified or if modified, giving particulars of such modification.

**5.1.16 Loan Proceeds.** Borrower shall use the proceeds of the Loan received by it on the Closing Date only for the purposes set forth in Section 2.1.4.

**5.1.17 Performance by Borrower.** Borrower shall in a timely manner observe, perform and fulfill each and every covenant, term and provision of each Loan Document executed and delivered by, or applicable to, Borrower, and shall not enter into or otherwise suffer or permit any amendment, waiver, supplement, termination or other modification of any Loan Document executed and delivered by, or applicable to, Borrower without the prior consent of Lender. Borrower shall cause Mortgage Borrower and Senior Mezzanine Borrower, in a timely manner, to observe, perform and fulfill each and every covenant, term and provision of each Mortgage Loan Document and Senior Mezzanine Loan Documents executed and delivered by, or applicable to, Mortgage Borrower and Senior Mezzanine Borrower, and shall not cause or permit Mortgage Borrower or Senior Mezzanine Borrower to enter into or otherwise suffer or permit any amendment, waiver, supplement, termination or other modification of any Mortgage Loan Document or Senior Mezzanine Loan Document executed and delivered by, or applicable to, Mortgage Borrower or Senior Mezzanine Borrower without the prior written consent of Lender.

**5.1.18 Confirmation of Representations.** Borrower shall deliver, in connection with any Securitization, (a) one or more Officer's Certificates certifying as to the accuracy of all representations made by Borrower in the Loan Documents as of the date of the closing of such Securitization in all relevant jurisdictions, and (b) certificates of the relevant Governmental Authorities in all relevant jurisdictions indicating the good standing and qualification of Mortgage Borrower, Senior Mezzanine Borrower, Borrower and Holdings as of the date of the Securitization.

**5.1.19 No Joint Assessment.** Borrower shall not, and shall not permit Mortgage Borrower to, suffer, permit or initiate the joint assessment of any Individual Property (a) with any other real property constituting a tax lot separate from such Individual Property, and (b) which constitutes real property with any portion of such Individual Property which may be deemed to constitute personal property, or any other procedure whereby the lien of any taxes which may be levied against such personal property shall be assessed or levied or charged to such real property portion of the Individual Property, except as required by Legal Requirements.

**5.1.20 Leasing Matters.** (a) Borrower shall not (and shall cause Mortgage Borrower and Guarantor (Operating Lease) not to), without the prior written consent of Lender (and, if a Securitization shall have occurred, Borrower shall have obtained and delivered to Lender a Rating Agency Confirmation) restate, materially modify, materially amend or materially supplement (or permit the restatement, material modification, amendment or supplement of) any Operating Lease or Operating Lease Guaranty (provided, that any modification, amendment or supplement affecting any of the economic terms of any Operating

Lease or any of the terms of the Operating Lease Guaranty shall be deemed to be material for purposes hereof), terminate or accept the surrender (or permit the termination or surrender) of any Operating Lease or Operating Lease Guaranty, or release or materially waive (or permit the release or material waiver of) the Operating Company or Guarantor (Operating Lease) from the performance or observance of any obligation or condition under the Operating Leases or Operating Lease Guaranty. In connection with a material modification, Lender may request, and in such event, Borrower shall not effect such modification without, an Additional True Lease Opinion in form and substance reasonably satisfactory to Lender issued by Borrower's counsel (at Borrower's expense). Borrower shall not permit (or cause or permit Mortgage Borrower to permit) the prepayment of any rents under the Operating Leases for more than one (1) month prior to the due date thereof. Notwithstanding the foregoing, Lender's consent shall not be required in connection with any modification, amendment or waiver of any provision of the Operating Lease as may be reasonably necessary to comply with the requirements of this Agreement or any other Loan Document or that makes the provisions of the Operating Lease consistent with the provisions of this Agreement or any other Loan Document. Notwithstanding anything contained in this Section 5.1.20(a) to the contrary, (x) Lender's consent to any amendment, modification or supplement of the Operating Lease (or any new Operating Lease) or the Operating Lease Guaranty may also be conditioned on the delivery by Borrower, upon the reasonable request of Lender, of an Additional Insolvency Opinion and/or an Additional True Lease Opinion acceptable to Lender (and, if a Securitization shall have occurred, acceptable to the Rating Agencies), and (y) Lender's consent to any assignment of any Operating Lease or Operating Lease Guaranty (or of any interest therein) or any material amendment, material modification or material supplement of any Operating Lease shall also be conditioned on the delivery by Borrower, upon the reasonable request of Lender, of an Additional Insolvency Opinion and an Additional True Lease Opinion acceptable to Lender (and, if a Securitization shall have occurred, acceptable to the Rating Agencies).

(b) Borrower shall not permit (or consent to) an assignment by any Operating Company of any such Operating Company's interest(s) under any Operating Lease or an assignment by any Mortgage Borrower of any such Mortgage Borrower's interest(s) under any Operating Lease Guaranty without, in each case, Lender's prior written consent (and, if a Securitization shall have occurred, at Lender's request, without Borrower providing to Lender a Rating Agency Confirmation and an Additional True Lease Opinion).

(c) All space Leases and all renewals of space Leases executed after the date hereof entered into by Operating Company shall (i) provide for rental rates, rent credits and free rent periods comparable to existing local market rates for comparable properties, (ii) be on commercially reasonable terms, (iii) provide that such Lease is subordinate to the Mortgage encumbering the Individual Property in question and that the lessee will attorn to Mortgage Lender and any purchaser at a foreclosure sale; (iv) not contain any terms which would materially adversely affect Lender's rights under the Loan Documents; (v) not grant to the Tenants thereunder any option or right to purchase the applicable Individual Property (or any portion thereof); and (v) in the case of Major Leases, have initial terms less than twenty (20) consecutive years, in each case (unless otherwise consented to by Lender pursuant to clause (d) below).

(d) (i) Any Major Lease entered into by Operating Company with respect to an Individual Property executed after the date hereof (and any renewal of any Major Lease with respect to an Individual Property), and any space Lease or space Lease renewal proposed to be entered into by Operating Company after the date hereof and that does not meet the criteria set forth in Sections 5.1.20(a) and subparagraph (c) above, shall be subject to the prior written approval of Lender, which approval shall not be unreasonably withheld, conditioned or delayed. Borrower shall not terminate or accept the surrender of (and shall not permit Operating Company or Mortgage Borrower to terminate or accept the surrender of) a Major Lease (unless by reason of a tenant default) without the consent of Lender.

(ii) Every submission to Lender of any proposed Major Lease (or Major Lease renewal, amendment, modification or termination) for Lender's approval shall be forwarded to Lender together with a notice from Borrower (in bold typeface) that states "YOUR FAILURE TO RESPOND TO THIS NOTICE AND REQUEST FOR APPROVAL WITHIN TEN (10) BUSINESS DAYS OF YOUR RECEIPT OF THIS NOTICE SHALL CONSTITUTE YOUR DEEMED CONSENT TO THE MATTERS DESCRIBED IN OR THAT ARE THE SUBJECT OF THIS NOTICE". If Lender responds to Borrower's request by identifying missing documents or materials that are incomplete or inaccurate (and that are the subject of the request for approval), then Borrower shall re-submit such documents or materials to Lender for its approval together with a second notice from Borrower that complies with this section.

(iii) If Lender fails to approve or disapprove any such proposed request or submission attached to a first notice or request sent by Borrower (or the matters that are the subject of the re-submitted notice or request for approval) within ten (10) Business Days of receipt of same, Borrower shall re-submit such instruments or materials to Lender for Lender's approval and give Lender a second notice (in bold typeface) that states "SECOND NOTICE — YOUR FAILURE TO RESPOND TO THIS NOTICE AND REQUEST FOR APPROVAL WITHIN FIVE (5) BUSINESS DAYS OF YOUR RECEIPT OF THIS NOTICE SHALL CONSTITUTE YOUR DEEMED CONSENT TO THE MATTERS DESCRIBED IN OR THAT ARE THE SUBJECT OF THIS NOTICE". If Lender fails to respond to such second notice within five (5) Business Days of receipt of same, then Lender's consent to the proposed request or submission that is the subject of such notice shall be deemed granted.

(e) Borrower shall and shall cause Mortgage Borrower and Operating Company to (i) observe and perform the obligations imposed upon the lessor under the Leases in a commercially reasonable manner; (ii) enforce the terms, covenants and conditions contained in the Leases upon the part of the lessee thereunder to be observed or performed in a commercially reasonable manner and in a manner not to impair the value of the Individual Property involved; (iii) not collect any of the rents more than one (1) month in advance (other than security deposits); (iv) not execute any other assignment of lessor's interest in the Leases or the Rents (except as contemplated by the Loan Documents); (v) not alter, modify or change the terms of the Leases in a manner inconsistent with the provisions of the Loan Documents; and (vi) execute and deliver at the request of Lender all such further assurances, confirmations and assignments in connection with the Leases as Lender shall from time to time reasonably require.

(f) Upon request, Borrower shall furnish Lender with executed copies of all new Leases or Lease renewals or amendments.

(g) Notwithstanding anything to the contrary contained herein, Borrower shall not enter into (or permit Operating Company or Mortgage Borrower to enter into) a lease of all or substantially all of any Individual Property without Lender's prior consent.

**5.1.21 Alterations.** (a) Borrower shall cause all Alterations with respect to any portion of any of the Properties to be conducted and performed with due diligence in a good and workmanlike manner, and all materials used and work done shall be in accordance with all applicable Legal Requirements. In addition, with respect to the Convention Center Project and the Tower Project, to the extent such projects are pursued, Borrower agrees to cause Mortgage Borrower to (i) diligently pursue each such project to completion in a timely manner, subject to delays arising from Force Majeure events, (ii) cause the work to be performed in connection with each such project in substantial conformance with the plans and specifications for such project, and otherwise in conformity with the Mortgage Loan Agreement, each Senior Mezzanine Loan Agreement and this Agreement, (iii) provide Lender with reasonably detailed monthly progress reports (and such information as Lender shall reasonably request from time to time) regarding the status of the Convention Center Project and the Tower Project, (iv) upon the substantial completion of each such project, provide Lender with evidence of the substantial completion of each such project, copies of final unconditional lien waivers from the general contractors, construction managers or subcontractors for such project (if requested by Lender) and evidence of the final payment of all amounts due in connection with each such project, and a title search for the affected Individual Property indicating that such Individual Property is free from all liens, claims and other encumbrances not previously approved by Lender, and (v) upon final completion of each such project, provide Lender with a final survey acceptable to Lender showing the "as-built" location of the completed Improvements and all easements appurtenant thereto, and "as-built" plans and specifications for Lender's file and a certificate of occupancy to the extent issued by the relevant Governmental Authority.

(b) Borrower shall obtain Lender's prior consent to (i) any Material Alterations (unless collateral or a completion guaranty is provided as set forth in subparagraph (c) below) or (ii) any Alterations to any of the Improvements (even if otherwise described in clause (i) above) that is reasonably likely to have an Individual Material Adverse Effect. Lender's consent shall not be required for any Alterations other than the Alterations described in the preceding sentence. Notwithstanding any provision hereof to the contrary, without Lender's consent, not to be unreasonably withheld or delayed, in no event shall Borrower close or shutter, or undertake or permit any Tenant or other Person to undertake, an Alteration that, alone or together with other work then being undertaken, closes or shutters, more than ten percent (10%) of the income-generating space in any Individual Property at any one time. Prior to undertaking any Alteration with respect to an Individual Property in excess of five percent (5%) of the sum of the Allocated Loan Amount for such Individual Property and the "Allocated Loan Amounts" under (and as defined in each of) the Mortgage Loan Agreement and the Other Mezzanine Loan Agreements for such Individual Property, to afford Lender a prior and reasonable opportunity to determine whether or not the proposed Alteration would have an Individual Material Adverse Effect, Borrower will deliver such plans, specifications, project schedules, logistical plans, construction budgets (including a statement of sources and uses) and such other information as Lender may reasonably request in respect of such Alteration for review by Lender (and its consultants). All reasonable out-of-pocket costs and expenses incurred by Lender in connection with reviewing said Alterations proposal, including, without limitation, reasonable counsel fees

and disbursements and Lender's consultants, shall be paid by Borrower. The above-referenced submission to Lender shall be delivered with a notice from Borrower (in bold typeface) that states "YOUR FAILURE TO RESPOND TO THIS NOTICE AND REQUEST FOR APPROVAL WITHIN TEN (10) BUSINESS DAYS OF YOUR RECEIPT OF THIS NOTICE SHALL CONSTITUTE YOUR DEEMED CONSENT TO THE MATTERS DESCRIBED IN OR THAT ARE THE SUBJECT OF THIS NOTICE". If Lender responds to Borrower's request by identifying missing documents or materials that are incomplete or inaccurate (and that are the subject of the request for approval), then Borrower shall re-submit such documents or materials to Lender for its approval together with a second notice from Borrower that complies with this Section. If Lender fails to approve or disapprove any such proposed request or submission attached to a first notice or request sent by Borrower (or the matters that are the subject of the re-submitted notice or request for approval) within ten (10) Business Days of receipt of same, Borrower shall re-submit such instruments or materials to Lender for Lender's approval and give Lender a second notice (in bold typeface) that states "SECOND NOTICE — YOUR FAILURE TO RESPOND TO THIS NOTICE AND REQUEST FOR APPROVAL WITHIN TEN (10) BUSINESS DAYS OF YOUR RECEIPT OF THIS NOTICE SHALL CONSTITUTE YOUR DEEMED CONSENT TO THE MATTERS DESCRIBED IN OR THAT ARE THE SUBJECT OF THIS NOTICE". If Lender fails to respond to such second notice within ten (10) Business Days of receipt of same, then Lender's consent to the proposed request or submission that is the subject of such notice shall be deemed granted.

(c) With respect to any Material Alteration, unless otherwise consented to by Lender, Borrower shall promptly deliver to Mortgage Lender as security for the payment of such amounts and as additional security for Borrower's obligations under the Loan Documents any of the following: (A) cash, (B) U.S. Obligations, (C) other securities having a rating acceptable to Lender and that the applicable Rating Agencies have confirmed in writing will not, in and of itself, result in a downgrade, withdrawal or qualification of the initial, or, if higher, then current ratings assigned to any Securities or any class thereof in connection with any Securitization, (D) a completion and performance bond or an irrevocable letter of credit (payable on sight draft only) issued by an Eligible Institution, or (E) a completion guaranty from an Approved Guarantor in the form attached hereto as Exhibit A (with such changes as Lender shall approve), together with evidence reasonably satisfactory to Lender that the Approved Guarantor has reasonable liquidity taking into account the nature and amount of the guaranteed obligations under such completion guaranty (it being agreed that, if the Approved Guarantor in question is Holdings, then the amounts available for repayment of such obligations under any revolving credit facility in effect at such time in favor of Harrah's Operating Company, Inc. will be taken into account in determining whether Holdings has reasonable liquidity), and with, if required by applicable Rating Agency requirements, an Additional Insolvency Opinion. Such security, including the amount of the guaranteed obligations under any completion guaranty delivered as aforesaid, shall be in an amount equal to the sum of (i) the excess of the total unpaid amounts with respect to alterations to the Improvements on the applicable Individual Property (other than such amounts to be paid or reimbursed by tenants under the Leases) over the Threshold Amount and (ii) the costs of collection, and, upon the occurrence and during the continuance of an Event of Default, Lender may apply such security from time to time at the option of Lender to pay for such alterations.

**5.1.22 Operation of Properties.** (a) Borrower shall cause Mortgage Borrower to cause each of the Properties to be operated, in all material respects, in accordance with the Operating Leases and in accordance with all applicable Legal Requirements, including Gaming Laws, and all Gaming Licenses and other Operating Permits and in a manner consistent with their respective use as of the Closing Date. Borrower shall cause Operating Company to post all required bonds, if any, with any Gaming Authority as and in the amounts required under all applicable Legal Requirements (and shall, if Lender makes a request therefor, promptly provide Lender with copies of all such bonds).

(b) Borrower shall not, without Lender's prior written consent, permit Operating Company to assign or transfer, and Operating Company shall not, without Lender's prior written consent, assign or transfer, or delegate any responsibilities with respect to, any Gaming License or Operating Permit.

(c) Borrower shall cause Operating Company to make all filings required under the Gaming Laws, or in connection with any Gaming Licenses or Operating Permits, including in connection with the origination of the Mortgage Loan and the Mezzanine Loans, and shall deliver copies of such filings as Lender shall reasonably request to Lender, promptly upon request. Borrower will timely pay all fees, investigative fees and costs required by the Gaming Authorities with respect to any such approvals and licenses. Borrower will and will cause Mortgage Borrower to diligently and comprehensively respond to any inquiries and requests from the Gaming Authorities and promptly file or cause to be filed any additional information required in connection with any required filings as soon as practicable after receipt of requests therefor.

(d) Upon request of Lender, Borrower shall deliver to Lender (or cause Operating Company to deliver to Lender) such evidence of compliance (by Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company and each Individual Property) with all Legal Requirements, including Gaming Laws as shall be reasonably requested by Lender. Borrower shall immediately deliver to Lender (and shall cause Operating Company and Mortgage Borrower to deliver to Lender) any notice of material non-compliance or material violation of any Legal Requirement, or of any material inquiry or investigation commenced by the Gaming Authorities in connection with any of the Properties. Borrower shall immediately notify Lender if it, Senior Mezzanine Borrower, Mortgage Borrower or Operating Company believe that any material license, including any Gaming License, is being or could be revoked or suspended, or that any action is pending, being considered or being, or could be, taken to revoke or suspend Borrower's, Senior Mezzanine Borrower's, Mortgage Borrower's or Operating Company's material licenses, including the Gaming Licenses, or to fine, penalize or impose remedies upon Borrower, Mortgage Borrower, Senior Mezzanine Borrower or Operating Company, or that any action is pending, being considered, or being, or could be, taken to discontinue, suspend, deny, decrease or recoup any payments due, made or coming due to Borrower, Senior Mezzanine Borrower, Mortgage Borrower or Operating Company, in each case if same might reasonably be expected to have an Individual Material Adverse Effect. Borrower shall immediately deliver to Lender any notice received by Borrower, Senior Mezzanine Borrower, Mortgage Borrower or Operating Company alleging or relating to the material non-compliance by Borrower, Senior Mezzanine Borrower, Mortgage Borrower or Operating Company with any Legal Requirements, including Gaming Laws.

(e) In the event that any of the Operating Leases expire or are terminated (without limiting any obligation of Borrower to obtain Lender's consent to any termination or modification of any of the Operating Leases in accordance with the terms and provisions of this Agreement), Borrower shall cause Mortgage Borrower to promptly enter into a replacement Operating Lease (in form and substance satisfactory to Lender) with Operating Company or another operating company reasonably satisfactory to Lender, provided Borrower will obtain a Rating Agency Confirmation as a condition to the effectiveness of such replacement Operating Lease and that Borrower will cause Guarantor (Operating Lease) to execute and deliver an operating lease guaranty in the same form and substance as the Operating Lease Guaranty.

(f) Borrower shall cause Mortgage Borrower to: (i) promptly perform and/or observe, in all material respects, all of the covenants and agreements required to be performed and observed by it under the Operating Lease and do all things necessary to preserve and to keep unimpaired its material rights thereunder; (ii) promptly notify Lender of any material default under any Operating Lease or Operating Lease Guaranty of which it is aware; (iii) promptly deliver to Lender a copy of each financial statement, business plan, capital expenditures plan, notice, report and estimate received by it under each Operating Lease; and (iv) enforce the performance and observance of all of the material covenants and agreements required to be performed and/or observed by each Operating Company under each Operating Lease and by each Guarantor (Operating Lease) under each Operating Lease Guaranty, in a commercially reasonable manner.

(g) Borrower shall cause Mortgage Borrower to cause the Hotel Components to be at all times open for business as a hotel and the Casino Components to be open for business as a casino, except to the extent necessary to undertake any alterations or repairs (subject to the provisions of this Agreement with respect to the performance of any such alterations or repairs). Borrower shall cause each Individual Property to be at all times operated, managed and maintained, at all times and in the manner and accordance with the standards required pursuant to the Operating Leases and all applicable Legal Requirements in all material respects.

(h) If Mortgage Borrower shall be in material default under any Operating Lease, then, subject to the terms of such Operating Lease, Borrower shall cause Mortgage Borrower (subject to any applicable Legal Requirements) to grant Lender the right (but not the obligation), to cause the default or defaults under such Operating Lease to be remedied and otherwise exercise any and all rights of Mortgage Borrower under such Operating Lease, as may be necessary to prevent or cure any default provided such actions are necessary to protect Lender's interest under the Loan Documents, and Lender shall have the right to enter all or any portion of the affected Individual Property at such times and in such manner as Lender deems necessary, to prevent or to cure any such default. The actions or payments of Lender to cure any default by Mortgage Borrower under any Operating Lease shall not remove or waive, as between Borrower and Lender, any default that may occur or occurred under this Agreement by virtue of such default by Mortgage Borrower under such Operating Lease. All out-of-pocket sums reasonably expended by Lender to cure any such default shall be paid by Borrower to Lender, upon demand, with interest on such sum at the rate set forth in this Agreement from the date such sum is expended to and including the date the reimbursement payment is made to Lender. All such indebtedness shall be deemed to be secured by the Pledge Agreement and the Collateral.

(i) Borrower shall notify Lender promptly in writing of (i) the occurrence, to Borrower's knowledge, of any material default by any party to any Operating Lease or any Operating Lease Guaranty, (ii) the occurrence, to Borrower's knowledge, of any event that, with the passage of time or service of notice, or both, would constitute a material default by any party under any Operating Lease or any Operating Lease Guaranty, and (iii) the receipt by Borrower or its Affiliate of any notice (written or otherwise) from any party under any Operating Lease or any Operating Lease Guaranty noting or claiming the occurrence of any material default by Borrower under such Operating Lease or such Operating Lease Guaranty.

(j) Borrower shall (subject to any applicable Legal Requirements) promptly cause Mortgage Borrower to execute, acknowledge and deliver to Lender such instruments as may reasonably be required to permit Lender to cure any material default under any Operating Lease or permit Lender to take such other action required to enable Lender to cure or remedy the matter in default and preserve the value of the security interest of Lender under the Loan Documents with respect to the Collateral. Upon the occurrence and during the continuance of an Event of Default, Borrower irrevocably appoints Lender as its true and lawful attorney-in-fact to do, in its name or otherwise, any and all acts and to execute any and all documents that are necessary to preserve any rights of Mortgage Borrower under or with respect to any Operating Lease, including, without limitation, the right to effectuate any extension or renewal of any Operating Lease, or to preserve any rights of Mortgage Borrower whatsoever in respect of any part of any Operating Lease (and the above powers granted to Lender are coupled with an interest and shall be irrevocable).

(k) With respect to any Operating Lease or any Operating Lease Guaranty, Borrower shall, from time to time, upon ten (10) Business Days' prior written request from Lender, execute, acknowledge and deliver to Lender, a statement containing the following: (A) a statement that such Operating Lease or such Operating Lease Guaranty is unmodified and in full force and effect or, if there have been modifications, that the Operating Lease or the Operating Lease Guaranty is in full force and effect as modified and setting forth such modifications, (B) a statement that Mortgage Borrower is not in default thereunder beyond any applicable grace, cure or notice period or, if any such default shall exist thereunder, a description of such default and the steps being taken to cure such default, (C) a statement that, to Borrower's knowledge, either the other party thereto is not in default thereunder beyond any applicable grace, cure or notice period or, if any such default shall exist thereunder, a description of such default and the steps being taken to cure such default and (D) such other information with respect to the Operating Lease or the Operating Lease Guaranty as Lender shall reasonably request.

(l) With respect to any Operating Lease, Borrower shall, from time to time, upon ten (10) Business Days of Lender's prior written request from Lender, provide Lender with a statement from each Operating Company containing the following: (A) a statement that such Operating Lease is unmodified and in full force and effect or, if there have been modifications, that the Operating Lease is in full force and effect as modified and setting forth such modifications, (B) a statement that Operating Company is not in default thereunder beyond any applicable grace, cure or notice period or, if any such default shall exist thereunder, a description of such default and the steps being taken to cure such default, (C) a statement that, to Operating Company's knowledge, the Mortgage Borrower is not in default thereunder beyond any applicable grace, cure or notice period or, if any such default shall exist thereunder, a description

of such default and the steps being taken to cure such default and (D) such other information with respect to Operating Company, any Operating Lease and/or any Operating Lease Guaranty as Lender shall reasonably request.

(m) With respect to any Operating Lease Guaranty, Borrower shall, from time to time, upon ten (10) Business Days of Lender's prior written request from Lender, provide Lender with a statement from Guarantor (Operating Lease) containing the following: (A) a statement that such Operating Lease Guaranty is unmodified and in full force and effect or, if there have been modifications, that the Operating Lease Guaranty is in full force and effect as modified and setting forth such modifications; (B) a statement that Guarantor (Operating Lease) is not in default thereunder beyond any applicable grace, cure or notice period or, if any such default shall exist thereunder, a description of such default and the steps being taken to cure such default; and (C) such other information with respect to such Guarantor (Operating Lease) and/or Operating Lease Guaranty as Lender shall reasonably request.

**5.1.23 Ground Lease Estoppel.** Borrower shall, on or prior to May 28, 2008, either (i) effect the substitution of the Properties commonly known as "Paris Las Vegas" and "Harrah's Laughlin" for the Individual Properties referred to as "Harrah's Lake Tahoe", "Harvey's Lake Tahoe", "Bill's Lake Tahoe" and "Showboat Atlantic City" as described in Section 2.5.2 of this Agreement or (ii) (x) cause the occurrence of the events set forth in paragraph 1, clause (ii) of the Ground Lease Side Letter and (y) in connection therewith, deliver to Lender updates to its UCC Title Insurance Policy and any endorsements to the Mortgage Borrower's owner's policies delivered to Lender in connection with the closing of the Loan, together with such other documents, instruments and new or updated opinions (including as to enforceability, non-consolidation and true lease matters) as Lender may reasonably request. The failure by Borrower to cause the occurrence of the event described in clause (i) or of the events described in clause (ii) above, on or prior to May 28, 2008 shall constitute a "Ground Lease Estoppel Trigger Event" hereunder, but shall not constitute a Default or an Event of Default hereunder.

**5.1.24 Mortgage Loan Reserve Funds.** Borrower shall cause Mortgage Borrower and Senior Mezzanine Borrower to deposit and maintain each of the Mortgage Loan Reserve Funds and Senior Mezzanine Loan Reserve Funds (if any) as more particularly set forth in Article VII of the Mortgage Loan Agreement and Senior Mezzanine Loan Agreement and to perform and comply with all the terms and provisions relating thereto. Borrower grants to Lender a first-priority perfected security interest in Borrower's interest in each of the Mortgage Loan Reserve Funds and Senior Mezzanine Loan Reserve Funds, if any, subject to the prior rights of Mortgage Lender and Senior Mezzanine Lender, and any and all monies now or hereafter deposited in each Mortgage Loan Reserve Fund and Senior Mezzanine Loan Reserve Funds as additional security for payment of the Debt to the extent Borrower has an interest in same. Subject to the qualifications regarding Mortgage Lender's and Senior Mezzanine Lender's interest in the Mortgage Loan Reserve Funds and Senior Mezzanine Loan Reserve Funds (as applicable), if any, until expended or applied in accordance with the Mortgage Loan Documents, Senior Mezzanine Loan Documents or the Loan Documents, Borrower's interest in the Mortgage Loan Reserve Funds and Senior Mezzanine Loan Reserve Funds shall constitute additional security for the Debt and upon the occurrence of an Event of Default, Lender may, in addition to any and all other remedies available to Lender, apply any sums then present in any or

all of the Mortgage Loan Reserve Funds and Senior Mezzanine Loan Reserve Funds to the payment of the Debt in any order in its sole discretion and/or hold the same as Collateral for the Loan.

**5.1.25 Notices.** Borrower shall give notice, or cause notice to be given to Lender promptly upon the occurrence and during the continuance of an Event of Default and upon any of the following:

(a) any Mortgage Loan Event of Default or Senior Mezzanine Loan Event of Default;

(b) any default or event of default under any contractual obligation of Borrower, or, to the knowledge of Borrower, Senior Mezzanine Borrower, Mortgage Borrower, Operating Company, Principal or Guarantor that could reasonably be expected to have an Individual Material Adverse Affect or an Aggregate Material Adverse Affect;

(c) any litigation or proceeding affecting Borrower, or, to the knowledge of Borrower, affecting any of Mortgage Borrower, Senior Mezzanine Borrower, Operating Company, Principal or Guarantor, which could or could reasonably be expected to have an Individual Material Adverse Effect or an Aggregate Material Adverse Effect; or

(d) a change in the business, operations, property or financial or other condition or prospects of Borrower, or, to the knowledge of Borrower, Senior Mezzanine Borrower, Mortgage Borrower, Operating Company, Principal or Guarantor which could reasonably be expected to have an Individual Material Adverse Affect or an Aggregate Material Adverse Affect.

**5.1.26 Special Distributions.** On each date on which amounts are required to be paid to Lender under any of the Loan Documents (or required be disbursed to the Mezzanine Collection Account, if applicable) Borrower shall exercise its rights under the First Mezzanine Borrower Company Agreement to cause Senior Mezzanine Borrower to make to Borrower a distribution in an aggregate amount such that Lender shall receive the amount required to be disbursed to the Mezzanine Collection Account or otherwise paid to Lender on such date.

**5.1.27 Curing.** Lender shall have the right, but shall not have the obligation, to exercise Borrower's rights under the First Mezzanine Borrower Company Agreement (a) to cure a Mortgage Loan Default, or Senior Mezzanine Loan Default, (b) to cure a Mortgage Loan Event of Default, or Senior Mezzanine Loan Event of Default, (c) to satisfy any Liens, claims or judgments against the Properties (except for Liens permitted by the Mortgage Loan Documents or Senior Mezzanine Loan Documents), (d) to satisfy any Liens, claims or judgments against the Senior Mezzanine Collateral, in the case of either (a), (b) or (c), unless Borrower, Senior Mezzanine Borrower or Mortgage Borrower shall be diligently pursuing remedies to cure the Mortgage Loan Default, the Senior Mezzanine Loan Default, the Senior Mezzanine Loan Event of Default or Mortgage Loan Event of Default or to satisfy any such Liens, claims or judgments, in either case to Lender's sole satisfaction. Borrower shall reimburse Lender on demand for any and all costs incurred by Lender in connection with curing

any such Mortgage Loan Default, Senior Mezzanine Loan Default, Mortgage Loan Event of Default or Senior Mezzanine Loan Event of Default or satisfying any Liens, claims or judgments against any of the Properties or the Senior Mezzanine Collateral.

**5.1.28 Senior Borrower Covenants.** Borrower shall cause Mortgage Borrower and Senior Mezzanine Borrower to comply with all obligations with which Mortgage Borrower and/or Senior Mezzanine Borrower have covenanted to comply under the Mortgage Loan Agreement, Senior Mezzanine Loan Agreement, all Senior Mezzanine Loan Documents and all other Mortgage Loan Documents, as applicable (including, without limitation, those certain affirmative and negative covenants set forth in Article V of the Mortgage Loan Agreement and Senior Mezzanine Loan Agreement), unless otherwise consented to in writing by Lender.

**Section 5.2. Negative Covenants.** From the date hereof until payment and performance in full of all obligations of Borrower under the Loan Documents or the earlier release of the Liens of the Collateral in accordance with the terms of this Agreement and the other Loan Documents, Borrower covenants and agrees with Lender that it will not do, directly or indirectly, any of the following (without, in each case, the prior written consent of Lender):

**5.2.1 Operation of Properties.** (a) Borrower shall not cause or permit Mortgage Borrower to, without Lender's prior consent: (i) surrender, terminate or cancel (or permit to be surrendered, terminated or canceled) any of the Operating Leases or any Operating Lease Guaranty; (ii) reduce or consent to the reduction of (or permit the reduction or the consent to the reduction) of the term of any of the Operating Leases; (iii) decrease or consent to any decrease (or permit to be decreased or the consent to the decrease) of the amount of any rent or other charges payable under any of the Operating Leases; (iv) Transfer, convey, assign, sell, mortgage, encumber, pledge, hypothecate, grant a security interest in, grant an option or options with respect to, or otherwise dispose of (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, whether or not for consideration) the Properties or any collateral for the Mortgage Loan (or permit Operating Company to do so), in each case without the prior written consent of Lender or except as expressly permitted in **Section 5.2.10**, or (v) otherwise modify, change, supplement, alter or amend, or waive or release (or permit to be modified, changed, supplemented, altered, amended, waived or released) any of the rights and remedies of Borrower, Mortgage Borrower or any Operating Company under any of the Operating Leases in any material respect or any Operating Lease Guaranty (provided that Lender shall not unreasonably withhold its consent to any modification, change, supplement, alteration, amendment, waiver or release of the Operating Lease as may be reasonably necessary to comply with the requirements of this Agreement or any other Loan Document).

(b) During the continuance of an Event of Default, Borrower shall not exercise (and shall not cause or permit Mortgage Borrower to exercise) any rights, make any decisions, grant any approvals or otherwise take any action under any Operating Lease, Operating Lease Guaranty or any management agreement without, in each instance, the prior written consent of Lender, which consent may be withheld in Lender's sole discretion.

**5.2.2 Liens.** (a) Borrower shall not create, incur, assume or suffer to exist any Lien on any of the Collateral, except Liens created by or permitted pursuant to the Loan

Documents. Borrower shall not, and shall not cause or permit Mortgage Borrower or Senior Mezzanine Borrower to create, incur, assume or suffer to exist any Lien on any portion of any Individual Property or Senior Mezzanine Collateral or permit any such action to be taken, except:

- (i) Permitted Encumbrances;
- (ii) Liens created by or permitted pursuant to the Loan Documents, Senior Mezzanine Loan Documents or Mortgage Loan Documents; and
- (iii) Liens for Taxes or Other Charges not yet due.

(b) Borrower shall not incur any Indebtedness other than the Loan, shall not permit Mortgage Borrower to incur any Indebtedness other than the Mortgage Loan and Permitted Indebtedness (as defined in the Mortgage Loan Agreement), and shall not permit Senior Mezzanine Borrower to incur any Indebtedness other than the Senior Mezzanine Loans. Borrower shall not permit any Operating Company to incur Indebtedness in excess or other than Permitted Indebtedness (Operating Company).

**5.2.3 Dissolution.** Borrower shall not, and shall not permit Mortgage Borrower, Senior Mezzanine Borrower or Operating Company to, (a) engage in any dissolution, liquidation or consolidation or merger with or into any other business entity, (b) engage in any business activity not related to (i) in the case of Borrower, the ownership of the Collateral, (ii) in the case of Senior Mezzanine Borrower, ownership of the Senior Mezzanine Collateral, (iii) in the case of Mortgage Borrower, the ownership and operation of the Properties and (iv) in the case of Operating Company, the leasing and operation of the Properties, (c) transfer, lease or sell, in one transaction or any combination of transactions, the assets or all or substantially all of the properties or assets of Borrower, Senior Mezzanine Borrower or Mortgage Borrower except to the extent permitted by the Loan Documents, (d) modify (in any material respect), amend (in any material respect), waive or terminate its organizational documents or its qualification and good standing in any jurisdiction or (e) cause Holdings to (i) dissolve, wind up or liquidate or take any action, or omit to take an action, as a result of which Holdings, Senior Mezzanine Borrower or Mortgage Borrower would be dissolved, wound up or liquidated in whole or in part, or (ii) amend (in any material respect), modify (in any material respect), waive or terminate the certificate of incorporation or bylaws of Holdings, Senior Mezzanine Borrower or Mortgage Borrower, in each case, without obtaining the prior consent of Lender.

**5.2.4 Change in Business.** Borrower shall not cause Mortgage Borrower to enter into any line of business other than the ownership and operation of any of the Properties and other activities reasonably ancillary thereto, or make any material change in the scope or nature of its business objectives, purposes or operations, or undertake or participate in activities other than the continuance of its present business. In addition, Borrower shall not permit or cause Mortgage Borrower to cancel or otherwise forgive or release any material claim or debt (other than termination of Leases in accordance herewith) owed to Mortgage Borrower by any Person, except for adequate consideration and in the ordinary cause of Mortgage Borrower's business. Borrower shall not enter into any line of business other than the ownership of the Collateral, or make any material change in the scope or nature of its business objectives,

purposes or operations, or undertake or participate in activities other than the continuance of its present business. Borrower shall not allow Senior Mezzanine Borrower to enter into any line of business other than the direct or indirect ownership of the applicable Senior Mezzanine Collateral or make any material change in the scope or nature of its business objectives, purposes or operations, or undertake or participate in activities other than the continuance of its present business.

**5.2.5 Debt Cancellation.** Borrower shall not, and shall not permit Mortgage Borrower, Senior Mezzanine Borrower or Operating Company to, cancel or otherwise forgive or release any claim or debt (other than termination of Leases in accordance herewith) owed to Mortgage Borrower, Borrower or Senior Mezzanine Borrower by any Person, except for adequate consideration and in the ordinary course of Mortgage Borrower's, Borrower's or Senior Mezzanine Borrower's business. In addition, Borrower shall not permit or cause itself, Senior Mezzanine Borrower, or Mortgage Borrower to cancel or otherwise forgive or release any material claim or debt (other than termination of Leases in accordance herewith) owed to Senior Mezzanine Borrower, Borrower or Mortgage Borrower by any Person, except for adequate consideration and in the ordinary course of Mortgage Borrower's, Borrower's or Senior Mezzanine Borrower's business.

**5.2.6 Zoning.** Borrower shall not, and shall not permit Mortgage Borrower or Operating Company to, initiate or consent to any zoning reclassification of any portion of any Individual Property or seek any variance under any existing zoning ordinance or use or permit the use of any portion of any Individual Property in any manner that could result in such use becoming a non-conforming use under any zoning ordinance or any other applicable land use law, rule or regulation, without the prior consent of Lender.

**5.2.7 Ground Lease.** Borrower shall not (or shall not cause or permit Mortgage Borrower or Ground Lease Subsidiary, as applicable, to) (a) fail to pay any rent, additional rent or other charge mentioned in or made payable under any Ground Lease as and when such rent or other charge is due (unless waived in writing by the ground lessor under such Ground Lease), (b) permit to occur any event of default (beyond any applicable notice, grace or cure periods) by any Mortgage Borrower or Ground Lease Subsidiary, as applicable, as tenant under the related Ground Lease, in the observance or performance of any term, covenant or condition of such Ground Lease on the part of such Mortgage Borrower or Ground Lease Subsidiary, as applicable, to be observed or performed (unless waived in writing by the ground lessor under such Ground Lease), (c) permit any one or more of the events referred to in any Ground Lease to occur which would cause such Ground Lease to terminate without notice or action by the ground lessor under such Ground Lease or which would entitle such ground lessor to terminate such Ground Lease and the term thereof by giving notice to the related Mortgage Borrower or Ground Lease Subsidiary, as applicable, as tenant thereunder (unless waived in writing by the ground lessor under such Ground Lease), (d) permit the leasehold estate created by any Ground Lease to be surrendered or any Ground Lease to be terminated or canceled for any reason or under any circumstances whatsoever or (e) permit any of the terms, covenants or conditions of any Ground Lease to be materially modified, materially changed, materially supplemented, materially altered, or materially amended without the consent of Lender except as otherwise may be permitted by this Agreement.

**5.2.8 Principal Place of Business and Organization.** Borrower shall not, nor shall Borrower permit Mortgage Borrower, Senior Mezzanine Borrower or Operating Company to, change the place of its organization as set forth in Section 4.1.28 without the consent of Lender, which consent shall not be unreasonably withheld. Upon Lender's request, Borrower shall (and shall cause Mortgage Borrower, Senior Mezzanine Borrower or Operating Company to) execute and deliver additional financing statements, security agreements and other instruments which may be necessary to effectively evidence or perfect Mortgage Lender's security interest in any of the Properties, any Senior Mezzanine Lender's Security Interest in the related Senior Mezzanine Collateral or Lender's security interest in the Collateral as a result of such change of place of organization.

**5.2.9 ERISA.** (a) Borrower shall not engage in any transaction which would cause any obligation, or action taken or to be taken, hereunder (or the exercise by Lender of any of its rights under the Note, this Agreement or the other Loan Documents) to be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under ERISA.

(b) Borrower further covenants and agrees to deliver to Lender such certifications or other evidence from time to time throughout the term of the Loan, as requested by Lender in its sole discretion, that (i) Borrower is not an "employee benefit plan" as defined in Section 3(3) of ERISA, which is subject to Title I of ERISA, or a "governmental plan" within the meaning of Section 3(32) of ERISA; (ii) Borrower is not subject to any state statute regulating investments of, or fiduciary obligations with respect to, governmental plans; and (iii) one or more of the following circumstances is true:

(A) Equity interests in Borrower are publicly offered securities, within the meaning of 29 C.F.R. § 2510.3-101(b)(2);

(B) Less than twenty-five percent (25%) of each outstanding class of equity interests in Borrower is held by "benefit plan investors" within the meaning of 29 C.F.R. § 2510.3-101(f)(2); or

(C) Borrower qualifies as an "operating company" or a "real estate operating company" within the meaning of 29 C.F.R. § 2510.3-101(c) or (e).

**5.2.10 Transfers.** (a) Without the prior consent of Lender and except to the extent otherwise set forth in this Section 5.2.10, Borrower shall not, and shall not permit any other Person holding any direct or indirect legal, economic, beneficial or other ownership interest in Borrower, the Collateral, the Senior Mezzanine Collateral or one or more of the Properties to, (1) Transfer all or any part of the Collateral, the Senior Mezzanine Collateral or one or more of the Properties, (2) permit any Transfer (directly or indirectly) of any direct or indirect interest in Borrower, or (3) permit any Transfer (directly or indirectly) of any direct or indirect interest in Operating Company or any transfer or assignment or subletting (of all or substantially of any Individual Property) by any Operating Company under any Operating Lease.

(b) A Transfer of (but not a mortgage, pledge, hypothecation, encumbrance or grant of a security interest in) an indirect beneficial interest in Borrower consisting of ownership

interests in or at any level above the level of Ninth Mezzanine Borrower shall be permitted without Lender's consent (but subject to the last sentence of Section 5.2.10(d)), provided that (i) immediately prior to such Transfer, no Event of Default shall have occurred and be continuing, (ii) Borrower is at all times Controlled and at least fifty percent (50%) owned (directly or indirectly) by Qualified Transferees, (iii) subsequent to such Transfer, Borrower will continue to be a Special Purpose Entity, (iv) if (1) such Transfer causes the Transferee to own, in the aggregate with the ownership interests of its Affiliates, more than a forty nine percent (49%) interest in Borrower (and the Transferee (together with the ownership interests of its Affiliates) did not, prior to such Transfer, own more than a forty-nine percent (49%) interest in Borrower), or (2) such Transfer, together with all other Transfers by Borrower, whether in a single Transfer or in a series of Transfers and whether or not effected simultaneously, results in a Transfer of more than forty-nine percent (49%) of the aggregate interests in Borrower, then an acceptable non-consolidation opinion is delivered to the holder of the Loan and to each of the Rating Agencies concerning, as applicable, Borrower, the new Transferee and/or their respective owners, and (v) subsequent to such Transfer, the beneficial ownership of Borrower and Operating Company will be substantially identical. For purposes hereof, Control shall not be deemed absent solely because other parties have veto rights with respect to major decisions. Further, a Change in Control shall be deemed a Transfer hereunder and, unless clauses (ii) through (v) of this Section 5.2.10(b) shall be satisfied, the same shall be an Event of Default hereunder (and for the sake of clarity, nothing else contained in this Section 5.2.10 or this Agreement shall be deemed to limit or qualify the above terms of this sentence).

(c) A Transfer of (but not a mortgage, pledge, hypothecation, encumbrance or grant of a security interest in) a direct or indirect beneficial interest in Operating Company shall be permitted without Lender's consent (but subject to the last sentence of Section 5.2.10(d)), provided that (i) immediately prior to such Transfer, no Event of Default shall have occurred and be continuing, (ii) Operating Company is at all times Controlled and at least fifty percent (50%) owned (directly or indirectly) by Qualified Transferees, and (iii) subsequent to such Transfer, the beneficial ownership of Borrower and Operating Company will be substantially identical. For purposes hereof, Control shall not be deemed absent solely because other parties have veto rights with respect to major decisions.

(d) In the event that a permitted Transfer of more than a forty nine percent (49%) interest in Borrower is made pursuant to this Section 5.2.10, at Borrower's request, Lender shall release Guarantor from (i) the obligations and liabilities under any Guaranty for obligations and liabilities that occurred subsequent to such Transfer, provided that a replacement guarantor(s) reasonably satisfactory to Lender shall have executed and delivered to Lender replacement guarantees in form and substance substantially similar to the applicable Guaranty, pursuant to which such replacement guarantor(s) expressly assumes all of Guarantor's obligations under the applicable Guaranty for obligations and liabilities arising from and after the date of such Transfer, and (ii) the obligations and liabilities under any Guaranty for obligations and liabilities that occurred either prior or subsequent to such Transfer, provided that a replacement guarantor(s) reasonably satisfactory to Lender shall have executed and delivered to Lender replacement guarantees in form and substance substantially similar to the applicable Guaranty, pursuant to which such replacement guarantor(s) expressly assumes all of Guarantor's obligations under the applicable Guaranty, including those which occurred prior to the Transfer. Notwithstanding the foregoing or anything else that may be construed to the contrary, in no event

may Borrower effect a Transfer, or permit or suffer any Transfer, that would result in any loss or impairment of any Gaming License or in any similar event that would have an Individual Property Material Adverse Effect or Aggregate Property Material Adverse Effect.

(e) Notwithstanding the foregoing or anything herein to the contrary, but subject to the final sentence of Section 5.2.10(d), nothing contained in this Agreement or the other Loan Documents shall in any way restrict or prohibit, nor shall any notice to Lender or consent of Lender or Rating Agency Confirmation be required in connection with the Transfer or issuance in the ordinary course of any securities in any Person whose securities are publicly traded on a national exchange (except to the extent that the same would cause a Change of Control) or with an initial public offering of securities issued by Holdings or of subsidiary of Holdings (other than the Borrower and any Mezzanine Borrower (provided that, in the case of an issuance by a subsidiary, such issuance would not cause a Change of Control)).

(f) Assumptions of the Loan shall be permitted, provided that the following conditions are satisfied and/or occur to Lender's satisfaction:

(i) such sale has been approved or deemed approved under the Mortgage Loan Documents and Senior Mezzanine Loan Documents and all conditions set forth in the Mortgage Loan Documents and Senior Mezzanine Loan Documents relating thereto have been satisfied;

(ii) an assumption of this Agreement, the Note, the Pledge Agreement and the other Loan Documents as so modified by the proposed transferee, subject to the provisions of Section 9.3 hereof;

(iii) payment of all of reasonable out-of-pocket costs and expenses incurred in connection with such Transfer including, without limitation, the cost of any legal fees and expenses, Rating Agency fees and expenses or required legal opinions;

(iv) the payment of a non-refundable assumption fee equal to Lender's Share of One Million and No/100 Dollars (\$1,000,000) per transaction (effecting an assumption of the Loan) or series of related transactions (effected to implement an assumption of the Loan);

(v) the delivery of an Additional Insolvency Opinion reflecting the proposed transfer satisfactory in form and substance to Lender; and the delivery of an Additional True-Lease Opinion in form and substance satisfactory to Lender;

(vi) the proposed Transferee being Controlled and at least 50% owned, directly or indirectly, by one or more Qualified Transferees;

(vii) the Operating Company being Controlled and at least 50% owned, directly or indirectly, by one or more Qualified Transferees, having sufficient experience (or having a manager that has sufficient experience) in the management of properties similar to the Properties, and such Operating Company or its manager not having materially less than the same level of experience in the operation of properties similar to the Properties as the current Operating Company under the Operating Lease and, in each case, Lender

shall be provided with reasonable evidence thereof (and Lender reserves the right to approve the Transferee(s) without approving the substitution of the Operating Company) and the operating tenant shall be either the Operating Company or, if permitted by applicable Legal Requirements, a manager acceptable to Lender under a management agreement acceptable to Lender; provided that so long as the Operating Lease is in force and effect and the current Operating Company shall continue to be the tenant thereunder and owned and Controlled by the same Person(s) that currently own and Control the Operating Company, the condition with respect to the Operating Company set forth in this subclause (vi) shall be deemed to have been met in all respects;

(viii) the delivery of evidence reasonably satisfactory to Lender that the single purpose nature and bankruptcy remoteness of Borrower, its shareholders, partners or members, as the case may be, following such transfers are in accordance with the then current standards of Lender and the Rating Agencies; and the Transferee(s)' continued compliance with the representations and covenants set forth in Section 4.1.30 and Section 5.2.9 hereof;

(ix) Borrower's delivery to Lender of evidence reasonably satisfactory to Lender of any required approval or consent of any Governmental Authority, including the Gaming Authorities, that has direct or indirect authority or oversight over Borrower, Mortgage Borrower, Senior Mezzanine Borrower, the Properties, Operating Company or the operations conducted at the Properties to the change in ownership and/or operator of the Properties (or any part thereof);

(x) prior to any release of the Guarantor, a substitute guarantor reasonably acceptable to Lender shall have assumed all of the obligations of the Guarantor under the Guaranty (FF&E), the Guaranty (Recourse Carveouts), the Operating Lease Guaranty, the Guaranty (Ground Lease Estoppel), any completion guaranty provided under Section 5.1.21 and the Environmental Indemnity or executed replacement guaranties and an environmental indemnity reasonably satisfactory to Lender;

(xi) receipt of evidence satisfactory to Lender that all of the entities which own interests in the transferee similar to the interests in Sixth Mezzanine Borrower owned by the Seventh Mezzanine Borrower (1) shall assume the Seventh Mezzanine Loan (if still outstanding) and all the agreements of Seventh Mezzanine Borrower under the Seventh Mezzanine Loan Documents (and without limiting the foregoing, all of the ownership interests in Sixth Mezzanine Borrower, all payments thereon and all proceeds thereof shall be pledged to Lender on terms no less favorable than the pledge of the Collateral under the applicable Pledge Agreement), (2) shall each be a bankruptcy remote single purpose entity, and (3) shall otherwise have a legal, financial and ownership structure that is (a) substantially the same as the Seventh Mezzanine Borrower or (b) at least as favorable to the Seventh Mezzanine Lender, as determined by the Seventh Mezzanine Lender in its reasonable discretion, as the legal, financial and ownership structure of Seventh Mezzanine Borrower;

(xii) receipt of evidence satisfactory to Lender that all of the entities which own interests in the transferee similar to the interests in Seventh Mezzanine Borrower owned

by the Eighth Mezzanine Borrower (1) shall assume the Eighth Mezzanine Loan (if still outstanding) and all the agreements of Eighth Mezzanine Borrower under the Eighth Mezzanine Loan Documents (and without limiting the foregoing, all of the ownership interests in Seventh Mezzanine Borrower, all payments thereon and all proceeds thereof shall be pledged to Lender on terms no less favorable than the pledge of the Collateral under the applicable Pledge Agreement), (2) shall each be a bankruptcy remote single purpose entity, and (3) shall otherwise have a legal, financial and ownership structure that is (a) substantially the same as the Eighth Mezzanine Borrower or (b) at least as favorable to the Eighth Mezzanine Lender, as determined by the Eighth Mezzanine Lender in its reasonable discretion, as the legal, financial and ownership structure of Eighth Mezzanine Borrower;

(xiii) receipt of evidence satisfactory to Lender that all of the entities which own interests in the transferee similar to the interests in Eighth Mezzanine Borrower owned by the Ninth Mezzanine Borrower (1) shall assume the Ninth Mezzanine Loan (if still outstanding) and all the agreements of Ninth Mezzanine Borrower under the Ninth Mezzanine Loan Documents (and without limiting the foregoing, all of the ownership interests in Eighth Mezzanine Borrower, all payments thereon and all proceeds thereof shall be pledged to Lender on terms no less favorable than the pledge of the Collateral under the applicable Pledge Agreement), (2) shall each be a bankruptcy remote single purpose entity, and (3) shall otherwise have a legal, financial and ownership structure that is (a) substantially the same as the Ninth Mezzanine Borrower or (b) at least as favorable to the Ninth Mezzanine Lender, as determined by the Ninth Mezzanine Lender in its reasonable discretion, as the legal, financial and ownership structure of Ninth Mezzanine Borrower;

(xiv) a written consent to the transfer from the lender under each Mezzanine Loan (and, if any, a Permitted Mezzanine Loan) or receipt by Lender of other evidence satisfactory to Lender that all conditions imposed under the terms of each Mezzanine Loan and Permitted Mezzanine Loan shall have been complied with by the borrower thereunder or otherwise waived by the applicable lender;

(xv) subsequent to such assumption of the Loan, the beneficial ownership of Borrower and Operating Company will be substantially identical; and

(xvi) the delivery of a new Owner's Title Policy, in an amount equal to the value of the Properties, together with an endorsement to Lender in form and substance reasonably satisfactory to Lender.

Lender agrees to provide a written consent to a transfer pursuant to this Section 5.2.10(f) upon satisfaction of all of the conditions set forth in this Section 5.2.10(f) other than the condition set forth in clause (xy) of this Section 5.2.10(f).

(g) Restrictions on Transfers set forth herein or in the Pledge shall not apply to (i) the pledge of the Collateral to Lender pursuant to the Pledge Agreement, (ii) the pledge by First Mezzanine Borrower of the ownership interests in Mortgage Borrower as security for the First Mezzanine Loan pursuant to the First Mezzanine Loan Agreement, (iii) the pledge by

Second Mezzanine Borrower of the ownership interests in First Mezzanine Borrower as security for the Second Mezzanine Loan pursuant to the Second Mezzanine Loan Agreement, (iv) the pledge by Third Mezzanine Borrower of the ownership interests in Second Mezzanine Borrower as security for the Third Mezzanine Loan pursuant to the Third Mezzanine Loan Agreement, (v) the pledge by Fourth Mezzanine Borrower of the ownership interests in Third Mezzanine Borrower as security for the Fourth Mezzanine Loan pursuant to the Fourth Mezzanine Loan Agreement, (vi) the pledge by Fifth Mezzanine Borrower of the ownership interests in Fourth Mezzanine Borrower as security for the Fifth Mezzanine Loan pursuant to the Fifth Mezzanine Loan Agreement, (vii) the pledge by Seventh Mezzanine Borrower of the ownership interests in Borrower as security for the Seventh Mezzanine Loan pursuant to the Seventh Mezzanine Loan Agreement, (viii) the pledge by Eighth Mezzanine Borrower of the ownership interests in Seventh Mezzanine Borrower as security for the Eighth Mezzanine Loan pursuant to the Eighth Mezzanine Loan Agreement, (ix) the pledge by Ninth Mezzanine Borrower of the ownership interests in Eighth Mezzanine Borrower as security for the Ninth Mezzanine Loan pursuant to the Ninth Mezzanine Loan Agreement, (x) any pledge pursuant to a New Mezzanine Loan or (xi) the Transfer or pledge of any direct or indirect interest in Holdings, provided that no Change in Control shall occur.

(h) Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Debt immediately due and payable upon a Transfer without Lender's consent. This provision shall apply to every Transfer regardless of whether voluntary or not, or whether or not Lender has consented to any previous Transfer.

**5.2.11 Operating Lease Subsidiary.** Borrower shall not cause or permit Mortgage Borrower to Transfer any of its interests in Ground Lease Subsidiary without the prior written consent of Lender; Borrower shall not permit Mortgage Borrower to cause or permit Ground Lease Subsidiary to own any assets other than its interests in the Ground Lease or to incur any liabilities other than liabilities under the Ground Lease; Borrower shall not permit Mortgage Borrower to cause or permit Ground Lease Subsidiary to engage in any business other than that related to its ownership of interests in the Ground Lease.

**5.2.12 Limitations on Distributions.** Following the occurrence and during the continuance of an Event of Default, Borrower shall not make any distributions to its members. If any Distributions shall be received by Borrower or any Affiliate of Borrower after the occurrence and during the continuance of an Event of Default, Borrower shall hold, or shall cause the same to be held, in trust for the benefit of Lender.

**5.2.13 Other Limitations.** Prior to the payment in full of the Debt, neither Borrower nor any of its Affiliates shall, without the prior written consent of Lender (which may be furnished or withheld at its sole and absolute discretion), give its consent or approval to any of the following actions or items: the distribution by Mortgage Borrower or Senior Mezzanine Borrower of property other than cash.

**5.2.14 Refinancing.** Borrower shall not consent to or permit a refinancing of the Mortgage Loan or Senior Mezzanine Loan unless it obtains the prior consent of Lender, unless the Loan shall be paid in full in connection with such refinancing in accordance with this

Agreement. Borrower shall not consent to or permit a prepayment in full or in part of the Mortgage Loan or Senior Mezzanine Loan unless it obtains the prior consent of Lender, unless the Loan shall likewise be prepaid (in the same proportion, in the case of any partial prepayment) in accordance with this Agreement.

**Section 5.3. General.** For avoidance of doubt, all requirements contained in this Article V with respect to the Operating Company shall mean that it shall be a Default or Event of Default hereunder if Operating Company fails to perform in the specified manner, but Lender acknowledges that Operating Company is not a party to this Agreement and that Borrower does not control Operating Company.

## VI. INSURANCE; CASUALTY; CONDEMNATION

**Section 6.1. Insurance.** (a) Borrower shall cause Mortgage Borrower to maintain at all times during the term of the Loan the Policies required under Section 6.1 of the Mortgage Loan Agreement, including, without limitation, meeting all insurer requirements thereunder. In addition, Borrower shall cause Lender to be named “as their interest may appear”, under the Policies required under Sections 6.1(a)(i), (ii), (iii), (iv), (v), (vi), (vii), (viii), (ix), (x) and (xi) of the Mortgage Loan Agreement and as an “additional insured” with respect to liability coverages. Borrower shall also cause all insurance policies required under this Section 6.1 to provide for at least thirty (30) days’ prior notice to Lender in the event of policy cancellation or material changes. Borrower shall provide Lender with evidence of all such insurance required hereunder on or before the date on which Mortgage Borrower is required to provide such evidence to Mortgage Lender. For purposes of this Agreement, Lender shall have the same approval rights over the insurance referred to above and in the Mortgage Loan Agreement (including, without limitation, the insurers, deductibles and coverages thereunder, as well as the right to require other reasonable insurance pursuant to Section 6.1 of the Mortgage Loan Agreement) as are provided in favor of the Mortgage Lender in the Mortgage Loan Agreement.

(b) If at any time Lender is not in receipt of written evidence that all insurance required hereunder is in full force and effect, Lender shall have the right, without notice to Borrower, to take such action as Lender deems necessary to protect its interest in any of the Properties or the Collateral, including, without limitation, the obtaining of such insurance coverage as Lender in its sole discretion deems appropriate (but limited to the coverages and amounts required under the Mortgage Loan Agreement) and all premiums incurred by Lender in connection with such action or in obtaining such insurance and keeping it in effect shall be paid by Borrower to Lender upon demand and shall bear interest at the Default Rate.

**Section 6.2. Casualty.** If the Individual Property shall be materially damaged or destroyed, in whole or in part, by fire or other casualty (a “Casualty”), Borrower shall give prompt notice of such damage to Lender and shall cause Mortgage Borrower to promptly commence and diligently prosecute the completion of the Restoration of the Individual Property as nearly as possible to the condition the Individual Property was in immediately prior to such Casualty, with such alterations as may be reasonably approved by Lender and otherwise in accordance with Section 6.4 of the Mortgage Loan Agreement. Borrower shall cause Mortgage Borrower to pay all costs of such Restoration whether or not such costs are covered by insurance. Lender may, but shall not be obligated to make proof of loss if not made promptly by Borrower

or Mortgage Borrower. In addition, Lender may participate in any settlement discussions with any insurance companies with respect to any Casualty in which the Net Proceeds or the costs of completing the Restoration are equal to or greater than, in the case of each Casualty, an amount equal to five percent (5%) of the sum of the Allocated Loan Amount for the affected Individual Property and the "Allocated Loan Amounts" under (and as defined in each of) the Mortgage Loan Agreement and the Other Mezzanine Loan Agreements for the affected Individual Property, and Borrower shall deliver to Lender all instruments required by Lender to permit such participation.

**Section 6.3. Condemnation.** Borrower shall promptly give Lender notice of the actual or threatened commencement of any proceeding for the Condemnation of any Individual Property and shall cause Mortgage Borrower to deliver to Lender copies of any and all papers served in connection with such proceedings. Lender may participate in any such proceedings, and Borrower shall from time to time deliver to Lender all instruments requested by it to permit such participation. Borrower shall, at its expense, diligently prosecute any such proceedings, and shall consult with Lender, its attorneys and experts, and cooperate with them in the carrying on or defense of any such proceedings. Notwithstanding any taking by any public or quasi-public authority through Condemnation or otherwise (including, but not limited to, any transfer made in lieu of or in anticipation of the exercise of such taking), Borrower shall continue to pay the Debt at the time and in the manner provided for its payment in the Note and in this Agreement and the Debt shall not be reduced until any Award shall have been actually received and applied by Lender, after the deduction of expenses of collection, to the reduction or discharge of the Debt. Lender shall not be limited to the interest paid on the Award by the condemning authority but shall be entitled to receive out of the Award interest at the rate or rates provided herein or in the Note. If any Individual Property or any portion thereof is taken by a condemning authority, Borrower shall cause Mortgage Borrower to promptly commence and diligently prosecute the Restoration of the applicable Individual Property and otherwise comply with the provisions of Section 6.4 of the Mortgage Loan Agreement. If any Individual Property is sold, through foreclosure or otherwise, prior to the receipt by Lender of the Award, Lender shall have the right, whether or not a deficiency judgment on the Note shall have been sought, recovered or denied, to receive the Award, or a portion thereof sufficient to pay the Debt.

**Section 6.4. Restoration.** Borrower shall, or shall cause Mortgage Borrower to, deliver to Lender all reports, plans, specifications, documents and other materials that are delivered to Mortgage Lender under Section 6.4 of the Mortgage Loan Agreement in connection with the Restoration of any Individual Property after a Casualty or Condemnation.

## VII. RESERVE FUNDS

### **Section 7.1. Intentionally Omitted.**

**Section 7.2. Tax and Insurance Escrow Fund.** (a) If (and for so long as) a Trigger Event shall have occurred and shall not have been cured by a Trigger Event Cure, on each Payment Date during such period, Borrower shall pay to Lender (or Servicer, as directed by Lender) an amount equal to (i) one-twelfth of the Taxes that Lender estimates will be payable during the next ensuing twelve (12) months in order to accumulate with Lender sufficient funds to pay all such Taxes at least thirty (30) days prior to their respective due dates, and

(ii) one-twelfth of the Insurance Premiums that Lender estimates will be payable for the renewal of the coverage afforded by the Policies upon the expiration thereof in order to accumulate with Lender sufficient funds to pay all such Insurance Premiums at least thirty (30) days prior to the expiration of the Policies (said amounts in (i) and (ii) above hereinafter called the “**Tax and Insurance Escrow Fund**”). Lender shall apply the Tax and Insurance Escrow Fund to payments of Taxes and Insurance Premiums required to be made by Borrower pursuant to Section 5.1.2 hereof and under the Mortgage Loan Agreement. In making any payment relating to the Tax and Insurance Escrow Fund, Lender may do so according to any bill, statement or estimate procured from the appropriate public office (with respect to Taxes) or insurer or agent (with respect to Insurance Premiums), without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof. If the amount of the Tax and Insurance Escrow Fund shall exceed the amounts due for Taxes and Insurance Premiums pursuant to Section 5.1.2 hereof, provided no Event of Default shall have occurred and be continuing, then Lender shall return any excess to Borrower (or to Operating Company, if so directed by Borrower). In allocating such excess, Lender may deal with the Person shown on the records of Lender to be the owner of the Properties. If at any time Lender reasonably determines that the Tax and Insurance Escrow Fund is not or will not be sufficient to pay Taxes and Insurance Premiums by the dates set forth in (i) and (ii) above, Lender shall notify Borrower of such determination and Borrower shall increase its monthly payments to Lender by the amount that Lender estimates is sufficient to make up the deficiency at least thirty (30) days prior to the due date of the Taxes and/or thirty (30) days prior to expiration of the Policies, as the case may be.

(b) Notwithstanding the foregoing, Borrower shall not be required to make any deposits into the Tax and Insurance Escrow Fund on account of Insurance Premiums if (and for so long as) Borrower shall maintain a blanket insurance policy in respect of the Properties that is in accordance with the provisions of Section 6.1(a) and otherwise satisfactory to Lender in all material respects.

(c) Any amount remaining in the Tax and Insurance Escrow Fund following the occurrence of a Trigger Event Cure shall be returned to Borrower (or Operating Company, as directed by Borrower).

**7.2.1 Waiver of Tax Escrow.** Borrower shall be relieved of its obligation to make deposits of Tax and Insurance Escrow Fund under Section 7.2 above, provided that (a) Mortgage Borrower or Senior Mezzanine Borrower is required to and does make monthly deposits to a tax escrow account under the Mortgage Loan or Senior Mezzanine Loan, and (b) Lender receives evidence acceptable to it of the making of such deposits and of the payment of all such Taxes.

**7.2.2 Tax and Insurance Escrow Funds After Debt Paid.** Any Tax and Insurance Escrow Funds remaining after the Debt has been paid in full shall be remitted (i) if the Seventh Mezzanine Loan is outstanding, then to the Seventh Mezzanine Lender or (ii) if the Seventh Mezzanine Loan is no longer outstanding, then to the Eighth Mezzanine Lender in accordance with the Seventh Mezzanine Loan Agreement or (iii) if the Seventh Mezzanine Loan and the Eighth Mezzanine Loan are no longer outstanding, then to the Ninth Mezzanine Lender in accordance with the Eighth Mezzanine Loan Agreement or (v) if the Seventh Mezzanine

Loan, the Eighth Mezzanine Loan and the Ninth Mezzanine Loan are no longer outstanding then to Borrower or, at Borrower's election, shall be credited against the Debt simultaneously with the satisfaction of the balance of the Loan.

### **Section 7.3. FF&E Reserve Account.**

**7.3.1 FF&E Reserve Fund.** (a) Unless Borrower shall have delivered to Lender a Guaranty (FF&E), Borrower shall pay to Lender (or Servicer, as directed by Lender) on each Payment Date an amount equal to (i) one-twelfth of three percent (3%) of the amount of all Revenues for the full calendar year prior to the first (1st) day of the month in which such Payment Date occurs, less (ii) any amount spent during the previous calendar month by Borrower or Operating Company on behalf of Borrower in accordance with the Operating Lease on account of FF&E (other than from the FF&E Reserve Fund, it being understood that amounts expended on account of FF&E from the FF&E Reserve Fund shall not be included in any deductions required pursuant to the preceding subclause (i) and that any FF&E that is purchased through disbursements from the FF&E Reserve Fund may not be subsequently financed by Borrower or Operating Company). Notwithstanding anything to the contrary contained herein, in no event shall Borrower be required to maintain in the FF&E Reserve Account an amount in excess of the aggregate amount of all FF&E deposits required to be made in the preceding calendar year (as determined, for purposes of this sentence, utilizing the monthly formula set forth in the preceding sentence). In addition, notwithstanding anything to the contrary contained herein, for purposes of determining the amount of any required FF&E Reserve Fund deposits (and for purposes of calculating such amount, monthly, based on the formula set forth in the first sentence of this Section 7.3.1), Revenues shall include Revenue from the Hotel Component and the Casino Component but shall not include non-Hotel or Casino related Revenues (e.g., Rents from retail tenants).

(b) Amounts deposited by Borrower as described in this Section 7.3.1 shall hereinafter be referred to as the "**FF&E Reserve Fund**" and the account in which such amounts are held shall hereinafter be referred to as the "**FF&E Reserve Account**".

**7.3.2 Disbursements from FF&E Reserve Account.** (a) All disbursements from the FF&E Reserve Account shall be made solely for the purpose of reimbursing Borrower (or Operating Company for FF&E bought on behalf and in the name of Borrower in accordance with the Operating Lease, as directed by Borrower) for its costs and expenses incurred, or for paying costs to be incurred, in connection with the repair, replacement and/or upgrade of FF&E at the Properties. Provided no Event of Default shall have occurred and be continuing, Lender shall, within ten (10) days following request by Borrower, make disbursements from the FF&E Reserve Fund no more frequently than once in any thirty (30) day period, in amounts no less than \$10,000 per disbursement (or a lesser amount if the total amount in the FF&E Reserve Account is less than \$10,000, in which case only one disbursement of the amount remaining in the account shall be made), and upon delivery by Borrower (or Operating Company) of Lender's standard form of draw request accompanied by copies of invoices for the amounts requested and, if required by Lender for requests in excess of \$50,000 for a single item, receipts and releases from all parties furnishing materials and/or services in connection with the requested payment.

(b) Disbursements may be made from the FF&E Reserve Account, at Borrower's election, directly to third parties (as directed by Borrower).

(c) In no event shall funds in the FF&E Reserve Account be utilized to pay (or reimburse any Person) for any Capital Expenditures or non-recurring work being performed at the Properties.

**7.3.3 Balance in the FF&E Reserve Account.** (a) The insufficiency of any balance in the FF&E Reserve Account shall not relieve Borrower from its obligation to fulfill all preservation and maintenance covenants in the Loan Documents.

**7.3.4 Waiver of FF&E Reserve.** Borrower shall be relieved of its obligation to make deposits of FF&E Reserve Fund under Section 7.3 above, provided that either (a)(i) Mortgage Borrower or Senior Mezzanine Borrower is required to and does make monthly deposits to a FF&E reserve account under the Mortgage Loan or Senior Mezzanine Loan, and (ii) Lender receives evidence acceptable to it of the making of such deposits or (b) an FF&E Guaranty is provided to Mortgage Lender.

**7.3.5 FF&E Reserve Funds After Debt Paid.** Any FF&E Reserve Funds remaining after the Debt has been paid in full shall be remitted (i) if the Seventh Mezzanine Loan is outstanding, then to the Seventh Mezzanine Lender or (ii) if the Seventh Mezzanine Loan is no longer outstanding, then to the Eighth Mezzanine Lender in accordance with the Seventh Mezzanine Loan Agreement or (iii) if the Seventh Mezzanine Loan and the Eighth Mezzanine Loan are no longer outstanding, then to the Ninth Mezzanine Lender in accordance with the Eighth Mezzanine Loan Agreement or (iv) if the Seventh Mezzanine Loan, the Eighth Mezzanine Loan and the Ninth Mezzanine Loan are no longer outstanding then to Borrower or, at Borrower's election, shall be credited against the Debt simultaneously with the satisfaction of the balance of the Loan.

#### **Section 7.4. Ground Rent Funds.**

**7.4.1 Deposits of Ground Rent Funds.** If (and for so long as) a Trigger Event shall have occurred and shall not have been cured by a Trigger Event Cure, Borrower shall deposit with Lender (or Servicer, as directed by Lender), at least ten (10) Business Days prior to each Payment Date during such period, an amount equal to the Ground Rent that will be payable under the Ground Lease for the month in which such Payment Date occurs. Amounts deposited by Borrower as described in this Section 7.4.1 shall hereinafter be referred to as the "**Ground Rent Reserve Fund**" and the account in which such amounts are held shall hereinafter be referred to as the "**Ground Rent Reserve Account**". Such deposit may be increased by Lender in the amount Lender deems is necessary in its reasonable discretion based on any increases in the Ground Rent.

**7.4.2 Release of Ground Rent Funds.** Provided no Event of Default has occurred and is continuing, Lender shall apply the Ground Rent Reserve Funds to payments of Ground Rent. In making any payment relating to Ground Rent, Lender may do so according to any bill or statement given by the Ground Lessor without inquiry into the accuracy of such bill or statement or into the validity of any rent, additional rent or other charge thereof. If the amount of

the Ground Rent Reserve Funds shall exceed the amounts due for Ground Rent, Lender shall return any excess to Borrower.

**7.4.3 Waiver of Ground Rent Reserve.** Borrower shall be relieved of its obligation to make deposits of Ground Rent Reserve Funds under Section 7.4 above, provided that (a) Mortgage Borrower or Senior Mezzanine Borrower is required to and does make monthly deposits to a ground rent reserve account under the Mortgage Loan or Senior Mezzanine Loan, and (b) Lender receives evidence acceptable to it of the making of such deposits and of the payment of all Ground Rent.

**7.4.4 Ground Rent Reserve Funds After Debt Paid.** Any Ground Rent Reserve Funds remaining after the Debt has been paid in full shall be remitted (i) if the Seventh Mezzanine Loan is outstanding, then to the Seventh Mezzanine Lender or (ii) if the Seventh Mezzanine Loan is no longer outstanding, then to the Eighth Mezzanine Lender in accordance with the Seventh Mezzanine Loan Agreement or (iii) if the Seventh Mezzanine Loan and the Eighth Mezzanine Loan are no longer outstanding, then to the Ninth Mezzanine Lender in accordance with the Eighth Mezzanine Loan Agreement or (iv) if the Seventh Mezzanine Loan, the Eighth Mezzanine Loan and the Ninth Mezzanine Loan are no longer outstanding then to Borrower or, at Borrower's election, shall be credited against the Debt simultaneously with the satisfaction of the balance of the Loan.

**Section 7.5. Reserve Funds, Generally.** (a) Borrower grants to Lender a first-priority perfected security interest in each of the Reserve Funds and any and all monies now or hereafter deposited in each Reserve Fund as additional security for payment of the Debt. Until expended or applied in accordance herewith, the Reserve Funds shall constitute additional security for the Debt. Upon the occurrence and during the continuance of an Event of Default, Lender may, in addition to any and all other rights and remedies available to Lender, apply any sums then present in any or all of the Reserve Funds to the payment of the Debt in any order in its sole discretion. The Reserve Funds shall not constitute trust funds and may be commingled with other monies held by Lender.

(b) Borrower shall not, without obtaining the prior consent of Lender, further pledge, assign or grant any security interest in any Reserve Fund or the monies deposited therein or permit any lien or encumbrance to attach thereto, or any levy to be made thereon, or any UCC-1 Financing Statements, except those naming Lender as the secured party, to be filed with respect thereto.

(c) The Reserve Funds shall be held by Lender (or Servicer) and may be invested at Borrower's election and direction in Permitted Investments routinely offered by the Servicer of the Securitization for investment by Borrower. All interest or other earnings on a Reserve Fund shall be added to and become a part of such Reserve Fund for the benefit of Borrower and shall be disbursed in the same manner as other monies deposited in such Reserve Fund. Borrower shall have the right to direct Lender (or Servicer) to invest sums on deposit in the Eligible Account in Permitted Investments provided (a) such investments are permitted by applicable federal, state and local rules, regulations and laws, (b) the maturity date of the Permitted Investment is not later than the date on which the applicable Reserve Funds are required for payment of an obligation for which such Reserve Fund was created, and (c) no

Event of Default shall have occurred and be continuing. Borrower shall be responsible for payment of any federal, state or local income or other tax applicable to the interest or income earned on the Reserve Funds. No other investments of the sums on deposit in the Reserve Funds shall be permitted except as set forth in this Section 7.5. Borrower shall bear all reasonable costs associated with the investment of the sums in the account in Permitted Investments. Such costs shall be deducted from the income or earnings on such investment, if any, and to the extent such income or earnings shall not be sufficient to pay such costs, such costs shall be paid by Borrower promptly on demand by Lender. Lender shall have no liability for the rate of return earned or losses incurred on the investment of the sums in Permitted Investments.

(d) Borrower shall indemnify Lender and hold Lender harmless from and against any and all actions, suits, claims, demands, liabilities, losses, damages, obligations and costs and expenses (including litigation costs and reasonable attorneys fees and expenses) arising from or in any way connected with the Reserve Funds or the performance of the obligations for which the Reserve Funds were established. Borrower shall assign to Lender all rights and claims Borrower may have against all Persons supplying labor, materials or other services which are to be paid from or secured by the Reserve Funds; provided, however, that Lender may not pursue any such right or claim unless an Event of Default has occurred and remains uncured.

**Section 7.6. Transfer of Reserve Funds Under Mortgage Loan and Senior Mezzanine Loan.** If Mortgage Lender or Senior Mezzanine Lender waives any reserves or escrow accounts required in accordance with the terms of the Mortgage Loan Agreement or Senior Mezzanine Loan Agreement which reserves or escrow accounts are also required in accordance with the terms of this Article VII, or if the Mortgage Loan or Senior Mezzanine Loan is refinanced or paid off in full (without a prepayment of the Loan) and Reserve Funds that are required hereunder are not required under the new mortgage loan, if any, then Borrower shall cause any amounts that would have been deposited into any reserves or escrow accounts in accordance with the terms of the Mortgage Loan Agreement or Senior Mezzanine Loan Agreement to be paid to and deposited with Lender in accordance with the terms of this Article VII (and Borrower shall enter into lockbox and cash management agreements for the benefit of Lender in form and substance acceptable to Lender).

## VIII. DEFAULTS

**Section 8.1. Event of Default.** (a) Each of the following events shall constitute an event of default hereunder (an “**Event of Default**”):

- (i) if (A) any portion of the Debt is not paid in full on the Maturity Date, (B) the Debt Service is not paid in full on or before the related Payment Date, or (C) any other portion of the Debt is not paid within five (5) days of when due;
- (ii) if any of the Taxes or Other Charges are not paid (with respect to each Individual Property) prior to Delinquency;
- (iii) if the Policies (with respect to each Individual Property) are not kept in full force and effect, or if certified copies of the Policies (for each Individual Property) are not delivered to Lender upon request (or certificates thereof, if a Policy shall be

renewed and certified copies of the Policy are not immediately available upon such renewal (Borrower agreeing in such instance to provide copies of the Policies to Lender promptly thereafter));

(iv) if Borrower Transfers or otherwise encumbers any portion of the Properties or the Collateral or Senior Mezzanine Collateral, or there shall otherwise occur a Transfer, without Lender's prior consent in violation of the provisions of this Agreement, the Pledge Agreement or any other Loan Document or any Transfer is made in violation of the provisions of Section 5.2.10;

(v) if any representation or warranty made by Borrower or any other Loan Party herein or in any other Loan Document, or in any report, certificate, financial statement or other instrument, agreement or document furnished to Lender shall have been false or misleading in any material respect as of the date the representation or warranty was made (and, with respect to any such breach which is not the subject of any other subsection of this Section 8.1 and which is capable of being cured, Borrower fails to remedy such condition within ten (10) days following notice to Borrower from Lender, in the case of any such breach which can be cured by the payment of a sum of money, or within thirty (30) days following notice from Lender in the case of any other such breach);

(vi) if Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Principal, Holdings, Operating Company or any Guarantor shall make an assignment for the benefit of creditors;

(vii) if a receiver, liquidator or trustee shall be appointed for Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Principal, Holdings, Operating Company or Guarantor, or if Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Principal, Holdings, Operating Company or Guarantor shall be adjudicated a bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to federal bankruptcy law, or any similar federal or state law, shall be filed by or against, consented to, or acquiesced in by, Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Principal, Holdings, Operating Company or Guarantor, or if any proceeding for the dissolution or liquidation of Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Principal, Holdings, Operating Company or Guarantor shall be instituted; provided, however, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Principal, Holdings, Operating Company or Guarantor, upon the same not being discharged, stayed or dismissed within ninety (90) days;

(viii) if Borrower attempts to assign its rights under this Agreement or any of the other Loan Documents or any interest herein or therein in contravention of the Loan Documents;

(ix) if Borrower breaches any of its respective negative covenants contained in Section 5.2 or any covenant contained in Section 4.1.30 or Section 5.1.11 hereof (and, with respect to any such breach of any covenant set forth in Section 5.1.11 which is not

the subject of any other subsection of this Section 8.1, Borrower fails to remedy such condition within ten (10) days after notice to Borrower from Lender, in the case of any such Default under Section 5.1.11 which can be cured by the payment of a sum of money, or for thirty (30) days after notice from Lender in the case of any other such Default under Section 5.1.11);

(x) with respect to any term, covenant or provision set forth herein which specifically contains a notice requirement or grace period, if Borrower shall be in default under such term, covenant or condition after the giving of such notice or the expiration of such grace period;

(xi) if any of the assumptions contained in the Insolvency Opinion delivered to Lender in connection with the Loan, or in the Additional Insolvency Opinion delivered subsequent to the closing of the Loan, is or shall become untrue in any material respect; or if any of the assumptions contained in the True Lease Opinion delivered to Lender in connection with the Loan, or in the Additional True Lease Opinion delivered subsequent to the closing of the Loan, is or shall become untrue in any material respect;

(xii) if Mortgage Borrower, Operating Company or Guarantor (Operating Lease) is in default of any of its material obligations under the Operating Lease (or under another lease and/or management agreement in substitution for the Operating Lease in accordance herewith) or under the Operating Lease Guaranty (or under another operating lease guaranty in substitution for the Operating Lease Guaranty in accordance herewith) beyond any applicable notice and cure periods contained therein; or if any Operating Lease (or such other lease and/or management agreement) or any Operating Lease Guaranty (or such other operating lease guaranty) shall be surrendered or any Operating Lease or any Operating Lease Guaranty shall be terminated or canceled for any reason or under any circumstances whatsoever, except with the consent of Lender; or if any of the terms, covenants or conditions of the Operating Lease (or such other lease and/or management agreement) or the Operating Lease Guaranty (or such other operating lease guaranty) shall in any manner be modified, changed, supplemented, altered, restated or amended without the consent of Lender except as may otherwise expressly permitted in this Agreement;

(xiii) if any Affiliate of Borrower that is or becomes a party to the Windstorm Insurance Intercreditor Agreement is in default of any of its material obligations under the Windstorm Insurance Intercreditor Agreement beyond any applicable notice and cure periods contained therein; or if the Windstorm Insurance Intercreditor Agreement shall be surrendered, terminated or canceled for any reason or under any circumstances whatsoever, except with the consent of Lender; or if any of the terms, covenants or conditions of the Windstorm Insurance Intercreditor Agreement shall in any manner be modified, changed, supplemented, altered, restated or amended without the consent of Lender;

(xiv) if Borrower, Senior Mezzanine Borrower or Mortgage Borrower fails to comply with the covenants as to Prescribed Laws set forth in Section 5.1.1 hereof;

(xv) if (A) subject to any notice and cure periods contained in the applicable Ground Lease, Mortgage Borrower or Ground Lease Subsidiary, as applicable, shall fail in the payment of any rent, additional rent or other charge mentioned in or made payable by such Ground Lease as and when such rent or other charge is payable (unless waived by the landlord under such Ground Lease), (B) subject to any notice and cure periods contained in the applicable Ground Lease, there shall occur any default by Mortgage Borrower or Ground Lease Subsidiary, as applicable, as tenant under such Ground Lease, in the observance or performance of any term, covenant or condition of the Ground Lease on the part of Mortgage Borrower or Ground Lease Subsidiary, as applicable, to be observed or performed (unless waived by the landlord under the Ground Lease) (other than any such default being contested by Borrower in good faith by appropriate proceedings, provided that (i) no Event of Default has occurred and remains uncured, (ii) such proceeding shall be conducted in accordance with all applicable statutes, laws and ordinances, (iii) in Lender's reasonable determination, the Ground Lease is not in imminent danger of being forfeited, terminated, cancelled or lost and the Operating Company's use and operation of the ground leased premises in connection with the operation of Harrah's Lake Tahoe", "Harvey's Lake Tahoe" or "Bill's Lake Tahoe" is not in imminent danger of being denied, forfeited, terminated, cancelled or lost and (iv) Borrower shall furnish such security as may be reasonably requested by Lender), (C) any one or more of the events referred to in any Ground Lease shall occur which would cause the Ground Lease to terminate without notice or action by the landlord under the Ground Lease or which would entitle the landlord to terminate the Ground Lease and the term thereof by giving notice to Mortgage Borrower or Ground Lease Subsidiary, as applicable, as tenant thereunder (unless waived by the landlord under the Ground Lease), (D) the leasehold estate created by any Ground Lease shall be surrendered or the Ground Lease shall be terminated or canceled for any reason or under any circumstances whatsoever unless Mortgage Borrower or Ground Lease Subsidiary, as applicable, acquires the fee interest and mortgages same to Lender (unless Mortgage Borrower or Ground Lease Subsidiary, as applicable, acquires the fee interest, with Lender's prior reasonable approval, and mortgages same to Mortgage Lender) or (E) if any of the terms, covenants or conditions of any Ground Lease shall in any manner be modified, changed, supplemented, altered, or amended without the consent of Lender except as otherwise permitted by this Agreement;

(xvi) any Gaming License shall be refused, suspended, revoked, modified in a materially adverse manner or canceled or allowed to lapse or any proceeding is commenced by any Governmental Authority for the purpose of suspending, revoking or canceling any Gaming License in any materially adverse respect, or any Governmental Authority shall have appointed a conservator, supervisor or trustee to or for any of the Casino Components and, in each case of the foregoing, such action could reasonably be expected to (A) have an Individual Material Adverse Effect, (B) materially and adversely effect the continued operation of the Casino Components in the usual course of business and in substantially the same manner and to at least the same standard as was maintained prior to such action, or (C) result in any material decrease in the then expected cash flow and revenues to be derived from the Casino Components;

(xvii) if Borrower shall continue to be in Default under any of the other terms, covenants or conditions of this Agreement not specified in subsections (i) to (xv) above, for ten (10) days after notice to Borrower from Lender, in the case of any Default which can be cured by the payment of a sum of money, or for thirty (30) days after notice from Lender in the case of any other Default; provided, however, that if such non-monetary Default is susceptible of cure but cannot reasonably be cured within such thirty (30) day period and provided further that Borrower shall have commenced to cure such Default within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for such time as is reasonably necessary for Borrower in the exercise of due diligence to cure such Default, such additional period not to exceed one hundred twenty (120) days;

(xviii) if there shall be a default under any of the other Loan Documents beyond any applicable cure periods contained in such documents, whether as to Borrower, Mortgage Borrower, Senior Mezzanine Borrower, the Collateral or any Individual Property, or if any other such event shall occur or condition shall exist, if the effect of such event or condition is to accelerate the maturity of any portion of the Debt or to permit Lender to accelerate the maturity of all or any portion of the Debt;

(xix) if the Liens created pursuant to any Loan Document shall cease to be a fully protected enforceable first priority security interest in the Collateral, or any portion of the Collateral is Transferred without Lender's prior written consent except as permitted hereunder; or

(xx) if a Mortgage Loan Event of Default or Senior Mezzanine Loan Event of Default shall occur.

(b) Upon the occurrence of an Event of Default (other than an Event of Default described in clauses (vi) or (vii) above) and at any time thereafter, in addition to any other rights or remedies available to it pursuant to this Agreement and the other Loan Documents or at law or in equity, Lender may take such action, without notice or demand, that Lender deems advisable to protect and enforce its rights against Borrower and in and to all or any of the Collateral, including, without limitation, declaring the Debt to be immediately due and payable, and Lender may enforce or avail itself of any or all rights or remedies provided in the Loan Documents and may exercise all the rights and remedies of a secured party under the Uniform Commercial Code, as adopted and enacted by the State or States where any of the Collateral is located against Borrower and any or all of the Collateral, including, without limitation, all rights or remedies available at law or in equity; and upon any Event of Default described in clauses (vi) or (vii) above, the Debt and all other obligations of Borrower hereunder and under the other Loan Documents shall immediately and automatically become due and payable, without notice or demand, and Borrower hereby expressly waives any such notice or demand, anything contained herein or in any other Loan Document to the contrary notwithstanding.

**Section 8.2. Remedies.** (a) Upon the occurrence of an Event of Default, but in compliance with applicable Gaming Laws, all or any one or more of the rights, powers, privileges and other remedies available to Lender against Borrower under this Agreement or any of the other Loan Documents executed and delivered by, or applicable to, Borrower or at law or

in equity may be exercised by Lender at any time and from time to time, whether or not all or any of the Debt shall be declared due and payable, and whether or not Lender shall have commenced any foreclosure proceeding or other action for the enforcement of its rights and remedies under any of the Loan Documents with respect to all or any of the Collateral. Any such actions taken by Lender shall be cumulative and concurrent and may be pursued independently, singularly, successively, together or otherwise, at such time and in such order as Lender may determine in its sole discretion, to the fullest extent permitted by law, without impairing or otherwise affecting the other rights and remedies of Lender permitted by law, equity or contract or as set forth herein or in the other Loan Documents. Without limiting the generality of the foregoing, Borrower agrees that if an Event of Default is continuing (i) Lender is not subject to any "one action" or "election of remedies" law or rule, and (ii) all liens and other rights, remedies or privileges provided to Lender shall remain in full force and effect until Lender has exhausted all of its remedies against the Collateral and the Collateral has been foreclosed upon, sold and/or otherwise realized upon in satisfaction of the Debt or the Debt has been paid in full.

(b) With respect to Borrower and the Collateral, nothing contained herein or in any other Loan Document shall be construed as requiring Lender to resort to any portion of the Collateral for the satisfaction of any of the Debt in preference or priority to any other portion of the Collateral, and Lender may seek satisfaction out of all of the Collateral or any part thereof, in its absolute discretion in respect of the Debt. In addition, Lender shall have the right from time to time to partially foreclose upon the Collateral in any manner and for any amounts secured by the Pledge Agreement then due and payable as determined by Lender in its sole discretion including, without limitation, the following circumstances: (i) in the event Borrower defaults beyond any applicable grace period in the payment of one or more scheduled payments of principal and interest, Lender may foreclose upon the Collateral to recover such delinquent payments, or (ii) in the event Lender elects to accelerate less than the entire outstanding principal balance of the Loan, Lender may foreclose upon the Collateral to recover so much of the principal balance of the Loan as Lender may accelerate and such other sums secured by the Collateral as Lender may elect. Notwithstanding one or more partial foreclosures, the Collateral shall remain subject to the Pledge Agreement and the other Loan Documents to secure payment of sums secured by the Pledge Agreement and other Loan Documents and not previously recovered.

(c) Upon the occurrence and during the continuance of an Event of Default, Lender shall have the right from time to time to sever the Note and the other Loan Documents into one or more separate notes, pledges and other security documents (the "**Severed Loan Documents**") in such denominations as Lender shall determine in its sole discretion for purposes of evidencing and enforcing its rights and remedies provided hereunder. Borrower shall execute and deliver to Lender from time to time, promptly after the request of Lender, a severance agreement and such other documents as Lender shall request in order to effect the severance described in the preceding sentence, all in form and substance reasonably satisfactory to Lender. Borrower hereby absolutely and irrevocably appoints Lender as its true and lawful attorney, coupled with an interest, in its name and stead to make and execute all documents necessary or desirable to effect the aforesaid severance, Borrower ratifying all that its said attorney shall do by virtue thereof; provided, however, Lender shall not make or execute any such documents under such power until three (3) days after notice has been given to Borrower by Lender of Lender's intent to exercise its rights under such power. Borrower shall be obligated to pay any costs or

expenses incurred in connection with the preparation, execution, recording or filing of the Severed Loan Documents. The Severed Loan Documents shall not contain any representations, warranties or covenants not contained in the Loan Documents and any such representations and warranties contained in the Severed Loan Documents will be given by Borrower only as of the Closing Date. The Severed Loan Documents shall (a) not increase the aggregate stated principal amount of the Loan, (b) provide that the weighted average spread of the Loan on the date of such severance shall equal the weighted average spread which was applicable to the Loan immediately prior to such severance (Borrower acknowledging that such Severed Loan Document may, in connection with the application of principal to the amounts evidenced by such Severed Loan Documents, subsequently cause the weighted average spread of such new notes or modified notes to change), (c) not adversely affect the overall economics to Borrower of the Loan, taken as a whole, or (d) expose Borrower to any additional costs or increased risk of any liability (beyond that or greater than that existing in the Loan Documents in effect on the date hereof).

(d) The rights, powers and remedies of Lender under this Agreement shall be cumulative and not exclusive of any other right, power or remedy which Lender may have against Borrower pursuant to this Agreement or the other Loan Documents, or existing at law or in equity or otherwise. Lender's rights, powers and remedies may be pursued singularly, concurrently or otherwise, at such time and in such order as Lender may determine in Lender's sole discretion. No delay or omission to exercise any remedy, right or power accruing upon an Event of Default shall impair any such remedy, right or power or shall be construed as a waiver thereof, but any such remedy, right or power may be exercised from time to time and as often as may be deemed expedient. A waiver of one Default or Event of Default with respect to Borrower shall not be construed to be a waiver of any subsequent Default or Event of Default by Borrower or to impair any remedy, right or power consequent thereon.

(e) Any amounts recovered from the Collateral after an Event of Default may be applied by Lender toward the payment of any interest and/or principal of the Loan and/or any other amounts due under the Loan Documents in such order, priority and proportions as Lender in its sole discretion shall determine.

(f) Upon the occurrence and during the continuance of an Event of Default, Lender may, but without any obligation to do so and without notice to or demand on Borrower and without releasing Borrower from any obligation hereunder or being deemed to have cured any Event of Default hereunder, make, do or perform any obligation of Borrower hereunder in such manner and to such extent as Lender may deem necessary. Borrower shall cause Mortgage Borrower to permit Lender to enter upon any Individual Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in any Individual Property for such purposes, and the cost and expense thereof (including reasonable attorneys' fees to the extent permitted by law), with interest as provided in this Section 8.2, shall constitute a portion of the Debt and shall be due and payable to Lender upon demand. All such costs and expenses incurred by Lender in remedying such Event of Default or such failed payment or act or in appearing in, defending, or bringing any action or proceeding shall bear interest at the Default Rate, for the period after such cost or expense was incurred into the date of payment to Lender. All such costs and expenses incurred by Lender together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and be secured by the liens,

claims and security interests provided to Lender under the Loan Documents and shall be immediately due and payable upon demand by Lender therefore. Upon the occurrence and during the continuance of a Senior Mezzanine Loan Event of Default, Lender may, but without any obligation to do so and without notice to or demand on Borrower or Senior Mezzanine Borrower and without releasing Senior Mezzanine Borrower from any obligation under the Senior Mezzanine Loan Documents or being deemed to have cured any Senior Mezzanine Loan Event of Default, make, do or perform any obligation of Senior Mezzanine Borrower under Senior Mezzanine Loan Documents in such manner and to such extent as Lender may deem necessary. All such costs and expenses incurred by Lender in remedying such Senior Mezzanine Loan Event of Default or such failed payment or act shall bear interest at the Default Rate, for the period after such cost or expense was incurred into the date of payment to Lender. All such costs and expenses incurred by Lender together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and be secured by the liens, claims and security interests provided to Lender under the Loan Documents and shall be immediately due and payable upon demand by Lender therefor. Upon the occurrence and during the continuance of a Mortgage Loan Event of Default, Lender may, but without any obligation to do so and without notice to or demand on Borrower or Mortgage Borrower and without releasing Mortgage Borrower from any obligation under the Mortgage Loan Documents or being deemed to have cured any Mortgage Loan Event of Default, make, do or perform any obligation of Mortgage Borrower under Mortgage Loan Documents in such manner and to such extent as Lender may deem necessary. All such costs and expenses incurred by Lender in remedying such Mortgage Loan Event of Default or such failed payment or act shall bear interest at the Default Rate, for the period after such cost or expense was incurred into the date of payment to Lender. All such costs and expenses incurred by Lender together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and be secured by the liens, claims and security interests provided to Lender under the Loan Documents and shall be immediately due and payable upon demand by Lender therefor.

(g) For the purpose of carrying out the provisions and exercising the rights, powers and privileges granted in this Section 8.2, Borrower hereby irrevocably constitutes and appoints the Lender its true and lawful attorney-in-fact to execute, acknowledge and deliver any instruments and do and perform any acts such as are referred to in this subsection in the name and on behalf of Borrower upon the occurrence and during the continuance of an Event of Default. This power of attorney is a power coupled with an interest and cannot be revoked.

**Section 8.3. Intentionally Omitted.**

**Section 8.4. Costs of Collection.** In the event that after an Event of Default and during the continuance thereof: (a) the Note or any of the Loan Documents is placed in the hands of an attorney for collection or enforcement or is collected or enforced through any legal proceeding; (b) an attorney is retained to represent Lender in any bankruptcy, reorganization, receivership, or other proceedings affecting creditors' rights and involving a claim under the Note or any of the Loan Documents or (c) an attorney is retained to protect or enforce the lien or any of the terms of this Agreement, the Pledge Agreement or any of the Loan Documents, then, in any such instance, Borrower shall pay to Lender all reasonable attorneys' fees, costs and expenses actually incurred in connection therewith, including costs of appeal, together with interest on any judgment obtained by Lender at the Default Rate.

## IX. SPECIAL PROVISIONS

**Section 9.1. Sale of Notes and Securitization.** Borrower acknowledges and agrees that the Lender may sell all or any portion of the Loan and the Loan Documents, or issue one or more participations therein, or consummate one or more private or public securitizations of rated single- or multi-class securities (the “**Securities**”) secured by or evidencing ownership interests in all or any portion of the Loan and the Loan Documents or a pool of assets that include the Loan and the Loan Documents (such sales, participations and/or securitizations, collectively, a “**Securitization**”). At the request of Lender, and to the extent not already required to be provided by Borrower under this Agreement, Borrower shall use reasonable efforts to provide information not in the possession of Lender or which may be reasonably required by Lender in order to satisfy the market standards to which Lender customarily adheres or which may be reasonably required by prospective investors and/or the Rating Agencies in connection with any such Securitization including, without limitation, to:

(a) provide or cause Mortgage Borrower and Senior Mezzanine Borrower to provide additional and/or updated Provided Information, together with appropriate verification and/or consents related to the Provided Information through letters of auditors or opinions of counsel of independent attorneys reasonably acceptable to Lender and the Rating Agencies;

(b) cooperate in good faith in the preparation of descriptive materials for presentations to any or all of the Rating Agencies, and work with, and if requested, supervise, third-party service providers engaged by Borrower, Holdings and their respective affiliates to obtain, collect, and deliver information requested or required by Lender or the Rating Agencies;

(c) deliver, if required or requested by any Rating Agency, (i) updated opinions of counsel as to non-consolidation, due execution and enforceability with respect to the Properties, Borrower, Mortgage Borrower, Senior Mezzanine Borrower, the Collateral, the Senior Mezzanine Collateral, Principal, Holdings and their respective Affiliates and the Loan Documents, and (ii) revised organizational documents for Borrower, which counsel opinions and organizational documents shall be reasonably satisfactory to Lender and the Rating Agencies;

(d) if required by any Rating Agency, use commercially reasonable efforts to deliver such additional tenant estoppel letters, subordination agreements or other agreements from parties to agreements that affect any of the Properties, which estoppel letters, subordination agreements or other agreements shall be reasonably satisfactory to Lender and the Rating Agencies;

(e) execute such amendments to the Loan Documents as may be requested by Lender or the Rating Agencies to effect the Securitization and/or deliver one or more new component notes to replace the original note or modify the original note to reflect multiple components of the Loan such that the pricing and marketability of the Securities and the size of each class of Securities and the rating assigned to each such class by the Rating Agencies shall provide the most favorable rating levels and achieve the optimum rating levels for the Loan, provided that, (i) the aggregate stated principal amount of the notes, following such amendments or deliver of new or component notes, shall equal the aggregate stated principal amount of the Loan immediately prior thereto, (ii) the weighted average spread of the Loan on the date of such

amendment or delivery of new or component notes shall equal the weighted average spread which was applicable to the Loan immediately prior to such adjustment (Borrower acknowledging that such new notes or modified notes may, in connection with the application of principal to such new notes or modified note following the occurrence of an Event of Default, but not otherwise, subsequently cause the weighted average spread of such new notes or modified notes to change and (iii) the provisions of Section 2.1.5 otherwise shall apply to any such amendments and delivery of new or component notes (such provisions being incorporated herein by this reference);

(f) if requested by Lender, review any information regarding any of the Properties, Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Principal, the Collateral, the Senior Mezzanine Collateral, Holdings, the Operating Company and the Loan which is contained in a preliminary or final private placement memorandum, prospectus, prospectus supplement (including any amendment or supplement to either thereof), or other disclosure document to be used by Lender or any affiliate thereof; and

(g) supply to Lender such documentation, financial statements and reports in form and substance required in order to comply with any applicable securities laws (to the extent in Borrower's possession, or in the possession of Borrower's advisors, agents or employees), including, without limitation, if applicable, information necessary to comply with any applicable reporting or information requirements under Regulation D under the Securities Act of 1933 or Regulation S under the Securities Act of 1933.

Lender and Borrower each shall pay their respective costs and expenses incurred in connection with the foregoing, including, without limitation, legal fees in connection with any of the foregoing matters; except that all costs and expenses of Lender and Borrower associated with any restructuring of the Loan requested by Lender, including under Sections 2.1.5, 2.1.6 and 2.1.7, shall be paid solely by Lender.

**Section 9.2. Securitization Indemnification.** (a) Borrower understands that certain of the Provided Information may be included in Disclosure Documents in connection with the Securitization and may also be included in filings with the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended (the "**Securities Act**"), or the Securities and Exchange Act of 1934, as amended (the "**Exchange Act**"), or provided or made available to investors or prospective investors in the Securities, the Rating Agencies, and service providers relating to the Securitization. In the event that the Disclosure Document is required to be revised prior to the sale of all Securities, Borrower will cooperate with the holder of the Note in updating the Disclosure Document by providing all current information necessary to keep the Disclosure Document accurate and complete in all material respects to the extent in Borrower's possession.

(b) Borrower agrees to provide, in connection with the Securitization, an indemnification agreement (i) certifying that (A) Borrower has carefully examined the Disclosure Documents, including, without limitation, the sections entitled "Risk Factors," "Special Considerations," "Description of the Collateral," "Description of the Mezzanine Loans," "The Operating Company," "The Borrower" and "Certain Legal Aspects of the Mezzanine Loans," and (B) such sections and such other information in the Disclosure

Documents (to the extent such information relates to or includes any Provided Information or any information regarding the Properties, Borrower, Mortgage Borrower, the Collateral, the Senior Mezzanine Collateral and/or Operating Company) (collectively with the Provided Information, the “**Covered Disclosure Information**”) do not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, (ii) indemnifying Lender, each Noteholder, JPM (whether or not it is the Lender), any Affiliate of JPM or a Noteholder that has filed any registration statement relating to the Securitization or has acted as the sponsor or depositor in connection with the Securitization, any Affiliate of JPM or a Noteholder that acts as an underwriter, placement agent or initial purchaser of Securities issued in the Securitization, any other co-underwriters, co-placement agents or co-initial purchasers of Securities issued in the Securitization, and each of their respective officers, directors, partners, employees, representatives, agents and Affiliates and each Person or entity who controls any such Person within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act (collectively, the “**Indemnified Persons**”), for any losses, claims, damages, liabilities, costs or expenses (including, without limitation, legal fees and expenses for enforcement of these obligations (collectively, the “**Liabilities**”)) to which any such Indemnified Person may become subject insofar as the Liabilities arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in the Covered Disclosure Information or arise out of or are based upon the omission or alleged omission to state in the Covered Disclosure Information a material fact required to be stated therein or necessary in order to make the statements in the Covered Disclosure Information, in light of the circumstances under which they were made, not misleading and (iii) agreeing to reimburse each Indemnified Person for any legal or other expenses incurred by such Indemnified Person, as they are incurred, in connection with investigating or defending the Liabilities provided, however, that Borrower shall have liability with respect to Liabilities arising out of or based upon the Covered Disclosure Information only to the extent that such Liabilities arise out of or are based upon any such untrue statement or omission made in the Covered Disclosure Information in reliance upon and in conformity with information furnished to Lender or such Noteholder by or on behalf of Borrower in connection with the preparation of the Disclosure Documents or in connection with the underwriting or the closing of the Loan (including without limitation financial statements of Borrower and operating statements and rent rolls with respect to the Properties), and in no event shall Borrower be liable for Liabilities arising from information contained in a Disclosure Document that was not provided to Borrower for comment at least five (5) Business Days prior to its dissemination or on which Borrower provided comments to Lender in writing and Lender failed to incorporate such comments (assuming such comments were accurate). This indemnity agreement will be in addition to any liability which Borrower may otherwise have. Moreover, the indemnification provided for in clauses (ii) and (iii) above shall be effective whether or not an indemnification agreement described in clause (i) above is provided.

(c) In connection with filings under the Exchange Act (if any), Borrower agrees to indemnify (i) the Indemnified Persons for Liabilities to which any such Indemnified Person may become subject insofar as the Liabilities arise out of or are based upon any untrue statement or alleged untrue statement of any material fact in the Covered Disclosure Information, or the omission or alleged omission to state in the Covered Disclosure Information a material fact required to be stated therein or necessary in order to make the statements in the Covered Disclosure Information, in light of the circumstances under which they were made, not

misleading and (ii) reimburse each Indemnified Person for any legal or other expenses incurred by such Indemnified Persons, as they are incurred, in connection with defending or investigating the Liabilities.

(d) Promptly after receipt by an Indemnified Person of notice of any claim or the commencement of any action, the Indemnified Person shall, if a claim in respect thereof is to be made against Borrower, notify Borrower in writing of the claim or the commencement of that action; provided, however, that the failure to notify Borrower shall not relieve it from any liability which it may have under the indemnification provisions of this Section 9.2 except to the extent that it has been materially prejudiced by such failure and, provided, further, that the failure to notify Borrower shall not relieve it from any liability which it may have to an Indemnified Person otherwise than under the provisions of this Section 9.2. If any such claim or action shall be brought against an Indemnified Person, and it shall notify Borrower thereof, Borrower shall be entitled to participate therein and, to the extent that it wishes, assume the defense thereof with counsel reasonably satisfactory to the Indemnified Person. After notice from any Borrower to an Indemnified Person of its election to assume the defense of such claim or action, Borrower shall not be liable to the Indemnified Person for any legal or other expenses subsequently incurred by the Indemnified Person in connection with the defense thereof except as provided in the following sentence; provided, however, if the defendants in any such action include both Borrower, on the one hand, and one or more Indemnified Persons on the other hand, and an Indemnified Person shall have reasonably concluded that there are any legal defenses available to it and/or other Indemnified Persons that are different or in addition to those available to Borrower, the Indemnified Person or Persons shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on behalf of such Indemnified Person or Persons. The Indemnified Person shall instruct its counsel to maintain reasonably detailed billing records for fees and disbursements for which such Indemnified Person is seeking reimbursement hereunder and shall submit copies of such detailed billing records to substantiate that such counsel's fees and disbursements are solely related to the defense of a claim for which Borrower is required hereunder to indemnify such Indemnified Person. Borrower shall not be liable for the expenses of more than one (1) such separate counsel unless such Indemnified Person shall have reasonably concluded that there may be legal defenses available to it that are different from or additional to those available to another Indemnified Person.

(e) Without the prior consent of the Indemnified Person in question (which consent shall not be unreasonably withheld), Borrower shall not settle or compromise or consent to the entry of any judgment in any pending or threatened claim, action, suit or proceeding in respect of which indemnification may be sought hereunder (whether or not any Indemnified Person is an actual or potential party to such claim, action, suit or proceeding) unless Borrower shall have given such Indemnified Person reasonable prior notice thereof and shall have obtained an unconditional release of each Indemnified Person hereunder from all liability arising out of such claim, action, suit or proceedings. As long as Borrower has complied with its obligations to defend and indemnify hereunder, Borrower shall not be liable for any settlement made by any Indemnified Person without the consent of Borrower (which consent shall not be unreasonably withheld).

(f) Borrower agrees that if any indemnification or reimbursement sought pursuant to this Section 9.2 is finally judicially determined to be unavailable for any reason or is insufficient to hold any Indemnified Person harmless (with respect only to the Liabilities that are the subject of this Section 9.2), then Borrower, on the one hand, and such Indemnified Person, on the other hand, shall contribute to the Liabilities for which such indemnification or reimbursement is held unavailable or is insufficient: (x) in such proportion as is appropriate to reflect the relative benefits to Borrower, on the one hand, and such Indemnified Person, on the other hand, from the transactions to which such indemnification or reimbursement relates; or (y) if the allocation provided by clause (x) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (x) but also the relative faults of Borrower, on the one hand, and all Indemnified Persons, on the other hand, as well as any other equitable considerations. Notwithstanding the provisions of this Section 9.2, (A) no party found liable for a fraudulent misrepresentation shall be entitled to contribution from any other party who is not also found liable for such fraudulent misrepresentation, and (B) Borrower agrees that in no event shall the amount to be contributed by the Indemnified Persons collectively pursuant to this paragraph exceed the amount of the fees (by underwriting discount or otherwise) actually received by the Indemnified Persons in connection with the closing of the Loan or the Securitization.

(g) Borrower agrees that the indemnification, contribution and reimbursement obligations set forth in this Section 9.2 shall apply whether or not any Indemnified Person is a formal party to any lawsuits, claims or other proceedings. Borrower further agrees that the Indemnified Persons are intended third party beneficiaries under this Section 9.2.

(h) The liabilities and obligations of the Indemnified Persons and Borrower under this Section 9.2 shall survive the termination of this Agreement and the satisfaction and discharge of the Debt.

(i) Notwithstanding anything to the contrary contained herein, Borrower shall have no obligation to act as depositor with respect to the Loan or an issuer or registrant with respect to the Securities issued in any Securitization.

**Section 9.3. Exculpation.** (a) Subject to the qualifications below, Lender shall not enforce the liability and obligation of Borrower to perform and observe the obligations contained in the Note, this Agreement, the Pledge Agreement or the other Loan Documents by any action or proceeding wherein a money judgment shall be sought against Borrower, except that Lender may bring a foreclosure action, an action for specific performance or any other appropriate action or proceeding to enable Lender and each Noteholder to enforce and realize upon its interest under the Note, this Agreement, the Pledge Agreement and the other Loan Documents, or in the Collateral, or any other collateral given to Lender pursuant to the Loan Documents; provided, however, that, except as specifically provided herein, any judgment in any such action or proceeding shall be enforceable against Borrower only to the extent of Borrower's interest in the Collateral and in any other collateral given to Lender, and Lender, by accepting the Note, this Agreement, the Pledge Agreement and the other Loan Documents, agrees that it shall not sue for, seek or demand any deficiency judgment against Borrower in any such action or proceeding under, or by reason of, or in connection with, the Note, this Agreement, the Pledge Agreement or the other Loan Documents. The provisions of this Section shall not, however,

(a) constitute a waiver, release or impairment of any obligation evidenced or secured by any of the Loan Documents; (b) impair the right of Lender to name Borrower as a party defendant in any action or suit for foreclosure and sale under the Pledge Agreement; (c) affect the validity or enforceability of or any Guaranty made in connection with the Loan or any of the rights and remedies of Lender thereunder; (d) impair the right of Lender to obtain the appointment of a receiver; (e) intentionally omitted; (f) constitute a prohibition against Lender to seek a deficiency judgment against Borrower in order to fully realize the security granted by the Pledge Agreement or to commence any other appropriate action or proceeding in order for Lender to exercise its remedies against all of the Collateral; or (g) constitute a waiver of the right of Lender to enforce the liability and obligation of Borrower, by money judgment or otherwise, to the extent of any actual loss, damage, cost, expense, liability, claim or other obligation incurred by Lender (including attorneys' fees and costs reasonably incurred) arising out of or in connection with the following:

(i) fraud or intentional misrepresentation by Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor in connection with the execution and delivery of the Loan Documents and/or the Loan;

(ii) the misappropriation, conversion or misapplication in contravention of the Loan Documents by Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor of any funds of Borrower, Senior Mezzanine Borrower, Mortgage Borrower or Operating Company, including, without limitation, (A) any Revenues, (B) any Net Liquidation Proceeds or Insurance Proceeds, (C) any Awards received in connection with a Condemnation, (D) any Rents or security deposits (or any item of Revenue, from whatever source) following an Event of Default, or (E) any distribution or other payments made in connection with any part of the Collateral or Senior Mezzanine Collateral;

(iii) the misappropriation, conversion or misapplication by Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor of any security deposits or Rents paid more than one (1) month in advance;

(iv) any act of actual intentional physical waste by Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor;

(v) the breach of any representation, warranty, covenant or indemnification provision in the Environmental Indemnity Agreement concerning environmental laws, hazardous substances and asbestos and any indemnification of Lender with respect thereto in either document;

(vi) if Borrower, Mortgage Borrower, Senior Mezzanine Borrower or Operating Company fails to obtain Lender's prior consent to any voluntary intentional Transfer as required by this Agreement, the Mortgage Loan Agreement or the Mortgages, as applicable;

(vii) any security deposits, advance deposits or any other deposits collected with respect to any of the Properties which are not delivered to Mortgage Lender upon a

foreclosure of any of the Properties or action in lieu thereof, except to the extent any such security deposits were applied in accordance with the terms and conditions of any of the Leases prior to the occurrence of the Event of Default that gave rise to such foreclosure or action in lieu thereof;

(viii) in the event of: (A) Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor filing a voluntary petition under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (B) the filing of an involuntary petition against Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law by any Person in which Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor or any of their respective Affiliates, agents or employees colludes with or such other Person, or Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor soliciting or causing to be solicited petitioning creditors for any involuntary petition against Borrower, Operating Company or any Guarantor from any Person; (C) Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor filing an answer consenting to or otherwise acquiescing in or joining in any involuntary petition filed against it by any other Person, other than Lender, under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (D) Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor consenting to or acquiescing in or joining in an application for the appointment of a custodian, receiver, trustee, or examiner for Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor or any of the Properties, the Collateral, the Senior Mezzanine Collateral or any portion thereof, other than at the request of Lender; or (E) Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor making an assignment for the benefit of creditors (other than Lender), or admitting, in writing or in any legal proceeding, its insolvency or inability to pay its debts as they become due;

(ix) if Borrower, Senior Mezzanine Borrower or Mortgage Borrower fails to maintain its status as a Special Purpose Entity or breaches any material representation or warranty set forth in Section 4.1.30 of this Agreement; and

(x) if Borrower, Mortgage Borrower, Senior Mezzanine Borrower or Operating Company fails to obtain Lender's prior consent to any voluntary Indebtedness (other than (x) with respect to Mortgage Borrower, Permitted Indebtedness and (y) with respect to Operating Company, Permitted Indebtedness (Operating Company), as applicable) or voluntary Lien (other than Permitted Encumbrances) encumbering any of the Properties, Senior Mezzanine Collateral or Collateral as required by this Agreement, the Senior Mezzanine Loan Agreement, the Mortgage Loan Agreement, the Pledge Agreement or the Mortgages.

Notwithstanding anything to the contrary under this Agreement, neither any present or future Affiliate of Borrower (other than Guarantor, to the extent provided under the Guaranty) nor any present or future shareholder, officer, director, employee, trustee, beneficiary, advisor, partner, member, principal, participant or agent of or in any Borrower or of or in any person or entity that

is or becomes an Affiliate of any Borrower shall have any personal liability, directly or indirectly, under or in connection with the Loan Documents. Neither the negative capital account of any Affiliate of Borrower in Borrower, or in any other Affiliate of Borrower in any other Affiliate of Borrower, nor any obligation of any Affiliate of Borrower in any Borrower to restore a negative capital account or to contribute or loan capital to any Borrower or to any other Affiliate of Borrower shall at any time be deemed to be the property or an asset of any Borrower (or any other Affiliate of Borrower) and neither Lender nor its successors or assigns shall have any right to collect, enforce or proceed against any such negative capital account or obligation to restore, contribute or loan capital.

(b) Notwithstanding anything to the contrary in this Agreement, the Note or any of the Loan Documents, Lender shall not be deemed to have waived any right which Lender may have under Section 506(a), 506(b), 1111(b) or any other provisions of the Bankruptcy Code to file a claim for the full amount of the Indebtedness or to require that all collateral shall continue to secure all of the Indebtedness owing to Lender in accordance with the Loan Documents.

**Section 9.4. Servicer.** (a) At the option of Lender, the Loan may be serviced by a servicer/trustee (the “**Servicer**”) selected by Lender and Lender may delegate all or any portion of its responsibilities under this Agreement and the other Loan Documents to the Servicer pursuant to a servicing agreement (the “**Servicing Agreement**”) between Lender and Servicer. Lender shall be responsible for any set-up fees or any other initial costs relating to or arising under the Servicing Agreement (arising in connection with the Securitization) and the payment of the monthly servicing fee due to Servicer under the Servicing Agreement, and, unless otherwise specifically set forth herein, Borrower shall be responsible for the payment of all fees and other reasonable out-of-pocket expenses incurred by Servicer resulting from any Borrower requests (for approvals or otherwise) to Servicer.

(b) In the event of a Securitization or syndication, the grant of participations in the Loan or any secondary marketing by Lender, Mortgage Borrower and the Mezzanine Borrowers, collectively may rely upon approvals or consents given by one (1) agent or representative in respect of the Mortgage Lender and the Mezzanine Lenders for the matter in question (which such parties shall designate, and pending further notice from Lender, such agent shall be JPM). Borrower shall only pay legal fees for the outside counsel of one Servicer.

**Section 9.5. Assignments and Participations.** (a) In addition to the rights Lender has under Section 9.1, Lender shall have the right, subject to this Section 9.5, to assign, sell, negotiate, pledge or hypothecate all or any portion of their rights and obligations hereunder (a “**Syndication**”). Except in connection with a Securitization, no Lender shall assign, sell, negotiate, pledge, hypothecate or otherwise transfer all or any portion of its rights in and to the Loan to any other Person (an “**Assignee**”) (a) other than in compliance with Section 9.9 hereof; and (b) unless such transaction shall be an assignment of a constant (and not varying), ratable percentage of such Lender’s interest in the Loan; provided, however, any Lender shall have the right at any time without the consent of or notice to any other Lender or other Person to grant a security interest in all or any portion of such Lender’s interest in the Loan to any Federal Reserve Bank or the central reserve bank or similar authority of any other country to secure any obligation of such Lender to such bank or similar authority (a “**Central Bank Pledge**”).

Effective on any such assignment and assumption by the assignee and on compliance with Section 9.9 hereof, the assigning Lender shall have no further liability hereunder with respect to the interest of such Lender that was the subject of such transfer and such Assignee shall be a Lender with respect to such interest, and Borrower shall have the same rights as to such Assignee with respect to such interest from and after the date of such assignment as if such Lender were an original Lender hereunder. Except for a Central Bank Pledge or financing transaction under a repurchase agreement, a Lender making any such assignment shall notify Borrower of same, specifying the Assignee thereof and the amount of the assignment and shall provide such other detail as Borrower may reasonably request to substantiate compliance with the foregoing.

**Section 9.6. Participation.** Lender may, without the consent of the Borrower, in compliance with applicable law, sell participations to one or more banks or other entities (a “**Participant**”), in all or a portion of Lender’s rights and obligations under this Agreement (including all or a portion of the Loan owing to it); provided that (A) Lender’s obligations under this Agreement shall remain unchanged, (B) Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) the Borrower shall continue to deal solely and directly with Lender in connection with Lender’s rights and obligations under this Agreement. The Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.2.3 and 2.2.4 (subject to requirements and limitations therein) to the same extent as if it were a Noteholder and had acquired its interest by assignment pursuant to Section 9.5. Each Lender that sells a participation shall, acting solely for this purpose as an agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each participant’s interest in the Loans or other obligations under this Agreement (the “**Participant Register**”). The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each person whose name is recorded in the Participant Register as the owner of such Loan or other obligation hereunder as the owner thereof for all purposes of this Agreement notwithstanding any notice to the contrary.

**Section 9.7. Borrower’s Facilitation of Transfer.** In order to facilitate permitted assignments and other transfers to Assignees and sales to Participants, Borrower shall execute and deliver to Lender and shall cause Guarantor to execute and deliver to Lender such further documents, instruments or agreements as Lender may reasonably require, including, if required by Lender, supplemental notes in the principal amount of such Lender’s *pro rata* share of the Loan substantially in the form of such Lender’s Note against surrender of the prior notes, and such supplemental note shall (i) be payable to order of such Lender, (ii) be dated as of the date hereof, and (iii) mature on the Maturity Date. Such supplemental note shall provide that it evidences a portion of the existing indebtedness hereunder and under the Notes and not any new or additional indebtedness of Borrower. The term “Note” as used in this Agreement and in all the other Loan Documents shall include all such supplemental notes but exclude any Note it replaces. Notwithstanding the foregoing, such documents, instruments or agreements shall not (a) increase the obligations or liabilities of any such Person hereunder or under the other Loan Documents in excess of the obligations or liabilities intended to be provided herein or in the other Loan Documents or (b) decrease such Person’s rights hereunder or under the other Loan Documents to less than what they were prior to the execution of such documents, instruments or agreements. In addition, Borrower agrees to reasonably cooperate with Lender, including providing such information and documentation regarding Borrower, Senior Mezzanine

Borrower, Mortgage Borrower, Holdings, the Operating Company and any other Person as Lender or any potential Assignee or Participant may reasonably request and to meet with potential Assignees and Participants upon reasonable notice. Lender and Borrower each shall pay their respective costs and expenses incurred in connection with the foregoing, including, without limitation, legal fees in connection with any of the foregoing matters, except that all costs and expenses of Lender and Borrower associated with any restructuring of the Loan requested by Lender, including under Section 2.1.5, 2.1.6 and 2.1.7, shall be paid solely by Lender.

**Section 9.8. Notice; Registration Requirement.** No Syndication of any part of Lender's interest in and to the Loan shall be effective or permitted under Section 9.5 until (a) an assignment and acceptance agreement in a form reasonably acceptable to Lender (an "**Assignment and Acceptance**") with respect to such Syndication shall have been delivered to Lender, (b) Lender shall have registered such Assignee's name and address in the Register which Lender maintains for the recordation of the names, addresses and interests of Noteholders, and (c) if such Assignee is not already a Lender hereunder, such Assignee shall deliver any tax forms required hereunder. The entries in the Register shall be conclusive, absent manifest error. This Section 9.8 shall not apply to any Central Bank Pledge.

**Section 9.9. Registry.** Borrower hereby designates Lender to serve as Borrower's agent, solely for purposes of this Section 9.9, to maintain at one of its offices a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the names and addresses of each Assignee, and the principal amount of the Loan (or portions thereof) owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). Failure to make any such recordation, or any error in such recordation shall not affect Borrower's obligations in respect of the Loan. With respect to any Lender, the transfer of the rights to the principal of, and interest on, its interest in the Loan shall not be effective until such transfer is recorded on the Register maintained by Lender with respect to ownership of such Loan and prior to such recordation all amounts owing to the transferor with respect to such Note shall remain owing to the transferor. The registration of a transfer of all or part of the Loan shall be recorded by Lender on the Register only upon the acceptance by Lender of a properly executed and delivered Assignment and Acceptance by the assignor and assignee. At the assigning Lender's option, concurrently with the delivery of an Assignment and Acceptance pursuant to which an interest of such Lender in the Loan was assigned to such Assignee, the assigning Lender shall surrender to Borrower its Note, if any, evidencing the portion of the Loan corresponding to the interest so transferred and Borrower shall deliver to Lender one or more new promissory notes in the same aggregate principal amount issued to the assigning Lender and/or the Assignee.

**Section 9.10. Cooperation in Syndication.** Borrower agrees to assist the Lender in completing a Syndication satisfactory to the Lender. Such assistance shall include (i) direct contact between senior management and advisors of Borrower and the proposed Assignees and/or Participants, (ii) assistance in the preparation of a confidential information memorandum and other marketing materials to be used in connection with the Syndication, (iii) the hosting, with the Lender, of one or more meetings of prospective Assignees and/or Participants, (iv) the delivery of appraisals satisfactory to the Lender if required. To assist the Lender in its Syndication efforts, Borrower agrees promptly to prepare and provide to the Lender all information with respect to Borrower, Senior Mezzanine Borrower, Mortgage Borrower, Holdings, the Operating Company, Guarantor, the Collateral, the Senior Mezzanine Collateral

and the Properties contemplated hereby, including all financial information and projections (the “**Projections**”), as the Lender may reasonably request in connection with the Syndication of the Loan. If required in connection with the Syndication, Borrower hereby agrees to:

(a) deliver updated financial and operating statements and other information reasonably required by the Lender to facilitate the Syndication;

(b) use reasonable efforts to deliver reliance letters reasonably satisfactory to the Lender with respect to the environmental assessments and reports delivered to the Lender prior to the Closing Date, which will run to the Lender and its successors and assigns;

(c) execute modifications to the Loan Documents required by the Lender, provided that such modification will not (except as set forth in (d)) change any material or economic terms of the Loan Documents, or otherwise increase the obligations or decrease the rights of Borrower pursuant to the Loan Documents (except to a de minimis extent); and

(d) if the Lender elects, in its sole discretion, prior to or upon a Syndication, to exercise its rights under Section 2.1.5, Borrower agrees to cooperate with the Lender in connection with the foregoing and to execute the required modifications and amendments to the Notes, this Agreement and the Loan Documents and to use reasonable efforts to provide opinions necessary to effectuate the same. Such Notes or components may be assigned different interest rates, so long as the weighted average of such interest rates does not exceed the Applicable Interest Rate, except in connection with the application of principal to such Notes or components following the occurrence of an Event of Default.

Lender and Borrower each shall pay their respective costs and expenses incurred in connection with the foregoing, including, without limitation, legal fees in connection with any of the foregoing matters, except that all costs and expenses of Lender and Borrower associated with any restructuring of the Loan requested by Lender, including under Sections 2.1.5, 2.1.6 and 2.1.7, shall be paid solely by Lender.

## **X. MISCELLANEOUS**

**Section 10.1. Survival.** This Agreement and all covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the making by Lender of the Loan and the execution and delivery to Lender of the Note, and shall continue in full force and effect so long as all or any of the Debt is outstanding and unpaid unless a longer period is expressly set forth herein or in the other Loan Documents. Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the legal representatives, successors and assigns of such party. All covenants, promises and agreements in this Agreement, by or on behalf of Borrower, shall inure to the benefit of the legal representatives, successors and assigns of Lender.

**Section 10.2. Lender’s Discretion.** Whenever pursuant to this Agreement, Lender exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Lender, the decision of Lender to approve or disapprove or to decide whether arrangements or terms are satisfactory or not satisfactory shall (except as is otherwise

specifically herein provided) be in the sole discretion of Lender and shall be final and conclusive. Whenever this Agreement expressly provides that Lender may not withhold or shall be reasonable in granting its consent or its approval of an arrangement or term, such provisions shall also be deemed to prohibit Lender from delaying or conditioning such consent or approval.

**Section 10.3. Governing Law.** (a) THIS AGREEMENT WAS NEGOTIATED IN THE STATE OF NEW YORK, THE LOAN WAS MADE BY LENDER AND ACCEPTED BY BORROWER IN THE STATE OF NEW YORK, AND THE PROCEEDS OF THE LOAN DELIVERED PURSUANT HERETO WERE DISBURSED FROM THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS AND THE OBLIGATIONS ARISING HEREUNDER AND THEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA. TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER AND LENDER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVE ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS, AND THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER OR BORROWER ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS MAY AT LENDER'S OPTION BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW AND BORROWER WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND BORROWER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. BORROWER DOES HEREBY DESIGNATE AND APPOINT:

Corporation Service Company  
2711 Centerville Road, Suite 400  
Wilmington, DE 19808

AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON ITS BEHALF SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUCH

SUIT, ACTION OR PROCEEDING IN ANY FEDERAL OR STATE COURT IN NEW YORK, NEW YORK, AND AGREES THAT SERVICE OF PROCESS UPON SAID AGENT AT SAID ADDRESS AND NOTICE OF SAID SERVICE MAILED OR DELIVERED TO BORROWER IN THE MANNER PROVIDED HEREIN SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON BORROWER IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE STATE OF NEW YORK. BORROWER (I) SHALL GIVE PROMPT NOTICE TO LENDER OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER, (II) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN NEW YORK, NEW YORK (WHICH SUBSTITUTE AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS), AND (III) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE IF ITS AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN NEW YORK, NEW YORK OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR.

**Section 10.4. Modification, Waiver in Writing.** No modification, amendment, extension, discharge, termination or waiver of any provision of this Agreement, or of the Note, or of any other Loan Document, nor consent to any departure by Borrower therefrom, shall in any event be effective unless the same shall be in a writing signed by the party against whom enforcement is sought, and then such waiver or consent shall be effective only in the specific instance, and for the purpose, for which given. Except as otherwise expressly provided herein, no notice to, or demand on Borrower, shall entitle Borrower to any other or future notice or demand in the same, similar or other circumstances. To the extent required by any Gaming Law, Borrower shall notify all relevant Gaming Authorities of any amendment to this Agreement or any Loan Document.

**Section 10.5. Delay Not a Waiver.** Except as expressly set forth herein, neither any failure nor any delay on the part of Lender in insisting upon strict performance of any term, condition, covenant or agreement, or exercising any right, power, remedy or privilege hereunder, or under the Note or under any other Loan Document, or any other instrument given as security therefor, shall operate as or constitute a waiver thereof, nor shall a single or partial exercise thereof preclude any other future exercise, or the exercise of any other right, power, remedy or privilege. In particular, and not by way of limitation, by accepting payment after the due date of any amount payable under this Agreement, the Note or any other Loan Document, Lender shall not be deemed to have waived any right either to require prompt payment when due of all other amounts due under this Agreement, the Note or the other Loan Documents, or to declare a default for failure to effect prompt payment of any such other amount.

**Section 10.6. Notices.** All notices, consents, approvals and requests required or permitted hereunder or under any other Loan Document shall be given in writing and shall be effective for all purposes if hand delivered or sent by (a) certified or registered United States mail, postage prepaid, return receipt requested or (b) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery, and by telecopier (with answer back acknowledged), addressed as follows (or at such other address and Person as shall be designated from time to time by any party hereto, as the case may be, in a notice to the other parties hereto in the manner provided for in this Section 10.6):

If to Lender: JPMorgan Chase Bank, N.A.  
270 Park Avenue, 10th Floor  
New York, New York 10017  
Attention: Michael Mesard  
Facsimile No.: (212) 834-6592

with a copy to: Sullivan & Cromwell LLP  
125 Broad Street  
New York, New York 10004  
Attention: Arthur S. Adler  
Facsimile No.: 212-558-3588

and

Cadwalader, Wickersham & Taft LLP  
One World Financial Center  
New York, New York 10281  
Attention: Fredric L. Altschuler  
Facsimile No.: (212) 504-6666

If to Borrower: One Caesars Palace Drive  
Las Vegas, Nevada 89109  
Attention: Chief Financial Officer  
Facsimile No.: (702) 407-6081

With a copy to: One Caesars Palace Drive  
Las Vegas, Nevada 89109  
Attention: General Counsel  
Facsimile No.: (702) 407-6418

and

Cleary Gottlieb Steen & Hamilton LLP  
One Liberty Plaza  
New York, New York 10006  
Attention: Michael Weinberger  
Facsimile No.: (212) 225-3999

and

Pircher, Nichols & Meeks  
1925 Century Park East, Seventeenth Floor  
Los Angeles, California 90067  
Attention: David Packer  
Facsimile No.: (310) 201-8922

A notice shall be deemed to have been given: in the case of hand delivery, at the time of delivery; in the case of registered or certified mail, when delivered or the first attempted delivery on a Business Day; or in the case of expedited prepaid delivery and telecopy, upon the first attempted delivery on a Business Day; or in the case of telecopy, upon sender's receipt of a machine-generated confirmation of successful transmission after advice by telephone to recipient that a telecopy notice is forthcoming. Each Borrower hereby designates Tahoe Mezz 6, LLC, a Delaware limited liability company ("**Borrower Agent**"), as the party to give and receive notices on behalf of Borrower hereunder, and any notice received by Lender by a Borrower other than Borrower Agent shall not constitute effective notice to, or be binding upon Lender hereunder. Notwithstanding the foregoing, any notice by Lender to one or more Borrowers other than Borrower Agent shall be deemed to constitute effective notice to all of the Borrowers.

**Section 10.7. Trial by Jury. BORROWER AND LENDER HEREBY AGREE NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVE ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY BORROWER AND LENDER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. BORROWER AND LENDER ARE HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER.**

**Section 10.8. Headings.** The Article and/or Section headings and the Table of Contents in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

**Section 10.9. Severability.** Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

**Section 10.10. Preferences.** Lender shall have the continuing and exclusive right to apply or reverse and reapply any and all payments by Borrower to any portion of the obligations of Borrower hereunder (except that, unless there exists an Event of Default, payments of principal shall be applied to components of the Note on a pro-rata basis). To the extent Borrower makes a payment or payments to Lender, which payment or proceeds or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable cause, then, to the extent of such payment or proceeds received, the obligations hereunder or part thereof intended to be satisfied shall be revived and continue in full force and effect, as if such payment or proceeds had not been received by Lender.

**Section 10.11. Waiver of Notice.** Borrower hereby expressly waives, and shall not be entitled to, any notices of any nature whatsoever from Lender except with respect to matters for which this Agreement or the other Loan Documents specifically and expressly provide for the giving of notice by Lender to Borrower and except with respect to matters for which Borrower is not, pursuant to applicable Legal Requirements, permitted to waive the giving of notice.

**Section 10.12. Remedies of Borrower.** In the event that a claim or adjudication is made that Lender or its agents have acted unreasonably or unreasonably delayed acting in any case where by law or under this Agreement or the other Loan Documents, Lender or such agent, as the case may be, has an obligation to act reasonably or promptly, Borrower agrees that neither Lender nor its agents shall be liable for any monetary damages, and Borrower's sole remedies shall be limited to commencing an action seeking injunctive relief or declaratory judgment (except in cases of bad faith, gross negligence or willful misconduct). The parties hereto agree that any action or proceeding to determine whether Lender has acted reasonably shall be determined by an action seeking declaratory judgment.

**Section 10.13. Expenses; Indemnity.** (a) Borrower covenants and agrees to pay or, if Borrower fails to pay, to reimburse, Lender and each Noteholder upon receipt of notice from such Person for all reasonable out-of-pocket costs and expenses (including reasonable attorneys' fees and disbursements) incurred by such Person in connection with (i) the preparation, negotiation, execution and delivery of this Agreement and the other Loan Documents and the consummation of the transactions contemplated hereby and thereby and all the costs of furnishing all opinions by counsel for Borrower (including, without limitation, any opinions requested by such Person as to any legal matters arising under this Agreement or the other Loan Documents with respect to the Properties); (ii) Borrower's ongoing performance of and compliance with Borrower's respective agreements and covenants contained in this Agreement and the other Loan Documents on its part to be performed or complied with after the Closing Date, including, without limitation, confirming compliance with environmental, gaming and insurance requirements if necessary or advisable due to reasonably suspected non-compliance; (iii) the negotiation, preparation, execution, delivery and administration of any consents, amendments, waivers or other modifications to this Agreement and the other Loan Documents and any other documents or matters requested by Borrower; (iv) securing Borrower's compliance with any requests made pursuant to the provisions of this Agreement, if Borrower defaults in its obligations hereunder; (v) the filing and recording fees and expenses, title insurance and reasonable fees and expenses of counsel for providing to Lender or any Noteholder all required legal opinions, and other similar expenses incurred in creating and perfecting the Liens in favor of Lender (or, as applicable, any Noteholder) pursuant to this Agreement and the other Loan Documents; (vi) enforcing or preserving any rights, either in response to third party claims or in prosecuting or defending any action or proceeding or other litigation, in each case against, under or affecting Borrower, Senior Mezzanine Borrower, Mortgage Borrower, Operating Company, this Agreement, the other Loan Documents, the Properties, the Collateral or any other security given for the Loan; and (vii) enforcing any obligations of or collecting any payments due from Borrower under this Agreement, the other Loan Documents or with respect to the Properties, Operating Company or in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a "work-out" or of any insolvency or bankruptcy proceedings; provided, however, that

Borrower shall not be liable for the payment of any such costs and expenses to any Person to the extent the same arise by reason of the gross negligence, illegal acts, fraud or willful misconduct of such Person. Any cost and expenses due and payable to Lender or any Noteholder may be paid from any amounts in the Mezzanine Collection Account upon the occurrence and during the continuance of an Event of Default.

(b) Borrower shall indemnify, defend and hold harmless Lender from and against any and all other actual liabilities, obligations, losses, damages (excluding, however, any punitive and consequential damages), penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel for Lender in connection with any investigative, administrative or judicial proceeding commenced or threatened, whether or not Lender shall be designated a party thereto), that may be imposed on, incurred by, or asserted against Lender in any manner relating to or arising out of (i) any breach by Borrower of its obligations under, or any material misrepresentation by Borrower contained in, this Agreement or the other Loan Documents, (ii) the use or intended use of the proceeds of the Loan, (iii) the Leases or any of the duties, responsibilities or obligations of Borrower or any Operating Company thereunder, (iv) the transactions contemplated in the Collection Account Agreements or (v) any third-party claims alleging that the Loan, the Senior Mezzanine Loan or the Mortgage Loan, the Operating Lease, the Operating Lease Guaranty or any of the Loan Documents violates any agreements or Legal Requirements binding on the Borrower or its Affiliates or their respective properties (collectively, the “**Indemnified Liabilities**”); provided, however, that Borrower shall not have any obligation to Lender hereunder to the extent that such Indemnified Liabilities arise from the gross negligence, illegal acts, fraud or willful misconduct of Lender. To the extent that the undertaking to indemnify, defend and hold harmless set forth in the preceding sentence may be unenforceable because it violates any law or public policy, Borrower shall pay the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by Lender.

(c) Borrower covenants and agrees to pay for or, if Borrower fails to pay, to reimburse Lender for, any fees and expenses incurred by any Rating Agency in connection with any request by Borrower that required Rating Agency Confirmation pursuant to the terms hereof.

**Section 10.14. Schedules Incorporated.** The Schedules annexed hereto are hereby incorporated herein as a part of this Agreement with the same effect as if set forth in the body hereof.

**Section 10.15. Offsets, Counterclaims and Defenses.** Any assignee of Lender’s interest in and to this Agreement, the Note and the other Loan Documents shall take the same free and clear of all offsets, counterclaims or defenses which are unrelated to such documents which Borrower may otherwise have against any assignor of such documents, and no such unrelated counterclaim or defense shall be interposed or asserted by Borrower in any action or proceeding brought by any such assignee upon such documents and any such right to interpose or assert any such unrelated offset, counterclaim or defense in any such action or proceeding is hereby expressly waived by Borrower.

**Section 10.16. No Joint Venture or Partnership; No Third Party Beneficiaries.** (a) Borrower and Lender intend that the relationships created hereunder and under the other Loan Documents be solely that of borrower and lender. Nothing herein or therein is intended to create a joint venture, partnership, tenancy-in-common, or joint tenancy relationship between Borrower and Lender nor to grant Lender any interest in the Properties other than that of mortgagee, beneficiary or lender.

(b) Except as expressly provided herein, this Agreement and the other Loan Documents are solely for the benefit of Lender and Borrower and nothing contained in this Agreement or the other Loan Documents shall be deemed to confer upon anyone other than Lender and Borrower any right to insist upon or to enforce the performance or observance of any of the obligations contained herein or therein. Lender and Borrower acknowledge and agree that the Noteholders are intended third party beneficiaries of all rights and remedies of the Lender hereunder. All conditions to the obligations of Lender to make the Loan hereunder are imposed solely and exclusively for the benefit of Lender and no other Person shall have standing to require satisfaction of such conditions in accordance with their terms or be entitled to assume that Lender will refuse to make the Loan in the absence of strict compliance with any or all thereof and no other Person shall under any circumstances be deemed to be a beneficiary of such conditions, any or all of which may be freely waived in whole or in part by Lender if, in Lender's sole discretion, Lender deems it advisable or desirable to do so.

**Section 10.17. Intentionally Omitted.**

**Section 10.18. Waiver of Marshalling of Assets.** To the fullest extent permitted by law, Borrower, for itself and its successors and assigns, waives all rights to a marshalling of the assets of Borrower, Borrower's partners and others with interests in Borrower, and of the Properties, or to a sale in inverse order of alienation in the event of foreclosure of all or any of the Mortgages, and agrees not to assert any right under any laws pertaining to the marshalling of assets, the sale in inverse order of alienation, homestead exemption, the administration of estates of decedents, or any other matters whatsoever to defeat, reduce or affect the right of Lender under the Loan Documents to a sale of the Properties for the collection of the Debt without any prior or different resort for collection or of the right of Lender to the payment of the Debt out of the net proceeds of the Properties in preference to every other claimant whatsoever. In addition, Borrower, for itself and its successors and assigns, waives in the event of foreclosure of any or all of the Collateral, any equitable right otherwise available to Borrower which would require the separate sale of the Collateral with respect to each Mortgage Borrower or require Lender to exhaust its remedies against any Collateral with respect to each Mortgage Borrower or any combination of such Collateral before proceeding against any other Collateral with respect to one or more Mortgage Borrowers; and further in the event of such foreclosure Borrower does hereby expressly consent to and authorize, at the option of Lender, the foreclosure and sale either separately or together of any combination of the Collateral.

**Section 10.19. Waiver of Counterclaim.** Borrower hereby waives the right to assert a counterclaim, other than a compulsory counterclaim, in any action or proceeding brought against it by Lender or its agents.

**Section 10.20. Conflict; Construction of Documents; Reliance.** In the event of any conflict between the provisions of this Loan Agreement and any of the other Loan Documents, the provisions of this Loan Agreement shall control. The parties hereto acknowledge that they were represented by competent counsel in connection with the negotiation, drafting and execution of the Loan Documents and that such Loan Documents shall not be subject to the principle of construing their meaning against the party which drafted same. Borrower acknowledges that, with respect to the Loan, Borrower shall rely solely on its own judgment and advisors in entering into the Loan without relying in any manner on any statements, representations or recommendations of Lender or any parent, subsidiary or Affiliate of Lender. Lender shall not be subject to any limitation whatsoever in the exercise of any rights or remedies available to it under any of the Loan Documents or any other agreements or instruments which govern the Loan by virtue of the ownership by it or any parent, subsidiary or Affiliate of Lender of any equity interest any of them may acquire in Borrower, and Borrower hereby irrevocably waives the right to raise any defense or take any action on the basis of the foregoing with respect to Lender's exercise of any such rights or remedies. Borrower acknowledges that Lender engages in the business of real estate financings and other real estate transactions and investments which may be viewed as adverse to or competitive with the business of Borrower or its Affiliates.

**Section 10.21. Brokers and Financial Advisors.** Borrower hereby represents that it has dealt with no financial advisors, brokers, underwriters, placement agents, agents or finders in connection with the transactions contemplated by this Agreement (other than those the fees and other claims of which shall be paid by Borrower). Borrower hereby agrees to indemnify, defend and hold Lender and each Noteholder harmless from and against any and all claims, liabilities, costs and expenses of any kind (including Lender's attorneys' fees and expenses) in any way relating to or arising from a claim by any Person that such Person acted on behalf of Borrower or Lender in connection with the transactions contemplated herein. Each of Lender and (by its acceptance of its respective Note) the Noteholders hereby represents that it has dealt with no financial advisors, brokers, underwriters, placement agents, agents or finders in connection with the transactions contemplated by this Agreement. The provisions of this Section 10.21 shall survive the expiration and termination of this Agreement and the payment of the Debt.

**Section 10.22. Prior Agreements.** This Agreement and the other Loan Documents contain the entire agreement of the parties hereto and thereto in respect of the transactions contemplated hereby and thereby, and all prior agreements among or between such parties, whether oral or written, including, without limitation, the Commitment Letter dated December 19, 2006 between Affiliates of Borrower and Lender are superseded by the terms of this Agreement and the other Loan Documents.

**Section 10.23. Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which counterparts together shall constitute one agreement with the same effect as if the parties had signed the same signature page.

**Section 10.24. Intentionally Omitted.**

**Section 10.25. Gaming Laws.** All rights, remedies and powers in or under this Agreement may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of the Gaming Laws.

**Section 10.26. Certain Additional Rights of Lender (VCOC).** Notwithstanding anything to the contrary contained in this Agreement, Lender shall have:

(a) the right to routinely consult with and advise Borrower's management regarding the significant business activities and business and financial developments of Borrower, Senior Mezzanine Borrower and Mortgage Borrower, provided that any such advice or consultation shall be completely nonbinding on Borrower, and; provided, however, that such consultations shall not include discussions of environmental compliance programs or disposal of hazardous substances;

(b) the right, in accordance with the terms of this Agreement, to examine the books and records of Borrower, Senior Mezzanine Borrower and Mortgage Borrower at any reasonable times upon reasonable notice;

(c) the right, in accordance with the terms of this Agreement, including, without limitation, Section 5.1.11 hereof, to receive monthly, quarterly and year end financial reports, including balance sheets, statements of income, shareholder's equity and cash flow, a management report and schedules of outstanding indebtedness, in each case to the extent explicitly set forth herein; and

(d) the right, without restricting any other rights of Lender under this Agreement (including any similar right), to reasonably approve any acquisition by Borrower, Senior Mezzanine Borrower or Mortgage Borrower of any other significant real property.

The rights described above in this Section 10.26 may be exercised by any entity which owns and controls, directly or indirectly, substantially all of the interests in Lender.

## **XI. JOINT AND SEVERAL LIABILITY; WAIVERS**

**Section 11.1. Joint and Several Liability; Primary Obligors.** Each entity comprising Borrower (each, a "**Borrower Entity**") shall be a primary obligor with respect to payment of the Debt and performance of Borrower's obligations under the Loan Documents and all such Borrower Entities shall be jointly and severally liable for payment of the Debt and performance of such other obligations. As used in this Article, references to "**Other Borrowers**" shall mean all Borrower Entities other than the particular Borrower Entity referred to.

**Section 11.2. Waivers.** Without limiting the primary liability of each Borrower Entity as set forth above, to the extent any such Borrower Entity is determined to be secondarily liable with respect to any portion of the Debt or any other obligation hereunder, the following shall apply:

**11.2.1 No Duty to Pursue Others.** It shall not be necessary for Lender (and each Borrower Entity hereby waives any rights which such Borrower Entity may have to require Lender), in order to enforce the obligations of such Borrower Entity hereunder, first to (a) institute suit or exhaust its remedies against any Other Borrower or others liable on the Debt or any other person, (b) enforce Lender's rights against any collateral mortgaged, pledged or granted by any Other Borrower which shall ever have been given to secure the Debt ("**Other Borrower Collateral**"), (c) enforce Lender's rights against any other guarantors of the Debt, (d) join Borrower or any others liable on the Debt in any action against any Other Borrower seeking to enforce the Loan Documents, (e) exhaust any remedies available to Lender against any collateral which shall ever have been given to secure the Debt, or (f) resort to any other means of obtaining payment of the Loan by any Other Borrower. Lender shall not be required to mitigate damages or take any other action pertaining to any Other Borrower or any Other Borrower Collateral to reduce, collect or enforce the Debt from any Other Borrower.

**11.2.2 Waivers.** Such Borrower Entity agrees to the provisions of the Loan Documents, and hereby waives notice of (a) any loans or advances made by Lender to any Other Borrower, (b) acceptance of the Loan Documents, (c) any amendment or extension of the Note, the Loan Agreement or of any other Loan Documents entered into by any Other Borrower, (d) the execution and delivery by any Other Borrower and Lender of any other loan or credit agreement or of any Other Borrower's execution and delivery of any promissory notes or other documents arising under the Loan Documents or in connection with the Other Borrower Collateral, (e) the occurrence of any breach by any Other Borrower or an Event of Default with respect to any Other Borrower or Other Borrower Collateral, (f) Lender's transfer or disposition of the Debt, or any part thereof, (g) sale or foreclosure (or posting or advertising for sale or foreclosure) of any Other Borrower Collateral, (h) protest, proof of non-payment or default by any Other Borrower and (i) any other action at any time taken or omitted by Lender, and, generally, all demands and notices to any Other Borrower of every kind in connection with the Loan Documents, any documents or agreements evidencing, securing or relating to any of the Debt.

**11.2.3 Waiver of Subrogation, Reimbursement and Contribution.** Notwithstanding anything to the contrary contained in the Loan Documents, each Borrower hereby unconditionally and irrevocably waives, releases and abrogates, prior to the payment in full of the Loan and for a period of ninety-one (91) days thereafter any and all rights it may now or hereafter have under any agreement, at law or in equity (including any law subrogating such Borrower Entity to the rights of Lender), to assert any claim against or seek contribution, indemnification or any other form of reimbursement (other than pursuant to the express provisions of the Contribution Agreement) from any Other Borrower or any other party liable for payment of any or all of the Debt for any payment made by such Borrower Entity under or in connection with the Loan Documents or otherwise.

**11.2.4 Events and Circumstances Not Reducing or Discharging Guarantor's Obligations.** Each Borrower Entity hereby consents and agrees to each of the following, and agrees that such Borrower Entity's obligations under the Loan Documents shall not be released, diminished, impaired, reduced or adversely affected by any of the following, and waives any common law, equitable, statutory or other rights (including rights to notice) which

such Borrower Entity might otherwise have as a result of or in connection with any of the following:

(a) Modifications. Any renewal, extension, increase, modification, alteration, restatement or rearrangement entered into by any Other Borrower of all or any part of the Debt, the Note, the Loan Agreement, the other Loan Documents, or any other document, instrument, contract or understanding between any Other Borrower and Lender, or any other parties, pertaining to the Debt or any failure of Lender to notify Borrower Entity of any such action.

(b) Adjustment. Any adjustment, indulgence, forbearance or compromise that might be granted or given by Lender to any Other Borrower.

(c) Condition of Borrower or Borrower Entity. The insolvency, bankruptcy, arrangement, adjustment, composition, liquidation, disability, dissolution or lack of power of any Other Borrower or any other party at any time liable for the payment of all or part of the Debt; or any dissolution of any Other Borrower, or any sale, lease or transfer of any or all of the assets of Borrower or of any Other Borrower, or any changes in the shareholders, partners or members of any Other Borrower; or any reorganization of any Other Borrower.

(d) Invalidity of Debt. The invalidity, illegality or unenforceability of all or any part of the Debt, or any document or agreement executed in connection with the Debt, for any reason whatsoever, including the fact that (a) the Debt, or any part thereof, exceeds the amount permitted by law, (b) the act of creating the Debt or any part thereof is ultra vires, (c) the officers or representatives executing the Note, the Loan Agreement or the other Loan Documents or otherwise creating the Debt acted in excess of their authority, (d) the Debt violate applicable usury laws, (e) any Other Borrower has valid defenses, claims or offsets (whether at law, in equity or by agreement) which render the Debt wholly or partially uncollectible from such Other Borrower, (f) the creation, performance or repayment of the Debt (or the execution, delivery and performance of any document or instrument by any Other Borrower representing part of the Debt or executed in connection with the Debt, or given to secure the repayment of the Debt) is illegal, uncollectible or unenforceable, or (g) the Note, the Loan Agreement or any of the other Loan Documents have been forged or otherwise are irregular or not genuine or authentic, it being agreed that such Borrower Entity shall remain liable hereon regardless of whether any Other Borrower or any other Person be found not liable on the Debt or any part thereof for any reason.

(e) Release of Obligors. Any full or partial release of the liability of any Other Borrower on the Debt, or any part thereof, or of any guarantor(s) thereof, or any other person or entity now or hereafter liable, whether directly or indirectly, jointly, severally, or jointly and severally, to pay, perform, guarantee or assure the payment of the Debt, or any part thereof, it being recognized, acknowledged and agreed by such Borrower Entity that such Borrower Entity may be required to pay the Debt in full without assistance or support of any other party, and such Borrower Entity has not been induced to enter into the Loan Documents on the basis of a contemplation, belief, understanding or agreement that other Persons will be liable to pay or perform the Debt, or that Lender will look to other Persons to pay or perform the Debt.

(f) Other Collateral. The taking or accepting of any other security, collateral or guaranty, or other assurance of payment, for all or any part of the Debt.

(g) Release of Collateral. Any release, surrender, exchange, subordination, deterioration, waste, loss or impairment (including negligent, willful, unreasonable or unjustifiable impairment) of any collateral, property or security at any time existing in connection with, or assuring or securing payment of, all or any part of the Debt.

(h) Care and Diligence. The failure of Lender or any other party to exercise diligence or reasonable care in the preservation, protection, enforcement, sale or other handling or treatment of Other Borrower Collateral, all or any part of such collateral, property or security, including any neglect, delay, omission, failure or refusal of Lender (a) to take or prosecute any action for the collection of any of the Debt or (b) to foreclose, or initiate any action to foreclose, or, once commenced, prosecute to completion any action to foreclose upon Other Borrower Collateral, or (c) to take or prosecute any action in connection with any instrument or agreement evidencing or securing all or any part of the Debt.

(i) Unenforceability. The fact that any collateral, security, security interest or lien contemplated or intended to be given, created or granted as security for the repayment of the Debt, or any part thereof, shall not be properly perfected or created, or shall prove to be unenforceable or subordinate to any other security interest or lien, it being recognized and agreed by such Borrower Entity that such Borrower Entity is not entering into the Loan Documents in reliance on, or in contemplation of the benefits of, the validity, enforceability, collectibility or value of any of the collateral for the Debt.

(j) Offset. Any existing or future right of offset, claim or defense of Borrower against Lender, or any other Person, or against payment of the Debt by any Other Borrower, whether such right of offset, claim or defense arises in connection with the Debt (or the transactions creating the Debt) or otherwise.

(k) Merger. The reorganization, merger or consolidation of any Other Borrower into or with any other corporation or entity.

(l) Preference. Any payment by Borrower to Lender is held to constitute a preference under bankruptcy laws, or for any reason Lender is required to refund such payment or pay such amount to Borrower or someone else.

**Section 11.3. Other Actions Taken or Omitted.** Any other action taken or omitted to be taken with respect to the Loan Documents, the Debt, or Other Borrower Collateral, whether or not such action or omission prejudices such Borrower Entity or increases the likelihood that such Borrower Entity will be required to pay the Debt pursuant to the terms hereof, it is the unambiguous and unequivocal intention of such Borrower Entity that such Borrower Entity shall be obligated to pay the Debt when due, notwithstanding any occurrence, circumstance, event, action, or omission whatsoever pertaining to any Other Borrower or any Other Borrower Collateral, whether contemplated or not, and whether or not otherwise or particularly described herein, which obligation shall be deemed satisfied only upon the full and final payment and satisfaction of the Debt.

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**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed by their duly authorized representatives, all as of the day and year first above written.

**BORROWER:**

**HARRAH'S LAS VEGAS MEZZ 6, LLC,**  
a Delaware limited liability company

By: /s/ Jonathan S. Halkyard

Name: Jonathan S. Halkyard

Title: President and Treasurer

**HARRAH'S ATLANTIC CITY MEZZ 6, LLC,**  
a Delaware limited liability company

By: /s/ Jonathan S. Halkyard

Name: Jonathan S. Halkyard

Title: President and Treasurer

**TAHOE MEZZ 6, LLC,**  
a Delaware limited liability company

By: /s/ Jonathan S. Halkyard

Name: Jonathan S. Halkyard

Title: President and Treasurer

**RIO MEZZ 6, LLC,**  
a Delaware limited liability company

By: /s/ Jonathan S. Halkyard

Name: Jonathan S. Halkyard

Title: President and Treasurer

**FLAMINGO LAS VEGAS MEZZ 6, LLC,**  
a Delaware limited liability company

By: /s/ Jonathan S. Halkyard

Name: Jonathan S. Halkyard

Title: President and Treasurer

**SHOWBOAT ATLANTIC CITY MEZZ 6, LLC,**  
a Delaware limited liability company

By: /s/ Jonathan S. Halkyard

Name: Jonathan S. Halkyard

Title: President and Treasurer

**LENDER:**

**JPMORGAN CHASE BANK, N.A.**

By: /s/ Jennifer A. Loughrey

Name: Jennifer A. Loughrey

Title: Vice President

**SEVENTH MEZZANINE LOAN AGREEMENT**

Dated as of January 28, 2008

Between

**THE ENTITIES IDENTIFIED ON THE SIGNATURE PAGES  
HEREOF AS BORROWER,**  
collectively, as Borrower

and

**JPMORGAN CHASE BANK N.A.,**  
as Lender

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Schedule XXIV	– Litigation



**SEVENTH MEZZANINE LOAN AGREEMENT**

**THIS SEVENTH MEZZANINE LOAN AGREEMENT**, dated as of January 28, 2008 (as amended, restated, replaced, supplemented or otherwise modified from time to time, this “**Agreement**”), between **JPMORGAN CHASE BANK, N.A.**, a banking association chartered under the laws of the United States of America, having an address at 270 Park Avenue, New York, New York 10017 (“**Lender**”), and **THE ENTITIES IDENTIFIED ON THE SIGNATURE PAGES HEREOF AS BORROWER**, each a Delaware limited liability company having its principal place of business at the addresses set forth on Schedule I attached hereto (collectively, “**Borrower**”).

**WITNESSETH:**

**WHEREAS**, JPMorgan Chase Bank, N.A., having an address at 270 Park Avenue, New York, New York 10017, as mortgage lender (“**Mortgage Lender**”), is making a loan in the principal amount of Four Billion and No/100 Dollars (\$4,000,000,000) (the “**Mortgage Loan**”) to Mortgage Borrower (as hereinafter defined) pursuant to that certain Loan Agreement, dated as of the date hereof (as the same may be amended, supplemented, replaced or otherwise modified from time to time, the “**Mortgage Loan Agreement**”), which Mortgage Loan is evidenced by the Mortgage Note (as hereinafter defined) made by Mortgage Borrower to Mortgage Lender and secured by, among other things, the Mortgage (as hereinafter defined) given by Mortgage Borrower in favor of Mortgage Lender pursuant to which Mortgage Borrower has granted Mortgage Lender a first priority mortgage on, among other things, the Properties and other collateral as more fully described in the Mortgage;

**WHEREAS**, JPMorgan Chase Bank, N.A., having an address at 270 Park Avenue, New York, New York 10017, as first mezzanine lender (“**First Mezzanine Lender**”), is making a loan in the principal amount of \$300,000,000 (the “**First Mezzanine Loan**”) to First Mezzanine Borrower (as hereinafter defined) pursuant to that certain First Mezzanine Loan Agreement, dated as of the date hereof (as the same may be amended, supplemented, replaced or otherwise modified from time to time, the “**First Mezzanine Loan Agreement**”), which First Mezzanine Loan is evidenced by the First Mezzanine Note (as hereinafter defined) made by First Mezzanine Borrower to First Mezzanine Lender and secured by, among other things, the First Mezzanine Pledge Agreement (as hereinafter defined) given by First Mezzanine Borrower in favor of First Mezzanine Lender pursuant to which First Mezzanine Borrower has granted First Mezzanine Lender a first priority security interest on, among other things, the Collateral (as defined in the First Mezzanine Pledge Agreement);

**WHEREAS**, JPMorgan Chase Bank, N.A., having an address at 270 Park Avenue, New York, New York 10017, as second mezzanine lender (“**Second Mezzanine Lender**”), is making a loan in the principal amount of \$275,000,000 (the “**Second Mezzanine Loan**”) to Second Mezzanine Borrower (as hereinafter defined) pursuant to that certain Second Mezzanine Loan Agreement, dated as of the date hereof (as the same may be amended, supplemented, replaced or otherwise modified from time to time, the “**Second Mezzanine Loan Agreement**”), which Second Mezzanine Loan is evidenced by the Second Mezzanine Note (as

hereinafter defined) made by Second Mezzanine Borrower to Second Mezzanine Lender and secured by, among other things, the Second Mezzanine Pledge Agreement (as hereinafter defined) given by Second Mezzanine Borrower in favor of Second Mezzanine Lender pursuant to which Second Mezzanine Borrower has granted Second Mezzanine Lender a first priority security interest on, among other things, the Collateral (as defined in the Second Mezzanine Pledge Agreement);

**WHEREAS**, JPMorgan Chase Bank, N.A., having an address at 270 Park Avenue, New York, New York 10017, as third mezzanine lender ("**Third Mezzanine Lender**"), is making a loan in the principal amount of \$275,000,000 (the "**Third Mezzanine Loan**") to Third Mezzanine Borrower (as hereinafter defined) pursuant to that certain Third Mezzanine Loan Agreement, dated as of the date hereof (as the same may be amended, supplemented, replaced or otherwise modified from time to time, the "**Third Mezzanine Loan Agreement**"), which Third Mezzanine Loan is evidenced by the Third Mezzanine Note (as hereinafter defined) made by Third Mezzanine Borrower to Third Mezzanine Lender and secured by, among other things, the Third Mezzanine Pledge Agreement (as hereinafter defined) given by Third Mezzanine Borrower in favor of Third Mezzanine Lender pursuant to which Third Mezzanine Borrower has granted Third Mezzanine Lender a first priority security interest on, among other things, the Collateral (as defined in the Third Mezzanine Pledge Agreement);

**WHEREAS**, JPMorgan Chase Bank, N.A., having an address at 270 Park Avenue, New York, New York 10017, as fourth mezzanine lender ("**Fourth Mezzanine Lender**"), is making a loan in the principal amount of \$275,000,000 (the "**Fourth Mezzanine Loan**") to Fourth Mezzanine Borrower (as hereinafter defined) pursuant to that certain Fourth Mezzanine Loan Agreement, dated as of the date hereof (as the same may be amended, supplemented, replaced or otherwise modified from time to time, the "**Fourth Mezzanine Loan Agreement**"), which Fourth Mezzanine Loan is evidenced by the Fourth Mezzanine Note (as hereinafter defined) made by Fourth Mezzanine Borrower to Fourth Mezzanine Lender and secured by, among other things, the Fourth Mezzanine Pledge Agreement (as hereinafter defined) given by Fourth Mezzanine Borrower in favor of Fourth Mezzanine Lender pursuant to which Fourth Mezzanine Borrower has granted Fourth Mezzanine Lender a first priority security interest on, among other things, the Collateral (as defined in the Fourth Mezzanine Pledge Agreement);

**WHEREAS**, JPMorgan Chase Bank, N.A., having an address at 270 Park Avenue, New York, New York 10017, as fifth mezzanine lender ("**Fifth Mezzanine Lender**"), is making a loan in the principal amount of \$275,000,000 (the "**Fifth Mezzanine Loan**") to Fifth Mezzanine Borrower (as hereinafter defined) pursuant to that certain Fifth Mezzanine Loan Agreement, dated as of the date hereof (as the same may be amended, supplemented, replaced or otherwise modified from time to time, the "**Fifth Mezzanine Loan Agreement**"), which Fifth Mezzanine Loan is evidenced by the Fifth Mezzanine Note (as hereinafter defined) made by Fifth Mezzanine Borrower to Fifth Mezzanine Lender and secured by, among other things, the Fifth Mezzanine Pledge Agreement (as hereinafter defined) given by Fifth Mezzanine Borrower in favor of Fifth Mezzanine Lender pursuant to which Fifth Mezzanine Borrower has granted Fifth Mezzanine Lender a first priority security interest on, among other things, the Collateral (as defined in the Fifth Mezzanine Pledge Agreement);

**WHEREAS**, JPMorgan Chase Bank, N.A., having an address at 270 Park Avenue, New York, New York 10017, as sixth mezzanine lender ("**Sixth Mezzanine Lender**"), is making a loan in the principal amount of \$275,000,000 (the "**Sixth Mezzanine Loan**") to Sixth Mezzanine Borrower (as hereinafter defined) pursuant to that certain Sixth Mezzanine Loan Agreement, dated as of the date hereof (as the same may be amended, supplemented, replaced or otherwise modified from time to time, the "**Sixth Mezzanine Loan Agreement**"), which Sixth Mezzanine Loan is evidenced by the Sixth Mezzanine Note (as hereinafter defined) made by Sixth Mezzanine Borrower to Sixth Mezzanine Lender and secured by, among other things, the Sixth Mezzanine Pledge Agreement (as hereinafter defined) given by Sixth Mezzanine Borrower in favor of Sixth Mezzanine Lender pursuant to which Sixth Mezzanine Borrower has granted Sixth Mezzanine Lender a first priority security interest on, among other things, the Collateral (as defined in the Sixth Mezzanine Pledge Agreement);

**WHEREAS**, First Mezzanine Borrower is the legal and beneficial owner of all of the interests in Mortgage Borrower;

**WHEREAS**, Second Mezzanine Borrower is the legal and beneficial owner of all of the interests in First Mezzanine Borrower;

**WHEREAS**, Third Mezzanine Borrower is the legal and beneficial owner of all of the interests in Second Mezzanine Borrower;

**WHEREAS**, Fourth Mezzanine Borrower is the legal and beneficial owner of all of the interests in Third Mezzanine Borrower;

**WHEREAS**, Fifth Mezzanine Borrower is the legal and beneficial owner of all of the interests in Fourth Mezzanine Borrower;

**WHEREAS**, Sixth Mezzanine Borrower is the legal and beneficial owner of all of the interests in Fifth Mezzanine Borrower;

**WHEREAS**, Borrower is the legal and beneficial owner of all of the interests in Sixth Mezzanine Borrower;

**WHEREAS**, Borrower desires to obtain the Loan (as hereinafter defined) from Lender;

**WHEREAS**, as a condition precedent to the obligation of Lender to make the Loan to Borrower, Borrower has entered into that certain Pledge and Security Agreement (Seventh Mezzanine Loan), dated as of the date hereof, in favor of Lender (as amended, supplemented or otherwise modified from time to time, the "**Pledge Agreement**"), pursuant to which Borrower has granted to Lender a first priority security interest in the Collateral (as defined in the Pledge Agreement) as collateral security for the Debt (as hereinafter defined); and

**WHEREAS**, Lender is willing to make the Loan to Borrower, subject to and in accordance with the terms of this Agreement and the other Loan Documents (as hereinafter defined).

**NOW THEREFORE**, in consideration of the making of the Loan by Lender and the covenants, agreements, representations and warranties set forth in this Agreement, the parties hereto hereby covenant, agree, represent and warrant as follows:

**I. DEFINITIONS; PRINCIPLES OF CONSTRUCTION**

**Section 1.1. Definitions.** For all purposes of this Agreement, except as otherwise expressly required or unless the context clearly indicates a contrary intent:

“**Acceptable Counterparty**” shall mean any counterparty to the Interest Rate Cap Agreement that has and shall maintain, until the expiration of the applicable Interest Rate Cap Agreement, a long-term unsecured debt rating of at least “A+” by S&P and “Aa3” from Moody’s, which rating shall not include a “t” or otherwise reflect a termination risk and is otherwise reasonably acceptable to Lender.

“**Additional Insolvency Opinion**” shall have the meaning set forth in Section 4.1.30(c) hereof.

“**Additional True Lease Opinion**” shall have the meaning set forth in Section 4.1.30(d) hereof.

“**Affiliate**” shall mean, as to any Person, any other Person that, directly or indirectly, is in Control of, is Controlled by or is under common Control with such Person or is a director or officer of such Person or of an Affiliate of such Person.

“**Aggregate Debt Service**” shall mean, with respect to any particular period of time, the sum of (a) the Debt Service, (b) the Mortgage Debt Service and (c) the Other Mezzanine Debt Service.

“**Aggregate Material Adverse Effect**” shall mean any event or condition that, either singly or in the aggregate, could reasonably be expected to have or result in a material adverse effect upon (a) the business, operations, economic performance, prospects, assets or condition (financial or otherwise) of (i) Mortgage Borrower, Senior Mezzanine Borrower or Borrower (taken as a whole), (ii) Guarantor, (iii) Operating Company (taken as a whole), (iv) the Operating Lease or the Operating Lease Guaranty (taken as a whole) or (v) the Properties (taken as a whole), the Collateral, the Senior Mezzanine Collateral, the Hotel Components (taken as a whole) or the Casino Components (taken as a whole); (b) the ability of Mortgage Borrower (taken as a whole), Senior Mezzanine Borrower (taken as a whole), Borrower (taken as a whole) or Guarantor to perform, in all material respects, its obligations under the Loan Documents, Senior Mezzanine Loan Documents or Mortgage Loan Documents (taken as a whole) to which such entity is a party; (c) the ability of Operating Company (taken as a whole) to perform, in all material respects, the

obligations under the Operating Leases (taken as a whole); or the ability of Guarantor (Operating Lease) (taken as a whole) to perform, in all material respects, the obligations under the Operating Lease Guaranty (taken as a whole); (d) the enforceability or validity of (i) the Operating Lease (taken as a whole) or the Operating Lease Guaranty (taken as a whole), (ii) the Loan Documents, Senior Mezzanine Loan Documents or Mortgage Loan Documents (taken as a whole) or the perfection or priority of the Liens created under the Loan Documents, Senior Mezzanine Loan Documents or Mortgage Loan Documents (taken as a whole); (e) the value of, or cash flow from, the Properties or the operations thereof (taken as a whole) or the Collateral; or (f) the material rights, interests and remedies of Lender under the Loan Documents (taken as a whole).

“**Allocated Loan Amount**” shall mean, for an Individual Property, the amount set forth on Schedule II attached hereto.

“**ALTA**” shall mean American Land Title Association, or any successor thereto.

“**Alteration**” shall mean, with respect to any Individual Property, any alteration, improvement, demolition, construction or removal of all or any portion of the Improvements at such Individual Property.

“**Annual Budget**” shall mean, individually and collectively as the context requires, (a) the Borrower Annual Budget and (b) the Operating Company Annual Budget.

“**Applicable Interest Rate**” shall mean the rate or rates at which the outstanding principal amount of the Loan bears interest from time to time in accordance with the provisions of Section 2.2.3 hereof.

“**Approved Guarantor**” means (x) Holdings, for so long Holdings meets the Minimum Value Test, or (y) any other guarantor that meets the Minimum Value Test and is otherwise reasonably satisfactory to Lender.

“**Assignee**” shall have the meaning set forth in Section 9.5 hereof.

“**Assignment and Acceptance**” shall have the meaning set forth in Section 9.8 hereof.

“**Award**” shall mean any compensation paid by any Governmental Authority in connection with a Condemnation with respect to all or any part of any Individual Property.

“**Bankruptcy Action**” shall mean with respect to any Person (a) such Person filing a voluntary petition under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (b) the filing of an involuntary petition against such Person under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law, or soliciting or causing to be solicited petitioning creditors for any involuntary petition against such Person; (c) such Person filing an answer consenting to or otherwise acquiescing in or joining in any involuntary petition filed against it, by any other Person under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law, or soliciting or causing to be solicited petitioning creditors for any involuntary petition from any Person; (d) such Person consenting to or acquiescing in or joining in an application for the appointment of a custodian, receiver, trustee, or examiner for such Person or any portion of its property; or (e) such Person making an

assignment for the benefit of creditors, or admitting, in writing or in any legal proceeding, its insolvency or inability to pay its debts as they become due.

“**Bankruptcy Code**” shall mean Title 11 of the United States Code, 11 U.S.C. §101, et seq., as the same may be amended from time to time, and any successor statute or statutes and all rules and regulations from time to time promulgated thereunder, and any comparable foreign laws relating to bankruptcy, insolvency or creditors’ rights or any other Federal or state bankruptcy or insolvency law.

“**Basic Carrying Costs**” shall mean, for any period, with respect to each Individual Property, the sum of the following costs associated with such Individual Property for such period: (a) Taxes, (b) Insurance Premiums and (c) Ground Rent.

“**Bill’s Lake Tahoe Casino**” shall mean that certain property identified on Schedule II as “Bill’s Lake Tahoe” having a street address of 15 Highway 50, Stateline, Nevada.

“**Borrower**” shall have the meaning set forth in the introductory paragraph hereto, together with its successors and permitted assigns. As used herein, the term “Borrower” shall mean one of the Borrowers individually, or the Borrowers collectively, as the context shall require.

“**Borrower Agent**” shall have the meaning set forth in Section 10.6 hereof.

“**Borrower Annual Budget**” shall mean the operating budget of Mortgage Borrower, prepared by Mortgage Borrower for the applicable Fiscal Year or other period.

“**Borrower Entity**” shall have the meaning set forth in Section 11.1 hereof.

“**Business Day**” shall mean any day other than a Saturday, Sunday or any other day on which national banks in New York, New York are not open for business.

“**Capital Expenditures**” shall mean, for any period, the amount expended for items capitalized under GAAP (including expenditures for building improvements or major repairs, leasing commissions, tenant improvements and Fixtures).

“**Capitalized Software Expenditures**” shall mean, for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities) by a Person during such period in respect of licensed or purchased software or internally developed software and software enhancements that, in accordance with GAAP, are or are required to be reflected as capitalized costs on the consolidated balance sheet of such Person.

“**Cash Management Account**” shall have the meaning set forth in the Mortgage Loan Agreement.

“**Casino Components**” shall mean, collectively, those portions of each Individual Property devoted to the operation of casino gaming operations, including (without limitation) those areas devoted to the conduct of games of chance, facilities associated directly with gaming operations including, without limitation, casino support areas such as surveillance and security

areas, cash cages, counting and accounting areas and gaming back-of-the-house areas in each case, to the extent the operation thereof requires a Gaming License under applicable Gaming Laws. The Casino Components are more particularly described and set forth in each Operating Lease, as appropriate.

“**Casualty**” shall have the meaning set forth in Section 6.2 hereof.

“**Change in Control**” shall mean (1) a “Change in Control” as defined in the Credit Agreement, dated the date hereof, among Hamlet Merger Inc., a Delaware corporation, Harrah’s Operating Company, Inc., a Delaware corporation, the Lenders party thereto from time to time, Bank of America, N.A., as administrative agent and collateral agent for the Lenders, and certain other parties thereto, or (2) a Change in Control as defined in clause (b) of said definition except that references therein to Borrower shall be deemed to refer to Holdings.

“**Closing Date**” shall mean the date of the funding of the Loan.

“**Code**” shall mean the Internal Revenue Code of 1986, as amended, as it may be further amended from time to time, and any successor statutes thereto, and applicable U.S. Department of Treasury regulations issued pursuant thereto in temporary or final form.

“**Collateral**” shall have the meaning set forth in the Pledge Agreement.

“**Collateral Assignment of Interest Rate Cap Agreement**” shall mean that certain Collateral Assignment of Interest Rate Cap Agreement, dated as of the date hereof, executed by Borrower in connection with the Loan for the benefit of the Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Collection Account**” shall have the meaning set forth in the Mortgage Loan Agreement.

“**Collection Banks**” shall mean (a) any Eligible Institution(s) designated by Mortgage Borrower as Collection Bank and reasonably approved by Lender from time to time in accordance with the terms hereof, or (b) any other financial institution otherwise reasonably approved by Lender and, if a Securitization has occurred, with respect to which a Rating Agency Confirmation has been obtained.

“**Condemnation**” shall mean a temporary or permanent taking by any Governmental Authority as the result or in lieu or in anticipation of the exercise of the right of condemnation or eminent domain, of all or any part of any Individual Property, or any interest therein or right accruing thereto, including any right of access thereto or any change of grade affecting such Individual Property or any part thereof.

“**Consolidated Net Income**” shall mean, with respect to any Person for any period, the aggregate of the Net Income of such Person for such period, on a consolidated basis; provided, however, that, without duplication,

(i) any net after-tax extraordinary, nonrecurring or unusual gains or losses or income or expense or charge (less all fees and expenses relating thereto), including,

without limitation, any severance, relocation or other restructuring expenses, any expenses related to any reconstruction, decommissioning, recommissioning or reconfiguration of fixed assets for alternative uses, fees, expenses or charges relating to new product lines, curtailments or modifications to pension and post-retirement employee benefit plans, excess pension charges, acquisition integration costs, facilities opening costs, project start-up costs, business optimization costs, signing, retention or completion bonuses, shall be excluded,

(ii) any net after tax income or loss from disposed, abandoned, transferred, closed or discontinued operations and any net after tax gain or loss on disposal of disposed, abandoned, transferred, closed or discontinued operations shall be excluded,

(iii) any net after tax gain or loss (less all fees and expenses or charges relating thereto) attributable to business dispositions or asset dispositions other than in the ordinary course of business (as determined in good faith by the management of the Borrower) shall be excluded,

(iv) Consolidated Net Income for such period shall not include the cumulative effect of a change in accounting principles during such period,

(v) effects of purchase accounting adjustments (including the effects of such adjustments pushed down to such Person) in component amounts required or permitted by GAAP, resulting from the application of purchase accounting in relation to any consummated acquisition or the amortization or write-off of any amounts thereof, net of taxes, shall be excluded,

(vi) any impairment charges or asset write-offs, in each case pursuant to GAAP, and the amortization of intangibles arising pursuant to GAAP, shall be excluded,

(vii) any non cash compensation charge or expenses realized or resulting from stock option plans, employee benefit plans or post-employment benefit plans, or grants or sales of stock, stock appreciation or similar rights, stock options, restricted stock, preferred stock or other rights shall be excluded,

(viii) accruals and reserves that are established or adjusted within twelve months after the Closing Date and that are so required to be established or adjusted in accordance with GAAP or as a result of adoption or modification of accounting policies shall be excluded,

(ix) non-cash gains, losses, income and expenses resulting from fair value accounting required by the applicable standard under GAAP and related interpretations shall be excluded,

(x) (i) the non-cash portion of "straight-line" rent expense shall be excluded and (ii) the cash portion of "straight-line" rent expense which exceeds the amount expensed in respect of such rent expense shall be included,

(xi) to the extent covered by insurance and actually reimbursed, or, so long as such Person has made a determination that there exists reasonable evidence that such amount will in fact be reimbursed by the insurer and only to the extent that such amount is (i) not denied by the applicable carrier in writing within 180 days and (ii) in fact reimbursed within 365 days of the date of such evidence (with a deduction for any amount so added back to the extent not so reimbursed within 365 days), expenses with respect to liability or casualty events or business interruption shall be excluded, and

(xii) non-cash charges for deferred tax asset valuation allowances shall be excluded.

“**Contribution Agreement**” shall mean that certain Contribution Agreement, dated as of the date hereof, between Borrower and Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Control**” shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management, policies or activities of a Person, whether through ownership of voting securities, by contract or otherwise. “**Controlled**” and “**Controlling**” shall have correlative meanings.

“**Convention Center Parcel**” shall mean the parcel shown on Schedule XXII and comprising a part of the Harrah’s Atlantic City Property.

“**Convention Center Project**” shall mean that certain conference center currently contemplated to be constructed on the Convention Center Parcel by the Mortgage Borrower and/or the Operating Company owning the Harrah’s Atlantic City Property, and more fully described in the schematic designs for the Convention Center Project provided by Mortgage Borrower to Mortgage Lender. The Convention Center Project will not be funded with the proceeds of the Loan (but will be funded by Mortgage Borrower, including with capital contributions).

“**Counterparty**” shall mean, with respect to the Interest Rate Cap Agreement and any Replacement Interest Rate Cap Agreement, any Acceptable Counterparty.

“**Covered Disclosure Information**” shall have the meaning set forth in Section 9.2(b) hereof.

“**Debt**” shall mean the outstanding principal amount set forth in, and evidenced by, this Agreement and the Notes together with all interest accrued and unpaid thereon (including any interest that would accrue on the outstanding principal amount of the Loan through and including the end of any applicable Interest Period, even if such Interest Period extends beyond any applicable Payment Date, prepayment date or the Maturity Date) and all other sums due to Lender in respect of the Loan under the Notes, this Agreement, the Pledge Agreement and the other Loan Documents.

“**Debt Service**” shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under this Agreement and the Note.

**“Debt Service Coverage Ratio”** shall mean a ratio for the applicable period in which:

(a) the numerator is EBITDAR of the Operating Company for the four (4) quarter period preceding the date of determination, as set forth in the financial statements required hereunder; and

(b) the denominator is the sum of (i) the aggregate amount of Mortgage Debt Service which was due and payable for such preceding four (4) quarter period calculated, for these purposes, assuming that (A) the spread on the Mortgage Loan is the Spread (as defined in the Mortgage Loan Agreement) and (B) LIBOR is equal to the lesser of (y) LIBOR on the date of determination, or (z) the applicable Strike Price, (ii) the aggregate amount of Mezzanine Debt Service (including the Debt Service) which was due and payable for such preceding four (4) quarter period calculated, for these purposes, assuming that (A) the spread on the Mezzanine Loans is the “Spread” as defined in each Mezzanine Loan Agreement and (B) LIBOR is equal to the lesser of (y) LIBOR on the date of determination, or (z) the applicable Strike Price (as defined in the Mortgage Loan Agreement), and (iii) the aggregate amount of the Permitted Mezzanine Debt Service which was due and payable for such preceding four (4) quarter period (or the annualized amount, if the Permitted Mezzanine Loan were outstanding for less than 12 calendar months) calculated, for these purposes, assuming that (A) the spread on the Permitted Mezzanine Loan is the “Spread” (as defined in the documents evidencing the Permitted Mezzanine Loan Documents and (B) LIBOR is equal to the lesser of (y) LIBOR on the date of determination, or (z) the strike price under the related interest rate cap purchased in connection with the Permitted Mezzanine Loan);

provided, however, that, solely for the purpose of Section 2.5, the Debt Service Coverage Ratio shall be determined as described in Section 2.5.1(c).

**“Default”** shall mean the occurrence of any event hereunder or under any other Loan Document which, but for the giving of notice or passage of time, or both, would be an Event of Default.

**“Default Rate”** shall mean a rate per annum equal to the lesser of (a) the Maximum Legal Rate and (b) two percent (2%) above the Applicable Interest Rate.

**“Delinquency”** shall mean, with respect to each Individual Property, the latest date on which Taxes or Other Charges may be paid (with respect to such Individual Property) without the payment of a premium, penalty or interest.

**“Determination Date”** shall mean, with respect to any Interest Period, the date that is two (2) London Business Days prior to the fifteenth (15th) day of the calendar month in which such Interest Period commences.

**“Disclosure Document”** shall mean a prospectus, prospectus supplement, private placement memorandum, offering memorandum, offering circular, term sheet, road show presentation materials or other offering documents or marketing materials, in each case in preliminary or final form, used to offer Securities in connection with a Securitization.

“EBITDAR” shall mean, with respect to any Person for any period, the Consolidated Net Income of such Person plus the sum of (in each case without duplication and to the extent the respective amounts described in subclauses (i) through (vi) below reduced such Consolidated Net Income (and were not excluded therefrom) for the respective period for which EBITDAR is being determined):

(i) provision for Taxes based on income, profits or capital for such period, including, without limitation, state, franchise and similar taxes and foreign withholding taxes (including penalties and interest related to taxes or arising from tax examinations);

(ii) Interest Expense for such period (net of interest income for such period);

(iii) depreciation and amortization expenses for such period including, but not exclusively, the amortization of intangible assets, deferred financing fees and Capitalized Software Expenditures and amortization of unrecognized prior service costs and actuarial gains and losses related to pensions and other post-employment benefits;

(iv) any expenses or charges (other than depreciation or amortization expense as described in the preceding clause (iii)) related to any acquisition, disposition, recapitalization or the incurrence, modification or repayment of Indebtedness permitted to be incurred by this Agreement (including a refinancing thereof) (whether or not successful), including (y) any amendment or other modification of such Indebtedness, and (z) commissions, discounts, yield and other fees and charges (including any interest expense) related to any such Indebtedness;

(v) restructuring charges or reserves (which, for the avoidance of doubt, shall include, without limitation, the effect of inventory optimization programs, retention, severance, systems establishment costs, contract termination costs, future lease commitments and excess pension charges), to the extent that such expenses, charges or reserves are considered to be extraordinary expenses under GAAP;

(vi) any costs or expense incurred pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement or any stock subscription or shareholder agreement, to the extent that such cost or expenses are funded with cash proceeds contributed to the capital of such Person;

(vii) with respect to the Operating Company, the Fixed Rent payable under the Operating Lease; and

(viii) if the Captive Insurance Company shall be utilized to provide terrorism coverage hereunder, the amount of the premiums expended by Mortgage Borrower to obtain such terrorism coverage to the extent such amount exceeds the Terrorism Premium Limit and such excess is retained by the Captive Insurance Company;

provided that EBITDAR shall be reduced by the sum of the following for the respective period for which EBITDAR is being determined:

(A) management fees equal to the greater of (x) 3 percent per annum of gross revenues at the Properties and (y) the actual management fees payable under any management agreement (provided the foregoing shall not be construed as Lender's approval of any management agreement except in accordance with the terms hereof), without double counting actual amounts incurred and otherwise reflected in the calculation of EBITDAR, and

(B) FF&E reserves equal to 3 percent per annum of gross hotel and casino revenues at the Properties without double counting actual amounts incurred and otherwise reflected in the calculation of EBITDAR.

**"EBITDAR (Closing Date)"** shall mean EBITDAR for calendar year 2007, as agreed upon between Borrower and Lender.

**"Eighth Mezzanine Borrower"** shall mean, collectively, the entities set forth on Schedule XX hereto, each a Delaware limited liability company, together with their respective successors and permitted assigns. As used herein, the term "Eighth Mezzanine Borrower" shall mean one of the Eighth Mezzanine Borrowers individually, or the Eighth Mezzanine Borrowers collectively, as the context shall require.

**"Eighth Mezzanine Debt Service"** shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Eighth Mezzanine Notes.

**"Eighth Mezzanine Lender"** shall mean JPMorgan Chase Bank, N.A., in its capacity as the holder of the Eighth Mezzanine Loan, together with its successors and assigns.

**"Eighth Mezzanine Loan"** shall mean that certain loan in the original principal amount of Two Hundred Seventy-Five Million and No/100 Dollars (\$275,000,000) of even date herewith made by Eighth Mezzanine Lender to Eighth Mezzanine Borrower.

**"Eighth Mezzanine Loan Agreement"** shall mean that certain Eighth Mezzanine Loan Agreement, dated as of the date hereof, between Eighth Mezzanine Borrower and Eighth Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**"Eighth Mezzanine Loan Documents"** shall mean the Eighth Mezzanine Loan Agreement, the Eighth Mezzanine Notes and all other documents and instruments executed and delivered in connection with the Eighth Mezzanine Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

**"Eighth Mezzanine Notes"** shall mean the "Notes" as defined in the Eighth Mezzanine Loan Agreement.

**"Eligibility Requirements"** means, with respect to any Person, that such Person (a) has total assets (in name or under management) in excess of \$4,000,000,000 and (except with respect to a pension advisory firm or similar fiduciary) capital/statutory surplus or shareholder's

equity of \$1,000,000,000, (b) is regularly engaged in the business of owning and operating commercial real estate properties, (c) is not currently, and its principals are not currently, subject to a Bankruptcy Action and for the immediately preceding 10 years, neither it nor any material subsidiary has been subject to a Bankruptcy Action, and (d) has not been, and its principals have not been, convicted and is not under current indictment for a felony or crime involving moral turpitude, has not been found by a court of competent jurisdiction to have violated federal or state securities laws, and is not an organized crime figure.

**“Eligible Account”** shall mean a separate and identifiable account from all other funds held by the holding institution that is either (a) an account or accounts maintained with a federal or state-chartered depository institution or trust company which complies with the definition of Eligible Institution or (b) a segregated trust account or accounts maintained with a federal or state chartered depository institution or trust company acting in its fiduciary capacity which, in the case of a state chartered depository institution or trust company, is subject to regulations substantially similar to 12 C.F.R. §9.10(b), having in either case a combined capital and surplus of at least \$50,000,000 and subject to supervision or examination by federal and state authority. An Eligible Account will not be evidenced by a certificate of deposit, passbook or other instrument.

**“Eligible Institution”** shall mean a depository institution or trust company, the short term unsecured debt obligations or commercial paper of which are rated at least “A-1” by S&P, “P-1” by Moody’s and “F-1” by Fitch in the case of accounts in which funds are held for thirty (30) days or less (or, in the case of accounts in which funds are held for more than thirty (30) days, the long term unsecured debt obligations of which are rated at least “A” by Fitch and S&P and “A2” by Moody’s). After a Securitization of all or any portion of the Loan, only the ratings of those Rating Agencies rating the Securities shall be taken into account in determining whether institutions or trust companies constitute Eligible Institutions.

**“Embargoed Person”** shall have the meaning set forth in Section 4.1.35 hereof.

**“Environmental Indemnity”** shall mean that certain Environmental Indemnity Agreement, dated as of the date hereof, executed by Borrower and Guarantor in connection with the Loan for the benefit of Lender and the Noteholders, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

**“Equipment”** shall mean, with respect to each Individual Property, any equipment now owned or hereafter acquired by Mortgage Borrower or Operating Company, which is used at or in connection with the Improvements or such Individual Property or is located thereon or therein, including (without limitation) all Gaming Equipment, all machinery, equipment, furnishings, and electronic data-processing and other office equipment now owned or hereafter acquired by or on behalf of Mortgage Borrower or Operating Company and any and all additions, substitutions and replacements of any of the foregoing), together with all attachments, components, parts, equipment and accessories installed thereon or affixed thereto.

**“ERISA”** shall mean the Employee Retirement Income Security Act of 1974, as amended.

“**Event of Default**” shall have the meaning set forth in Section 8.1(a) hereof.

“**Exchange Act**” shall have the meaning set forth in Section 9.2(a) hereof.

“**Exchange Act Filing**” shall have the meaning set forth in Section 5.1.11(f) hereof.

“**FF&E**” shall mean, with respect to each Individual Property, collectively, furnishings, fixtures (other than Fixtures) and Equipment located in the guest rooms, hallways, lobbies, restaurants, lounges, meeting and banquet rooms, parking facilities, public areas or otherwise in any portion of such Individual Property, including (without limitation) all fixed asset supplies (including, but not limited to, linen, china, glassware, tableware, uniforms, other hotel inventory and similar items, whether used in connection with public space or guest rooms), beds, chairs, bookcases, tables, carpeting, drapes, couches, luggage carts, luggage racks, bars, bar fixtures, radios, television sets, intercom and paging equipment, electric and electronic equipment, heating, lighting and plumbing fixtures, fire prevention and extinguishing apparatus, cooling and air-conditioning systems, elevators, escalators, stoves, ranges, refrigerators, laundry machines, tools, machinery, boilers, incinerators, switchboards, conduits, compressors, vacuum cleaning systems, floor cleaning, waxing and polishing equipment, cabinets, lockers, shelving, dishwashers, garbage disposals, washer and dryers, gaming equipment and other casino equipment and all other customary hotel and casino resort equipment and other tangible property owned by Mortgage Borrower or Operating Company, or in which Mortgage Borrower or Operating Company has or shall have an interest, now or hereafter located at such Individual Property and useable in connection with the present or future operation and occupancy of such Individual Property; provided, however, that FF&E shall not include items owned by tenants under space Leases (other than the Operating Lease) or by third party operators (other than Operating Company).

“**FF&E Reserve Account**” shall have the meaning set forth in Section 7.3 hereof.

“**FF&E Reserve Fund**” shall have the meaning set forth in Section 7.3 hereof.

“**Fifth Mezzanine Borrower**” shall mean, collectively, the entities set forth on Schedule XVII hereto, each a Delaware limited liability company, together with their respective successors and permitted assigns. As used herein, the term “Fifth Mezzanine Borrower” shall mean one of the Fifth Mezzanine Borrowers individually, or the Fifth Mezzanine Borrowers collectively, as the context shall require.

“**Fifth Mezzanine Debt Service**” shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Fifth Mezzanine Notes.

“**Fifth Mezzanine Lender**” shall mean JPMorgan Chase Bank, N.A., in its capacity as the holder of the Fifth Mezzanine Loan, together with its successors and assigns.

“**Fifth Mezzanine Loan**” shall mean that certain loan in the original principal amount of Two Hundred Seventy-Five Million and No/100 Dollars (\$275,000,000) of even date herewith made by Fifth Mezzanine Lender to Fifth Mezzanine Borrower.

**“Fifth Mezzanine Loan Agreement”** shall mean that certain Fifth Mezzanine Loan Agreement, dated as of the date hereof, between Fifth Mezzanine Borrower and Fifth Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**“Fifth Mezzanine Loan Documents”** shall mean the Fifth Mezzanine Loan Agreement, the Fifth Mezzanine Notes and all other documents and instruments executed and delivered in connection with the Fifth Mezzanine Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

**“Fifth Mezzanine Notes”** shall mean the “Notes” as defined in the Fifth Mezzanine Loan Agreement.

**“Fifth Mezzanine Pledge Agreement”** shall mean that certain Pledge and Security Agreement (Fifth Mezzanine Loan), dated as of the date hereof, between Fifth Mezzanine Borrower and Fifth Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**“First Mezzanine Borrower”** shall mean, collectively, the entities set forth on Schedule XIV hereto, each a Delaware limited liability company, together with their respective successors and permitted assigns. As used herein, the term “First Mezzanine Borrower” shall mean one of the First Mezzanine Borrowers individually, or the First Mezzanine Borrowers collectively, as the context shall require.

**“First Mezzanine Borrower Company Agreements”** shall mean, collectively, the Limited Liability Company Agreements of First Mezzanine Borrower, by each Borrower, as sole member, dated as of the date hereof.

**“First Mezzanine Debt Service”** shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the First Mezzanine Note.

**“First Mezzanine Lender”** shall have the meaning set forth in the Recitals.

**“First Mezzanine Loan”** shall have the meaning set forth in the Recitals.

**“First Mezzanine Loan Agreement”** shall have the meaning set forth in the Recitals.

**“First Mezzanine Loan Documents”** shall mean the First Mezzanine Loan Agreement, the First Mezzanine Notes, and all other documents and instruments executed and delivered in connection with the First Mezzanine Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

**“First Mezzanine Notes”** shall mean the “Notes” as defined in the First Mezzanine Loan Agreement.

**“First Mezzanine Pledge Agreement”** shall mean that certain Pledge and Security Agreement (First Mezzanine Loan), dated as of the date hereof, between First

Mezzanine Borrower and First Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Fiscal Year**” shall mean each twelve (12) month period commencing on January 1 and ending on December 31 during each year of the term of the Loan.

“**Fitch**” shall mean Fitch, Inc.

“**Fixed Rent**” shall mean the Base Rent (as defined in the Operating Lease) payable under the Operating Lease.

“**Fixtures**” shall mean, with respect to each Individual Property, all Equipment now owned, or the ownership of which is hereafter acquired, by Mortgage Borrower which is so related to the Land and the Improvements forming part of the Individual Property in question that it is deemed fixtures or real property under applicable Legal Requirements, including, without limitation, all building or construction materials intended for construction, reconstruction, alteration, decoration or repair of or installation on the applicable Individual Property, construction equipment, appliances, machinery, plant equipment, fittings, apparatuses, fixtures and other items now or hereafter attached to, installed in or used in connection with (temporarily or permanently) any of the Improvements or the Land, including, but not limited to, engines, devices for the operation of pumps, pipes, plumbing, call and sprinkler systems, fire extinguishing apparatuses and equipment, heating, ventilating, incinerating, electrical, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances and equipment, pollution control equipment, security systems, disposals, dishwashers, refrigerators and ranges, recreational equipment and facilities of all kinds, and water, electrical, storm and sanitary sewer facilities, utility lines and equipment (whether owned individually or jointly with others, and, if owned jointly, to the extent of Mortgage Borrower’s interest therein) and all other utilities whether or not situated in easements, all water tanks, water supply, water power sites, fuel stations, fuel tanks, fuel supply, and all other structures, together with all accessions, appurtenances, additions, replacements, betterments and substitutions or any of the foregoing and the proceeds thereof.

“**Flamingo Las Vegas**” shall mean that certain Individual Property identified on Schedule II as the “Flamingo Las Vegas” and having a street address of 3555 Las Vegas Boulevard South, Las Vegas, Nevada.

“**Force Majeure**” shall mean any delay caused by reason of strike, lock-out or other labor trouble, casualty, governmental preemption of priorities or other controls in connection with a national or other public emergency or shortages of fuel, supplies or labor resulting therefrom or other causes beyond Borrower’s reasonable control.

“**Foreign Taxes**” shall have the meaning set forth in Section 2.2.3(e) hereof.

“**Fourth Mezzanine Borrower**” shall mean, collectively, the entities set forth on Schedule XVI hereto, each a Delaware limited liability company, together with their respective successors and permitted assigns. As used herein, the term “Fourth Mezzanine Borrower” shall mean one of the Fourth Mezzanine Borrowers individually, or the Fourth Mezzanine Borrowers collectively, as the context shall require.

**“Fourth Mezzanine Debt Service”** shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Fourth Mezzanine Notes.

**“Fourth Mezzanine Lender”** shall mean JPMorgan Chase Bank, N.A., in its capacity as the holder of the Fourth Mezzanine Loan, together with its successors and assigns.

**“Fourth Mezzanine Loan”** shall mean that certain loan in the original principal amount of Two Hundred Seventy-Five Million and No/100 Dollars (\$275,000,000) of even date herewith made by Fourth Mezzanine Lender to Fourth Mezzanine Borrower.

**“Fourth Mezzanine Loan Agreement”** shall mean that certain Fourth Mezzanine Loan Agreement, dated as of the date hereof, between Fourth Mezzanine Borrower and Fourth Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**“Fourth Mezzanine Loan Documents”** shall mean the Fourth Mezzanine Loan Agreement, the Fourth Mezzanine Notes and all other documents and instruments executed and delivered in connection with the Fourth Mezzanine Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

**“Fourth Mezzanine Notes”** shall mean the “Notes” as defined in the Fourth Mezzanine Loan Agreement.

**“Fourth Mezzanine Pledge Agreement”** shall mean that certain Pledge and Security Agreement (Fourth Mezzanine Loan), dated as of the date hereof, between Fourth Mezzanine Borrower and Fourth Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**“GAAP”** shall mean generally accepted accounting principles in the United States of America as of the date of the applicable financial report.

**“Gaming Authorities”** shall mean, in any jurisdiction in which Borrower, Senior Mezzanine Borrower, Mortgage Borrower, Operating Company or any of their respective subsidiaries manages or conducts any casino, gaming business or activities, the applicable gaming board, commission, or other governmental gaming regulatory authority, body or agency which (a) has, or may at any time after the Closing Date have, jurisdiction over the gaming activities at any of the Properties or any successor to such authority or (b) is, or may at any time after the Closing Date be, responsible for interpreting, administering and enforcing the Gaming Laws.

**“Gaming Equipment”** shall mean any and all gaming devices, gaming device parts inventory and other related gaming equipment and supplies used in connection with the operation of a casino, including (without limitation), slot machines, gaming tables, cards, dice, chips, tokens, player tracking systems, cashless wagering systems, electronic betting systems, mobile gaming systems and associated equipment which are located at the Casino Components, owned or leased by Operating Company or Mortgage Borrower and used or useable exclusively

in the present or future operation of slot machines and live games at the Casino Component, together with all improvements and/or additions thereto.

“**Gaming Laws**” or “**Gaming Regulations**” shall mean all applicable constitutions, treaties, laws, statutes and municipal ordinances pursuant to which any Gaming Authority possesses regulatory, licensing or permitting authority over gaming, gambling or casino or casino-related activities and all rules, rulings, orders, ordinances and regulations of any Gaming Authority applicable to the gambling, casino, gaming businesses or casino or casino-related activities of Borrower, Senior Mezzanine Borrower, Mortgage Borrower or the Operating Companies or any of their respective subsidiaries in any jurisdiction, as in effect from time to time, including the policies, interpretations and administration thereof by the Gaming Authorities.

“**Gaming License**” shall mean, in any jurisdiction in which Borrower, Senior Mezzanine Borrower, Mortgage Borrower, Operating Company or any of their respective subsidiaries conducts any casino and gaming business or activities, any license, qualification, franchise, accreditation, approval, registration, permit, finding of suitability or other authorization relating to gaming, the gaming business or the operation of a casino under the Gaming Laws or required by the Gaming Authorities or otherwise necessary for the operation of gaming, the gaming business or a resort casino.

“**Gaming Liquidity Requirement**” shall mean the minimum bankroll requirements for cash and cash equivalents required to be maintained by each Operating Company pursuant to Gaming Laws in an amount no greater than is mandated by applicable law, which requirements may be subject to (a) adjustment in an amount equal to any incremental increase or decrease in the amount of the Gaming Liquidity Requirement that is required to be maintained by Operating Company under applicable Gaming Laws as a result of any increase or decrease in gaming business at the applicable Casino Component, or (b) subject to increase or decrease due to any change in the applicable requirements under Gaming Laws generally.

“**Gaming Operating Reserve**” shall mean, with respect to the Casino Component, such cash funds and reserves that are held and maintained on-site at each Individual Property by Operating Company, in its capacity as the duly licensed operator of the Casino Component, including (without limitation) casino chips, tokens, checks and markers; provided, however, that all such Gaming Operating Reserves (a) are established and maintained in compliance with all applicable Gaming Liquidity Requirements, (b) are solely for use in the day-to-day operation and management of each Casino Component in the ordinary course of business, and (c) in the case of each Individual Property, are in amounts customary and generally comparable for casinos comparable to the Individual Property in question.

“**Governmental Authority**” shall mean any court, board, agency, commission, office or other authority of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence, including, without limitation, all Gaming Authorities having jurisdiction over the Properties (and any operations conducted thereat), Mortgage Borrower, Borrower and Operating Company. For the avoidance of doubt, the term “Governmental Authority” shall include, and be deemed to include, all Gaming Authorities.

“**Ground Lease**” shall mean, individually and collectively, as the context requires, those certain ground leases listed in Schedule IV, as the same may be amended, supplemented, replaced or otherwise modified from time to time in accordance with the provisions hereof.

“**Ground Lease Estoppel Reserve Amount**” shall have the meaning set forth in the Ground Lease Side Letter.

“**Ground Lease Estoppel Trigger Event**” shall have the meaning set forth in Section 5.1.23 hereof.

“**Ground Lease Estoppel Trigger Spread**” shall have the meaning set forth in the Ground Lease Side Letter.

“**Ground Lease Side Letter**” shall have the meaning assigned to such term in the Mortgage Loan Agreement.

“**Ground Lease Subsidiary**” shall have the meaning assigned to such term in the Mortgage Loan Agreement.

“**Ground Rent**” shall mean any rent, additional rent or other charge payable by the tenant under the Ground Lease.

“**Ground Rent Reserve Account**” shall have the meaning set forth in Section 7.4 hereof.

“**Ground Rent Reserve Funds**” shall have the meaning set forth in Section 7.4.

“**Guarantor**” shall mean, collectively, Guarantor (FF&E), Guarantor (Recourse Carveouts), Guarantor (Operating Lease), Guarantor (Ground Lease Estoppel) and any guarantor under any completion guaranty provided under Section 5.1.21.

“**Guarantor (FF&E)**” shall mean any Approved Guarantor. Initially, Guarantor (FF&E) shall mean Holdings, and its successors. If Holdings fails to meet the Minimum Value Test, then Borrower shall replace Holdings, as the guarantor under the Guaranty (FF&E), with an Approved Guarantor.

“**Guarantor (Ground Lease Estoppel)**” shall mean Holdings, and its successors.

“**Guarantor (Operating Lease)**” shall mean Holdings, and its successors.

“**Guarantor (Recourse Carveouts)**” shall mean Holdings, and its successors.

“**Guaranty**” shall mean, collectively, the Guaranty (FF&E), the Guaranty (Recourse Carveouts), the Guaranty (Ground Lease Estoppel), the Operating Lease Guaranty and any completion guaranty provided under Section 5.1.21.

**“Guaranty (FF&E)”** shall mean that certain Guaranty (FF&E) (Seventh Mezzanine Loan), dated as of the date hereof, from Guarantor (FF&E) to Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

**“Guaranty (Ground Lease Estoppel)”** shall mean that certain Guaranty (Harvey’s - Payment) (Seventh Mezzanine), dated as of the date hereof, from Guarantor (Ground Lease Estoppel) to Lender, as the same may be amended, restated, supplemented or modified from time to time.

**“Guaranty (Recourse Carveouts)”** shall mean that certain Guaranty (Recourse Carveouts) (Seventh Mezzanine Loan), dated as of the date hereof, from Guarantor (Recourse Carveouts) to Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

**“Harrah’s Atlantic City Property”** shall mean that certain Individual Property identified on Schedule II as “Harrah’s Atlantic City” and having a street address of 777 Harrah’s Boulevard, Atlantic City, New Jersey.

**“Holdings”** shall mean Harrah’s Entertainment, Inc., and its successors.

**“Hotel Components”** shall mean, collectively, those portions of each Individual Property devoted to the operation of a hotel and related facilities, excluding the Casino Component, but including (without limitation) (a) all guest rooms and suites, hotel amenities, restaurants, conference centers, meeting, banquet and other public rooms, spa, parking spaces and other facilities of the hotel portion of such Individual Property, and (b) any theaters or performing arts spaces in the Individual Property in question. The Hotel Components are more particularly described and set forth in each Operating Lease, as applicable.

**“Improvements”** shall have the meaning set forth in the granting clause of the related Mortgage with respect to each Individual Property.

**“Indebtedness”** of a Person, at a particular date, means the sum (without duplication) at such date of (a) all indebtedness of such Person (including, without limitation, amounts for borrowed money and indebtedness in the form of mezzanine debt and preferred equity); (b) obligations evidenced by bonds, debentures, notes, or other similar instruments; (c) obligations for the deferred purchase price of property or services (including trade obligations); (d) obligations under letters of credit; (e) obligations under acceptance facilities; (f) all guaranties, endorsements (other than for collection or deposit in the ordinary course of business) and other contingent obligations to purchase, to provide funds for payment, to supply funds, to invest in any Person or entity, or otherwise to assure a creditor against loss; and (g) obligations secured by any Liens, whether or not the obligations have been assumed.

**“Indemnified Liabilities”** shall have the meaning set forth in Section 10.13 hereof.

**“Indemnified Person”** shall have the meaning set forth in Section 9.2(b) hereof.

**“Independent Director”** or **“Independent Manager”** shall mean a natural person who is not and will not be while serving and has not been during the five years preceding his or her initial appointment to such position any of the following: (a) a stockholder (other than a stockholder who owns a de minimis amount of shares and receive de minimis income therefrom, or who indirectly owns stock through its interest in one or more mutual funds), member (other than as a Special Member or Springing Member of Borrower), director, manager (except in his or her capacity as an Independent Manager on the Board of Managers of Borrower), officer, employee, partner, attorney, trustee or counsel of Borrower or any Affiliate of Borrower or any direct or indirect parent of either of them, including Holdings, (b) a creditor, customer (other than a retail customer of an Individual Property), supplier or other Person who derives any of its purchases or revenues from its activities with Borrower or any Affiliate of Borrower, including Holdings, (c) a Person or other entity controlling or under common control with any such stockholder, partner, member, director, manager or officer, customer, supplier or other Person excluded from serving as Independent Director or Independent Manager described in the foregoing subclause (a) or subclause (b), or (d) a member of the immediate family by blood or marriage of any such stockholder, member, manager, director, officer, employee, partner, attorney, customer, supplier or other Person excluded from serving as Independent Director or Independent Manager in subclause (a) or subclause (b). A natural person who satisfies the foregoing definition other than subclause (b) above shall not be disqualified from serving as an Independent Manager, if such individual is an independent director provided by a nationally recognized company that provides professional independent directors and managers, it being hereby acknowledged and agreed that Corporation Service Company satisfies such criteria. Further, a natural person who otherwise satisfies the foregoing definition except for subclause (a) by reason of being the independent director of a “special purpose entity” affiliated with the Borrower shall not be disqualified from serving as an Independent Director of the Borrower if such individual is either (i) a Professional Independent Director or (ii) the fees and other income that such individual earns from serving as independent director of affiliates of the Borrower in any given year constitute in the aggregate less than five percent (5%) of such individual’s annual income for that year. Notwithstanding the immediately preceding sentence, an Independent Director may not simultaneously serve as Independent Director of the Borrower and independent director of a special purpose entity that owns a direct or indirect equity interest in the Borrower or a direct or indirect interest in any co-borrower with the Borrower. For purposes of this paragraph, a “special purpose entity” is an entity, whose organizational documents contain restrictions on its activities and impose requirements intended to preserve such entity’s separateness that are substantially similar to the “special purpose entity” provisions of this Agreement. Notwithstanding anything herein to the contrary, an Independent Director may not simultaneously serve as Independent Director of a Borrower and an independent director of a special purpose entity that owns a direct or indirect equity interest in any Borrower; provided, however, that one Independent Director of Borrower (but not both Independent Directors simultaneously) may serve as an independent director of each Other Mezzanine Borrower.

**“Individual Material Adverse Effect”** shall mean any event or condition that, either singly or in the aggregate, could reasonably be expected to have or result in a material adverse effect upon (a) the business, operations, economic performance, prospects, assets or condition (financial or otherwise) of (i) any Borrower, any Senior Mezzanine Borrower or any Mortgage Borrower, (ii) Guarantor, (iii) any Operating Company, (iv) any Operating Lease or Operating Lease Guaranty or (v) the Collateral, the Senior Mezzanine Collateral or any

Individual Property or any Hotel Component or Casino Component thereon; (b) the ability of any Borrower, any Senior Mezzanine Borrower, any Mortgage Borrower or Guarantor to perform, in all material respects, its obligations under each of the Loan Documents, Senior Mezzanine Loan Documents or Mortgage Loan Documents to which it is a party; (c) the ability of any Operating Company to perform, in all material respects, its obligations under its Lease; (d) the enforceability or validity of (i) any Operating Lease or Operating Lease Guaranty, or (ii) any Loan Document, Senior Mezzanine Loan Document, Mortgage Loan Document or the perfection or priority of any Lien created under any Loan Document, Senior Mezzanine Loan Document or Mortgage Loan Document; (e) the value of, or cash flow from, any Individual Property, the Collateral, the Senior Mezzanine Collateral or the operations thereof; or (f) the material rights, interests and remedies of Lender under any of the Loan Documents.

**“Individual Property”** shall mean, individually, any one of the properties identified on Schedule II (it being the Improvements thereon and all Fixtures and all Equipment, FF&E and personal property owned by Mortgage Borrower and encumbered by a Mortgage, together with all rights pertaining to such property and Improvements, as more particularly described in the Granting Clauses of each Mortgage and referred to therein as the “Property”). For all purposes herein and in the other Loan Documents and to the extent not prohibited by the Ground Lease, the premises leased by Ground Lease Subsidiary or Borrower, as applicable, under the Ground Lease shall constitute a part of the Individual Property known as “Harvey’s Lake Tahoe”, “Harrah’s Lake Tahoe” and “Bill’s Lake Tahoe”, except that such ground leased premises shall not be subject to a lien of a Mortgage or an Operating Lease unless and until required pursuant hereto, the Mortgage Loan Agreement or pursuant to the Ground Lease Side Letter.

**“Insolvency Opinion”** shall mean that certain non-consolidation opinion letter dated the date hereof delivered by Cleary Gottlieb Steen & Hamilton LLP in connection with the Loan.

**“Institutional Lender”** shall mean any Person reasonably acceptable to Lender in all respects that is either (a) a real estate investment trust, bank, saving and loan association, investment bank, insurance company, trust company, commercial credit corporation, pension plan, pension fund or pension advisory firm, mutual fund, government entity or plan, provided that any such Person referred to in this clause (a) satisfies the Eligibility Requirements; (b) an investment company, money management firm or “qualified institutional buyer” within the meaning of Rule 144A under the Securities Act of 1933, as amended, or an institutional “accredited investor” within the meaning of Regulation D under the Securities Act of 1933, as amended, provided that any such Person referred to in this clause (b) satisfies the Eligibility Requirements; (c) an institution substantially similar to any of the foregoing entities described in clauses (a) or (b) that satisfies the Eligibility Requirements; (d) any entity controlled by any of the entities described in clauses (a) or (c) above; or (e) an investment fund, limited liability company, limited partnership or general partnership where a Permitted Fund Manager or an entity that is otherwise an Institutional Lender under clauses (a), (b), (c) or (d) of this definition acts as the general partner, managing member or fund manager and at least fifty percent (50%) of the equity interests in such investment fund are owned, directly or indirectly, by one or more entities that are otherwise Institutional Lenders under clauses (a), (b), (c) or (d) of this definition.

**“Insurance Premiums”** shall have the meaning set forth in the Mortgage Loan Agreement.

**“Insurance Proceeds”** shall have the meaning set forth in the Mortgage Loan Agreement.

**“Interest Expense”** shall mean, with respect to any Person for any period, the sum of (a) gross interest expense of such Person for such period on a consolidated basis, including (i) the amortization of debt discounts, (ii) the amortization of all fees payable in connection with the incurrence of Indebtedness to the extent included in interest expense and (iii) the portion of any payments or accruals with respect to equipment financing and equipment leases allocable to interest expense, (b) capitalized interest of such Person, and (c) commissions, discounts, yield and other fees and charges incurred in connection with any indebtedness which are payable to any Person other than Borrower. For purposes of the foregoing, interest on equipment financing or equipment leases shall be deemed to accrue at an interest rate reasonably determined by the Borrower to be the rate of interest implicit in such equipment financing or equipment lease in accordance with GAAP.

**“Interest Period”** shall mean (a) for the first interest period hereunder, (i) if the Closing Date occurs on or before the fourteenth (14th) day of a calendar month, the period commencing on the Closing Date and ending on (and including) the fourteenth (14th) day of the calendar month in which the Closing Date occurs, and (ii) if the Closing Date occurs on or after the fifteenth (15th) day of a calendar month, the period commencing on the Closing Date and ending on (and including) the fourteenth (14th) day of the following calendar month and (b) for each interest period thereafter commencing February 15, 2008, the period commencing on the fifteenth (15th) day of each calendar month and ending on (and including) the fourteenth (14th) day of the following calendar month. Each Interest Period as set forth in clause (b) above shall be a full month and shall not be shortened by reason of any payment of the Loan prior to the expiration of such Interest Period. Notwithstanding the foregoing, Lender shall have the right, in connection with a Securitization, to change the Interest Period and Payment Date, provided that in doing so, Lender shall not increase Borrower’s costs hereunder (other than the direct costs of implementing such change, such as legal fees, which Borrower hereby agrees to pay).

**“Interest Rate Cap Agreement”** shall mean, as applicable, an Interest Rate Cap Agreement (together with the confirmation and schedules relating thereto) in form and substance reasonably satisfactory to Lender between Borrower and an Acceptable Counterparty or a Replacement Interest Rate Cap Agreement.

**“JPM”** shall mean JPMorgan Chase Bank, N.A. and its successors in interest.

**“Lease”** shall mean any lease (including the Operating Lease), sublease or subsublease, letting, license, concession or other agreement (whether written or oral and whether now or hereafter in effect) pursuant to which any Person is granted a possessory interest in, or right to use or occupy all or any portion of any space in any Individual Property (other than short term arrangements with transient hotel guests entered into in the usual course of business), and (a) every modification, amendment or other agreement relating to such lease, sublease, subsublease, or other agreement entered into in connection with such lease, sublease,

sublease, or other agreement and (b) every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto (including the Operating Lease Guaranty).

“**Legal Requirements**” shall mean, with respect to each Individual Property and the Collateral, all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions of Governmental Authorities affecting such Individual Property, the Senior Mezzanine Collateral, the Collateral or any part thereof (including, without limitation, all Gaming Laws), or affecting the construction, use, alteration or operation thereof, or any part thereof, whether now or hereafter enacted and in force, and all permits, licenses and authorizations and regulations relating thereto (including, without limitation, all Gaming Licenses and Operating Permits), and all covenants, agreements, restrictions and encumbrances contained in any instruments, either of record or known to Borrower, Mortgage Borrower or Operating Company, at any time in force affecting such Individual Property or any part thereof, including, without limitation, any which may (a) require repairs, modifications or alterations in or to such Individual Property or any part thereof, or (b) in any way limit the use and enjoyment thereof. Legal Requirements shall include any (x) judicial, administrative or other governmental or quasi governmental order, injunction, writ, judgment, decree, ruling, interpretation, finding or other directive, whether domestic or foreign; (y) arbitrator’s, mediator’s or referee’s decision, finding, award or recommendation; or (z) charter, rule, regulation or other organizational or governance document of any self-regulatory or governing body or organization. For the avoidance of doubt, the term “Legal Requirements” shall include, and be deemed to include, all applicable Gaming Laws and Gaming Regulations.

“**Lender**” shall have the meaning set forth in the introductory paragraph hereto, together with its successors and assigns.

“**Lender’s Share**” shall mean a fraction, the numerator of which is the outstanding principal amount of the Loan and the denominator of which is the sum of the outstanding principal amounts of the Mortgage Loan, the Loan and the Other Mezzanine Loans (in each case, as of the date of determination).

“**Liabilities**” shall have the meaning set forth in Section 9.2(b) hereof.

“**LIBOR**” shall mean, with respect to each Interest Period, the rate (expressed as a percentage per annum and rounded to the next nearest 1/100 of 1%) for deposits in U.S. dollars, for a one-month period, that appears on Reuters Screen LIBOR01 Page (or the successor thereto) as of 11:00 a.m., London time, on the related Determination Date. If such rate does not appear on Reuters Screen LIBOR01 Page as of 11:00 a.m., London time, on such Determination Date, LIBOR shall be the arithmetic mean of the offered rates (expressed as a percentage per annum) for deposits in U.S. dollars for a one-month period that appear on the Reuters Screen Libor Page as of 11:00 a.m., London time, on such Determination Date, if at least two such offered rates so appear. If fewer than two such offered rates appear on the Reuters Screen Libor Page as of 11:00 a.m., London time, on such Determination Date, Lender shall request the principal London office of any four major reference banks in the London interbank market selected by Lender to provide such bank’s offered quotation (expressed as a percentage per

annum) to prime banks in the London interbank market for deposits in U.S. dollars for a one-month period as of 11:00 a.m., London time, on such Determination Date for the amounts of not less than U.S. \$1,000,000. If at least two such offered quotations are so provided, LIBOR shall be the arithmetic mean of such quotations. If fewer than two such quotations are so provided, Lender shall request any three major banks in New York City selected by Lender to provide such bank's rate (expressed as a percentage per annum) for loans in U.S. dollars to leading European banks for a one-month period as of approximately 11:00 a.m., New York City time on the applicable Determination Date for amounts of not less than U.S. \$1,000,000. If at least two such rates are so provided, LIBOR shall be the arithmetic mean of such rates. LIBOR shall be determined conclusively by Lender or its agent. Notwithstanding the foregoing, for the Interest Period ending February 14, 2008, LIBOR is 3.31%.

**"LIBOR Loan"** shall mean the Loan at such time as interest thereon accrues at a rate of interest based upon LIBOR.

**"Lien"** shall mean, with respect to each Individual Property, the Senior Mezzanine Collateral and the Collateral, any mortgage, deed of trust, lien, pledge, hypothecation, assignment, security interest, or any other encumbrance, charge or restriction on transfer of, on or affecting Borrower, Senior Mezzanine Borrower, Mortgage Borrower, any Individual Property, the Senior Mezzanine Collateral or the Collateral, any portion of either or any interest therein, including, without limitation, any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, the filing of any financing statement, and mechanic's, materialmen's and other similar liens and encumbrances, in each case whether arising by contract, operation of law, or otherwise.

**"Liquidation Event"** shall have the meaning set forth in Section 2.4.2 hereof.

**"Loan"** shall mean the loan made by Lender to Borrower pursuant to this Agreement.

**"Loan Adjustment"** shall have the meaning set forth in Section 2.1.6 hereof.

**"Loan Amount"** shall mean, as determined from time to time, the outstanding principal amount of the Loan.

**"Loan Documents"** shall mean, collectively, this Agreement, the Note, the Pledge Agreement, the Environmental Indemnity, the O&M Agreement, the Guaranty (Recourse Carveouts), the Guaranty (FF&E), the Guaranty (Ground Lease Estoppel), the Collateral Assignment of Interest Rate Cap Agreement, the Contribution Agreement and all other documents executed and/or delivered in connection with the Loan.

**"Loan Party"** shall mean, collectively, Mortgage Borrower, Borrower, Senior Mezzanine Borrower, Principal and Guarantor.

**"London Business Day"** shall mean any day other than a Saturday, Sunday or any other day on which commercial banks in London, England are not open for business.

**“Major Lease”** shall mean any of the following: (a) with respect to any Individual Property, any Lease (i) covering in excess of forty thousand (40,000) net rentable square feet at such Individual Property or (ii) made with a Tenant that is a Tenant under another Lease at such Individual Property (or with a Tenant that is an Affiliate of a Tenant under another Lease at such Individual Property) if any such Leases, together, cover in excess of forty thousand (40,000) net rentable square feet or more at such Individual Property, (b) any Lease of space at any Individual Property with an Affiliate of Mortgage Borrower, or (c) any Lease that is not the result of arm’s length negotiations; provided, however, that the Operating Lease shall not constitute a Major Lease for purposes of this Agreement.

**“Material Alteration”** shall mean any Alteration with respect to all or a portion of any Individual Property that (i) when aggregated with all other Alterations at such Individual Property then being conducted involve an estimated total cost in excess of an amount equal to ten percent (10%) of the sum of the Allocated Loan Amount for such Individual Property and the “Allocated Loan Amounts” under (and as defined in each of) the Mortgage Loan Agreement and the Other Mezzanine Loan Agreements for such Individual Property or (ii) when aggregated with all other Alterations at the Properties, including such Individual Property, then being conducted, involve an estimated total cost in excess of an amount equal to five percent (5%) of the sum of the Loan Amount, the Mortgage Loan Amount and the Other Mezzanine Loan Amount (and, as used herein, **“Threshold Amount”** shall mean whichever of said 5% or 10% amount shall have been exceeded, provided that if both shall have been exceeded, then the lower of such two amounts shall be the “Threshold Amount”); provided, that, in determining whether one or more Alterations comprise a Material Alteration, there shall not be included (a) merely decorative work such as painting, wall papering, carpeting and replacement of FF&E to the extent the same are of a routine and recurring nature, performed in the ordinary course of business; (b) tenant improvement work performed by a tenant pursuant to the terms of any Lease (other than the Operating Lease) entered into in accordance with the terms hereof, so long as such work does not adversely affect any structural component of any Improvements, any utility or HVAC system contained in any Improvements or the exterior of any building constituting a part of any Improvements, (c) any Alterations which are performed in connection with the Restoration of any portion of any Individual Property after the occurrence of a Casualty or Condemnation in accordance with the terms and provisions of this Agreement, or (d) the Tower Project or the Convention Center Project.

**“Maturity Date”** shall mean the Scheduled Maturity Date or such other date on which the final payment of principal of the Notes becomes due and payable as therein or herein provided, whether at such Scheduled Maturity, by declaration of acceleration, or otherwise.

**“Maximum Legal Rate”** shall mean the maximum nonusurious interest rate, if any, that at any time or from time to time may be contracted for, taken, reserved, charged or received on the indebtedness evidenced by the Note and as provided for herein or the other Loan Documents, under the laws of such state or states whose laws are held by any court of competent jurisdiction to govern the interest rate provisions of the Loan.

**“Mezzanine Borrowers”** shall mean, collectively, Borrower, First Mezzanine Borrower, Second Mezzanine Borrower, Third Mezzanine Borrower, Fourth Mezzanine

Borrower, Fifth Mezzanine Borrower, Sixth Mezzanine Borrower, Eighth Mezzanine Borrower, Ninth Mezzanine Borrower and any New Mezzanine Borrower.

“**Mezzanine Collection Account**” shall have the meaning set forth in Section 2.6.4 hereof.

“**Mezzanine Debt Service**” shall mean, with respect to any particular period of time, the sum of (a) the Debt Service, (b) the First Mezzanine Debt Service, (c) the Second Mezzanine Debt Service, (d) the Third Mezzanine Debt Service, (e) the Fourth Mezzanine Debt Service, (f) the Fifth Mezzanine Debt Service, (g) the Sixth Mezzanine Debt Service, (h) the Eighth Mezzanine Debt Service, (i) the Ninth Mezzanine Debt Service, and (j) debt service on any New Mezzanine Loan.

“**Mezzanine Lenders**” shall mean, collectively, Lender, First Mezzanine Lender, Second Mezzanine Lender, Third Mezzanine Lender, Fourth Mezzanine Lender, Fifth Mezzanine Lender, Sixth Mezzanine Lender, Eighth Mezzanine Lender, Ninth Mezzanine Lender and Lender, as lender under any New Mezzanine Loan.

“**Mezzanine Loan Agreements**” shall mean, collectively, this Agreement, the First Mezzanine Loan Agreement, the Second Mezzanine Loan Agreement, the Third Mezzanine Loan Agreement, the Fourth Mezzanine Loan Agreement, the Fifth Mezzanine Loan Agreement, the Sixth Mezzanine Loan Agreement, the Eighth Mezzanine Loan Agreement, the Ninth Mezzanine Loan Agreement and any New Mezzanine Loan Agreement.

“**Mezzanine Loan Amount**” shall mean, as determined from time to time, the outstanding principal amount of the Mezzanine Loans.

“**Mezzanine Loan Documents**” shall mean, collectively, the Loan Documents, the First Mezzanine Loan Documents, the Second Mezzanine Loan Documents, the Third Mezzanine Loan Documents, the Fourth Mezzanine Loan Documents, the Fifth Mezzanine Loan Documents, the Sixth Mezzanine Loan Documents, the Eighth Mezzanine Loan Documents, the Ninth Mezzanine Loan Documents and any loan documents entered into in connection with any New Mezzanine Loan.

“**Mezzanine Loans**” shall mean, collectively, this Loan, the First Mezzanine Loan, the Second Mezzanine Loan, the Third Mezzanine Loan, the Fourth Mezzanine Loan, the Fifth Mezzanine Loan, the Sixth Mezzanine Loan, the Eighth Mezzanine Loan, the Ninth Mezzanine Loan and any New Mezzanine Loan.

“**Minimum Value Test**” shall mean, with respect to any Person, that the greater of the book value or the fair market value of the assets of such Person (excluding, for purposes of making such determination, the value of the Properties) exceeds Five Billion and No/100 Dollars (\$5,000,000,000.00) in the aggregate, as certified to Lender in an Officer’s Certificate prepared in good faith based on the most recent financial statements of such Person.

“**Monthly Disbursements**” shall have the meaning provided in Section 2.6.2.

**“Monthly FF&E Reserve Amount”** means the monthly deposit for FF&E required pursuant to Section 7.3 of this Agreement.

**“Monthly Ground Rent Reserve Amount”** means the monthly deposit for Ground Rent required pursuant to Section 7.4 of this Agreement.

**“Monthly Tax and Insurance Amount”** means the monthly deposit for Taxes and Insurance required pursuant to Section 7.2 of this Agreement.

**“Moody’s”** shall mean Moody’s Investors Service, Inc.

**“Mortgage”** shall mean, with respect to each Individual Property, that certain first priority Mortgage (or Deed of Trust or Deed to Secure Debt) and Security Agreement, dated the date hereof, executed and delivered by Mortgage Borrower as security for the Mortgage Loan and encumbering such Individual Property and any first priority Mortgage (Deed of Trust or Deed to Secure Debt) and Security Agreement delivered pursuant to the Ground Lease Side Letter, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

**“Mortgage Borrower”** shall mean, collectively, the entities set forth on Schedule XIII hereto, each a Delaware limited liability company, together with their respective successors and permitted assigns. As used herein the term “Mortgage Borrower” shall mean one of the Mortgage Borrowers individually or the Mortgage Borrowers collectively, as the context shall require.

**“Mortgage Debt Service”** shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Mortgage Note and the Mortgage Loan Agreement.

**“Mortgage Lender”** shall have the meaning set forth in the Recitals.

**“Mortgage Loan”** shall have the meaning set forth in the Recitals.

**“Mortgage Loan Agreement”** shall have the meaning set forth in the Recitals.

**“Mortgage Loan Amount”** shall mean, as determined from time to time, the outstanding principal amount of the Mortgage Loan.

**“Mortgage Loan Default”** shall mean a “Default” as defined in the Mortgage Loan Agreement.

**“Mortgage Loan Documents”** shall mean the Mortgage Loan Agreement, the Mortgage Note, the Mortgage and all other documents and instruments executed and delivered in connection with the Mortgage Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

**“Mortgage Loan Event of Default”** shall mean an “Event of Default” as defined in the Mortgage Loan Agreement.

**“Mortgage Loan Reserve Funds”** shall mean the “Reserve Funds” as defined in the Mortgage Loan Agreement.

**“Mortgage Note”** shall mean the “Note” as defined in the Mortgage Loan Agreement.

**“Net Income”** shall mean, with respect to any Person, the net income (loss) of such Person, determined in accordance with GAAP and before any reduction in respect of preferred stock dividends.

**“Net Liquidation Proceeds After Debt Service”** shall mean, with respect to any Liquidation Event, all amounts paid to or received by or on behalf of Borrower, Senior Mezzanine Borrower or Mortgage Borrower in connection with such Liquidation Event, including, without limitation, proceeds of any sale, refinancing or other disposition or liquidation, less (a) Lender’s, Senior Mezzanine Lender’s and/or Mortgage Lender’s reasonable costs incurred in connection with the recovery thereof, (b) amounts required or permitted to be deducted therefrom and amounts paid pursuant to the Mortgage Loan Documents and Senior Mezzanine Loan Documents to Mortgage Lender and/or Senior Mezzanine Lender (as applicable), (c) in the case of a foreclosure sale, disposition or Transfer of any Individual Property in connection with realization thereon following a Mortgage Loan Event of Default, such reasonable and customary costs and expenses of sale or other disposition (including attorneys’ fees and brokerage commissions), (d) in the case of a foreclosure sale, disposition or Transfer of any Senior Mezzanine Collateral in connection with realization thereon following a Senior Mezzanine Loan Default under any Senior Mezzanine Loan Documents, such reasonable and customary costs and expenses of sale or other disposition (including attorneys’ fees and brokerage commissions), (e) in the case of a foreclosure sale, such costs and expenses incurred by Mortgage Lender under the Mortgage Loan Documents as Mortgage Lender shall be entitled to receive reimbursement for under the terms of the Mortgage Loan Documents, (f) in the case of a foreclosure sale, such costs and expenses incurred by Senior Mezzanine Lender under the Senior Mezzanine Loan Documents as Senior Mezzanine Lender shall be entitled to receive reimbursement for under the terms of the Senior Mezzanine Loan Documents, (g) in the case of a refinancing of the Mortgage Loan and/or Senior Mezzanine Loan, such costs and expenses (including attorneys’ fees) of such refinancing as shall be reasonably approved by Mortgage Lender and/or Senior Mezzanine Lender, as the case may be, and (h) the amount of any prepayments required pursuant to the Mortgage Loan Documents, Senior Mezzanine Loan Documents, and/or the Loan Documents, in connection with any such Liquidation Event.

**“Net Proceeds”** shall have the meaning set forth in Section 6.4 hereof.

**“New Mezzanine Borrower”** shall have the meaning set forth in Section 2.1.7.

**“New Mezzanine Loan”** shall have the meaning set forth in Section 2.1.7.

**“Ninth Mezzanine Borrower”** shall mean, collectively, the entities set forth on Schedule XXI hereto, each a Delaware limited liability company, together with their respective successors and permitted assigns. As used herein, the term “Ninth Mezzanine Borrower” shall

mean one of the Ninth Mezzanine Borrowers individually, or the Ninth Mezzanine Borrowers collectively, as the context shall require.

“**Ninth Mezzanine Debt Service**” shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Ninth Mezzanine Notes.

“**Ninth Mezzanine Lender**” shall mean JPMorgan Chase Bank, N.A., in its capacity as the holder of the Ninth Mezzanine Loan, together with its successors and assigns.

“**Ninth Mezzanine Loan**” shall mean that certain loan in the original principal amount of Two Hundred Seventy-Five Million and No/100 Dollars (\$275,000,000) of even date herewith made by Ninth Mezzanine Lender to Ninth Mezzanine Borrower.

“**Ninth Mezzanine Loan Agreement**” shall mean that certain Ninth Mezzanine Loan Agreement, dated as of the date hereof, between Ninth Mezzanine Borrower and Ninth Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Ninth Mezzanine Loan Documents**” shall mean the Ninth Mezzanine Loan Agreement, the Ninth Mezzanine Notes and all other documents and instruments executed and delivered in connection with the Ninth Mezzanine Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

“**Ninth Mezzanine Notes**” shall mean the “Notes” as defined in the Ninth Mezzanine Loan Agreement.

“**Note**” or “**Notes**” shall mean, collectively, Note A-1, Note A-2, Note A-3, Note A-4, Note A-5, Note A-6, Note A-7, Note A-8 and Note A-9.

“**Note A-1**” shall mean that certain Promissory Note A-1 (Seventh Mezzanine Loan), dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of Forty-One Million Two Hundred Fifty-Four Thousand Five Hundred Eighty-Three and 33/100 Dollars (\$41,254,583.33), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Note A-2**” shall mean that certain Promissory Note A-2 (Seventh Mezzanine Loan), dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of Forty-One Million Two Hundred Fifty-Four Thousand Five Hundred Eighty-Three and 33/100 Dollars (\$41,254,583.33), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Note A-3**” shall mean that certain Promissory Note A-3 (Seventh Mezzanine Loan), dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of Forty-One Million Two Hundred Fifty-Four Thousand Five Hundred Eighty-Three and 34/100 Dollars (\$41,254,583.34), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**“Note A-4”** shall mean that certain Promissory Note A-4 (Seventh Mezzanine Loan), dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of Forty-One Million Two Hundred Fifty-Four Thousand Five Hundred Eighty-Three and 34/100 Dollars (\$41,254,583.34), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**“Note A-5”** shall mean that certain Promissory Note A-5 (Seventh Mezzanine Loan), dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of Forty-One Million Two Hundred Fifty-Four Thousand Five Hundred Eighty-Three and 33/100 Dollars (\$41,254,583.33), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**“Note A-6”** shall mean that certain Promissory Note A-6 (Seventh Mezzanine Loan), dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of Forty-One Million Two Hundred Fifty-Four Thousand Five Hundred Eighty-Three and 33/100 Dollars (\$41,254,583.33), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**“Note A-7”** shall mean that certain Promissory Note A-7 (Seventh Mezzanine Loan), dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of Nine Million One Hundred Fifty-Seven Thousand Five Hundred and No/100 Dollars (\$9,157,500.00), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**“Note A-8”** shall mean that certain Promissory Note A-8 (Seventh Mezzanine Loan), dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of Nine Million One Hundred Fifty-Seven Thousand Five Hundred and No/100 Dollars (\$9,157,500.00), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**“Note A-9”** shall mean that certain Promissory Note A-9 (Seventh Mezzanine Loan), dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of Nine Million One Hundred Fifty-Seven Thousand Five Hundred and No/100 Dollars (\$9,157,500.00), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**“Noteholders”** shall mean, collectively, the holders of the Notes from time to time and a **“Noteholder”** shall mean any holder of a Note from time to time (provided that the transfer of a Note shall not result in any prior Noteholder’s loss of any indemnification provided for hereunder to a Noteholder).

**“OC Accounts”** shall have the meaning set forth in Section 2.6.1(c).

**“O&M Agreement”** shall mean, with respect to each Individual Property (to the extent required by the environmental reports referenced in Section 3.1.3(e) hereof, that certain Operations and Maintenance Agreement (Seventh Mezzanine Loan), dated as of the date hereof, between Borrower and Lender given in connection with the Loan, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Officer’s Certificate**” shall mean a certificate delivered to Lender by Borrower which is signed by an authorized senior officer of Borrower or the general partner or managing member of Borrower, as applicable.

“**Off-Shore Accounts**” shall mean the accounts more particularly described on Schedule V.

“**Operating Company**” shall mean, collectively, the tenants under the Operating Leases, and their successors and permitted assigns.

“**Operating Company Annual Budget**” shall mean, individually and collectively as the context requires, with respect to each Operating Company, the operating budget of such Operating Company, including all planned Capital Expenditures, prepared by such Operating Company for the applicable Fiscal Year or other period.

“**Operating Lease**” shall mean, collectively, those certain Lease Agreements listed on Schedule VI, dated as of the date hereof, having a term of fifteen (15) years commencing on the Closing Date, and any similar Lease Agreement executed and delivered pursuant to the Ground Lease Side Letter, as the same may be amended, supplemented, replaced or otherwise modified from time to time in accordance with the provisions hereof.

“**Operating Lease Guaranty**” shall mean, collectively, those certain Lease Guaranty Agreements listed on Schedule VIA, executed and delivered by Guarantor (Operating Lease), dated as of the date hereof, unconditionally guaranteeing the payment and performance by the Operating Company of all of its obligations under the Operating Lease, and any similar Lease Guaranty Agreement executed and delivered pursuant to the Ground Lease Side Letter, as such Lease Guaranty Agreements may be amended, supplemented, replaced or otherwise modified from time to time in accordance with the provisions hereof.

“**Operating Permits**” shall have the meaning set forth in Section 4.1.22 hereof.

“**O’Shea’s**” shall have the meaning ascribed to such term in the Mortgage Loan Agreement.

“**Other Borrower Collateral**” shall have the meaning set forth in Section 11.2.1 hereof.

“**Other Borrowers**” shall have the meaning set forth in Section 11.1 hereof.

“**Other Charges**” shall mean all ground rents, maintenance charges, impositions other than Taxes, and any other charges, including, without limitation, vault charges and license fees for the use of vaults, chutes and similar areas adjoining any Individual Property, now or hereafter levied or assessed or imposed against such Individual Property or any part thereof.

“**Other Mezzanine Borrowers**” shall mean, individually or collectively as the context may require, all of the Mezzanine Borrowers other than Borrower.

**“Other Mezzanine Debt Service”** shall mean, individually or collectively as the context may require, all of the Mezzanine Debt Service other than the Debt Service.

**“Other Mezzanine Lenders”** shall mean, individually or collectively as the context may require, all of the Mezzanine Lenders other than Lender.

**“Other Mezzanine Loans”** shall mean, individually or collectively as the context may require, all of the Mezzanine Loans other than the Loan.

**“Other Mezzanine Loan Agreements”** shall mean, individually or collectively as the context may require, all of the Mezzanine Loan Agreements other than this Agreement.

**“Other Mezzanine Loan Amounts”** shall mean, as determined from time to time, the outstanding principal amounts of all of the Mezzanine Loans other than the Loan.

**“Owner’s Title Policy”** shall mean those certain ALTA extended coverage owner’s policies of title insurance issued in connection with the closing of the Mortgage Loan insuring the Mortgage Borrower as the owner of the Property.

**“Participant”** shall have the meaning set forth in Section 9.6 hereof.

**“Participant Register”** shall have the meaning set forth in Section 9.6 hereof.

**“Payment Date”** shall mean the ninth (9th) calendar day of each calendar month during the term of the Loan, and if such day is not a Business Day, then the Business Day immediately preceding such day, commencing on March 9, 2008 and continuing to and including the Maturity Date. Notwithstanding the foregoing, the Payment Date in the final Interest Period shall be the Maturity Date (i.e., the second to last Business Day in such Interest Period rather than the ninth calendar day of such month).

**“Permitted Encumbrances”** shall mean, with respect to an Individual Property, collectively (a) the Liens and security interests created by the Mortgage Loan Documents; (b) all Liens, encumbrances and other matters disclosed in the Title Insurance Policies relating to such Individual Property or any part thereof; (c) Liens, if any, for Taxes and Other Charges imposed by any Governmental Authority not yet due or delinquent; (d) the Operating Lease; (e) such other title and survey exceptions as Lender has approved or may approve in writing in Lender’s reasonable discretion; (f) any Lien being contested by Borrower in good faith by appropriate proceedings, provided that (i) no Default or Event of Default has occurred and remains uncured, (ii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any applicable material instrument to which Mortgage Borrower is subject and shall not constitute a default thereunder and such proceeding shall be conducted in accordance with all applicable statutes, laws and ordinances, (iii) no Individual Property nor any part thereof or interest therein will be in imminent danger of being sold, forfeited, terminated, cancelled or lost, (iv) such proceeding shall suspend the enforcement of the contested Lien against Mortgage Borrower and any Individual Property, and (v) Borrower shall furnish such security as may be required by GAAP or as may be reasonably requested by Lender; (g) statutory Liens for amounts not yet due and payable, provided that no Individual Property nor any part thereof or interest therein will be in imminent danger of being sold, forfeited, terminated, cancelled or lost;

(h) Liens incurred in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security; (i) any Lien securing the financing of FF&E (including equipment leases) entered into by Mortgage Borrower or Operating Company in the ordinary course of business, subject to the limitations specified in the definitions of "Permitted Indebtedness" and "Permitted Indebtedness (Operating Company)", as applicable; (j) rights of tenants under Leases, as tenants only; (k) rights of hotel guests at the Hotel Components of the Properties; (l) zoning restrictions, easements, rights-of-way, restrictions on use of real property and other similar encumbrances incurred or entered into in the ordinary course of business which do not, in each case, have an Individual Material Adverse Effect, and (m) liens granted by Operating Company securing equipment financing leases and/or equipment acquisition financings permitted hereunder as "Permitted Indebtedness (Operating Company)," subject to the final sentence of said definition, or as "Permitted Indebtedness".

**"Permitted Fund Manager"** means any Person that on the date of determination (a) is one of the entities listed on Schedule VII or any other nationally-recognized manager of investment funds investing in debt or equity interests relating to commercial real estate, (b) is investing through a fund with committed capital of at least \$1,000,000,000, (c) is not subject to a Bankruptcy Action, (d) has not been, and none of its material subsidiaries has been, subject to a Bankruptcy Action for the preceding 5 years, (e) has not been convicted and is not under current indictment for a felony or crime involving moral turpitude, (f) has not been found by a court of competent jurisdiction to have violated federal or state securities laws, and (g) is not an organized crime figure (as determined by Lender in its reasonable discretion).

**"Permitted Indebtedness"** shall have the meaning assigned to such term in the Mortgage Loan Agreement.

**"Permitted Indebtedness (Operating Company)"** shall mean, collectively, (a) trade and operational debt (including equipment financing leases, such as leases with providers of Gaming Equipment) relating to the operation of the Properties and the routine administration of Operating Company incurred in the ordinary course of business with trade creditors and in amounts as are normal and reasonable under the circumstances, are not evidenced by a note, are required to be paid within ninety (90) days after same are incurred (except in the case of operating leases) and are paid when due, (b) accrued and unpaid payroll, benefits and payroll taxes with respect to employees of Operating Company or its Affiliates engaged with respect to the Properties incurred in the ordinary course of business and paid when due, (c) debt owed to affiliates, provided such debt is made subject to an intercreditor and standstill agreement in favor of Lender in form and substance reasonably satisfactory to Lender, and (d) such other Indebtedness specifically permitted pursuant to the Operating Lease (including the Gaming Equipment Facility Agreements (as defined in the Mortgage Loan Agreement)). In no event shall the Permitted Indebtedness (Operating Company) and Permitted Indebtedness of each Operating Company and Mortgage Borrower on an aggregate basis, excluding for purposes of this sentence the Indebtedness described in subclause (b) of the preceding sentence, exceed five percent (5%) of the sum of the Loan Amount, the Mortgage Loan Amount and the Other Mezzanine Loan Amounts in the aggregate (each as determined from time to time).

“**Permitted Investments**” shall have the meaning set forth in the Mortgage Loan Agreement.

“**Permitted Mezzanine Debt Loan-to-Value Ratio**” shall mean the ratio, as of a particular date, in which (a) the numerator is equal to the sum of (i) the outstanding principal amount of the Mortgage Loan, (ii) the outstanding principal amount of the Mezzanine Loans, and any New Mezzanine Loan, plus (iii) the amount of the Permitted Mezzanine Loan, and (b) the denominator is equal to the appraised value of the Properties subject to the Lien of the Mortgage as determined by Lender based on Appraisals obtained by Lender (at Borrower’s sole cost and expense) and satisfactory to Lender and dated no earlier than ninety (90) days prior to the date of determination or such other Appraisals as are approved by Lender in its sole discretion.

“**Permitted Mezzanine Debt Service**” shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Permitted Mezzanine Loan Documents.

“**Permitted Mezzanine DSCR**” shall mean, for the applicable period, the ratio of (a) EBITDAR for such period from the Properties to (b) the sum of (i) the Mortgage Debt Service and Mezzanine Debt Service for such period, plus (ii) principal and/or interest due and payable (or, for purposes of the calculation to be made pursuant to Section 2.8(d), that would have been due and payable had the Permitted Mezzanine Loan then been in place) for such period on the Permitted Mezzanine Loan at the interest rate set forth in the Permitted Mezzanine Loan Documents or, if the Permitted Mezzanine Loan is a floating rate loan, assuming that (A) the spread on the Permitted Mezzanine Loan is the “Spread” as defined in the documents evidencing the Permitted Mezzanine Loan and (B) LIBOR is equal to the lesser of (y) LIBOR on the date of determination, or (z) the strike price under the related interest rate cap purchased in connection with the Permitted Mezzanine Loan.

“**Permitted Mezzanine Loan**” shall have the meaning set forth in Section 2.8 hereof.

“**Permitted Mezzanine Loan Documents**” shall have the meaning set forth in Section 2.8(g) hereof.

“**Permitted Mezzanine Loan Election**” shall have the meaning set forth in Section 2.8 hereof.

“**Permitted Mezzanine Loan Lender**” shall have the meaning set forth in Section 2.8 hereof.

“**Person**” shall mean any individual, corporation, partnership, joint venture, limited liability company, estate, trust, unincorporated association, any federal, state, county or municipal government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

“**Physical Conditions Report**” shall mean, with respect to each Individual Property, a report prepared by a company satisfactory to Lender regarding the physical condition of such Individual Property, satisfactory in form and substance to Lender in its sole discretion.

“**Pledge Agreement**” shall mean that certain Pledge and Security Agreement (Loan), dated as of the date hereof, between Borrower and Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Pledged Company Interests**” shall have the meaning set forth in the Pledge Agreement.

“**Policies**” shall have the meaning specified in Section 6.1(b) hereof.

“**Prepayment Date**” shall have the meaning specified in Section 2.4.1 hereof.

“**Prescribed Laws**” shall mean, collectively, (a) the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56) (The USA PATRIOT Act), as amended, (b) Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, and relating to Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, (c) the International Emergency Economic Power Act, 50 U.S.C. §1701 *et seq.* and (d) all other Legal Requirements relating to money laundering or terrorism.

“**Prime Rate**” shall mean the annual rate of interest publicly announced by Citibank, N.A. in New York, New York, as its base rate, as such rate shall change from time to time. If Citibank, N.A. ceases to announce a base rate, Prime Rate shall mean the rate of interest published in The Wall Street Journal from time to time as the “Prime Rate.” If more than one “Prime Rate” is published in The Wall Street Journal for a day, the average of such “Prime Rates” shall be used, and such average shall be rounded up to the nearest one-eighth of one percent (0.125%). If The Wall Street Journal ceases to publish the “Prime Rate,” Lender shall select an equivalent publication that publishes such “Prime Rate,” and if such “Prime Rates” are no longer generally published or are limited, regulated or administered by a governmental or quasi-governmental body, then Lender shall select a comparable interest rate index.

“**Prime Rate Loan**” shall mean the Loan at such time as interest thereon accrues at a rate of interest based upon the Prime Rate.

“**Prime Rate Spread**” shall mean the difference (expressed as the number of basis points) between (a) LIBOR plus the Spread on the date LIBOR was last applicable to the Loan and (b) the Prime Rate on the date that LIBOR was last applicable to the Loan; provided, however, in no event shall such difference be a negative number.

“**Principal**” shall mean Eighth Mezzanine Borrower.

“**Properties**” shall mean, collectively, each and every Individual Property which is subject to the terms of this Agreement.

“**Provided Information**” shall mean any and all financial and other information provided at any time by, or on behalf of, Borrower, Senior Mezzanine Borrower, or Mortgage Borrower with respect to the Properties, Borrower, any Affiliates of Borrower, including Holdings, Guarantor and/or Operating Company.

**“Qualified Transferee”** means (a) any of the Mezzanine Lenders, (b) Apollo Management, L.P., TPG Capital, L.P. f/k/a Texas Pacific Group, their respective Affiliates and senior or executive principals of Apollo Management, L.P. or TPG Capital, L.P. who are the holders from time to time of voting interests in Holdings, and investment funds Controlled by either of them (but excluding for purposes of this clause (b) “portfolio companies” of the foregoing), or (c) one or more of the following:

(i) a real estate investment trust, bank, saving and loan association, investment bank, insurance company, trust company, commercial credit corporation, pension plan, pension fund or pension advisory firm, mutual fund, government entity or plan, provided that any such Person referred to in this clause (i) satisfies the Eligibility Requirements;

(ii) an investment company, money management firm or “qualified institutional buyer” within the meaning of Rule 144A under the Securities Act of 1933, as amended, or an institutional “accredited investor” within the meaning of Regulation D under the Securities Act of 1933, as amended, provided that any such Person referred to in this clause (ii) satisfies the Eligibility Requirements;

(iii) an institution substantially similar to any of the foregoing entities described in clauses (c)(i) or (c)(ii) that satisfies the Eligibility Requirements;

(iv) any entity Controlled by any of the entities described in clause (a) or clauses (c)(i) or (c)(iii) above, or Holdings or any entity Controlled by Holdings (provided in each case there shall have occurred no Change in Control);

(v) a Qualified Trustee in connection with a securitization of, the creation of collateralized debt obligations (“**CDO**”) secured by or financing through an “owner trust” of, any Mezzanine Loan (collectively, “**Securitization Vehicles**”), so long as (A) the special servicer or manager of such Securitization Vehicle has the Required Special Servicer Rating and (B) the entire “controlling class” of such Securitization Vehicle, other than with respect to a CDO Securitization Vehicle, is held by one or more entities that are otherwise Qualified Transferees under clauses (c)(i), (ii), (iii) or (iv) of this definition; provided that the operative documents of the related Securitization Vehicle require that (1) in the case of a CDO Securitization Vehicle, the “equity interest” in such Securitization Vehicle is owned by one or more entities that are Qualified Transferees under clauses (c)(i), (ii), (iii) or (iv) of this definition and (2) if any of the relevant trustee, special servicer, manager fails to meet the requirements of this clause (v), such Person must be replaced by a Person meeting the requirements of this clause (v) within thirty (30) days; or

(vi) an investment fund, limited liability company, limited partnership or general partnership where a Permitted Fund Manager or an entity that is otherwise a Qualified Transferee under clauses (c)(i), (ii), (iii) or (iv) of this definition acts as the general partner, managing member or fund manager and at least 50% of the equity interests in such investment vehicle are owned, directly or indirectly, by one or more

entities that are otherwise Qualified Transferees under clauses (c)(i), (ii), (iii) or (iv) of this definition;

provided, however, that no Transferee shall be a Qualified Transferee if (and for so long as) such Transferee is, or is Controlled by, an Embargoed Person or a Person that has been found “unsuitable,” for any reason, by a Gaming Authority.

“**Qualified Trustee**” means (a) a corporation, national bank, national banking association or a trust company, organized and doing business under the laws of any state or the United States of America, authorized under such laws to exercise corporate trust powers and to accept the trust conferred, having a combined capital and surplus of at least \$100,000,000 and subject to supervision or examination by federal or state authority, (b) an institution insured by the Federal Deposit Insurance Corporation or (c) an institution whose long-term senior unsecured debt is rated either of the then in effect top two rating categories of each of the Rating Agencies.

“**Rating Agencies**” shall mean each of S&P, Moody’s and Fitch, or any other nationally recognized statistical rating agency which has been approved by Lender and that rates a Securitization of the Loan (or any component thereof).

“**Rating Agency Confirmation**” means, collectively, a written affirmation from each of the Rating Agencies that the credit rating of the Securities given by such Rating Agency of such Securities immediately prior to the occurrence of the event with respect to which such Rating Agency Confirmation is sought will not be qualified, downgraded or withdrawn as a result of the occurrence of such event, which affirmation may be granted or withheld in such Rating Agency’s sole and absolute discretion. In the event that, at any given time, no such Securities shall have been issued and are then outstanding, then the term Rating Agency Confirmation shall be deemed instead to require the written approval of Lender based on its good faith determination of whether the Rating Agencies would issue a Rating Agency Confirmation if any such Securities were outstanding.

“**Regulation AB**” shall have the meaning set forth in Section 5.1.11(f) hereof.

“**Regulation S-K**” shall mean Regulation S-K under the Securities Act of 1933 and the Securities Exchange Act of 1934, as amended.

“**Regulation S-X**” shall mean Regulation S-X under the Securities Act of 1933 and the Securities Exchange Act of 1934, as amended.

“**Related Loan**” shall have the meaning set forth in Section 5.1.11(f) hereof.

“**Related Property**” shall have the meaning set forth in Section 5.1.11(f) hereof.

“**Release**” shall have the meaning set forth in Section 2.5.1 hereof.

“**Release Borrower**” shall have the meaning set forth in Section 2.5.1 hereof.

“**Release Price**” shall mean, in connection with a release of an Individual Property from the Lien of a Mortgage as provided in Section 2.5, an amount equal to one

hundred ten percent (110%) of the applicable Allocated Loan Amount for the first and second Individual Properties released, 115% of the applicable Allocated Loan Amount for the third and fourth Individual Properties released and (110%) of the applicable Allocated Loan Amount for any Individual Property thereafter released; provided if the Paris Las Vegas property becomes an Individual Property as contemplated by the last paragraph of Section 2.5.2, then such Individual Property shall have a Release Price of 120% of its Allocated Loan Amount and each other Individual Property shall have a Release Price of 110% of its Allocated Loan Amount.

**“Rents”** shall mean, with respect to each Individual Property, and without duplication, all rents, rent equivalents, moneys payable as damages or in lieu of rent or rent equivalents, royalties (including, without limitation, all oil and gas-or other mineral royalties and bonuses), income, receivables, receipts, revenues, deposits (including, without limitation, security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, and other consideration of whatever form or nature received by or paid to or for the account of or benefit of Mortgage Borrower or the Operating Company (or employees of Mortgage Borrower or the Operating Company) from any and all sources arising from or attributable to such Individual Property, and proceeds, if any, from business interruption or other loss of income or insurance, including, without limitation, all hotel receipts, revenues and credit card receipts collected from guest rooms, restaurants, bars, meeting rooms, banquet rooms and recreational facilities, all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of property or rendering of services by Mortgage Borrower or any operator or manager of the Hotel Components or the commercial spaces located in the Improvements or acquired from others (including, without limitation, from the rental of any office space, retail space, guest rooms or other space, halls, stores and offices, and deposits securing reservations of such space), license, lease, sublease and concession fees and rentals, health club membership fees, food and beverage wholesale and retail sales, service charges, vending machine sales and proceeds, if any, from business interruption or other loss of income insurance.

**“Replacement Interest Rate Cap Agreement”** means an interest rate cap agreement from an Acceptable Counterparty with terms identical to the Interest Rate Cap Agreement except that the same shall be effective in connection with replacement of the Interest Rate Cap Agreement following a downgrade, withdrawal or qualification of the long-term unsecured debt rating of the Counterparty; provided that to the extent any such interest rate cap agreement does not meet the foregoing requirements, a “Replacement Interest Rate Cap Agreement” shall be such interest rate cap agreement approved in writing by each of the Rating Agencies and Lender with respect thereto.

**“Reserve Account”** shall mean any one of the Tax and Insurance Escrow Account, the FF&E Reserve Account, the Ground Rent Reserve Account and any other escrow fund or reserve account established pursuant to the Loan Documents.

**“Reserve Funds”** shall mean, collectively, the Tax and Insurance Escrow Fund, the FF&E Reserve Fund, the Ground Rent Reserve Fund, the Ground Lease Estoppel Reserve Amount and any other escrow fund established pursuant to the Loan Documents.

**“Restoration”** shall mean the repair and restoration of an Individual Property after a Casualty or Condemnation as nearly as possible to the condition the Individual Property was in immediately prior to such Casualty or Condemnation, with such alterations as may be reasonably approved by Lender.

**“Revenue”** shall mean all Rents and items of income or revenue (of any kind) collected by Mortgage Borrower or Operating Company.

**“S&P”** shall mean Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc.

**“Sale or Pledge”** shall mean a voluntary or involuntary sale, conveyance, assignment, transfer, encumbrance or pledge of a legal or beneficial interest.

**“Scheduled Maturity Date”** shall mean February 13, 2013.

**“Second Mezzanine Borrower”** shall mean, collectively, the entities set forth on Schedule XV hereto, each a Delaware limited liability company, together with their respective successors and permitted assigns. As used herein, the term “Second Mezzanine Borrower” shall mean one of the Second Mezzanine Borrowers individually, or the Second Mezzanine Borrowers collectively, as the context shall require.

**“Second Mezzanine Debt Service”** shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Second Mezzanine Note.

**“Second Mezzanine Lender”** shall mean JPMorgan Chase Bank, N.A., in its capacity as the holder of the Second Mezzanine Loan, together with its successors and assigns.

**“Second Mezzanine Loan”** shall mean that certain loan in the original principal amount of Two Hundred Seventy-Five Million and No/100 Dollars (\$275,000,000) of even date herewith made by Second Mezzanine Lender to Second Mezzanine Borrower.

**“Second Mezzanine Loan Agreement”** shall mean that certain Second Mezzanine Loan Agreement, dated as of the date hereof, between Second Mezzanine Borrower and Second Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**“Second Mezzanine Loan Documents”** shall mean the Second Mezzanine Loan Agreement, the Second Mezzanine Notes and all other documents and instruments executed and delivered in connection with the Second Mezzanine Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

**“Second Mezzanine Notes”** shall mean the “Notes” as defined in the Second Mezzanine Loan Agreement.

**“Second Mezzanine Pledge Agreement”** shall mean that certain Pledge and Security Agreement (Second Mezzanine Loan), dated as of the date hereof, between Second

Mezzanine Borrower and Second Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Securities**” shall have the meaning set forth in Section 9.1 hereof.

“**Securities Act**” shall have the meaning set forth in Section 9.2(a) hereof.

“**Securitization**” shall have the meaning set forth in Section 9.1 hereof.

“**Senior Mezzanine Borrower**” shall mean, collectively, First Mezzanine Borrower, Second Mezzanine Borrower, Third Mezzanine Borrower, Fourth Mezzanine Borrower, Fifth Mezzanine Borrower and Sixth Mezzanine Borrower.

“**Senior Mezzanine Collateral**” shall mean, collectively, the “Collateral” as defined in each Senior Mezzanine Loan Agreement.

“**Senior Mezzanine Lender**” shall mean First Mezzanine Lender, Second Mezzanine Lender, Third Mezzanine Lender, Fourth Mezzanine Lender, Fifth Mezzanine Lender and Sixth Mezzanine Lender.

“**Senior Mezzanine Loan**” shall mean the First Mezzanine Loan, the Second Mezzanine Loan, the Third Mezzanine Loan, the Fourth Mezzanine Loan, the Fifth Mezzanine Loan and the Sixth Mezzanine Loan.

“**Senior Mezzanine Loan Agreement**” shall mean the First Mezzanine Loan Agreement, the Second Mezzanine Loan Agreement, the Third Mezzanine Loan Agreement, the Fourth Mezzanine Loan Agreement, the Fifth Mezzanine Loan Agreement and the Sixth Mezzanine Loan Agreement.

“**Senior Mezzanine Loan Default**” shall mean, collectively, a “Default” under any of the Senior Mezzanine Loan Documents.

“**Senior Mezzanine Loan Documents**” shall mean, collectively, the First Mezzanine Loan Documents, the Second Mezzanine Loan Documents, the Third Mezzanine Loan Documents, the Fourth Mezzanine Loan Documents, the Fifth Mezzanine Loan Documents and the Sixth Mezzanine Loan Documents.

“**Senior Mezzanine Loan Event of Default**” shall mean, collectively, an “Event of Default” under any of the Senior Mezzanine Loan Documents.

“**Senior Mezzanine Loan Reserve Funds**” shall mean, collectively, the “Reserve Funds” as defined in the Senior Mezzanine Loan Agreement.

“**Servicer**” shall have the meaning set forth in Section 9.4 hereof.

“**Servicing Agreement**” shall have the meaning set forth in Section 9.4 hereof.

“**Severed Loan Documents**” shall have the meaning set forth in Section 8.2(c) hereof.

“**Significant Obligor**” shall have the meaning set forth in Section 5.1.11(f) hereof.

“**Sixth Mezzanine Borrower**” shall mean, collectively, the entities set forth on Schedule XVIII hereto, each a Delaware limited liability company, together with their respective successors and permitted assigns. As used herein, the term “Sixth Mezzanine Borrower” shall mean one of the Sixth Mezzanine Borrowers individually, or the Sixth Mezzanine Borrowers collectively, as the context shall require.

“**Sixth Mezzanine Debt Service**” shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Sixth Mezzanine Notes.

“**Sixth Mezzanine Lender**” shall mean JPMorgan Chase Bank, N.A., in its capacity as the holder of the Sixth Mezzanine Loan, together with its successors and assigns.

“**Sixth Mezzanine Loan**” shall mean that certain loan in the original principal amount of Two Hundred Seventy-Five Million and No/100 Dollars (\$275,000,000) of even date herewith made by Sixth Mezzanine Lender to Sixth Mezzanine Borrower.

“**Sixth Mezzanine Loan Agreement**” shall mean that certain Sixth Mezzanine Loan Agreement, dated as of the date hereof, between Sixth Mezzanine Borrower and Sixth Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Sixth Mezzanine Loan Documents**” shall mean the Sixth Mezzanine Loan Agreement, the Sixth Mezzanine Notes and all other documents and instruments executed and delivered in connection with the Sixth Mezzanine Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

“**Sixth Mezzanine Notes**” shall mean “Notes” as defined in the Sixth Mezzanine Loan Agreement.

“**Sixth Mezzanine Pledge Agreement**” shall mean that certain Pledge and Security Agreement (Sixth Mezzanine Loan), dated as of the date hereof, between Sixth Mezzanine Borrower and Sixth Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Special Member**” shall mean a Springing Member in a given Delaware limited liability company who has become a member in such limited liability company to the extent so provided in such limited liability company’s operating agreement.

“**Special Purpose Entity**” shall mean a corporation, limited partnership or limited liability company which at all times on and after the date hereof:

(a) is organized solely for the purpose of (i) owning, holding, selling, transferring, exchanging, managing and operating the Collateral, entering into this Agreement with the Lender, refinancing the Collateral in connection with a permitted repayment of the Loan, and transacting lawful business that is incident, necessary and appropriate to accomplish the foregoing; or (ii) acting as a general partner of the limited partnership that owns the Collateral or member of the limited liability company that owns the Collateral;

(b) is not engaged and will not engage in any business unrelated to (i) the ownership of the Collateral, (ii) acting as general partner of the limited partnership that owns the Collateral or (iii) acting as a member of the limited liability company that owns the Collateral, as applicable;

(c) does not have and will not have any assets other than those related to the Collateral or its partnership interest in the limited partnership or the member interest in the limited liability company that owns the Collateral or acts as the general partner or managing member thereof, as applicable;

(d) has not engaged, sought or consented to and will not engage in, seek or consent to any dissolution, winding up, liquidation, consolidation, merger, sale of all or substantially all of its assets, transfer of partnership or membership interests (if such entity is a general partner in a limited partnership or a member in a limited liability company) or amendment of its limited partnership agreement, articles of incorporation, articles of organization, certificate of formation or operating agreement (as applicable) with respect to the matters set forth in this definition;

(e) if such entity is a limited partnership, has, as its only general partners, Special Purpose Entities that are corporations, limited partnerships or limited liability companies;

(f) if such entity is a corporation, has at least two (2) Independent Directors, and has not caused or allowed and will not cause or allow the board of directors of such entity to take any action requiring the unanimous affirmative vote of one hundred percent (100%) of the members of its board of directors unless two (2) Independent Directors shall have participated in such vote;

(g) if such entity is a limited liability company with more than one member, has at least one member that is a Special Purpose Entity that is a Delaware corporation or limited liability company that has at least two (2) Independent Directors;

(h) if such entity is a limited liability company with only one member, is a limited liability company organized in the State of Delaware that has (i) as its only member a non-managing member, (ii) at least two (2) Independent Managers and has not caused or allowed and will not cause or allow the board of managers of such entity to take any action requiring the unanimous affirmative vote of one hundred percent (100%)

of the managers unless two (2) Independent Managers shall have participated in such vote and (iii) at least one springing member that will become the non-managing member of such entity upon the dissolution of the existing non-managing member;

(i) if such entity is (i) a limited liability company, has articles of organization, a certificate of formation and/or an operating agreement, as applicable, (ii) a limited partnership, has a limited partnership agreement, or (iii) a corporation, has a certificate of incorporation or articles that, in each case, provide that such entity will not, while any obligations remain outstanding under the Loan Documents: (A) dissolve, merge, liquidate, consolidate; (B) sell all or substantially all of its assets or the assets of the Borrower (as applicable), except as permitted in connection with the release of an Individual Property as provided in Section 2.5.1; (C) engage in any other business activity, or amend its organizational documents with respect to the matters set forth in this definition without the consent of the Lender; or (D) without the affirmative vote of two (2) Independent Directors and of all other directors of the corporation (that is such entity or the general partner or managing or co-managing member of such entity), file a bankruptcy or insolvency petition or otherwise institute insolvency proceedings with respect to itself or to any other entity in which it has a direct or indirect legal or beneficial ownership interest;

(j) is and will remain solvent and pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from and to the extent of its assets as the same shall become due, and is maintaining and will maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations; provided, however, that the foregoing shall not require the Member to make additional capital contributions to the company;

(k) has not failed and will not fail to correct any known misunderstanding regarding the separate identity of such entity;

(l) has maintained and will maintain its bank accounts, books and records separate from any other Person and will file its own tax returns separate from those of any other Person, except to the extent the company is treated as a “disregarded entity” for tax purposes and is not required to file tax returns under applicable law;

(m) has maintained and will maintain its own records, books, resolutions and agreements;

(n) has not commingled and will not commingle its funds or assets with assets of any other Person;

(o) has held and will hold its assets in its own name;

(p) has conducted and will conduct its business in its own name;

(q) has maintained and will maintain its financial statements, accounting records and other entity documents separate and apart from any other Person and will have its assets listed on the financial statement of any other Person; provided, however,

that the company's assets may be included in a consolidated financial statement of its Affiliate, provided, that, (i) appropriate notation shall be made on such consolidated financial statements to indicate the separateness of the company from such Affiliate and to indicate the company's assets and credit are not available to satisfy the debts and other obligations of such Affiliate or any other Person and (ii) such assets shall also be listed on the company's own separate balance sheet;

(r) has paid and will pay its own liabilities and expenses, including the salaries of its own employees (if any), out of its own funds and assets, and has maintained and will maintain a sufficient number of employees (if any) in light of its contemplated business operations;

(s) has observed and will observe all partnership, corporate or limited liability company formalities necessary to maintain its separate existence;

(t) has and will not incur, create, or assume any Indebtedness other than (i) the Loan and (ii) certain Indebtedness to Affiliates that was incurred in connection with the formation of Borrower and Operating Company and the transfer of the Properties to Mortgage Borrower and was satisfied and/or released in full prior to the funding of the Loan hereunder;

(u) has not and will not assume or guarantee or become obligated for the debts of any other Person or hold out its credit as being available to satisfy the obligations of any other Person except as co-borrowers of the Loan;

(v) has not and will not acquire obligations or securities of its partners, members or shareholders or any Affiliate (other than Mortgage Borrower);

(w) has allocated and will allocate fairly and reasonably any overhead expenses that are shared with any Affiliate, including, but not limited to, paying for shared office space and services performed by any employee of an Affiliate;

(x) maintains and uses and will maintain and use separate stationery, invoices and checks, if any, bearing its name. The stationery, invoices, and checks, if any, utilized by the Special Purpose Entity or utilized to collect its funds or pay its expenses shall bear its own name and shall not bear the name of any other entity unless such entity is clearly designated as being the Special Purpose Entity's agent;

(y) has not pledged and will not pledge its assets for the benefit of any Person except as co-borrowers of the Loan;

(z) has held itself out and identified itself and will hold itself out to the public and all other Persons and identify itself as a separate and distinct entity under its own name or in a name franchised or licensed to it by an entity other than an Affiliate of Borrower and not as a division or part of any other Person;

(aa) has maintained and will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;

(bb) has not made and will not make loans to any Person or hold evidence of indebtedness issued by any other Person or entity (other than cash and investment-grade securities issued by an entity that is not an Affiliate of or subject to common ownership with such entity);

(cc) correct any known misunderstanding regarding its separate identity and has not identified and will not identify its partners, members or shareholders, or any Affiliate of any of them, as a division or part of it, and has not identified itself and shall not identify itself as a division of any other Person;

(dd) except for capital contributions or capital distributions permitted under the terms and conditions of this Agreement and properly reflected on the books and records of this company, has not entered into or been a party to, and will not enter into or be a party to, any transaction with its partners, members, shareholders or Affiliates except in the ordinary course of its business and on terms which are commercially reasonable and are no less favorable to it than would be obtained in a comparable arm's-length transaction with an unrelated third party (including an appropriate shared services agreement with Affiliates);

(ee) has not and will not have any obligation to, and will not, indemnify its partners, officers, directors or members, as the case may be, unless such an obligation is fully subordinated to the Debt and will not constitute a claim against it in the event that cash flow in excess of the amount required to pay the Debt is insufficient to pay such obligation;

(ff) if such entity is a corporation, it shall consider the interests of its creditors in connection with all corporate actions;

(gg) does not and will not have any of its obligations guaranteed by any Affiliate (except each Borrower as a co-borrower under the Loan);

(hh) has complied and will comply with all of the terms and provisions contained in its organizational documents. The statement of facts contained in its organizational documents are true and correct and will remain true and correct; and

(ii) form, acquire, or hold any subsidiary (whether corporate, partnership, limited liability company, or other) or own any equity interest in any other entity (other than, with respect to Borrower, its interest in Seventh Mezzanine Borrower, and with respect to Principal, its interest in Borrower).

“**SPE Party**” shall mean Borrower and any other Person that is required to be a “Special Purpose Entity” under applicable Rating Agency criteria so as to make Borrower a Special Purpose Entity.

“**Spread**” shall mean (i) unless and until a Ground Lease Estoppel Trigger Event exists, 3.00% and (ii) upon the occurrence of a Ground Lease Estoppel Trigger Event, the Ground Lease Estoppel Trigger Spread.

“**Spread Maintenance Outside Date**” shall mean February 10, 2009.

“**Spread Maintenance Premium**” shall mean, in connection with any repayment of any of the outstanding principal amount of the Loan prior to and including the Spread Maintenance Outside Date (whether a voluntary or mandatory prepayment), an amount equal to the product of (a) the principal amount of such prepayment, (b) the Spread and (c) a fraction, the numerator of which shall be the actual number of days from (but excluding) the date of such prepayment (or, if later, the last date of the Interest Period during which interest on the amount of such payment shall have been paid by Borrower, as required in this Agreement) through (and including) the Spread Maintenance Outside Date and the denominator of which is three hundred sixty (360).

“**Springing Member**” shall mean a Person who has signed the limited liability company agreement of a given Delaware limited liability company, which agreement provides that, upon the withdrawal, dissolution or disassociation of the last remaining member of such limited liability company (subject to applicable Gaming Laws), such Person shall become a member of such limited liability company having no economic interest therein.

“**State**” shall mean, with respect to an Individual Property, the State or Commonwealth in which such Individual Property or any part thereof is located.

“**Strike Price**” shall mean four and one-half percent (4.5%).

“**Survey**” shall mean a survey of the Individual Property in question prepared pursuant to the requirements contained in Section 3.1.3(c) hereof.

“**Syndication**” shall have the meaning set forth in Section 9.5 hereof.

“**Tax and Insurance Escrow Fund**” shall have the meaning set forth in Section 7.2 hereof.

“**Taxes**” shall mean all real estate and personal property taxes, assessments, water rates or sewer rents, now or hereafter levied or assessed or imposed against any Individual Property or part thereof.

“**Third Mezzanine Borrower**” shall mean, collectively, the entities set forth on Schedule XV hereto, each a Delaware limited liability company, together with their respective successors and permitted assigns. As used herein, the term “Third Mezzanine Borrower” shall mean one of the Third Mezzanine Borrowers individually, or the Third Mezzanine Borrowers collectively, as the context shall require.

“**Third Mezzanine Debt Service**” shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Third Mezzanine Notes.

“**Third Mezzanine Lender**” shall mean JPMorgan Chase Bank, N.A., in its capacity as the holder of the Third Mezzanine Loan, together with its successors and assigns.

“**Third Mezzanine Loan**” shall mean that certain loan in the original principal amount of Two Hundred Seventy-Five Million and No/100 Dollars (\$275,000,000) of even date herewith made by Third Mezzanine Lender to Third Mezzanine Borrower.

“**Third Mezzanine Loan Agreement**” shall mean that certain Third Mezzanine Loan Agreement, dated as of the date hereof, between Third Mezzanine Borrower and Third Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Third Mezzanine Loan Documents**” shall mean the Third Mezzanine Loan Agreement, the Third Mezzanine Notes and all other documents and instruments executed and delivered in connection with the Third Mezzanine Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

“**Third Mezzanine Notes**” shall mean the “Notes” as defined in the Third Mezzanine Loan Agreement.

“**Third Mezzanine Pledge Agreement**” shall mean that certain Pledge and Security Agreement (Third Mezzanine Loan), dated as of the date hereof, between Third Mezzanine Borrower and Third Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Threshold Amount**” shall have the meaning set forth in the definition of Material Alteration.

“**Title Insurance Policies**” shall mean, with respect to each Individual Property, an ALTA mortgagee title insurance policy in a form acceptable to Lender (or, if an Individual Property is in a State which does not permit the issuance of such ALTA policy, such form as shall be permitted in such State and acceptable to Lender) issued with respect to such Individual Property and insuring the lien of the Mortgage encumbering such Individual Property.

“**Tower Project**” shall mean that certain “New Atlantic City Tower Project” more fully described in (a) the Site, Design and Floor Plans, dated October 5, 2005, and prepared by Paul Steelman Design Group, and (b) Harrah’s Hotel/Podium/Garage Expansion: Summary of Project Costs, each delivered to Lender. The Tower Project will include a podium (of approximately 175,000 square feet) connecting the current Bayview Tower to a new approximately nine hundred (900) room tower to be built. The Tower Project will not be funded with the proceeds of the Loan (but will be funded by Mortgage Borrower or Operating Company, including with capital contributions).

“**Transfer**” shall mean to, directly or indirectly, sell, assign, convey, mortgage, transfer, pledge, hypothecate, encumber, grant a security interest in, exchange or otherwise dispose of any beneficial interest or grant any option or warrant with respect to, or where used as a noun, a direct or indirect sale, assignment, conveyance, transfer, pledge or other disposition of any beneficial interest by any means whatsoever whether voluntary, involuntary, by operation of

law or otherwise. A Transfer shall include, but not be limited to, (a) an installment sales agreement wherein Mortgage Borrower agrees to sell an Individual Property or any part thereof or Borrower agrees to sell the Collateral, in each case, for a price to be paid in installments; (b) an agreement by Mortgage Borrower leasing all or a substantial part of an Individual Property for other than actual occupancy by a space tenant thereunder or a sale, assignment or other transfer of, or the grant of a security interest in, Mortgage Borrower's right, title and interest in and to any Leases or any Rents; (c) if a Person restricted or affected by the provisions of this Agreement is a corporation, any merger, consolidation or sale or pledge of such corporation's stock or the creation or issuance of new stock; (d) if a Person restricted or affected by the provisions of this Agreement is a limited or general partnership or joint venture, any merger or consolidation or the change, removal, resignation or addition of a general partner or the sale or pledge of the partnership interest of any general partner or any profits or proceeds relating to such partnership interest, or the sale or pledge of limited partnership interests or any profits or proceeds relating to such limited partnership interest or the creation or issuance of new limited partnership interests; (e) if a Person restricted or affected by the provisions of this Agreement is a limited liability company, any merger or consolidation or the change, removal, resignation or addition of a managing member or non-member manager (or if no managing member, any member) or the sale or pledge of the membership interest of a managing member (or if no managing member, any member) or any profits or proceeds relating to such membership interest, or the sale or pledge of non-managing membership interests or the creation or issuance of new non-managing membership interests; (f) if a Person restricted or affected by the provisions of this Agreement is a trust or nominee trust, any merger, consolidation or the sale or pledge of the legal or beneficial interest in such Person or the creation or issuance of new legal or beneficial interests; or (g) any direct or indirect sale, assignment, conveyance, transfer, pledge or other disposition (by any means whatsoever whether voluntary, involuntary, by operation of law or otherwise) of the Collateral, the Senior Mezzanine Collateral or any part thereof or any legal or beneficial interest therein.

**"Transferee"** shall mean the Person to whom a Transfer is being effected.

**"Trigger Event"** shall mean, as of the end of any calendar quarter, any period of time during which EBITDAR from the Properties, calculated for the trailing twelve (12) month period immediately prior to the applicable calculation date, is less than eighty-five percent (85%) of the EBITDAR (Closing Date), as determined by Lender.

**"Trigger Event Cure"** shall mean that EBITDAR (excluding, in making such calculation, any capital contributions made to or for the benefit of Borrower, Mortgage Borrower or Operating Company, or payments made on the account of Borrower, Mortgage Borrower or Operating Company by any Affiliate of Borrower, Mortgage Borrower or Operating Company) from the Properties, calculated for the trailing twelve (12) month period immediately prior to the applicable calculation date, is equal to or greater than eighty-five percent (85%) of the EBITDAR (Closing Date) for two (2) consecutive calendar quarters.

**"True-Lease Opinion"** shall mean that certain true lease opinion letter dated the date hereof delivered by Cleary Gottlieb Steen & Hamilton LLP in connection with the Loan.

“UCC” or “Uniform Commercial Code” shall mean the Uniform Commercial Code as in effect in the applicable State in which an Individual Property is located.

“UCC Title Insurance Policy” shall have the meaning set forth in Section 3.13(b) hereof.

“U.S. Obligations” shall mean non-redeemable securities evidencing an obligation to timely pay principal and/or interest in a full and timely manner that are direct obligations of the United States of America for the payment of which its full faith and credit is pledged or other “government securities” within the meaning of Section 2(a)(16) of the Investment Company Act of 1940, as amended.

“Windstorm Insurance Intercreditor Agreement” means that certain Windstorm Insurance Intercreditor Agreement, dated as of the date hereof, by and among Lender, the Mortgage Lender, the Other Mezzanine Lenders, each of the “Other Owners” named therein and made a party thereto, Holdings, Bank of America, N.A., and the “Other Secured Parties named therein and made a party thereto, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**Section 1.2. Principles of Construction.** All references to sections and schedules are to sections and schedules in or to this Agreement unless otherwise specified. All uses of the word “including” shall mean “including, without limitation” unless the context shall indicate otherwise. Unless otherwise specified, the words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. Unless otherwise specified, all meanings attributed to defined terms herein shall be equally applicable to both the singular and plural forms of the terms so defined. With respect to cross-references contained herein to the Mortgage Loan Documents or to the Other Mezzanine Loan Documents (including with respect to any cross-references to defined terms therein), unless otherwise specifically provided herein, such cross-references shall be with respect to the Mortgage Loan Documents or the Other Mezzanine Loan Documents as the case may be, in existence as of the date hereof, and no modification or amendment to such cross-referenced sections of the Mortgage Loan Documents or the Other Mezzanine Loan Documents shall be binding upon Lender unless Lender shall have expressly agreed in writing to be bound by such modification or amendment. Terms used herein and not otherwise defined herein (but defined in the Mortgage Loan Agreement) shall have the meaning set forth in the Mortgage Loan Agreement as of the Closing Date, notwithstanding any subsequent amendment of the Mortgage Loan Agreement to such defined terms unless Lender shall have consented to such amendment. The words “Borrower shall cause Mortgage Borrower to”, “Borrower shall not permit Mortgage Borrower to”, “Borrower shall cause Senior Mezzanine Borrower to”, “Borrower shall not permit Senior Mezzanine Borrower to”, “Borrower shall cause Operating Company to” or “Borrower shall not permit Operating Company to” (or words of similar meaning) shall mean Borrower shall cause Mortgage Borrower, Senior Mezzanine Borrower or Operating Company (subject to the provisions of Section 5.3), as applicable, to so act or not to so act, as applicable.

**Section 1.3. Direction of Mortgage Borrower or with Respect to the Properties.** Borrower and Lender hereby acknowledge and agree that, as to any clauses or

provisions contained in this Agreement or any of the other Loan Documents to the effect that (i) Borrower shall cause Mortgage Borrower and/or Senior Mezzanine Borrower to act or to refrain from acting in any manner or (ii) Borrower shall cause to occur or not to occur, or otherwise be obligated in any manner with respect to, any matters pertaining to Mortgage Borrower, Senior Mezzanine Borrower or any of the Properties, such clause or provision, in each case, is intended to mean, and shall be construed as meaning, that Borrower has undertaken to act and is obligated to act only in Borrower's capacity as the sole member of Senior Mezzanine Borrower but not directly with respect to Senior Mezzanine Borrower, Mortgage Borrower or any of the Properties or in any other manner which would violate any of the covenants contained in Section 4.1.30 (Special Purpose Entity) hereof or other similar covenants contained in Borrower's organizational documents.

## II. GENERAL TERMS

### Section 2.1. Loan Commitment; Disbursement to Borrower.

**2.1.1 Agreement to Lend and Borrow.** Subject to and upon the terms and conditions set forth herein, Lender hereby agrees to make and Borrower hereby agrees to accept the Loan on the Closing Date.

**2.1.2 Single Disbursement to Borrower.** Borrower may request and receive only one borrowing hereunder in respect of the Loan and any amount borrowed and repaid hereunder in respect of the Loan may not be reborrowed.

**2.1.3 The Note, the Pledge Agreement and Loan Documents.** The Loan shall be evidenced by the Note (in the aggregate principal amount of Two Hundred Seventy-Five Million and No/100 Dollars (\$275,000,000) and secured by the Pledge Agreement and the other Loan Documents.

**2.1.4 Use of Proceeds.** Borrower shall use the proceeds of the Loan solely to (a) make an equity contribution to Mortgage Borrower (through each Senior Mezzanine Borrower) in order to cause Mortgage Borrower to use such amounts for any use permitted pursuant to Section 2.1.4 of the Mortgage Loan Agreement, (b) pay costs and expenses incurred in connection with the closing of the Loan, as approved by Lender, and (c) distribute the balance, if any, to Borrower.

**2.1.5 Component Notes.** Lender shall have the right at any time to modify the Loan in order to create an additional note or additional notes, adjust the interest rate spread on the Notes or notes, reduce the number of notes, reallocate the principal balances of the Notes or notes or eliminate the component note structure of the Loan provided that (a) the aggregate stated principal amount of the Loan on the date of each such adjustment shall equal the aggregate stated principal amount of the Loan immediately prior to such adjustment, and (b) the weighted average spread of the Loan on the date of such adjustment shall equal the weighted average spread which was applicable to the Loan immediately prior to such adjustment (Borrower acknowledging that such new notes or modified notes may, in connection with the application of principal to such new notes or modified note following the occurrence of an Event of Default, but not otherwise, subsequently cause the weighted average spread of such new notes or

modified notes to change). In connection with any such modification of the Note and notes, or the creation of additional note(s), (i) Borrower shall cooperate with all reasonable requests of Lender and shall execute and deliver such documents as shall reasonably be requested by Lender in connection therewith, all in form and substance reasonably satisfactory to Lender and, to the extent applicable, the Rating Agencies, including, without limitation, (y) revised title insurance policies and Interest Rate Protection Agreements, and (z) such amendments to the Loan Documents as are reasonably requested; (ii) Lender shall have received opinions of legal counsel with respect to due execution, authority and enforceability of the amended Loan Documents, and additional or updated nonconsolidation opinions for the Loan, each in form reasonably acceptable to Lender and prospective investors and in form acceptable to the Rating Agencies; and (iii) Lender shall pay the actual, reasonable out of pocket costs and expenses incurred by Borrower in connection with the foregoing, including, without limitation, the actual, reasonable out-of-pocket legal fees incurred by Borrower in connection with any of the foregoing matters. For the avoidance of doubt, and notwithstanding anything to the contrary contained herein, such modifications and any modifications under Sections 2.1.6 and 2.1.7 below shall not, absent an Event of Default, adversely affect the overall economics to Borrower of the Loan, taken as a whole, or expose Borrower to any additional costs (other than as set forth above) or increased risk of any liability (beyond that or greater than that existing in the Loan Documents in effect on the date hereof), and Borrower shall not be required to execute any document or agreement which would materially decrease its rights or materially increase its obligations relative to those set forth herein and in the other Loan Documents.

**2.1.6 Adjustment of Mortgage Loan and Mezzanine Loans.** Lender shall have the right at any time to adjust the respective principal amounts of the Mortgage Loan and the Mezzanine Loans (or either one of them) and/or to adjust the interest rate spread on the Mortgage Loan and the Mezzanine Loans (or either one of them) (such adjustment, a “**Loan Adjustment**”), provided that (a) the aggregate stated principal amount of the Mortgage Loan and the Mezzanine Loans on the date of each such Loan Adjustment shall equal the aggregate stated principal amount of the Mortgage Loan and the Mezzanine Loans immediately prior to such Loan Adjustment, and (b) Lender shall have the right to adjust the interest rate spread on the Mortgage Loan and the Mezzanine Loans, provided that the weighted average spread of the Mortgage Loan and the Mezzanine Loans on the date of each such Loan Adjustment shall equal the weighted average spread which was applicable to the Mortgage Loan and the Mezzanine Loans immediately prior to such Loan Adjustment (it being acknowledged that the weighted average spread will remain constant except in connection with the application of principal to such new notes or modified notes following the occurrence of an Event of Default). In connection with any Loan Adjustment, (i) Mortgage Borrower and Mezzanine Borrowers shall cooperate with all reasonable requests of Lender and shall execute and deliver such documents as shall reasonably be requested by Lender in connection therewith, all in form and substance reasonably satisfactory to Lender and, to the extent applicable, the Rating Agencies, including, without limitation, (y) revised title insurance policies, mezzanine endorsements, UCC policies and Interest Rate Protection Agreements, and (z) such amendments to the Mortgage Loan Documents and the Mezzanine Loan Documents as are reasonably requested in connection with the Loan Adjustment (provided that such amendments do not or would not (i) materially decrease the rights of the Mortgage Borrower or Mezzanine Borrowers, or, absent an Event of Default, materially increase the obligations of the Mortgage Borrower or the Mezzanine Borrowers, as the case may be, under the Mortgage Loan Documents or the Mezzanine Loan

Documents (as applicable) or (ii) absent an Event of Default, expose the Mortgage Borrower or any of the Mezzanine Borrowers to additional costs or increased risk of any liability under the Mortgage Loan Documents or the Mezzanine Loan Documents (as applicable) (beyond that or greater than that existing in the Mortgage Loan Documents, or the Mezzanine Loan Documents, as applicable, on the date hereof); (ii) Lender shall have received opinions of legal counsel with respect to due execution, authority and enforceability of the amended Mortgage Loan Documents or Mezzanine Loan Documents, as appropriate, and additional or updated nonconsolidation opinions for the Mortgage Loan and the Mezzanine Loans, each in form reasonably acceptable to Lender and prospective investors and in form acceptable to the Rating Agencies; and (iii) Lender shall pay the actual, reasonable out-of-pocket costs and expenses incurred by Borrower in connection with the foregoing, including, without limitation, the actual, reasonable out-of-pocket legal fees incurred by Borrower in connection with any of the foregoing matters.

**2.1.7 Creation of New Mezzanine Loans.** Lender shall at all times have the right to create one or more additional mezzanine loans (each, a “**New Mezzanine Loan**”), adjust the respective principal amounts of the Mortgage Loan and the Mezzanine Loans (or any one of them) upon the creation of the New Mezzanine Loan and/or to adjust the interest rate spread on the Mortgage Loan and the Mezzanine Loans (or any one of them) upon the creation of the New Mezzanine Loan, and to reallocate the principal balance and the interest rate spreads of the Mortgage Loan, the Mezzanine Loans and any New Mezzanine Loan amongst each other (or any one of them), provided that (a) the aggregate stated principal amount of the Mortgage Loan, the Mezzanine Loans and the New Mezzanine Loans on the date of such adjustment (and the creation of the New Mezzanine Loan) shall equal the aggregate stated principal amount of the Mortgage Loan, the Mezzanine Loans and the New Mezzanine Loan(s) immediately prior to such adjustment, (b) Lender shall have the right to adjust the interest rate spread on the Mortgage Loan, the Mezzanine Loans and the New Mezzanine Loan(s), provided that the weighted average spread of the Mortgage Loan, the Mezzanine Loans and the New Mezzanine Loan(s) on the date of such adjustment shall equal the weighted average spread which was applicable to the Mortgage Loan and the Mezzanine Loans (and the New Mezzanine Loans, if applicable) immediately prior to such adjustment (it being acknowledged that the weighted average spread will remain constant except in connection with the application of principal to such new notes or modified notes following the occurrence of an Event of Default), and (c) the terms and provisions of each of the Mortgage Loan and the Mezzanine Loans (and the New Mezzanine Loans, if applicable) shall otherwise remain unchanged. In connection with any New Mezzanine Loan, (i) Borrower shall cause the formation of one or more special purpose, bankruptcy remote entities as required by Lender in order to serve as the borrower under any New Mezzanine Loan (each, a “**New Mezzanine Borrower**”) and the applicable organizational documents of Mortgage Borrower and each Mezzanine Borrower (and of each previously created New Mezzanine Borrower, if applicable) shall be amended and modified as necessary or required in the formation of any New Mezzanine Borrower; (ii) Mortgage Borrower and Mezzanine Borrowers (and each previously created New Mezzanine Borrower, if applicable) shall cooperate with all reasonable requests of Lender and shall execute and deliver such documents as shall reasonably be requested by Lender in connection therewith, all in form and substance reasonably satisfactory to Lender and, to the extent applicable, the Rating Agencies, including, without limitation, (x) revised title insurance policies, mezzanine endorsements, UCC policies and Interest Rate Protection Agreements, (y) in connection with the creation of any New Mezzanine Loan, a promissory note and loan documents necessary to evidence such New Mezzanine Loan,

and (z) such amendments to the Mortgage Loan Documents and the Mezzanine Loan Documents (and the loan documents of any previously created New Mezzanine Borrower, if applicable) as are reasonably necessary in connection with the creation of such New Mezzanine Loan (provided that such amendments do not or would not (i) materially decrease the rights of the Mortgage Borrower or Mezzanine Borrowers (and any previously created New Mezzanine Borrowers, if applicable), or, absent an Event of Default, materially increase the obligations of the Mortgage Borrower or the Mezzanine Borrowers (and any previously created New Mezzanine Borrowers, if applicable), as the case may be, under such borrower's applicable loan documents, or (ii) absent an Event of Default, expose the Mortgage Borrower or any of the Mezzanine Borrowers (or any previously created New Mezzanine Borrowers, if applicable) to additional costs or increased risk of any liability under such borrower's applicable loan documents (beyond that or greater than that existing in the existing loan documents on the date hereof)); (iii) Lender shall have received opinions of legal counsel with respect to due execution, authority and enforceability of the amended Mortgage Loan Documents, the amended Mezzanine Loan Documents and the loan documents for the New Mezzanine Loan, as appropriate, and additional or updated nonconsolidation opinions for the Mortgage Loan, the Mezzanine Loans and each such New Mezzanine Loan, as appropriate, each in form reasonably acceptable to Lender and prospective investors and in form acceptable to the Rating Agencies; and (iv) Lender shall pay the actual, reasonable out-of-pocket costs and expenses incurred by Borrower in connection with the foregoing, including, without limitation, the actual, reasonable out-of-pocket legal fees incurred by Borrower in connection with any of the foregoing matters.

**Section 2.2. Interest Rate.**

**2.2.1 Interest Generally.** Except as herein provided with respect to interest accruing at the Default Rate, interest on the principal balance of the Loan outstanding from time to time shall accrue from the Closing Date up to and including the Maturity Date (including, without limitation, all interest that would accrue on the outstanding principal balance of the Loan through the end of the Interest Period during which the Maturity Date occurs (even if such period extends beyond the Maturity Date)) at the Applicable Interest Rate. Interest on the outstanding principal balance of the Loan existing on the commencement of an Interest Period shall accrue for the entire Interest Period and shall be owed by Borrower for the entire Interest Period regardless of whether any principal portion of the Loan is repaid prior to the expiration of such Interest Period.

**2.2.2 Interest Calculation.** Interest on the outstanding principal balance of the Loan shall be calculated by multiplying (a) the actual number of days elapsed in the period for which the calculation is being made by (b) a daily rate based on a three hundred sixty (360) day year (that is, the Applicable Interest Rate or the Default Rate, as then applicable, expressed as an annual rate divided by 360) by (c) the outstanding principal balance.

**2.2.3 Determination of Interest Rate.** (a) The Applicable Interest Rate with respect to the Loan shall be: (i) LIBOR plus the Spread with respect to the applicable Interest Period for a LIBOR Loan or (ii) the Prime Rate plus the Prime Rate Spread for a Prime Rate Loan if the Loan is converted to a Prime Rate Loan pursuant to the provisions of Section 2.2.3(c) or Section 2.2.3(f).

(b) Subject to the terms and conditions of this Section 2.2.3, the Loan shall be a LIBOR Loan and Borrower shall pay interest on the outstanding principal amount of the Loan at LIBOR plus the Spread for the applicable Interest Period. Any change in the rate of interest hereunder due to a change in the Applicable Interest Rate shall become effective as of the opening of business on the first day on which such change in the Applicable Interest Rate shall become effective. Each determination by Lender of the Applicable Interest Rate shall be conclusive and binding for all purposes, absent manifest error.

(c) In the event that Lender shall have determined (which determination shall be conclusive and binding upon Borrower absent manifest error) that by reason of circumstances affecting the interbank eurodollar market, adequate and reasonable means do not exist for ascertaining LIBOR, then Lender shall forthwith give notice by telephone of such determination, confirmed in writing, to Borrower at least one (1) Business Day prior to the last day of the related Interest Period. If such notice is given, the related outstanding LIBOR Loan shall be converted, on the last day of the then current Interest Period, to a Prime Rate Loan.

(d) If, pursuant to the terms of this Agreement, any portion of the Loan has been converted to a Prime Rate Loan and Lender shall determine (which determination shall be conclusive and binding upon Borrower absent manifest error) that the event(s) or circumstance(s) which resulted in such conversion shall no longer be applicable, Lender shall give notice by telephone of such determination, confirmed in writing, to Borrower at least one (1) Business Day prior to the last day of the related Interest Period. If such notice is given, the related outstanding Prime Rate Loan shall be converted to a LIBOR Loan on the last day of the then current Interest Period.

(e) With respect to a LIBOR Loan, all payments made by Borrower hereunder shall be made free and clear of, and without reduction for or on account of, income, stamp or other taxes, levies, imposts, duties, charges, fees, deductions, reserves or withholdings imposed, levied, collected, withheld or assessed by any Governmental Authority and imposed on any non-U.S. Lender due to a change in U.S. law after the date such non-U.S. Lender acquired its interest in the Loan (such non-excluded taxes, levies, imports, duties, charges, fees, deductions, reserves or withholdings being referred to collectively as “**Foreign Taxes**”), excluding (i) income and franchise taxes, (ii) any Taxes imposed by reason of any connection between the non-U.S. Lender and the taxing jurisdiction other than entering into this Agreement and receiving payments hereunder, and (iii) any Taxes imposed by reason of the non-U.S. Lender’s failure to complete and deliver to the Borrower, prior to the date on which the first payment to such Lender is due hereunder and (so long as it remains eligible to do so) from time to time thereafter, (x) (i) an Internal Revenue Service Form W-9 (or successor form) establishing that the Lender is not subject to U.S. backup withholding tax, (ii) an Internal Revenue Service Form W-8BEN (or successor form) certifying that such Lender is entitled to benefits under an income tax treaty to which the United States is a party that reduces the rate of withholding tax on payments of interest to zero, or (iii) an Internal Revenue Service Form W-8ECI certifying that the income receivable pursuant to this Agreement is effectively connected with the conduct of a trade or business in the United States, as appropriate; and (y) any successor or additional form required by the Internal Revenue Service or any taxing authority reasonably requested by the Borrower in order to secure an exemption from, or reduction in the rate of, Foreign Taxes. If any Foreign Taxes are required to be withheld from any amounts payable to Lender hereunder, the amounts so payable to Lender

shall be increased to the extent necessary to yield to Lender (after payment of all Foreign Taxes) interest or any such other amounts payable hereunder at the rate or in the amounts specified hereunder. Whenever any Foreign Tax is payable pursuant to applicable law by Borrower, as promptly as possible thereafter, Borrower shall send to Lender an original official receipt, if available, or certified copy thereof showing payment of such Foreign Tax. Borrower hereby indemnifies Lender for any incremental Foreign Taxes, interest or penalties that may become payable by Lender which may result from any failure by Borrower to pay any such Foreign Tax when due to the appropriate taxing authority or any failure by Borrower to remit to Lender the required receipts or other required documentary evidence thereof (provided such documents are reasonably available to the Borrower).

(f) If any requirement of law or any change therein or in the interpretation or application thereof, shall hereafter make it unlawful for Lender to make or maintain a LIBOR Loan as contemplated hereunder and the events giving rise thereto affect similarly situated banks or financial institutions generally, (i) the obligation of Lender hereunder to make a LIBOR Loan or to convert a Prime Rate Loan to a LIBOR Loan shall be canceled forthwith and (ii) any outstanding LIBOR Loan shall be converted automatically to a Prime Rate Loan on the next succeeding Payment Date or within such earlier period as required by law.

(g) In the event that any change in any requirement of law or in the interpretation or application thereof, or compliance by Lender with any request or directive (whether or not having the force of law) hereafter issued from any central bank or other Governmental Authority and the events giving rise thereto affect similarly situated banks or financial institutions generally:

(i) shall hereafter impose, modify or hold applicable any reserve, special deposit, compulsory loan or similar requirement against assets held by, or deposits or other liabilities in or for the account of, advances or loans by, or other credit extended by, or any other acquisition of funds by, the office of Lender that holds the Loan which is not otherwise included in the determination of LIBOR hereunder;

(ii) shall hereafter require the Lender to hold additional capital against the Loan in excess of that currently required by Governmental Authorities to be held against loans similar in nature to the Loan; or

(iii) shall hereafter impose on Lender any other condition affecting loans to borrowers subject to LIBOR-based interest rates and Lender determines that, by reason thereof, the cost to Lender of making or maintaining the Loan to Borrower is increased, or any amount received by Lender hereunder in respect of any portion of the Loan is reduced, in each case by an amount deemed by Lender in good faith to be material;

then, in any such case, Borrower shall promptly pay Lender, upon demand, any additional amounts necessary to compensate Lender for such additional cost or reduced amount receivable which Lender deems to be material as determined in good faith by Lender. If Lender becomes entitled to claim any additional amounts pursuant to this Section 2.2.3(g), Lender shall provide Borrower with not less than ninety (90) days notice specifying in reasonable detail the event by reason of which it has become so entitled and the additional amount required to fully compensate

Lender for such additional cost or reduced amount. A certificate as to any additional costs or amounts payable pursuant to the foregoing sentence submitted by Lender to Borrower shall be conclusive in the absence of manifest error. This provision shall survive payment of the Note and the satisfaction of all other obligations of Borrower under this Agreement and the Loan Documents.

(h) Lender shall not be entitled to claim compensation pursuant to this Section 2.2.3 for any Foreign Taxes or other amounts incurred or which accrued more than ninety (90) days before the date Lender notified Borrower of the change in law or other circumstance on which such claim of compensation is based and delivered to Borrower a written statement setting forth in reasonable detail the basis for calculating the additional amounts owed to Lender under this Section 2.2.3, which statement shall be conclusive and binding upon all parties hereto absent manifest error.

(i) For purposes of this Section 2.2.3, the term "Lender" shall be deemed to include each Noteholder and Lender's (as well as each Noteholder's) present and future participants in the Loan to the extent of Foreign Taxes imposed by reason of such Noteholder or participant's interest in the Loan and each such Noteholder's or participant's increased costs or reduction in amount received or receivable hereunder or any reduced rate of return, in each case payable by Borrower under this Section 2.2.3.

**2.2.4 Additional Costs.** Lender will use reasonable efforts (consistent with legal and regulatory restrictions) to maintain the availability of the LIBOR Loan and to avoid or reduce any increased or additional costs payable by Borrower under Section 2.2.3, including, if requested by Borrower, a transfer or assignment of the Loan to a branch, office or Affiliate of Lender in another jurisdiction, or a redesignation of its lending office with respect to the Loan, in order to maintain the availability of the LIBOR Loan or to avoid or reduce such increased or additional costs, provided that the transfer or assignment or redesignation (a) would not result in any material additional costs, expenses or risk to Lender that are not reimbursed by Borrower and (b) would not be disadvantageous in any other material respect to Lender as determined by Lender in its sole, but reasonable discretion.

**2.2.5 Default Rate.** In the event that, and for so long as, any Event of Default shall have occurred and be continuing, the outstanding principal balance of the Loan and, to the extent permitted by law, all accrued and unpaid interest in respect of the Loan and any other amounts due pursuant to the Loan Documents, shall accrue interest at the Default Rate, calculated from the date such payment was due without regard to any grace or cure periods contained herein.

**2.2.6 Usury Savings.** This Agreement, the Note and the other Loan Documents are subject to the express condition that at no time shall Borrower be obligated or required to pay interest on the principal balance of the Loan at a rate which could subject Lender to either civil or criminal liability as a result of being in excess of the Maximum Legal Rate. If, by the terms of this Agreement or the other Loan Documents, Borrower is at any time required or obligated to pay interest on the principal balance due hereunder at a rate in excess of the Maximum Legal Rate, the Applicable Interest Rate or the Default Rate, as the case may be, shall be deemed to be immediately reduced to the Maximum Legal Rate and all previous payments in excess of the

Maximum Legal Rate shall be deemed to have been payments in reduction of principal and not on account of the interest due hereunder. All sums paid or agreed to be paid to Lender for the use, forbearance, or detention of the sums due under the Loan, shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Loan until payment in full so that the rate or amount of interest on account of the Loan does not exceed the Maximum Legal Rate of interest from time to time in effect and applicable to the Loan for so long as the Loan is outstanding.

**2.2.7 Interest Rate Cap Agreement.** (a) On or prior to 5:00 p.m. (New York time) on the Closing Date, Borrower shall enter into an Interest Rate Cap Agreement with a LIBOR strike price equal to the required Strike Price. The Interest Rate Cap Agreement (i) shall be in a form and substance reasonably acceptable to Lender, (ii) shall be with an Acceptable Counterparty, (iii) shall direct such Acceptable Counterparty to deposit directly with Lender (or into an account or otherwise as directed by Lender) any amounts due Borrower under such Interest Rate Cap Agreement unless and until otherwise instructed by Lender (it being agreed as between Lender and Borrower that Lender will so instruct the Counterparty at such time as the Debt shall no longer exist, provided that the Debt shall be deemed to exist if the Collateral is transferred by secured party sale or otherwise), (iv) shall be for a period equal to the initial term of the Loan and (v) shall have an initial notional amount equal to the principal balance of the Loan. Borrower shall collaterally assign to Lender, pursuant to the Collateral Assignment of Interest Rate Cap Agreement, all of its right, title and interest to receive any and all payments under the Interest Rate Cap Agreement, and shall deliver to Lender an executed counterpart of such Interest Rate Cap Agreement (which shall, by its terms, authorize the assignment to Lender and require that payments be paid directly into an account pledged to Lender as provided above in this Section 2.2.7). Provided no Event of Default has occurred and is continuing, amounts contained in the foregoing pledged account shall be released to Borrower on a monthly basis to the extent not applied toward debt service on the Loan.

(b) Borrower shall comply with all of its obligations under the terms and provisions of the Interest Rate Cap Agreement. All amounts paid by the Counterparty under the Interest Rate Cap Agreement to Borrower or Lender shall be paid to Lender (or into an account or otherwise as directed by Lender). Borrower shall take all actions reasonably requested by Lender to enforce Lender's rights under the Interest Rate Cap Agreement in the event of a default by the Counterparty and shall not waive, amend or otherwise modify any of its rights thereunder.

(c) In the event of any downgrade, withdrawal or qualification of the rating of the Counterparty by S&P or Moody's to below the ratings set forth in the definition of "Acceptable Counterparty", Borrower (i) shall replace the Interest Rate Cap Agreement with a Replacement Interest Rate Cap Agreement (or cause the Counterparty or an Affiliate thereof to post collateral acceptable to Lender and the Rating Agencies) not more than fifteen (15) Business Days following receipt of notice of such downgrade, withdrawal or qualification (and meeting the requirements set forth in this Section 2.2.7) from an Acceptable Counterparty, (ii) if a new cap is provided to Lender, then if requested by Lender shall provide to Lender an opinion of counsel to such Acceptable Counterparty in the form and containing the substance of the form of opinion set forth in Exhibit A to the Mortgage Loan Agreement (which such changes as shall be reasonably approved by Lender), and (iii) shall collaterally assign to Lender, pursuant to an

assignment in the form of the Collateral Assignment of Interest Rate Cap Agreement, all of its right, title and interest to receive any and all payments under the Replacement Interest Rate Cap Agreement.

(d) In the event that Borrower fails to purchase and deliver to Lender the Interest Rate Cap Agreement or fails to maintain the Interest Rate Cap Agreement in accordance with the terms and provisions of this Agreement, Lender may purchase the Interest Rate Cap Agreement and the cost incurred by Lender in purchasing such Interest Rate Cap Agreement shall be paid by Borrower to Lender with interest thereon at the Default Rate from the date such cost was incurred by Lender until such cost is reimbursed by Borrower to Lender.

(e) In connection with any Interest Rate Cap Agreement provided to Lender as herein required, if requested by Lender, Borrower shall obtain and deliver to Lender an opinion from counsel (which counsel may be in-house counsel for the Counterparty) for the Counterparty (upon which Lender and its successors and assigns may rely) in the form and containing the substance of the form of opinion set forth in Exhibit A to the Mortgage Loan Agreement (which such changes as shall be reasonably approved by Lender).

(f) In connection with any prepayment of the Loan, provided no Event of Default shall have occurred and be continuing, Borrower may reduce the amount of any Interest Rate Cap Agreement (so that the same shall be in an initial notional amount equal to the principal balance of the Loan following such prepayment), provided that such reduction shall not affect any of the other terms of the Interest Rate Cap Agreement or the Collateral Assignment of Interest Rate Cap Agreement (or Lender's rights in respect thereof).

### **Section 2.3. Loan Payment.**

**2.3.1 Payments Generally.** Borrower shall make a payment to Lender of interest only on the Closing Date for the initial Interest Period. On the date hereof, Borrower shall make a payment to Lender of interest accruing hereunder during the period from the Closing Date up to and including the initial Interest Period, calculated in the manner set forth herein, and on the Payment Date occurring in March 2008 and on each Payment Date thereafter to and including the Maturity Date, Borrower shall make a payment to Lender of interest accruing hereunder during the entire Interest Period in which such Payment Date occurs, calculated in the manner set forth herein. All amounts due pursuant to this Agreement and the other Loan Documents shall be payable without setoff, counterclaim, defense or any other deduction whatsoever. Each payment shall be applied pro rata and pari passu (a) first to accrued and unpaid interest on all of the Notes and (b) the balance shall be applied to principal of all the Notes.

**2.3.2 Payment on Maturity Date.** Borrower shall pay to Lender on the Maturity Date the outstanding principal balance of the Loan, all accrued and unpaid interest and all other amounts due hereunder and under the Note, the Pledge Agreement and the other Loan Documents, including, without limitation, all interest that would accrue on the outstanding principal balance of the Loan through and including the end of the Interest Period in which the Maturity Date occurs (even if such Interest Period extends beyond the Maturity Date).

**2.3.3 Late Payment Charge.** If any principal, interest or any other sums due under the Loan Documents, other than the payment of principal due on the Maturity Date, is not paid by Borrower by the date on which it is due, Borrower shall pay to Lender upon demand an amount equal to the lesser of one percent (1%) of such unpaid sum or the maximum amount permitted by applicable law in order to defray the expense incurred by Lender in handling and processing such delinquent payment and to compensate Lender for the loss of the use of such delinquent payment; provided, however, that, except with respect to the payment of any monthly Debt Service payments with respect to which no notice or demand shall be required, no such late payment charge shall be due unless such payment of principal, interest or other sum shall be delinquent for more than five (5) Business Days following the date of demand therefor. Any such amount shall be secured by the Pledge Agreement and the other Loan Documents to the extent permitted by applicable law.

**2.3.4 Method and Place of Payment.** Except as otherwise specifically provided herein, all payments and prepayments under this Agreement and the Note shall be made to Lender not later than 3:00 p.m., New York City time, on the date when due and shall be made in lawful money of the United States of America in immediately available funds at Lender's office or as otherwise directed by Lender, and any funds received by Lender after such time shall, for all purposes hereof, be deemed to have been paid on the next succeeding Business Day.

**Section 2.4. Prepayments.**

**2.4.1 Voluntary Prepayments.** Borrower may, at its option, prepay the Debt in whole or in part, provided, the following conditions are satisfied:

(a) No Event of Default shall have occurred and be continuing (unless, in the case of a prepayment upon the release of an Individual Property, the Event of Default relates solely to such Individual Property and therefore would be fully cured by the release of such Individual Property);

(b) Borrower shall provide prior written notice to Lender specifying the date upon which the prepayment is to be made (the "**Prepayment Date**"), which notice shall be delivered to Lender not less than ten (10) days prior to such Prepayment Date, and which notice shall be irrevocable (or such shorter period of time as may be permitted by Lender in its sole discretion) (Lender hereby agreeing that Borrower may revoke any notice of prepayment up until the date that is one (1) Business Day prior to the proposed Prepayment Date (provided that Borrower shall be required to pay Lender, promptly upon demand, any actual, out-of-pocket expenses incurred by Lender resulting from any such revocation));

(c) each such prepayment, in the case of partial prepayments, shall be in an amount not less than Five Million and No/100 Dollars (\$5,000,000.00), unless the outstanding principal balance of the Loan (prior to such prepayment) shall be less than Five Million and No/100 Dollars (\$5,000,000.00), in which event the amount of the prepayment shall be in such amount as shall prepay the Debt and all other amounts due in connection therewith in full, as more fully provided herein;

(d) if such prepayment is made on or prior to the Payment Date occurring in the Interest Period in which such prepayment was made, then, in connection with such prepayment Borrower shall pay to Lender, simultaneously with such prepayment, all interest on the principal balance of the Note then being prepaid which would have accrued through the end of the Interest Period then in effect notwithstanding that such Interest Period extends beyond the Prepayment Date;

(e) if such prepayment is made after a Payment Date occurring in the Interest Period in which such prepayment was made, but prior to the last two (2) Business Days in such Interest Period, Borrower shall make such prepayment without paying any interest thereon (Borrower having already paid interest on such amount on the Payment Date occurring in such Interest Period);

(f) if such prepayment is made on either of the last two (2) Business Days in an Interest Period, Borrower will pay to Lender, simultaneously with such prepayment, interest on the principal amount of the Loan prepaid through the last day of the Interest Period immediately following the Interest Period in which such prepayment occurs, calculated at the Applicable Interest Rate;

(g) if such prepayment is a prepayment of the Loan in full, Lender shall have received a written consent to the repayment from the lender under each Other Mezzanine Loan (and, if any, a Permitted Mezzanine Loan) or receipt by Lender of other evidence satisfactory to Lender that all conditions imposed under the terms of each Other Mezzanine Loan and Permitted Mezzanine Loan shall have been complied with by the borrower thereunder or otherwise waived by the applicable lender, including the simultaneous *pro rata* prepayment of each Other Mezzanine Loan and Permitted Mezzanine Loan if required thereunder; and

(h) if such prepayment is made on or prior to the Spread Maintenance Outside Date, then in connection with any such prepayment, Borrower shall pay to Lender, simultaneously with such prepayment, the Spread Maintenance Premium in respect of such prepayment.

Any prepayment received by Lender on other than a Payment Date (but not any amount received between a Payment Date and the second to last Business Day in an Interest Period) shall be held by Lender in an interest-bearing account as collateral security for the Loan and shall be applied to the Debt on the next occurring Payment Date (with all interest and other income earned on such amount being for the account of Borrower and being remitted by Lender to Borrower promptly following such next Payment Date). Any prepayment made pursuant to this Section 2.4.1 shall be applied *pro rata* and *pari passu* (a) first to accrued and unpaid interest on all of the Notes and (b) the balance shall be applied to principal of all the Notes. Lender agrees that it shall provide a written consent to the repayment of the Loan upon satisfaction of the conditions set forth in clauses (a) through (f) and clause (h) of this Section 2.4.1.

**2.4.2 Mandatory Prepayments from Net Proceeds.** (a) On the next occurring Payment Date following the date on which Lender actually receives any Net Proceeds, if Lender is not obligated to make such Net Proceeds available to Borrower for the Restoration of any Individual Property, Borrower shall prepay, or authorize Lender to apply Net Proceeds as a

prepayment of, the outstanding principal balance of the Note in an amount equal to, (x) if no Event of Default shall have occurred and be continuing, the product of (i) a fraction, the numerator of which is outstanding principal amount of the Loan and the denominator is the outstanding principal amount of the Mortgage Loan, the Loan and the Other Mezzanine Loans times (ii) the Net Proceeds, together with interest accruing on such amount calculated through and including the end of the Interest Period in which such Payment Date occurs (with the balance of the Net Proceeds to be paid over to the Eighth Mezzanine Lender, for application in accordance with the Eighth Mezzanine Loan Agreement), and (y) if an Event of Default shall have occurred and be continuing, 100% of the Net Proceeds. No Spread Maintenance Premium shall be due in connection with any prepayment made pursuant to this Section 2.4.2(a). Any prepayment received by Lender pursuant to this Section 2.4.2(a) on a date other than a Payment Date shall be held by Lender as collateral security for the Loan in an interest bearing account, with such interest accruing to the benefit of Borrower, and shall be applied by Lender on the next Payment Date. Following the prepayment made as described in this Section 2.4.2(a), the Allocated Loan Amount for the affected Individual Property, as set forth in this Agreement, shall be reduced in an amount equal to such prepayment. Any prepayment of the Notes made pursuant to this Section 2.4.2(a) shall be applied *pro rata* and *pari passu* (a) first to accrued and unpaid interest on all of the Notes and (b) the balance shall be applied to principal of all the Notes.

(b) In the event of (i) a Transfer of any Individual Property or any Senior Mezzanine Collateral in connection with the realization thereon following a Mortgage Loan Default or a Senior Mezzanine Loan Default, as applicable, (ii) any refinancing of any Individual Property, any Senior Mezzanine Collateral, any Senior Mezzanine Loan or the Mortgage Loan, or (iii) the receipt by Mortgage Borrower of any excess proceeds realized under its owner's title insurance policy after application of such proceeds by Mortgage Borrower to cure any title defect (each, a "**Liquidation Event**"), Borrower shall cause the related Net Liquidation Proceeds After Debt Service to be remitted directly to Lender (or as directed by Lender). On each date on which Lender actually receives a distribution of Net Liquidation Proceeds After Debt Service, Borrower shall prepay the outstanding principal balance of the Note in an amount equal to one hundred percent (100%) of such Net Liquidation Proceeds After Debt Service, together with interest accruing on such amount calculated through and including the end of the Interest Period in which such payment occurs. Any amounts of Net Liquidation Proceeds After Debt Service in excess of the Debt shall be remitted to Eighth Mezzanine Lender (or to an account designated by Eighth Mezzanine Lender). Any prepayment received by Lender pursuant to this Section 2.4.2(b) on a date other than a Payment Date shall be held by Lender as collateral security for the Loan in an interest bearing account, with such interest accruing to the benefit of Borrower, and shall be applied by Lender on the next Payment Date. A Spread Maintenance Premium or fee may be due in connection with any prepayment made pursuant to this Section 2.4.2(b) if made prior to the Spread Maintenance Outside Date. Following the prepayment made as described in this Section 2.4.2(b), the Allocated Loan Amount for the affected Individual Property, as set forth in this Agreement, shall be reduced in an amount equal to such prepayment. Any prepayment of the Notes made pursuant to this Section 2.4.2(b) shall be applied *pro rata* and *pari passu* (a) first to accrued and unpaid interest on all of the Notes and (b) the balance shall be applied to principal of all the Notes.

(c) Borrower shall immediately notify Lender of any Liquidation Event once Borrower has knowledge of such event. Borrower shall be deemed to have knowledge of (i) a sale (other than a foreclosure sale) of any Individual Property on the date on which a contract of sale for such sale is entered into, and a foreclosure sale, on the date notice of such foreclosure sale is given, and (ii) a refinancing of any Individual Property, on the date on which a commitment for such refinancing has been entered into. The provisions of this Section 2.4.2(c) shall not be construed to contravene in any manner the restrictions and other provisions regarding refinancing of the Mortgage Loan or Transfer of any Individual Property set forth in this Agreement, the other Loan Documents and the Mortgage Loan Documents.

**2.4.3 Prepayments After Default.** If, following the occurrence and during the continuance of an Event of Default, payment of all or any part of the Debt is tendered by Borrower or any other Person and accepted by Lender or otherwise recovered by Lender (including through application of any Reserve Funds), Borrower shall pay to Lender, in addition to the outstanding principal balance, (a) all accrued and unpaid interest at the Default Rate (including, without limitation, (i) in the event that such prepayment is received on a Payment Date or on any date in any Interest Period prior to a Payment Date, interest accruing (at the Default Rate) on such amount calculated through and including the end of the Interest Period in which such payment occurs, or (ii) in the event that such prepayment is received on a date after a Payment Date up to (and including) the last day of the Interest Period in which such Payment Date occurs, interest accruing (at the Default Rate) on such amount calculated through and including the end of the Interest Period in which the next Payment Date occurs, (b) the Spread Maintenance Premium, if such prepayment is made prior to the Spread Maintenance Outside Date, and (c) any and all other amounts payable under the Loan Documents. Any payment under this Section 2.4.3 shall be applied in such order, priority and proportions as Lender may direct in its sole and absolute discretion.

**Section 2.5. Release of Collateral.** Except as set forth in this Section 2.5, no repayment or prepayment of all or any portion of the Note shall cause, give rise to a right to require, or otherwise result in, the release or assignment of any Lien of the Pledge Agreement on the Collateral.

**2.5.1 Release of Individual Property.** Concurrently with the release of an Individual Property from the Lien of the Mortgage (and related Mortgage Loan Documents) pursuant to Section 2.5.1 of the Mortgage Loan Agreement (a “**Release**” and such Individual Property, a “**Release Property**”), Borrower may obtain the release of the related Individual Borrower with an indirect ownership interest in such Individual Property (a “**Release Borrower**”) and such Release Borrower’s obligations under the Loan Documents with respect to the Release Property (other than those expressly stated to survive), upon the satisfaction of each of the following conditions:

(a) No Event of Default shall have occurred and be continuing (unless, in the case of a prepayment upon the release of an Individual Property, the Event of Default relates solely to such Individual Property and therefore would be fully cured by the release of such Individual Property);

(b) Borrower shall submit to Lender, not less than ten (10) Business Days prior to the date of such release, a release of Lien of the Pledge Agreement (and related Loan Documents), only with respect to such Release Borrower, for execution by Lender. Such release shall contain standard provisions, if any, protecting the rights of the releasing lender;

(c) After giving effect to such release, the Debt Service Coverage Ratio for the Properties then remaining subject to the Liens of the Mortgages (including giving pro forma effect to the payment of the Release Price and any additional prepayment(s) made by Borrower in connection with such release) shall be equal to or greater than the greatest of (i) the Debt Service Coverage Ratio for the twelve (12) full calendar months immediately preceding the release of the Individual Property (assuming the contemplated release had not occurred, i.e., for all Properties subject to the Liens of the Mortgage prior to the proposed release), (ii) 90% of the Debt Service Coverage Ratio as of the Closing Date, and (iii) 1.0;

(d) (i) The Individual Property to be released shall be conveyed to a Person other than a Mortgage Borrower or Mezzanine Borrower, and other than to an Affiliate of Mortgage Borrower unless, in the latter case, such Affiliate is refinancing the Loan with a construction or development loan (or repaying the Loan with equity contributions to such Affiliate) and (ii) it is such Affiliate's immediate intention to materially redevelop such Individual Property, which loan (or equity contribution) and intention shall be described in reasonable detail and represented to in an Officer's Certificate submitted to Lender concurrently with (or prior to) the materials described in clause (b) of this Section 2.5.1;

(e) Lender shall have received a wire transfer of immediately available federal funds in an amount equal to the Release Price for the applicable Individual Property, together with (i) all accrued and unpaid interest calculated at the Applicable Interest Rate on the amount of principal being prepaid as provided in Sections 2.4.1(d) or (e), as applicable, (ii) the Spread Maintenance Premium, if applicable and (iii) all other sums due under this Agreement, the Note or the other Loan Documents in connection with a partial prepayment;

(f) Lender shall have received a written consent to the transfer from the lender under the Mortgage Loan and each of the Other Mezzanine Loans (and, if any, a Permitted Mezzanine Loan) or receipt by Lender of other evidence satisfactory to Lender that all conditions imposed under the terms of the Mortgage Loan, each of the Other Mezzanine Loans and Permitted Mezzanine Loan shall have been complied with by the borrower thereunder or otherwise waived by the applicable lender, including the simultaneous pro rata prepayment of each Mortgage Loan, the Other Mezzanine Loans and Permitted Mezzanine Loan if required thereunder; and

(g) Lender shall have received payment of all Lender's reasonable out-of-pocket costs and expenses, including reasonable counsel fees and disbursements incurred in connection with the release of the Individual Property and or Release Borrower from the lien of the Pledge Agreement and the review and approval of the documents and information required to be delivered in connection therewith. Lender acknowledges that it shall not charge any fee (other than costs and expenses, as provided in the preceding sentence) in connection with the release of an Individual Property or Release Borrower.

Lender agrees that it shall provide a written consent to the transfer upon satisfaction of the conditions set forth in clauses (a) through (e) and clause (g) of this Section 2.5.1.

**2.5.2 Release of Convention Center Parcel; Property Swap.** At any time after the date hereof, Mortgage Borrower may obtain the release of the Convention Center Parcel pursuant to the Mortgage Loan Agreement, without the payment of a Release Price and upon the satisfaction by Borrower of each of the following conditions:

(a) No Event of Default shall have occurred and be continuing (unless, in the case of a release of the Convention Center Parcel, the Event of Default relates solely to such parcel and therefore would be fully cured by the release of the Convention Center Parcel);

(b) The Convention Center Parcel shall be conveyed to a Person other than a Mortgage Borrower or any Mezzanine Borrower;

(c) Mortgage Borrower will enter into a restrictive covenant agreement, restricting the use of the Convention Center Parcel to the development of a Convention Center and ancillary uses which agreement shall be in form and substance reasonably satisfactory to Lender;

(d) Prior to the transfer and release of the Convention Center Parcel, each applicable municipal authority exercising jurisdiction over the Convention Center Parcel shall have approved, a lot-split ordinance or other applicable action under local law dividing the Convention Center Parcel from the remainder of the Harrah's Atlantic City Property, and a separate tax identification number has been issued for the Convention Center Parcel (with the result that, upon the transfer and release of the Convention Center Parcel, no part of the remaining Harrah's Atlantic City Property shall be part of a tax lot which includes any portion of the Convention Center Parcel);

(e) All requirements under all laws, statutes, rules and regulations (including, without limitation, all zoning and subdivision laws, setback requirements, sideline requirements, parking ratio requirements, use requirements, building and fire code requirements, environmental requirements and wetlands requirements) applicable to the Harrah's Atlantic City Property necessary to accomplish the lot split shall have been fulfilled, and all necessary variances, if any, shall have been obtained, and Borrower shall have delivered to Lender either (1) letters or other evidence from the appropriate municipal authorities confirming such compliance with laws, or (2) a zoning report or legal opinion confirming such compliance with laws, in each case in substance reasonably satisfactory to Lender;

(f) As a result of the lot split, the remaining Harrah's Atlantic City Property with all easements appurtenant and other Permitted Encumbrances thereto will not be in violation of any then applicable law, statute, rule or regulation (including, without limitation, all zoning and subdivision laws, setback requirements, sideline requirements, parking ratio requirements, use requirements, building and fire code requirements, environmental requirements and wetland requirements) and all necessary variances, if any, shall have been obtained and evidence thereof has been delivered to Lender which in form and substance is appropriate for the jurisdiction in which the Harrah's Atlantic City Property is located;

(g) If reasonably necessary, appropriate reciprocal easement agreements for the benefit and burden of the remaining Harrah's Atlantic City Property and the Convention Center Parcel requiring no cost or expense to Mortgage Borrower regarding the use of common facilities of such parcels, including, but not limited to, roadways, parking areas, utilities and community facilities, in a form and substance that would be reasonably acceptable to an ordinary prudent lender and which easements will not materially adversely affect the remaining Harrah's Atlantic City Property, shall be declared and recorded, and the remaining Harrah's Atlantic City Property and the Convention Center Parcel shall be in compliance with all applicable covenants under all easements and property agreements contained in the Permitted Encumbrances for the Harrah's Atlantic City Property;

(h) Borrower has delivered an Officer's Certificate to the effect that, to such officer's knowledge after diligent inquiry, the conditions in subsection (a)-(g) hereof have occurred or shall occur concurrently with the transfer and release of the Convention Center Parcel;

(i) Borrower shall execute such documents and instruments and obtain such opinions of counsel as are typical for similar transactions;

(j) Lender shall have received payment of all Lender's reasonable out-of-pocket costs and expenses, including reasonable counsel fees and disbursements incurred in connection with the review and approval of the documents and information required to be delivered in connection with the release of the Convention Center Parcel from the Lien of the related Mortgage. Lender acknowledges that it shall not charge any fee (other than costs and expenses, as provided in the preceding sentence) in connection with the release of the Convention Center Parcel;

(k) Lender shall have received evidence reasonably satisfactory to it that Mortgage Borrower and each Other Mezzanine Borrower shall have satisfied all of the conditions to the proposed Release set forth in the Mortgage Loan Agreement and each Other Mezzanine Loan Agreement, as applicable; and

(l) There shall be no release of any portion of the Lien of the Pledge Agreement in connection with this Section 2.5.2.

Borrower agrees that it shall promptly use all reasonable best efforts to substitute, and Lender agrees (subject to the terms set forth below in this paragraph) that it shall accept the substitution of, the properties commonly known as "Paris Las Vegas" and "Harrah's Laughlin" for the Individual Properties referred to as "Harrah's Lake Tahoe", "Harvey's Lake Tahoe", "Bill's Lake Tahoe" and "Showboat Atlantic City" and the portion of the Flamingo Las Vegas Property known as O'Shea's in a reasonably satisfactory manner, provided that Lender's obligation to accept such substitution shall be conditioned on the following:

(i) that no Event of Default shall exist, either before or after giving effect to such substitution (unless such Event of Default would be fully cured by the substitution);

(ii) the satisfaction, with respect to both "Paris Las Vegas" and "Harrah's Laughlin", of the closing conditions set forth in Article III hereof and of the Mortgage

Loan Agreement, except that references therein to the Closing Date shall be to the date of such substitution;

(iii) delivery of such agreements, instruments, title insurance policies, surveys, resolutions, certificates and opinions (including, without limitation, substitute notes, amendments to the Loan Documents (including amendments to adjust the Allocated Loan Amounts, the EBITDAR (Closing Date) and any other items that need to be adjusted to reflect the substitution), the Operating Lease, the Operating Lease Guaranty and the Windstorm Insurance Intercreditor Agreement, an appropriate subdivision and a reciprocal easement agreement in respect of O'Shea's, written assurances that the substitution will have no negative effects on the existing Title Policies, updated "tie-in" endorsements for the Title Policies, an Additional True Lease Opinion and an Additional Insolvency Opinion), in each case as are reasonably required by Lender in connection with such substitution;

(iv) with respect to the release of O'Shea's, delivery of evidence reasonably satisfactory to Lender that such release will not have either an Individual Material Adverse Effect on the remainder of the Flamingo Las Vegas Property or an Aggregate Material Adverse Effect (it being understood that, for purposes of such determinations, O'Shea's shall be deemed to have closed as of the Closing Date and to have no value) and that the remainder of the Flamingo Las Vegas Property satisfies the conditions set forth in Sections 3.1.3(b), (c) and (f) of the Mortgage Loan Agreement and the representations and warranties set forth in Sections 4.1.4, 4.1.16, 4.1.22, 4.1.39 and 4.1.40 of the Mortgage Loan Agreement shall continue to be true and complete with respect to the remainder of the Flamingo Las Vegas Property, and satisfaction of conditions similar to those set forth in clauses (c), (d), (e), (f), (g) and (h) of Section 3.1.3 hereof, as applicable, with respect to O'Shea's;

(v) the satisfaction, with respect to "Harrah's Lake Tahoe", "Harvey's Lake Tahoe", "Bill's Lake Tahoe", "Showboat Atlantic City" and O'Shea's, of the conditions set forth above in Section 2.5.1(b) and (f) with respect to released Individual Properties to the extent applicable,

(vi) the conveyance of "Harrah's Lake Tahoe", "Harvey's Lake Tahoe", "Bill's Lake Tahoe", "Showboat Atlantic City" and O'Shea's to a Person other than a Mortgage Borrower or Mezzanine Borrower;

(vii) unless otherwise extended by Lender, the substitution shall be completed on or prior to May 28, 2008;

(viii) the payment by Borrower of all Lender's reasonable out-of-pocket costs and expenses in connection with the substitution contemplated by this paragraph, including reasonable counsel fees and disbursements, up to an aggregate amount of \$300,000, it being acknowledged that costs incurred to obtain title insurance and surveys in respect of the substituted properties shall be paid by Borrower directly and shall not be taken into account for purposes of the foregoing limitation on the reimbursement of Lender's expenses.

Lender acknowledges that it shall not charge any fee (other than costs and expenses, as provided in the preceding sentence) in connection with the release of an Individual Property in accordance with this paragraph. In addition, if all of “Harrah’s Lake Tahoe”, “Harvey’s Lake Tahoe”, “Bill’s Lake Tahoe” and “Showboat Atlantic City” can be transferred from Mortgage Borrower as contemplated above, but O’Shea’s cannot (including by reason of an inability to get a separate gaming license for O’Shea’s independent of the “Flamingo Las Vegas”), then Borrower shall cause Mortgage Borrower to nevertheless proceed to consummate the swap without transferring O’Shea’s (subject to Borrower’s ongoing right to obtain the release of O’Shea’s from the Lien of the Mortgage in accordance with the following sentence). Upon the satisfaction of such conditions set forth above in this paragraph (including clauses (i) through (viii) hereof), Borrower will have the right to choose between an immediate release of “O’Shea’s” from the Lien of the Mortgage on the date of the swap or a free release subsequent to the date of the swap without conditions (in either case, subject to the conditions set forth above in this Section 2.5.2), except that the limitation on Borrower’s payment of Lender’s costs and expenses set forth in clause (viii) above shall not apply to any such costs and expenses incurred by Lender in connection with such release), and, pending such release, EBITDAR shall be computed without regard to O’Shea’s; provided, further, the Operating Company in respect of the “Flamingo Las Vegas” Individual Property, both before and after such release, shall be permitted to provide management and other similar services for O’Shea’s and shall be reimbursed for the allocable share of expenses attributable to O’Shea’s.

**2.5.3 Release on Payment in Full.** Lender shall, upon the written request and at the expense of Borrower, upon payment in full of all principal and interest due on the Loan and all other amounts due and payable under the Loan Documents in accordance with the terms and provisions of the Note and this Agreement, release the Lien of the Pledge Agreement on the Collateral.

**Section 2.6. Cash Management.**

**2.6.1 Establishment of Collection Accounts.**

(a) In accordance with the provisions of the Operating Lease, (i) Operating Company will establish within thirty (30) days after the Closing Date and will maintain for the benefit of Mortgage Borrower, as lessor under the Operating Lease, the Collection Accounts with Collection Banks throughout the term of the Mortgage Loan and (ii) the rights of Mortgage Borrower (as landlord) under the Operating Lease will be collaterally assigned to Mortgage Lender within such 30-day period. All Revenues, other than amounts retained on-site by each Operating Company as a Gaming Operating Reserve and amounts collected and maintained in Off-Shore Accounts, will be deposited in the Collection Accounts.

(b) Borrower hereby represents and warrants as follows: when established, the Collection Accounts will be the only accounts maintained by Operating Company in any jurisdiction that include funds arising out of, or are otherwise attributable to, the Properties or relate to the operation and management of any of the Properties other than accounts (collectively, the “OC Accounts”) that contain amounts theretofore released from Collection Accounts in accordance herewith, and other than Off-Shore Accounts, which shall not be subject to this Agreement; and neither Borrower nor Mortgage Borrower maintains any accounts that include

funds arising out of, or are otherwise attributable to, any of the Properties or relate to the operation and management of any of the Properties or otherwise (except for accounts containing funds released from the Collection Accounts as herein provided and the Off-Shore Accounts). None of Mortgage Borrower, Senior Mezzanine Borrower, Borrower or Operating Company may (and Borrower shall not permit Mortgage Borrower, Senior Mezzanine Borrower or Operating Company to), without the prior consent of Lender (not to be unreasonably withheld, conditioned or delayed), open any accounts or new accounts or in any way alter the flow of funds and payment into such Collection Accounts, including, without limitation, changing the source, type or currency of any payments currently deposited and maintained in any such account (it being understood that the foregoing restriction shall not preclude Operating Company, Mortgage Borrower, Senior Mezzanine Borrower or Borrower from accepting and depositing in any Collection Accounts any capital contributions, or any disbursements from any Collection Accounts in accordance with the provisions of the Mortgage Loan Agreement, this Agreement and the Senior Mezzanine Loan Agreements. None of Mortgage Borrower, Senior Mezzanine Borrower, Borrower or Operating Company may (and Borrower shall not permit Mortgage Borrower, Senior Mezzanine Borrower, or Operating Company to), without the prior consent of Lender (not to be unreasonably withheld, conditioned or delayed), establish and maintain any accounts with financial institutions outside of the United States of America, other than the Off-Shore Accounts.

(c) Borrower shall cause Mortgage Borrower, Senior Mezzanine Borrower and Operating Company to comply with Section 2.6.1 of the Mortgage Loan Agreement and Senior Mezzanine Loan Agreement (as applicable) in all respects.

(d) Borrower hereby agrees that in the event that (i) the Mortgage Loan Documents require Mortgage Borrower and/or Operating Company to maintain the Collection Accounts, but (due to repayment of the Mortgage Loan, waiver of the requirement by Mortgage Lender, or otherwise) the Collection Accounts are not being maintained and (ii) the Collection Accounts are not being maintained under Section 2.6.1(d) of the Senior Mezzanine Loan Agreement, Borrower shall establish or cause the Operating Company to establish or cause the Operating Company to establish collection accounts substantially the same as that required under the Mortgage Loan Documents (and shall otherwise comply with the provisions of Section 2.6.1 of the Mortgage Loan Documents, and grant to Lender security interests in such accounts for the benefit of Lender, as if such provisions were incorporated herein for the benefit of Lender). In addition, if Borrower is required to deposit amounts with Lender pursuant to Article VII hereof but (due to repayment of the Mortgage Loan, waiver of the requirement by Mortgage Lender, or otherwise) the Collection Accounts and Cash Management Account are not being maintained, Borrower shall establish collection accounts and a cash management account and system with Lender substantially the same as that required under the Mortgage Loan Documents (and shall otherwise comply with the provisions of Sections 2.6.1 and 2.6.2 of the Mortgage Loan Documents, and grant to Lender security interests in such accounts for the benefit of Lender, as if such provisions were incorporated herein for the benefit of Lender). In addition, if Mortgage Borrower is required to provide security or other collateral to the Mortgage Lender pursuant to the terms of the Mortgage Loan Agreement (excluding any mortgage lien on the Properties or assignment of leases and rents with respect to the Properties) but (due to repayment of the Mortgage Loan, waiver of the requirement by Mortgage Lender, or otherwise) such security or

other collateral was not provided to Mortgage Lender, Borrower shall provide such security or other collateral to Lender in substantially the same form and amount as that required under the Mortgage Loan Documents.

**2.6.2 Disbursements from, Security Interest in, Collection Accounts.** The Operating Lease provides, among other things, that all Revenues shall be collaterally assigned by Operating Company to Mortgage Borrower as additional security for Operating Company's obligations under the Operating Lease and that Mortgage Borrower shall have the right to collaterally assign and pledge such Revenues to Lender as additional security for the Loan. In furtherance thereof, Lender and Borrower agree as follows:

(a) Except as otherwise provided in subparagraphs (b) and (c) hereof, all amounts collected in the Collection Accounts shall be transferred on each Business Day to (or as directed by) Operating Company for use or distribution by the Operating Company in its discretion free of any rights or encumbrances of Lender.

(b) Upon the occurrence and during the continuance of an Event of Default hereunder, under the Mortgage Loan Documents or under any of the Other Mezzanine Loan Documents, and provided no Event of Default (as such term is defined in the Operating Lease) shall have occurred and be continuing under any Operating Lease, Borrower shall cause Mortgage Borrower to direct and cause Collection Bank to deposit directly into the Cash Management Account, all Rent payable under the Operating Lease for the next thirty (30) days (it being the intent and agreement that, during the continuance of an Event of Default, the Cash Management Account shall at all times contain such amounts sufficient to cover the ensuing 30-day period), including the Monthly Tax and Insurance Amount, the Monthly Ground Rent Amount and Monthly FF&E Reserve Amount (the amounts described in the preceding sentence, collectively, the "**Monthly Disbursements**"); provided that, notwithstanding the foregoing, Lender may not apply such Monthly Disbursements to the payment of amounts due hereunder in an amount in excess of the amounts owed by the Operating Company under the Operating Lease. In the event Borrower shall have failed to cause Mortgage Borrower to so instruct Collection Bank, Lender shall have the right to so direct the Collection Bank on behalf of Mortgage Borrower. Any amounts not required to be so deposited into the Cash Management Account shall be transferred on each Business Day thereafter to (or as directed by) Operating Company for use or distribution by the Operating Company in its discretion free of any rights or encumbrances of Lender. If no Event of Default has occurred and is continuing hereunder, to the extent Monthly Disbursements are not applied to the payment of amounts due hereunder, such excess shall be remitted to Eighth Mezzanine Lender (or to an account designated by Eighth Mezzanine Lender); provided that, notwithstanding the foregoing, Lender shall not remit any such amounts in excess of the amounts owed by the Operating Company under the Operating Lease. If an Event of Default has occurred and is continuing hereunder, to the extent Monthly Disbursements are not applied to the payment of amounts due hereunder, Lender shall have the right to retain the amount so remitted to the Collection Account as collateral for the Loan and/or apply such amount to the payment of the Debt.

(c) Upon the occurrence and during the continuance of an Event of Default (as such term is defined in the Operating Lease) under any Operating Lease, Borrower shall cause Mortgage Borrower to notify Collection Bank to transfer to the Cash Management Account on each Business Day in immediately available funds by federal wire transfer all

amounts on deposit in each Collection Account and, in the event Mortgage Borrower shall have failed to do so, Mortgage Lender (or Lender in the event of Mortgage Lender's failure to so instruct) shall have the right to so direct the Collection Bank on behalf of Mortgage Borrower. Lender shall have the right to retain all amounts to be paid into the Cash Management Account in accordance with the first sentence of this Section 2.6.2(c) as collateral for the Loan and/or apply such excess to the payment of the Debt.

(d) Borrower and its Affiliates shall (and Borrower shall cause Operating Company to) execute and deliver such documents, instruments, certificates, assignments and other writings, and do such other acts necessary or desirable, to evidence, preserve and/or protect, maintain and perfect Lender's security interest in the Collection Accounts, if any.

**2.6.3 Cash Management Account.** (a) During the term of the Loan, Borrower shall cause Mortgage Borrower and Senior Mezzanine Borrower to comply with Section 2.6.3 of the Mortgage Loan Agreement and Senior Mezzanine Loan Agreement (as applicable) which may require the establishment of the Cash Management Account to be held by and in trust for the benefit of Mortgage Lender. All costs and expenses for establishing and maintaining the Cash Management Account shall be paid by Mortgage Borrower.

(b) Borrower shall not cause or permit Mortgage Borrower or Operating Company to further pledge, assign or grant any security interest in the Cash Management Account or the monies deposited therein or permit any lien or encumbrance to attach thereto, or any levy to be made thereon, or any UCC-1 Financing Statements, except those naming Mortgage Lender as the secured party, to be filed with respect thereto.

(c) Borrower hereby agrees that in the event that (i) the Mortgage Loan Documents require Mortgage Borrower and/or Operating Company to maintain the Cash Management Account, but (due to repayment of the Mortgage Loan, waiver of the requirement by Mortgage Lender, or otherwise) the Cash Management Account is not being maintained and (ii) the Cash Management Account is not being maintained under Section 2.6.3 of the Senior Mezzanine Loan Agreement, Borrower shall establish a cash management account and system with Lender substantially the same as that required under the Mortgage Loan Documents. If Borrower is required to deposit amounts with Lender pursuant to Article VII hereof, Borrower shall establish a cash management account and system with Lender substantially the same as that required under the Mortgage Loan Documents (and shall otherwise comply with the provisions of Section 2.6.2 of the Mortgage Loan Documents, and grant to Lender security interests in such accounts for the benefit of Lender, as if such provisions were incorporated herein for the benefit of Lender).

**2.6.4 Mezzanine Collection Account.** (a) Lender or Servicer may establish and maintain, to collect all amounts distributed to Lender under Section 2.6.3 of the Mortgage Loan Agreement, a segregated Eligible Account (the "**Mezzanine Collection Account**") to be held by Servicer in trust for the benefit of Lender, which Mezzanine Collection Account shall be under the sole dominion and control of Lender (which may be exercised through Servicer). Lender (and its agents, including Servicer) shall have the sole right to make withdrawals from the Mezzanine Collection Account in accordance with the terms and conditions of this Agreement and the other Loan Documents, except as otherwise expressly provided in this

Agreement or the other Loan Documents. Borrower shall cause Senior Mezzanine Borrower to comply with Section 2.6.4 of the Senior Mezzanine Loan Agreements.

(b) Borrower hereby grants to Lender a first priority security interest in the Mezzanine Collection Account and all deposits at any time contained therein and the proceeds thereof and will take all actions necessary to maintain in favor of Lender a perfected first priority security interest in the Mezzanine Collection Account, including, without limitation, executing and filing UCC 1 Financing Statements and continuations thereof upon Lender's request therefor. All costs and expenses for establishing and maintaining the Mezzanine Collection Account (and any sub account thereof) shall be at Borrower's sole cost and expense.

(c) Borrower shall be responsible for payment of any federal, state or local income or other tax applicable to the interest or income earned on the Mezzanine Collection Account and any sub-account thereof. The Mezzanine Collection Account and any sub-account thereof shall be assigned the federal tax identification numbers of each Borrower set forth on Schedule I attached hereto. Borrower shall provide Lender, at any time upon request of Lender, with a Form W-8 or W-9 to evidence that Borrower is not subject to any back-up withholding under the Code.

(d) Upon the occurrence and during the continuance of an Event of Default, all funds on deposit in the Mezzanine Collection Account shall be applied by Lender in such order and priority as Lender shall determine.

(e) The insufficiency of funds on deposit in the Mezzanine Collection Account shall not relieve Borrower from the obligation to make any payments, as and when due pursuant to this Agreement and the other Loan Documents, and such obligations shall be separate and independent, and not conditioned on any event or circumstance whatsoever.

**Section 2.7. Intentionally Omitted.**

**Section 2.8. Permitted Mezzanine Loan.** Borrower shall have the one-time right, upon thirty (30) days prior written notice to Lender (the "**Permitted Mezzanine Loan Election**"), to obtain a loan ("**Permitted Mezzanine Loan**") secured by a pledge of the ownership interests in the indirect owners of Borrower (above the level of the Ninth Mezzanine Borrower) provided that the following conditions precedent are satisfied:

(a) no Default or Event of Default shall have occurred and remains uncured;

(b) as of the date the Permitted Mezzanine Loan is advanced, the Permitted Mezzanine Debt Loan-to-Value Ratio for the Properties subject to the Lien of the Mortgage is equal to or less than eighty percent (80%);

(c) as of the date the Permitted Mezzanine Loan is advanced, Permitted Mezzanine DSCR for the four-quarter period preceding such date for the Properties then subject to the Lien of the Mortgage(s) is equal to or greater than 1.2 to 1.0;

(d) the Permitted Mezzanine Loan shall be evidenced by one (1) Loan, that may be advanced in multiple draws provided that Borrower complies with the requirements set forth in this Section 2.8 with respect to each draw;

(e) the Permitted Mezzanine Loan shall be issued by one (1) lender (the “**Permitted Mezzanine Loan Lender**”) which shall be an Institutional Lender; provided, however, that such single Lender that is an Institutional Lender may grant participations in such Permitted Mezzanine Loan or syndicate the Permitted Mezzanine Loan to multiple lenders so long as at least fifty-one percent (51%) of such participants and syndicate lenders are Institutional Lenders and, in addition, so long a single lender serves as agent with respect to all approvals, consents and other matters relating to the Permitted Mezzanine Loan;

(f) the Permitted Mezzanine Loan shall have the same maturity date as the Maturity Date under the Loan, or a maturity date extending beyond the Maturity Date under the Loan;

(g) the Permitted Mezzanine Loan (including all of the terms, provisions and conditions of the Permitted Mezzanine Loan, including, without limitation, the loan documents evidencing and securing the Permitted Mezzanine Loan (“**Permitted Mezzanine Loan Documents**”)) shall be acceptable to Lender in its reasonable discretion (it being agreed that with respect (only) to Lender’s approval of the form of loan documents that loan documents in substantially the same form as the Ninth Mezzanine Loan Documents, appropriately modified to reflect subordination to the Mezzanine Loans still outstanding, shall be deemed to be acceptable);

(h) the Permitted Mezzanine Loan Lender shall enter into a co-lender or intercreditor agreement substantially on the standard CMSA form (or the form entered into by Lender, Other Mezzanine Lenders and Mortgage Lender in connection with the closing of the Loan) or in form and substance reasonably acceptable to Lender, acknowledging the subordination of the Permitted Mezzanine Loan in all respects to each of the Mezzanine Loans and the Mortgage Loan (and Lender agrees to enter into such co-lender or intercreditor agreement upon request);

(i) the Permitted Mezzanine Loan shall be a fixed rate loan, or a floating rate loan containing an interest rate that is capped at an amount that satisfies the debt service coverage ratio requirement set forth in subparagraph (c) above, with interest due and payable monthly (*i.e.*, interest does not accrue) and such interest rate shall not be subject to adjustment except after an event of default (Borrower agreeing to cause the purchase of an interest rate cap to reflect the foregoing);

(j) if requested by Lender, Borrower shall execute amendments to the Loan Documents reasonably requested by Lender, to reflect the existence of such Permitted Mezzanine Loan, provided that any such amendments or agreements will not alter the payment terms of the Loan set forth in this Agreement or the other Loan Documents or materially and adversely affect Borrower or impose additional material obligations or liabilities upon Borrower;

(k) if required by Lender, Borrower shall deliver (i) Additional Insolvency Opinions and, if the Loan Documents are amended pursuant to Section 2.8(k), opinions regarding due execution and enforceability with respect to the Properties, Mortgage Borrower, Mezzanine Borrowers, Holdings, Guarantor and their respective Affiliates and the Loan Documents, and such related matters as Lender shall reasonably require, and (ii) revised organizational documents for Borrower, which opinions and organizational documents shall be reasonably satisfactory to Lender;

(l) all necessary or appropriate governmental or other third party consents (including any approvals, notices, filings or other actions under or pursuant to the Gaming Laws or other Legal Requirements) required to be obtained or taken by Borrower, Mortgage Borrower, any Mezzanine Borrower or the Permitted Mezzanine Borrower for the execution, delivery and performance by the Permitted Mezzanine Borrower of the Permitted Mezzanine Loan shall have been obtained or taken; and

(m) all reasonable out-of-pocket costs and expenses (including reasonable attorneys' fees and expenses) incurred by Lender in connection with this Section 2.8 shall be paid by Borrower (but no approval or consent fees shall be payable in connection therewith).

### III. CONDITIONS PRECEDENT

**Section 3.1. Conditions Precedent to Closing.** The obligation of Lender to make the Loan hereunder is subject to the fulfillment by Borrower or waiver by Lender of the following conditions precedent no later than the Closing Date:

**3.1.1 Representations and Warranties; Compliance with Conditions.** The representations and warranties of Borrower contained in this Agreement and the other Loan Documents shall be true and correct in all material respects on and as of the Closing Date with the same effect as if made on and as of such date, and no Default or an Event of Default shall have occurred and be continuing; and Borrower shall be in compliance in all material respects with all terms and conditions set forth in this Agreement and in each other Loan Document on its part to be observed or performed.

**3.1.2 Loan Agreement and Note.** Lender shall have received a copy of this Agreement and the Note, in each case, duly executed and delivered on behalf of Borrower.

#### **3.1.3 Delivery of Loan Documents; Title Insurance; Reports; Leases.**

(a) **Pledge Agreement.** Lender shall have received from Borrower fully executed and acknowledged counterparts of the Pledge Agreement and delivery of the Pledged Company Interests, the UCC Financing Statements, and such other documents required pursuant to the Pledge Agreement, in the reasonable judgment of Lender, so as to effectively create valid and enforceable Liens upon the Collateral, of the requisite priority, in favor of Lender, subject only to the Permitted Encumbrances and such other Liens as are permitted pursuant to the Loan Documents. Lender shall have also received from Borrower fully executed counterparts of the other Loan Documents.

(b) **Title Insurance.** Lender shall have received a UCC Title Insurance Policy (the “**UCC Title Insurance Policy**”) issued by a title company acceptable to Lender and dated as of the Closing Date, with reinsurance and direct access agreements acceptable to Lender. Such UCC Title Insurance Policy shall (i) provide coverage in amounts reasonably satisfactory to Lender, (ii) insure Lender that the Pledge Agreement and the documents executed and delivered in connection therewith create a valid lien on the Collateral of the requisite priority, free and clear of all exceptions from coverage other than Permitted Encumbrances and standard exceptions and exclusions from coverage (as modified by the terms of any endorsements), (iii) contain such endorsements and affirmative coverages as Lender may reasonably request, and (iv) name Lender as the insured. The UCC Title Insurance Policy shall be assignable. Lender also shall have received evidence that all premiums in respect of such UCC Title Insurance Policy have been paid. Lender shall have received each Owner’s Title Policy in an amount equal to the value of the Property, together with an endorsement in favor of Lender and in form and substance reasonably satisfactory to Lender.

(c) **Survey.** Lender shall have received a current Survey for each Individual Property, certified to the title company and Lender and their successors and assigns, in form and content reasonably satisfactory to Lender and prepared by a professional and properly licensed land surveyor satisfactory to Lender in accordance with the Accuracy Standards for ALTA/ACSM Land Title Surveys as adopted by ALTA, American Congress on Surveying & Mapping and National Society of Professional Surveyors in 2005. Each such Survey shall reflect the same legal description contained in the Title Insurance Policies relating to such Individual Property and shall include, among other things, a metes and bounds description (or other description reasonably satisfactory to Lender) of the real property comprising part of such Individual Property reasonably satisfactory to Lender. The surveyor’s seal shall be affixed to each Survey and the surveyor shall provide a certification for each Survey in form and substance reasonably acceptable to Lender.

(d) **Insurance.** Lender shall have received valid certificates of insurance for the Policies required hereunder, satisfactory to Lender in its reasonable discretion. Lender shall be included as an “additional insured” under such Policies and Lender shall have received evidence of the payment of all Insurance Premiums payable for the existing policy period.

(e) **Environmental Reports.** Lender shall have received a Phase I environmental report (and, if recommended by the Phase I environmental report, a Phase II environmental report) in respect of each Individual Property, in each case satisfactory in form and substance to Lender, Lender acknowledges that the foregoing condition has been satisfied, provided that the underground storage tank at Harrah’s Las Vegas shall be registered if and to the extent the same is required under Legal Requirements and Lender shall have received and reasonably approved the O&M Plans contemplated pursuant to the above-referenced environmental reports in respect of Flamingo Las Vegas and Harrah’s Las Vegas.

(f) **Zoning.** With respect to each Individual Property, Lender shall have received, at Lender’s option, either (i) (A) letters or other evidence with respect to each Individual Property from the appropriate municipal authorities (or other Persons) concerning applicable zoning and building laws, and (B) an ALTA 3.1 zoning endorsement for the

applicable Title Insurance Policy or (ii) a zoning report, in each case in substance reasonably satisfactory to Lender.

(g) **Encumbrances.** Borrower shall have taken or caused to be taken such actions in such a manner so that Lender has a valid and perfected first priority Lien as of the Closing Date on the Collateral and with respect to the Pledge Agreement and Lender shall have received satisfactory evidence thereof.

(h) **Senior Loan Documents.** The Mortgage Loan Documents and Senior Mezzanine Loan Documents shall have been duly authorized, executed and delivered by all parties thereto, the Mortgage Loan and Senior Mezzanine Loan shall have been contemporaneously funded and Lender shall have received and approved certified copies thereof. All of the conditions precedent set forth in Article III of the Mortgage Loan Agreement and Senior Mezzanine Loan Agreements shall have been satisfied and the Mortgage Loan and Senior Mezzanine Loans shall have closed and been fully advanced in accordance therewith.

**3.1.4 Related Documents.** Each additional document not specifically referenced herein, but relating to the transactions contemplated herein, shall be in form and substance reasonably satisfactory to Lender, and shall have been duly authorized, executed and delivered by all parties thereto and Lender shall have received and approved certified copies thereof.

**3.1.5 Delivery of Organizational Documents.** Borrower shall deliver or cause to be delivered to Lender copies certified by Borrower of all organizational documentation related to Borrower and each Loan Party and/or the formation, structure, existence, good standing and/or qualification to do business, as Lender may request in its sole discretion, including, without limitation, good standing certificates, qualifications to do business in the appropriate jurisdictions, resolutions authorizing the entering into of the Loan and incumbency certificates as may be requested by Lender.

**3.1.6 Opinions of Borrower's Counsel.** Lender shall have received opinions from Borrower's counsel with respect to non-consolidation and the due execution, authority, enforceability of the Loan Documents and such other matters as Lender may require, including True-Lease Opinions, an opinion with respect to the priority and perfection of the Collateral and all such opinions shall be in form, scope and substance satisfactory to Lender and Lender's counsel in their reasonable discretion.

**3.1.7 Budgets.** Borrower shall have delivered, and Lender shall have approved in its reasonable discretion, the Annual Budget for the current Fiscal Year.

**3.1.8 Basic Carrying Costs.** Borrower shall have caused Mortgage Borrower to have paid all Basic Carrying Costs relating to the Properties which are in arrears, including, without limitation, (a) accrued but unpaid Insurance Premiums, (b) currently due Taxes (including any in arrears) and (c) currently due Other Charges, which amounts shall be funded with proceeds of the Loan.

**3.1.9 Completion of Proceedings.** All corporate and other proceedings taken or to be taken in connection with the transactions contemplated by this Agreement and other

Loan Documents and all documents incidental thereto shall be satisfactory in form and substance to Lender, and Lender shall have received all such counterpart originals or certified copies of such documents as Lender may reasonably request.

**3.1.10 Payments.** All payments, deposits or escrows required to be made or established by Borrower under this Agreement, the Note and the other Loan Documents on or before the Closing Date shall have been paid.

**3.1.11 Windstorm Insurance Intercreditor Agreement.** The Windstorm Insurance Intercreditor Agreement shall have been executed by all parties thereto and delivered to Lender.

**3.1.12 Transaction Costs.** Borrower shall have paid or reimbursed Lender for all UCC Title Insurance Policy premiums, all Owner's Title Policy premiums, costs of obtaining recording and filing fees, costs of environmental reports, Physical Conditions Reports, appraisals and other reports, the reasonable fees and costs of Lender's counsel and all other third party out-of-pocket expenses reasonably incurred in connection with the origination of the Loan to the extent such costs and expenses relating to third party costs have not already been paid or reimbursed by Mortgage Borrower to Mortgage Lender.

**3.1.13 Material Adverse Change.** There shall have been no material adverse change in the financial condition or business condition of Borrower, any Loan Party, the Collateral, the Senior Mezzanine Collateral or the Properties since the date of the most recent financial statements delivered to Lender. The income and expenses of the Properties, the occupancy thereof, and all other features of the transaction shall be as represented to Lender without material adverse change. None of Borrower, any Loan Party, or any of their respective constituent Persons shall be the subject of any bankruptcy, reorganization, or insolvency proceeding.

**3.1.14 Leases and Rent Roll.** Lender shall have received copies of all Leases and certified copies of any Leases as requested by Lender. Lender shall have received a current certified rent roll of the Properties, reasonably satisfactory in form and substance to Lender.

**3.1.15 Tax Lot.** Lender shall have received evidence that each Individual Property constitutes one (1) or more separate tax lots, which evidence shall be reasonably satisfactory in form and substance to Lender.

**3.1.16 Physical Conditions Reports.** Lender shall have received Physical Conditions Reports with respect to each Individual Property, which reports shall be reasonably satisfactory in form and substance to Lender. Lender acknowledges that the foregoing condition has been satisfied.

**3.1.17 Operating Leases; Operating Lease Guaranty.** Lender shall have received copies of the Operating Leases, each Operating Lease Guaranty and the Gaming Equipment Facility Agreements, which shall be reasonably satisfactory in form and substance to Lender.

**3.1.18 Appraisal.** Lender shall have received an appraisal of each Individual Property, which shall be reasonably satisfactory in form and substance to Lender.

**3.1.19 Financial Statements.** Lender shall have received a balance sheet with respect to each Individual Property for the two most recent Fiscal Years and statements of income and statements of cash flows with respect to each Individual Property for the three most recent Fiscal Years, each in form and substance reasonably satisfactory to Lender.

**3.1.20 Further Documents.** Lender or its counsel shall have received a fully executed Interest Rate Cap Agreement and a Collateral Assignment of Interest Rate Cap Agreement, together with an opinion of counsel in form and substance satisfactory to it, or shall have received reasonably satisfactory evidence that same will be delivered promptly following the Closing Date.

**3.1.21 Gaming Authority Approvals.** Mortgage Borrower and Operating Company shall have obtained all Operating Permits from Gaming Authorities that are required in order to permit the closing of the Mortgage Loan and the Mezzanine Loans (if required), or in connection with the Operating Lease or the Operating Lease Guaranty (if required), or to permit the conveyances of any of the Properties to Mortgage Borrower (effected immediately prior hereto) and the operation of the Properties as currently conducted.

#### **IV. REPRESENTATIONS AND WARRANTIES**

**Section 4.1. Borrower Representations.** Borrower represents and warrants as of the date hereof and as of the Closing Date, except as disclosed in Schedule XXIII, that:

**4.1.1 Organization.** (a) Borrower has been duly organized and is validly existing and in good standing with requisite power and authority to own the Individual Properties and to transact the businesses in which it is (or each of them is) now engaged. Borrower is duly qualified to do business and is in good standing in each jurisdiction where it is required to be so qualified in connection with its properties, businesses and operations. Borrower possesses all rights, licenses, permits and authorizations (governmental or otherwise) necessary to entitle it to own its properties and to transact the businesses in which it is now engaged and the failure to possess which would reasonably be expected to have an Individual Material Adverse Effect. The sole business of Borrower is the ownership of Senior Mezzanine Borrower. The ownership interests of Borrower are as set forth on the organizational chart attached hereto as Schedule VIII.

(b) Each Operating Company has been duly organized and is validly existing and in good standing with requisite power and authority to own its properties or assets, including the Gaming Equipment, and to transact the businesses in which it is now engaged. Each Operating Company is duly qualified to do business and is in good standing in each jurisdiction where it is required to be so qualified in connection with its properties, businesses and operations, including the operation of the Casino Components at each Individual Property. Each Operating Company possesses all rights, licenses, permits and authorizations (governmental or otherwise) necessary to entitle it to operate the Properties currently operated by each such Operating Company and to transact the businesses in which it is now engaged and the failure to

possess which would reasonably be expected to have an Individual Material Adverse Effect. The sole business of each Operating Company is the management and operation of the Individual Property or Properties currently operated by each such Operating Company. The ownership interests of each Operating Company are as set forth on the organizational chart attached hereto as Schedule VIII.

(c) Borrower has the power and authority and the requisite ownership interests in Senior Mezzanine Borrower and Mortgage Borrower to control the actions of Senior Mezzanine Borrower and Mortgage Borrower, and upon the realization of the Collateral under the Pledge Agreement, Lender or any other party succeeding to the Borrower's interest in the Collateral described in the Pledge Agreement would have such control. Without limiting the foregoing, Borrower has sufficient control over Senior Mezzanine Borrower and Mortgage Borrower to cause Senior Mezzanine Borrower and Mortgage Borrower to (i) take any action on Senior Mezzanine Borrower's or Mortgage Borrower's part required by the Loan Documents and (ii) refrain from taking any action prohibited by the Loan Documents.

**4.1.2 Proceedings.** Borrower and Operating Company have taken all necessary action to authorize the execution, delivery and performance of this Agreement and the other Loan Documents. This Agreement and such other Loan Documents have been duly executed and delivered by or on behalf of Borrower and Operating Company and constitute legal, valid and binding obligations of Borrower and Operating Company enforceable against Borrower and Operating Company (as applicable) in accordance with their respective terms, subject only to applicable bankruptcy, insolvency and similar laws affecting rights of creditors generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

**4.1.3 No Conflicts; Approvals.** (a) The execution, delivery and performance of this Agreement and the other Loan Documents by Borrower and Operating Company will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance (other than pursuant to the Loan Documents) upon any of the property or assets of Borrower or Operating Company pursuant to the terms of any indenture, mortgage, deed of trust, loan agreement, partnership agreement, management agreement, material lease or other material agreement or instrument to which Borrower or Operating Company (as applicable) is a party or by which any of Borrower's or Operating Company's property or assets is or are subject, nor will such action result in any violation of the provisions of any statute or any order, rule or regulation of any Governmental Authority having jurisdiction over Borrower or Operating Company any of Borrower's or Operating Company's properties or assets, and any consent, approval, authorization, order, registration or qualification of or with any such Governmental Authority required for the execution, delivery and performance by Borrower and Operating Company of this Agreement or any other Loan Documents (and the execution by Lender of the remedies provided in the Loan Documents, subject to the limitations thereon pursuant to applicable Gaming Laws) has been obtained and is in full force and effect.

(b) Borrower, Senior Mezzanine Borrower, Mortgage Borrower and Operating Company have obtained all consents and approvals, including all approvals of Governmental Authorities including Gaming Authorities, if required, in connection with the

execution, delivery and performance of the Loan Documents (including by Mortgage Lender and each Mezzanine Lender), the Operating Lease, the Operating Lease Guaranty and the operation of the business currently conducted at any of the Properties, and shall promptly execute any and all such instruments and documents, deliver any certificates and do all such other acts or things required by the Gaming Authorities to maintain or keep current such approvals.

**4.1.4 Litigation.** There are no actions, suits or proceedings at law or in equity by or before any Governmental Authority or other agency now pending or, to Borrower's knowledge, threatened against or affecting any Loan Party, any Affiliates of Borrower, including Holdings, Operating Company or any Individual Property, or any prior owner or other holder of any interest in any Individual Property, which actions, suits or proceedings, if determined against any Loan Party, Holdings, Operating Company, any other Affiliate or any Individual Property (taking into account the reasonably estimated damages payable in connection therewith), is reasonably likely to materially adversely affect the condition (financial or otherwise) or business of any Loan Party, any Affiliate of Borrower that is a direct or indirect owner of Mortgage Borrower, including Holdings and Operating Company, or the condition or ownership of any Individual Property, or any of the material rights, interests and remedies of Lender under the Loan Documents (taken as a whole). None of the actions described on Schedule XXIV, if determined adversely to Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company and/or any of their respective Affiliates, as applicable, would result in the payment by Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or such Affiliate of an amount in excess of Ten Million and no/100 Dollars (\$10,000,000.00), except to the extent covered by insurance.

**4.1.5 Agreements.** None of Borrower, Senior Mezzanine Borrower, Mortgage Borrower or Operating Company is in default, in any material respect, in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any material agreement or instrument to which it is a party or by which Borrower, Senior Mezzanine Borrower, Mortgage Borrower, Operating Company, the Collateral, the Senior Mezzanine Collateral or any of the Properties are bound. None of Borrower, Senior Mezzanine Borrower, Mortgage Borrower or Operating Company has any material financial obligation under any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which Borrower, Senior Mezzanine Borrower, Mortgage Borrower or Operating Company is a party or by which Borrower, Senior Mezzanine Borrower, Mortgage Borrower, Operating Company, the Collateral, the Senior Mezzanine Collateral or the Properties is otherwise bound, other than (a) with respect to Mortgage Borrower, obligations incurred in the ordinary course of the operation of the Properties as permitted pursuant to clause (t) of the definition of "Special Purpose Entity" set forth in Section 1.1 of the Mortgage Loan Agreement, (b) with respect to Borrower, obligations under the Loan Documents, (c) with respect to Senior Mezzanine Borrower, obligations under the Senior Mezzanine Loan Documents, and (d) with respect to Operating Company, the Operating Lease and Permitted Indebtedness (Operating Company).

**4.1.6 Title.** (a) The Borrower (as pledgor under the Pledge Agreement) is the record and beneficial owner of, and Borrower has good and marketable title to the Collateral, free and clear of all Liens whatsoever except the Liens created by the Loan Documents. The Permitted Encumbrances in the aggregate do not materially and adversely affect the value, operation or use of any of the Properties (as currently used) or Borrower's ability to repay the

Loan. The Pledge Agreement, together with the delivery of the certificates evidencing ownership of the Pledged Company Interests and the endorsement in blank, as being delivered concurrently herewith, will create a valid perfected, first priority lien on, and security interest in and to, the Collateral, all in accordance with the terms thereof. There are no claims for payment for work, labor or materials affecting any of the Properties which are or may become a Lien prior to, or of equal priority with, the Liens created by the Mortgage Loan Documents.

(b) Each Operating Company has good, marketable title to the Gaming Equipment, free and clear of all Liens whatsoever (except equipment financing and leasing arrangements entered into by Operating Company in the ordinary course of its business (subject to the limitations set forth in the definition of "Permitted Indebtedness (Operating Company)").

**4.1.7 Solvency.** Borrower has (a) not entered into the transaction or executed the Note, this Agreement or any other Loan Documents with the actual intent to hinder, delay or defraud any creditor and (b) received reasonably equivalent value in exchange for its obligations under such Loan Documents. The fair saleable value of Borrower's assets exceeds and will, immediately following the making of the Loan, exceed Borrower's total liabilities, including, without limitation, subordinated, unliquidated, disputed and contingent liabilities. The fair saleable value of Borrower's assets is and will, immediately following the making of the Loan, be greater than Borrower's probable liabilities, including the maximum amount of its contingent liabilities on its debts as such debts become absolute and matured. Borrower's assets do not and, immediately following the making of the Loan will not, constitute unreasonably small capital to carry out its business as conducted or as proposed to be conducted. Borrower does not intend to, and does not believe that it will, incur debt and liabilities (including contingent liabilities and other commitments) beyond its ability to pay such debt and liabilities as they mature (taking into account the timing and amounts of cash to be received by Borrower and the amounts to be payable on or in respect of obligations of Borrower). No petition in bankruptcy has been filed against Borrower, Operating Company, any Loan Party or any constituent Person, and none of Borrower, Operating Company, any Loan Party or any constituent Person has ever made an assignment for the benefit of creditors or taken advantage of any insolvency act for the benefit of debtors. None of Borrower, Operating Company, any Loan Party or any of their respective constituent Persons are contemplating either the filing of a petition by it under any state or federal bankruptcy or insolvency laws or the liquidation of all or a major portion of Borrower's, Operating Company's, or any Loan Party's assets or properties, and Borrower has no knowledge of any Person contemplating the filing of any such petition against it, Operating Company, any Loan Party or such constituent Persons.

**4.1.8 Full and Accurate Disclosure.** No statement of fact made by Borrower in this Agreement or in any of the other Loan Documents contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained herein or therein not misleading. There is no material fact presently known to Borrower which has not been disclosed to Lender which has, nor as far as Borrower can foresee, might reasonably be expected to have an Individual Material Adverse Effect or an Aggregate Material Adverse Effect.

**4.1.9 No Plan Assets.** Borrower is not an "employee benefit plan," as defined in Section 3(3) of ERISA, subject to Title I of ERISA, and none of the assets of Borrower

constitutes or will constitute “plan assets” of one or more such plans within the meaning of 29 C.F.R. Section 2510.3-101. In addition, (a) Borrower is not a “governmental plan” within the meaning of Section 3(32) of ERISA and (b) transactions by or with Borrower are not subject to any state statute regulating investments of, or fiduciary obligations with respect to, governmental plans similar to the provisions of Section 406 of ERISA or Section 4975 of the Code currently in effect, which prohibit or otherwise restrict the transactions contemplated by this Loan Agreement.

**4.1.10 Compliance.** Except as disclosed in the zoning reports obtained by Lender in connection with the origination of the Loan, Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company and each Individual Property (including the use thereof) comply in all material respects with all applicable Legal Requirements, including, without limitation, building and zoning ordinances and codes and Prescribed Laws. Borrower, Mortgage Borrower, Senior Mezzanine Borrower and Operating Company are not in default or violation of (i) any material order, writ, injunction, decree or demand of any Gaming Authority or (ii) any material order, writ, injunction, decree or demand of any other Governmental Authority. There has not been committed by Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any other Person in occupancy of or involved with the operation or use of the Properties any act or omission affording the federal government or any other Governmental Authority the right of forfeiture as against any Individual Property or any part thereof or any monies paid in performance of Borrower’s obligations under any of the Loan Documents.

**4.1.11 Financial Information.** All financial data, including, without limitation, the statements of cash flow and income and operating expense, that have been delivered to Lender in connection with the Loan, the Collateral, the Senior Mezzanine Collateral, the Properties and each Loan Party (i) are true, complete and correct in all material respects, (ii) accurately represent in all material respects the financial condition of the Properties as of the date of such reports, and (iii) to the extent prepared or audited by an independent certified public accounting firm, have been prepared in accordance with GAAP throughout the periods covered, except as disclosed therein. Except for Permitted Encumbrances, Borrower does not have any contingent liabilities, liabilities for taxes, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments that are known to Borrower and reasonably likely to have a materially adverse effect on the Collateral, the Senior Mezzanine Collateral, Borrower, any Loan Party, any Individual Property or the operation thereof as mixed-use hotel and casino properties, except as referred to or reflected in said financial statements. Borrower has no Indebtedness other than the Loan. Except for Permitted Indebtedness (Operating Company), Operating Company does not have any Indebtedness or contingent liabilities, or due and unpaid liabilities for taxes, that are known to Borrower, Mortgage Borrower, Senior Mezzanine Borrower or Operating Company and reasonably likely to have a materially adverse effect on the Collateral, any Senior Mezzanine Collateral, Borrower, any Loan Party, any Individual Property or the operation thereof as mixed-use hotel and casino properties, except as referred to or reflected in said financial statements. Since the date of such financial statements, there has been no material adverse change in the financial condition, operation or business of Borrower or Operating Company from that set forth in said financial statements.

**4.1.12 Condemnation.** No Condemnation or other similar proceeding has been commenced or, to Borrower's best knowledge, is threatened or contemplated with respect to all or any portion of any Individual Property or for the relocation of roadways providing access to any Individual Property.

**4.1.13 Federal Reserve Regulations.** No part of the proceeds of the Loan will be used for the purpose of purchasing or acquiring any "margin stock" within the meaning of Regulation U of the Board of Governors of the Federal Reserve System or for any other purpose which would be inconsistent with such Regulation U or any other Regulations of such Board of Governors, or for any purposes prohibited by Legal Requirements or by the terms and conditions of this Agreement or the other Loan Documents.

**4.1.14 Utilities and Public Access.** Each Individual Property has rights of access to public ways and is served by water, sewer, sanitary sewer and storm drain facilities adequate to service such Individual Property for its respective intended uses. All public utilities necessary or convenient to the full use and enjoyment of each Individual Property are located either in the public right-of-way abutting such Individual Property (which are connected so as to serve such Individual Property without passing over other property) or in recorded easements serving such Individual Property and such easements are set forth in and insured by the Title Insurance Policies. All roads necessary for the use of each Individual Property for their current respective purposes have been completed and dedicated to public use and accepted by all Governmental Authorities.

**4.1.15 Not a Foreign Person.** Borrower is not a "foreign person" within the meaning of § 1445(f)(3) of the Code.

**4.1.16 Separate Lots.** Each Individual Property is comprised of one (1) or more parcels which constitute a separate tax lot or lots and does not constitute a portion of any other tax lot not a part of such Individual Property.

**4.1.17 Assessments.** There are no pending or, to Borrower's knowledge, proposed special or other assessments for public improvements or otherwise affecting any Individual Property, nor are there any contemplated improvements to any Individual Property that may result in such special or other assessments.

**4.1.18 Enforceability.** The Loan Documents are not subject to any right of rescission, set-off, counterclaim or defense by Borrower, any Affiliates of Borrower including Holdings, Operating Company or Guarantor, including the defense of usury, nor would the operation of any of the terms of the Loan Documents, or the exercise of any right thereunder, render the Loan Documents unenforceable (subject to principles of equity and bankruptcy, insolvency and other laws generally affecting creditors' rights and the enforcement of debtors' obligations), and Borrower, any Affiliates of Borrower including Holdings, Operating Company and Guarantor have not asserted any right of rescission, set-off, counterclaim or defense with respect thereto.

**4.1.19 No Prior Assignment.** There are no prior assignments of the Leases (including the Operating Leases) or of the Rents (or any Revenue) due and payable or to become

due and payable which are presently outstanding. There are no prior assignments of the Collateral which are presently outstanding except in accordance with the Loan Documents.

**4.1.20 Insurance.** Borrower (or Mortgage Borrower or Operating Company) has obtained and has delivered to Lender certified copies of all Policies reflecting the insurance coverages, amounts and other requirements set forth in this Agreement. No material claims have been made under any such Policies except such as have been disclosed to Lender, and no Person, including Borrower, Mortgage Borrower, Senior Mezzanine Borrower and Operating Company, has done, by act or omission, anything which would impair the coverage of any such Policies.

**4.1.21 Use of Property.** Each Individual Property is used exclusively as a mixed-use hotel and casino operation, and other appurtenant and related uses.

**4.1.22 Gaming Licenses and Operating Permits.** (a) Schedule IX contains a correct and complete list of all Gaming Licenses and other material licenses, certification and permits for each of the Properties (and the holder thereof).

(b) Borrower possesses all licenses, permits, franchises, authorizations, certificates, approvals and consents which are material to the ownership of the Collateral. Mortgage Borrower possesses all licenses, permits, franchises, authorizations, certificates, approvals and consents, including, without limitation, all certificates of occupancy, which are material to the ownership and use of each of the Properties, and Operating Company possesses all licenses, permits, franchises, authorizations, certificates, approvals and consents, including, without limitation, all environmental, liquor, Gaming Licenses, health and safety licenses of all Governmental Authorities which are material to the conduct of their business and the use, occupation and operation of each of the Properties and the failure to possess which would have an Individual Material Adverse Effect (collectively, "**Operating Permits**"); each such Operating Permit is and will be in full force and effect (unless, in the case of any Operating Permit, such Operating Permit is no longer necessary or advisable for the conduct of Borrower's, Senior Mezzanine Borrower's, Mortgage Borrower's or Operating Company's business); Borrower, Senior Mezzanine Borrower, Mortgage Borrower, Operating Company and each of its Affiliates are in compliance in all material respects with all such Operating Permits, and no event (including, without limitation, any material violation of any law, rule or regulation) has occurred which would be reasonably likely to lead to the revocation or termination of any such Operating Permit or the imposition of any material restriction thereon.

(c) Operating Company and each of its Affiliates possesses all Gaming Licenses which are material to the conduct of their business and the ownership, use, occupation and operation of each of the Properties. Further, Borrower hereby represents and warrants as follows:

(i) Each Gaming License is in full force and effect (except for such Gaming Licenses as are no longer necessary or advisable for the conduct of Borrowers, Senior Mezzanine Borrower's, Mortgage Borrower's or Operating Company's business); Operating Company and each of its Affiliates, respective directors, members, managers, officers, key personnel and Persons holding a five percent (5%) or greater equity or economic interests directly or indirectly in Operating Company is in compliance in all

material respects with all such Gaming Licenses (to the extent required by Legal Requirements), and no event (including, without limitation, any material violation of any Legal Requirements) has occurred which would be reasonably likely to lead to the revocation or termination of any such Gaming Licenses or the imposition of any restriction thereon;

(ii) Borrower has no reason to believe Mortgage Borrower and Operating Company will not be able to maintain in effect all Gaming Licenses necessary for the lawful conduct of their respective businesses or operations wherever now conducted and as planned to be conducted, including the ownership and operation of the Casino Components, pursuant to all applicable Legal Requirements;

(iii) All Gaming Licenses are in full force and effect and have not been amended or otherwise modified, rescinded, revoked or assigned in any manner that would reasonably be expected to have an Individual Material Adverse Effect;

(iv) Neither Mortgage Borrower nor Operating Company is in default in any material respect under, or in violation in any material respect of, any Gaming License (and no event has occurred, and no condition exists, which, with the giving of notice or passage of time or both, would constitute a default thereunder or violation thereof that has caused or would reasonably be expected to cause the loss of any Gaming License) (unless, in the case of any Gaming License, such Gaming License is no longer necessary or advisable for the conduct of Borrower's or Operating Company's business);

(v) Neither Mortgage Borrower nor Operating Company has received any notice of any violation of Legal Requirements which has caused or would reasonably be expected to cause any Gaming License to be suspended, forfeited, modified in any manner that would have an Individual Material Adverse Effect, not renewed, rescinded or revoked (unless, in the case of any Gaming License, such Gaming License is no longer necessary or advisable for the conduct of Mortgage Borrower's or Operating Company's business);

(vi) No condition exists or event has occurred which would reasonably be expected to result in the suspension, revocation, impairment, forfeiture, rescission or non-renewal of any Gaming License (unless, in the case of any Gaming License, such Gaming License is no longer necessary or advisable for the conduct of Mortgage Borrower's or Operating Company's business); and

(vii) The continuation, validity and effectiveness of all Gaming Licenses will not be adversely affected by the transactions contemplated by this Agreement.

(d) There is no proceeding, investigation, or disciplinary action (including, without limitation, before any Gaming Authority, under any Gaming Law or under any Gaming License or other Operating Permit) pending or, to Borrower's knowledge, threatened against any of Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or, to Borrower's knowledge, any of their respective directors, members, managers, officers, key personnel or Persons holding a five percent (5%) or greater direct or indirect equity or economic

interest in Mortgage Borrower, Senior Mezzanine Borrower or Operating Company and that could reasonably be expected to have an Individual Material Adverse Effect.

(e) There is no proceeding (including, without limitation, before any Gaming Authority, under any Gaming Law or under any Gaming License or other Operating Permit) pending or, to Borrower's knowledge, threatened either (a) in connection with, or that seeks to restrain, enjoin, prevent the consummation of or otherwise challenge, any of the Loan Documents or any of the transactions contemplated therein, or (b) that could reasonably be expected to have an Individual Material Adverse Effect.

(f) Neither the execution, delivery or performance of any of the Loan Documents (nor the Securitization or any participations in the Loan, or the creation or sale of any of the Mortgage Loan or Mezzanine Loans) will (i) require the consent of any Gaming Authority not heretofore obtained or (ii) allow or result in the imposition of any material penalty under, or the revocation or termination of, any Gaming License or any material impairment of the rights of the holder of any Gaming License.

**4.1.23 Intentionally Omitted.**

**4.1.24 Intentionally Omitted.**

**4.1.25 Intentionally Omitted.**

**4.1.26 Leases.** (a) The Operating Leases (together with any certificates and notifications entered into in connection therewith) and the Operating Lease Guaranty provided to Lender on the Closing Date are true, correct, accurate and complete copies of such documents and constitute the entire agreement between the parties thereto with respect to the subject matter therein and there are no written agreements modifying, amending, supplementing or restating such documents. Except as set forth on Schedule X, the Properties are not subject to any space Leases other than the Operating Lease and space Leases providing for occupancy of less than one hundred (100) square feet. Each Operating Lease is a "true lease" for all purposes of the Bankruptcy Code (including Section 365(d) and 502(b)(6) thereof) and applicable Legal Requirements, and no Operating Lease constitutes a financing or conveys any interest in the Properties other than the leasehold interest therein demised thereby. Mortgage Borrower is the owner and lessor of landlord's interest in the Operating Lease and the Operating Lease Guaranty. Currently, no Person has any possessory interest in any Individual Property or right to occupy the same except under and pursuant to the provisions of the Operating Lease, any other space Leases listed on Schedule X and, with respect to a right to occupancy only (and not a possessory interest), hotel guests. Each Operating Lease and Operating Lease Guaranty is in full force and effect and there are no material events of default thereunder by any party thereto and there are no conditions that, with the passage of time or the giving of notice, or both, would constitute a default thereunder. No Rent under any Operating Lease has been paid more than one (1) month in advance of its due date and no Rents or charges under the Operating Lease have been waived, released or otherwise discharged or compromised. There has been no prior sale, transfer or assignment, hypothecation or pledge of any Operating Lease, any Operating Lease Guaranty or of the Rents. No Operating Company has assigned the Operating Lease or sublet all or any portion of any Individual Property except pursuant to the Operating Lease and the terms hereof.

(b) The Properties are not subject to any space Leases other than the Leases described in Schedule X attached hereto. Operating Company is the owner and lessor of landlord's interest in all such space Leases. No Person has any possessory interest in any Individual Property except under and pursuant to the provisions of the space Leases, and no Person has any right to occupy any portion of any Individual Property except under and pursuant to the provisions of the space Leases and hotel guests. The current space Leases are in full force and effect and, except as shown in Schedule X attached hereto, to Borrower's knowledge, there are no material defaults thereunder by either party and there are no conditions that, with the passage of time or the giving of notice, or both, would constitute defaults thereunder. No Rent has been paid more than one (1) month in advance of its due date. Except as shown in Schedule X attached hereto, all work to be performed by Mortgage Borrower (or Operating Company) under each space Lease has been performed as and to the extent required and has been accepted by the applicable tenant, and any payments, free rent, partial rent, rebate of rent or other payments, credits, allowances or abatements required to be given by Mortgage Borrower (or Operating Company) to any tenant has already been received by such tenant. There has been no prior sale, transfer or assignment, hypothecation or pledge of any space Lease or of the Rents received therein which is still in effect. To Borrower's knowledge, except as shown on Schedule X, no tenant listed on Schedule X has assigned its space Lease or sublet all or any portion of the premises demised thereby, no such tenant holds its leased premises under assignment or sublease, nor does anyone except such tenant and its employees occupy such leased premises. No tenant under any space Lease has a right or option pursuant to such Lease or otherwise to purchase all or any part of the leased premises or the building of which the leased premises are a part. No tenant under any space Lease has any right or option for additional space in the Improvements except pursuant to such tenant's space Lease.

**4.1.27 Intentionally Omitted.**

**4.1.28 Principal Place of Business; State of Organization.** (a) Borrower's principal place of business as of the date hereof is the address set forth in Schedule I. Each Borrower is organized under the laws of the State of Delaware.

(b) Operating Company's principal place of business as of the date hereof is the address set forth in Schedule I. Each Operating Company is organized under the laws of the state of Delaware.

**4.1.29 Filing and Recording Taxes.** All transfer taxes, deed stamps, intangible taxes or other amounts in the nature of transfer taxes required to be paid by any Person under applicable Legal Requirements currently in effect in connection with the transfer of the Collateral to Borrower have been paid. All recording, stamp, intangible or other similar tax required to be paid by any Person under applicable Legal Requirements currently in effect in connection with the execution, delivery, recordation, filing, registration, perfection or enforcement of any of the Loan Documents, including, without limitation, the Pledge Agreement, have been paid, and, under current Legal Requirements, the Pledge Agreement is enforceable in accordance with their respective terms by Lender (or any subsequent holder thereof), subject to principles of equity and bankruptcy, insolvency and other laws generally applicable to creditors' rights and the enforcement of debtors' obligations.

**4.1.30 Special Purpose Entity/Separateness.** (a) Until the Debt has been paid in full, Borrower hereby represents, warrants and covenants that Borrower and each SPE Party is, shall be and shall continue to be a Special Purpose Entity.

(b) The representations, warranties and covenants set forth in Section 4.1.30(a) shall survive for so long as any amount remains payable to Lender under this Agreement or any other Loan Document.

(c) All of the assumptions made in the Insolvency Opinion, including, but not limited to, any exhibits attached thereto, are true and correct and any assumptions made in any subsequent non-consolidation opinion required to be delivered in connection with the Loan Documents (an “**Additional Insolvency Opinion**”), including, but not limited to, any exhibits attached thereto, will have been and shall be true and correct. Borrower has complied and will comply with, and Borrower shall cause each SPE Party and Operating Company to comply with, all of the assumptions made with respect to the SPE Parties and Operating Company in the Insolvency Opinion. The SPE Parties will have complied and will comply with all of the assumptions made with respect to the SPE Parties in any Additional Insolvency Opinion. Each entity with respect to which an assumption shall be made in any Additional Insolvency Opinion will have complied and will comply with all of the assumptions made with respect to it in any Additional Insolvency Opinion.

(d) All of the assumptions made in the True Lease Opinion, including, but not limited to, any exhibits attached thereto, are true and correct and any assumptions made in any subsequent true lease opinion required to be delivered in connection with the Loan Documents (an “**Additional True Lease Opinion**”), including, but not limited to, any exhibits attached thereto, will have been and shall be true and correct. Each SPE Party has complied and will comply with, and Borrower shall cause Operating Company to comply with, all of the assumptions made with respect to such SPE Parties and Operating Company in the True Lease Opinion. Each SPE Party will have complied and will comply with all of the assumptions made with respect to such SPE Parties in any Additional True Lease Opinion. Each entity with respect to which an assumption shall be made in any Additional True Lease Opinion will have complied and will comply with all of the assumptions made with respect to it in any Additional True Lease Opinion.

**4.1.31 Operating Leases; Operating Lease Guaranty.** The Operating Leases and the Operating Lease Guaranty are in full force and effect and there is no default thereunder by any party thereto and no event has occurred that, with the passage of time and/or the giving of notice would constitute a default thereunder.

**4.1.32 Illegal Activity.** No portion of any Individual Property or the Collateral has been or will be purchased with proceeds of any illegal activity.

**4.1.33 Intentionally Omitted.**

**4.1.34 Investment Company Act.** Borrower is not an “investment company” or a company “controlled” by an “investment company,” within the meaning of the Investment Company Act of 1940, as amended.

**4.1.35 Embargoed Person.** At all times throughout the term of the Loan, including after giving effect to any Transfers permitted pursuant to the Loan Documents, (a) none of the funds or other assets of Borrower, Senior Mezzanine Borrower, Mortgage Borrower, Holdings, Operating Company and Guarantor constitute property of, or are beneficially owned, directly or indirectly, by any person, entity or government subject to trade restrictions under U.S. law, including, but not limited to, the International Emergency Economic Powers Act, 50 U.S.C. § 1701 *et seq.*, The Trading with the Enemy Act, 50 U.S.C. App. 1 *et seq.*, and any Executive Orders or regulations promulgated thereunder with the result that the investment in any Loan Party or Operating Company, as applicable (whether directly or indirectly), is prohibited by law or the Loan made by the Lender is in violation of law (“**Embargoed Person**”); (b) no Embargoed Person has any interest of any nature whatsoever in any Loan Party, Holdings or Operating Company, as applicable, with the result that the investment in any Loan Party, Holdings or Operating Company, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law; and (c) none of the funds of any Loan Party, Holdings or Operating Company, as applicable, have been derived from any unlawful activity with the result that the investment in any Loan Party, Borrower, Holdings or Operating Company, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law.

**4.1.36 Operating Lease Subsidiary.** Tahoe Propco, LLC is the owner of one hundred percent (100%) of the equity interests of Ground Lease Subsidiary; Ground Lease Subsidiary does not own any assets other than its interests in the Ground Lease and does not have any liabilities other than liabilities under the Ground Lease; Ground Lease Subsidiary does not engage in any business other than that related to its ownership of interests in the Ground Lease.

**4.1.37 Taxes including Gaming Taxes and Fees.** Mortgage Borrower, Borrower and each of their respective Affiliates, and Operating Company and each of its Affiliates, have filed or caused to be filed all Federal, state, local and foreign tax returns (including, without limitation, all reports relating to gaming taxes and fees to the Gaming Authorities) which are required to be filed by them, on or prior to the date hereof, other than tax returns in respect of taxes that (i) are not franchise, capital or income taxes, (ii) in the aggregate are not material and (iii) would not, if unpaid, result in the imposition of any material Lien on any property or assets of Mortgage Borrower, Senior Mezzanine Borrower, Borrower or Operating Company or any of their respective Affiliates. All such filed tax returns were, to Borrower’s knowledge, true, correct and complete when filed. Mortgage Borrower, Senior Mezzanine Borrower, Borrower, Operating Company and each of their respective Affiliates, have paid or caused to be paid all taxes shown to be due and payable on such filed returns or on any assessments received by them, other than any taxes or assessments the validity of which Mortgage Borrower, Senior Mezzanine Borrower, Borrower, Operating Company or such Affiliate, as applicable) is contesting in good faith by appropriate proceedings, and with respect to which Mortgage Borrower, Senior Mezzanine Borrower, Borrower, Operating Company or such Affiliate, as applicable, shall have set aside adequate reserves. None of Mortgage Borrower, Senior Mezzanine Borrower, Borrower, Operating Company or any of their respective Affiliates, has as of the date hereof requested or been granted any extension of time to file any Federal, state, local or foreign tax return. None of Mortgage Borrower, Senior Mezzanine

Borrower, Borrower or Operating Company is party to (or has any obligation under) any tax sharing agreement.

**4.1.38 Intentionally Omitted.**

**4.1.39 Intentionally Omitted.**

**4.1.40 Operation of Property.**

(a) The operation, management and use of each Individual Property by Mortgage Borrower and Operating Company is in compliance in all material respects with applicable Legal Requirements, including all applicable Gaming Laws, and all other federal, state, or local governmental authorities including, without limitation, those requirements relating to such Individual Property's physical structure and environment, except to the extent that non-compliance would not reasonably be expected to have an Individual Material Adverse Effect.

(b) The licenses, permits, and regulatory agreements, approvals and registrations relating to each Individual Property, including the Gaming Licenses, (i) may not be, and have not been, transferred to any location other than any Individual Property; have not been pledged as collateral security for any other loan or indebtedness; and are held free from restrictions or known conflicts that would materially impair the use or operation of any Individual Property as intended, (ii) are in full force and effect and in good standing and (iii) are not provisional, conditional or probationary in any manner.

(c) None of Mortgage Borrower, Senior Mezzanine Borrower, Borrower, Holdings, Guarantor or Operating Company is currently the subject of any proceeding by any Governmental Authority, and no notice of any violation has been received from a Governmental Authority that, in either case, would reasonably be expected to have an Individual Material Adverse Effect or an Aggregate Material Adverse Effect.

(d) None of Mortgage Borrower, Senior Mezzanine Borrower, Borrower or Operating Company has received a statement of charges or deficiencies and no penalty enforcement actions have been undertaken against any of them relating to any Individual Property by any Governmental Authority during the last three (3) calendar years which caused or could cause an Individual Material Adverse Effect or an Aggregate Material Adverse Effect.

(e) Each Operating Lease and Operating Lease Guaranty is in full force and effect and no party to either agreement has defaulted thereunder in any material respect.

(f) None of Mortgage Borrower or Operating Company has pledged its receivables relating to any of the Properties as collateral security for any other loan or indebtedness.

**4.1.41 Mortgage Loan Representations and Warranties.** All of the representations and warranties contained in the Mortgage Loan Documents and Senior Mezzanine Loan Documents are hereby incorporated into this Agreement and deemed made hereunder as and when made thereunder and shall remain incorporated without regard to any waiver, amendment or other modification thereof by the Mortgage Lender or Senior Mezzanine

Lender or to whether the related Mortgage Loan Document or Senior Mezzanine Loan Document has been repaid or otherwise terminated, unless otherwise consented to in writing by Lender.

**4.1.42 Affiliates.** Effective as of the consummation of the transactions contemplated by this Agreement, the sole member of Borrower is Principal, which owns one hundred percent (100%) of the membership interests in Borrower. Borrower does not have any subsidiaries except as set forth in Schedule VIII.

**Section 4.2. Survival of Representations.** Borrower agrees that all of the representations and warranties of Borrower set forth in Section 4.1 and elsewhere in this Agreement and in the other Loan Documents shall survive for so long as any amount remains owing to Lender under this Agreement or any of the other Loan Documents by Borrower. All representations, warranties, covenants and agreements made in this Agreement or in the other Loan Documents by Borrower shall be deemed to have been relied upon by Lender notwithstanding any investigation heretofore or hereafter made by Lender or on its behalf.

## V. BORROWER COVENANTS

**Section 5.1. Affirmative Covenants.** From the date hereof and until payment and performance in full of all obligations of Borrower under the Loan Documents or the earlier release of the Liens of the Pledge Agreement (and all related obligations) in accordance with the terms of this Agreement and the other Loan Documents, Borrower hereby covenants and agrees with Lender that:

**5.1.1 Existence; Compliance with Legal Requirements.** Borrower shall, and shall cause Mortgage Borrower, Senior Mezzanine Borrower and Operating Company to, do or cause to be done all things necessary to preserve, renew and keep in full force and effect their existence, rights, licenses, permits and franchises and comply with all Legal Requirements applicable to Borrower, Senior Mezzanine Borrower, Mortgage Borrower, the Collateral, the Senior Mezzanine Collateral, Operating Company and the Properties, including, without limitation, Prescribed Laws. There shall never be committed by Borrower and Borrower shall not permit Mortgage Borrower or Senior Mezzanine Borrower to permit any other Person in occupancy of or involved with the operation or use of the Properties, including Operating Company, to commit any act or omission affording the federal government or any state or local government the right of forfeiture against the Collateral, the Senior Mezzanine Collateral, any Individual Property or any part thereof or any monies paid in performance of Borrower's obligations under any of the Loan Documents. Borrower hereby covenants and agrees not to commit, permit or suffer to exist any act or omission affording such right of forfeiture. Borrower shall, and shall cause Mortgage Borrower to, at all times maintain, preserve and protect all franchises and trade names and preserve all the remainder of its property used or useful in the conduct of its business and shall keep the Properties in good working order and repair. Borrower shall cause Mortgage Borrower to keep the Properties insured at all times as (and in the amounts) provided elsewhere in this Agreement. Borrower shall cause Mortgage Borrower to operate any Individual Property that is the subject of the O&M Agreement in accordance with the terms and provisions thereof in all material respects. After prior notice to Lender, Borrower, at its own expense, may contest (or cause Mortgage Borrower to contest) by appropriate legal proceeding

promptly initiated and conducted in good faith and with due diligence, the validity of any Legal Requirement, the applicability of any Legal Requirement to Borrower, Senior Mezzanine Borrower, Mortgage Borrower, the Collateral, the Senior Mezzanine Collateral or any Individual Property or any alleged violation of any Legal Requirement, provided that (i) no Event of Default has occurred and remains uncured; (ii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any applicable material instrument to which Borrower, Senior Mezzanine Borrower or Mortgage Borrower is subject and shall not constitute a default thereunder and such proceeding shall be conducted in accordance with all Legal Requirements; (iii) none of the Collateral, the Senior Mezzanine Collateral or any Individual Property nor any material part thereof or interest therein will be in imminent danger of being sold, forfeited, terminated, cancelled or lost; (iv) Borrower shall promptly upon receipt of a final, non-appealable determination thereof comply with any such Legal Requirement determined to be valid or applicable or cure any violation of any such Legal Requirement; (v) such proceeding shall suspend the enforcement of the contested Legal Requirement against Borrower, Senior Mezzanine Borrower, Mortgage Borrower, the Collateral, the Senior Mezzanine Collateral and any Individual Property; and (vi) Borrower shall furnish such security as may be required in the proceeding, or as may be reasonably requested by Lender, to insure compliance with such Legal Requirement, together with all interest and penalties payable in connection therewith. Lender may apply any such security, as necessary to cause compliance with such Legal Requirement at any time when, in the reasonable judgment of Lender, the validity, applicability or violation of such Legal Requirement is finally established or the Collateral, the Senior Mezzanine Collateral or any Individual Property (or any part thereof or interest therein) shall be in imminent danger of being sold, forfeited, terminated, cancelled or lost.

**5.1.2 Taxes and Other Charges.** Borrower shall pay or shall cause Mortgage Borrower to pay or cause to be paid all Taxes and Other Charges now or hereafter levied or assessed or imposed against the Properties or any part thereof as the same become due and payable; provided, however, Borrower's obligation to cause Mortgage Borrower to directly pay or cause to be paid Taxes shall be suspended for so long as Borrower complies with the terms and provisions of Section 7.2 hereof. Borrower will deliver or cause to be delivered to Lender receipts for payment or other evidence satisfactory to Lender that the Taxes and Other Charges have been so paid or are not then delinquent no later than the date on which the Taxes and/or Other Charges would otherwise be delinquent if not paid. Borrower shall furnish or cause to be furnished to Lender receipts for the payment of the Taxes and the Other Charges prior to the date the same shall become delinquent provided, however, Borrower is not required to furnish such receipts for payment of Taxes in the event that such Taxes have been paid by Lender pursuant to Section 7.2 hereof. Borrower shall not suffer (and shall not permit Mortgage Borrower to suffer) and shall promptly pay or cause to be paid and discharged (or cause Mortgage Borrower to pay or cause to be paid and discharged any Lien or charge whatsoever which may be or become a Lien or charge against the Properties other than Permitted Encumbrances, and shall promptly pay or cause to be paid for all utility services provided to the Properties. After prior notice to Lender, Borrower, at its own expense, may contest (or cause Mortgage Borrower to contest) by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any Taxes or Other Charges, provided that (a) no Default or Event of Default has occurred and remains uncured; (b) such proceeding shall be permitted under and be conducted in accordance with the provisions of any applicable material other instrument to which Borrower or Mortgage Borrower is subject

and shall not constitute a default thereunder and such proceeding shall be conducted in accordance with all Legal Requirements; (c) none of the Collateral, the Senior Mezzanine Collateral, any Individual Property or any part of either or interest in either will be in imminent danger of being sold, forfeited, terminated, cancelled or lost; (d) Borrower shall promptly upon receipt of a final, non-appealable determination thereof pay (or cause Mortgage Borrower to pay) the amount of any such Taxes or Other Charges, together with all costs, interest and penalties which may be payable in connection therewith; (e) such proceeding shall suspend the collection of such contested Taxes or Other Charges from the applicable Individual Property; and (f) Borrower shall furnish or cause Mortgage Borrower to furnish such security as may be required in the proceeding, or as may be reasonably requested by Lender, to insure the payment of any such Taxes or Other Charges, together with all interest and penalties thereon. Lender may pay over any such cash deposit or part thereof held by Lender to the claimant entitled thereto at any time when, in the judgment of Lender, the entitlement of such claimant is established or any Individual Property (or part thereof or interest therein) shall be in danger of being sold, forfeited, terminated, cancelled or lost or there shall be any danger of the Lien of any Mortgage being primed by any related Lien.

**5.1.3 Litigation.** Borrower shall give prompt notice to Lender of any litigation or governmental proceedings pending or, to Borrower's knowledge, threatened against Borrower, Senior Mezzanine Borrower, Mortgage Borrower, the Collateral, Operating Company, Holdings or Guarantor which, in any such case, might materially adversely affect Borrower's, Senior Mezzanine Borrower's, Mortgage Borrower's, the Collateral's, Operating Company's, Holdings's or Guarantor's condition (financial or otherwise) or business or any Individual Property. Borrower shall not, without the prior written consent of Lender (which may be furnished or withheld at its sole and absolute discretion), give its consent or approval to the settlement of any claim against Borrower, other than a fully insured third party claim, in any amount greater than One Hundred Thousand and No/100 Dollars (\$100,000.00).

**5.1.4 Access to Properties.** Borrower shall cause Mortgage Borrower to permit agents, representatives and employees of Lender and any Noteholder, and prospective purchasers of any Note or any interest therein, to inspect the Properties or any part thereof at reasonable hours upon reasonable advance notice, and Borrower shall cause Operating Company to permit such access by Lender, in each case subject to the rights of tenants under Leases and Hotel guests.

**5.1.5 Notice of Default.** Borrower shall promptly advise Lender of any material Default or Event of Default of which Borrower has knowledge, including any Mortgage Loan Default, Senior Mezzanine Loan Default, Senior Mezzanine Loan Event of Default or Mortgage Loan Event of Default.

**5.1.6 Cooperate in Legal Proceedings.** Borrower shall cooperate fully with Lender with respect to any proceedings before any court, board or other Governmental Authority which may in any way affect the rights of Lender hereunder or any rights obtained by Lender under any of the other Loan Documents and, in connection therewith, permit Lender, at its election, to participate in any such proceedings.

**5.1.7 Perform Loan Documents.** Borrower shall observe, perform and satisfy all the terms, provisions, covenants and conditions of, and shall pay when due all costs, fees and expenses to the extent required under the Loan Documents executed and delivered by, or applicable to, Borrower.

**5.1.8 Award and Insurance Benefits.** Borrower shall cooperate with Lender in obtaining for Lender the benefits of any Awards or Insurance Proceeds lawfully or equitably payable in connection with any Individual Property, and Lender shall be reimbursed for any actual, reasonable out-of-pocket expenses incurred in connection therewith (including actual, reasonable out-of-pocket attorneys' fees and disbursements, and, if reasonably required, the payment by Borrower of the expense of an appraisal on behalf of Lender in case of Casualty or Condemnation affecting any Individual Property or any part thereof) out of such Insurance Proceeds.

**5.1.9 Further Assurances.** Borrower shall and shall cause Mortgage Borrower, Senior Mezzanine Borrower, Guarantor and Operating Company to, at Borrower's sole cost and expense:

(a) furnish to Lender all instruments, documents, boundary surveys, footing or foundation surveys, certificates, plans and specifications, appraisals, title and other insurance reports and agreements, and each and every other document, certificate, agreement and instrument, in each case in such party's possession, not subject to confidentiality restrictions barring the delivery of such materials, and which are either required to be furnished by Borrower or Operating Company pursuant to the terms of the Loan Documents or which are reasonably requested by Lender in connection therewith;

(b) execute and deliver to Lender such documents, instruments, certificates, assignments and other writings, and do such other acts necessary or desirable, to evidence, preserve and/or protect the collateral at any time securing or intended to secure the obligations of Borrower under the Loan Documents, as Lender may reasonably require; and

(c) do and execute all and such further lawful and reasonable acts, conveyances and assurances for the better and more effective carrying out of the intents and purposes of this Agreement and the other Loan Documents, as Lender shall reasonably require from time to time.

**5.1.10 Mortgage Taxes.** Borrower represents that it has caused Mortgage Borrower to pay all state, county and municipal recording and all other taxes imposed upon the execution and recordation of the Mortgage.

**5.1.11 Financial Reporting.** (a) Borrower will keep or will cause to be kept and maintained on a Fiscal Year basis, in accordance with GAAP (or such other accounting basis acceptable to Lender), books, records and accounts reflecting all of the financial affairs of Borrower, Senior Mezzanine Borrower and Mortgage Borrower and all items of income and expense in connection with the operation on an individual basis of the Properties. Lender (at Lender's sole cost and expense) shall have the right from time to time at all times during normal business hours upon reasonable notice to examine the books, records and accounts of Borrower,

Senior Mezzanine Borrower and Mortgage Borrower at the office of Borrower or any other Person maintaining such books, records and accounts and to make such copies or extracts thereof as Lender shall desire. After the occurrence and during the continuance of an Event of Default, Borrower shall pay any costs and expenses incurred by Lender to examine Borrower's, Senior Mezzanine Borrower's, Mortgage Borrower's or to the extent permitted under the Operating Lease, Operating Company's accounting records with respect to the Properties, as Lender shall determine to be necessary or appropriate in the protection of Lender's interest.

(b) Borrower will furnish or cause to be furnished to Lender annually, by no later than April 30, 2009, and thereafter within no more than one hundred twenty (120) days following the end of each Fiscal Year of Borrower, a complete copy of the annual financial statements of the Operating Companies, Mortgage Borrower, Senior Mezzanine Borrower and Borrower (and of no other entity or Person), audited by a "Big Four" accounting firm or other independent certified public accountant acceptable to Lender in accordance with GAAP (or such other accounting basis acceptable to Lender) covering the Properties on a combined basis for such Fiscal Year (and no other Persons, Properties or assets) and containing statements of profit and loss for the Operating Companies, Borrower, Senior Mezzanine Borrower, Mortgage Borrower and the Properties (on a combined basis) and a balance sheet for the Operating Companies, Borrower, Senior Mezzanine Borrower, Mortgage Borrower and the Properties (on a combined basis), in each case showing no other assets than the Properties (and the interests of Operating Companies, Mortgage Borrower, Senior Mezzanine Borrower and Borrower therein). In addition, Borrower will furnish or cause to be furnished to Lender by no later than April 30, 2008 (i) a "balance sheet only audit" prepared by a "Big Four" accounting firm or other independent certified public accountant acceptable to Lender (for the Fiscal Year ending December 31, 2007) and (ii) a complete copy of annual financial statements for the Operating Company, Mortgage Borrower, Senior Mezzanine Borrower and Borrower prepared in accordance with GAAP (or such other accounting basis acceptable to Lender) covering the Operating Companies, Mortgage Borrower, Borrower, Senior Mezzanine Borrower, and the Properties on a combined basis for such Fiscal Year (ending December 31, 2007) and containing statements of profit and loss for the Operating Companies, Mortgage Borrower, Senior Mezzanine Borrower, Borrower and the Properties (in each case, on a combined basis), and a balance sheet for the Operating Companies, Mortgage Borrower, Senior Mezzanine Borrower, Borrower and the Properties (in each case on a combined basis). All such statements (including statements for the Fiscal Year ending December 31, 2007, and thereafter for all statements provided yearly to Lender) shall set forth the financial condition and the results of operations for the Properties for such Fiscal Year, and shall include, but not be limited to, amounts representing Borrower's reasonable and good faith determination of aggregate annual EBITDAR from all of the Properties and capital expenditures (allocated between maintenance and growth) at the Properties (it being acknowledged that Borrower's statement of EBITDAR pursuant to the above provisions of this sentence and the balance of this [Section 5.1.11](#) shall not be binding on Lender and shall be subject to Lender's reasonable review). All such statements (including statements for the Fiscal Year ending December 31, 2007, and thereafter for all statements provided yearly to Lender) shall also set forth unaudited schedules for each Individual Property, detailing the statements of profit and loss and a balance sheet for each Individual Property, as well as gross revenues, gross hotel and casino revenues, EBITDAR and capital expenditures (allocated between maintenance and growth). The annual financial statements, as described above, shall be accompanied by (1) a comparison of the budgeted income and expenses and the actual income

and expenses for the prior Fiscal Year, (2) in the case of any financial statements for Fiscal Year 2008 and thereafter, an unqualified opinion of a “Big Four” accounting firm or other independent certified public accountant reasonably acceptable to Lender, (3) room rate reports and RevPAR calculations, and (4) an Officer’s Certificate certifying (A) that each annual financial statement presents fairly the financial condition and the results of operations of the Operating Companies, Borrower, Mortgage Borrower, Senior Mezzanine Borrower and the Properties being reported upon, (B) that such financial statements have been prepared in accordance with GAAP (or such other accounting basis acceptable to Lender) and (C) as of the date thereof whether there exists an event or circumstance which constitutes a Default or Event of Default, and if such Default or Event of Default exists, the nature thereof, the period of time it has existed and the action then being taken to remedy the same. Any audits performed by Borrower (and any audited materials and other information provided to Lender, as required hereunder in order for Borrower to comply with the requirements of this subparagraph (b)) may be performed with respect to the Properties on a “combining basis” (so that a single audit of the Properties, rather than individual audits of each of the separate Properties, may be performed and provided).

(c) Borrower will furnish, or cause to be furnished, to Lender on or before sixty (60) days after the end of each fiscal quarter the following items, accompanied by an Officer’s Certificate stating that such items fairly present the financial condition and results of the Operating Companies, Mortgage Borrower, Senior Mezzanine Borrower, Borrower and the Properties, subject to normal year end adjustments, as applicable: (i) quarterly and year to date operating statements (including Capital Expenditures) noting such information as is necessary and sufficient to fairly represent the financial position and results of operation of the Properties during such quarter, and containing a comparison of budgeted income and expenses and the actual income and expenses together with a detailed explanation of any variances of ten percent (10%) or more between budgeted and actual amounts for such periods, all in form reasonably satisfactory to Lender; and (ii) a calculation reflecting the Debt Service Coverage Ratio, gross revenues, gross hotel and casino revenues, EBITDAR and capital expenditures (allocated between maintenance and growth, in the case for the immediately preceding twelve (12) month period as of the last day of such quarter (it being acknowledged that Borrower’s statement of EBITDAR pursuant to the above provisions of this sentence and the balance of this Section 5.1.11 shall not be binding on Lender and shall be subject to Lender’s reasonable review). Borrower shall provide the statements and calculations required hereunder on both a “combined basis” for all Properties and on an Individual Property-by-Individual Property basis. In addition, such Officer’s Certificate shall also state that the representations and warranties of Borrower set forth in Section 4.1.30 are true and correct as of the date of such certificate and that there are no trade payables outstanding for more than ninety (90) days. In addition, prior to a Securitization or Syndication, Borrower shall be obligated to provide the statements and calculations, as well as the Officer’s Certificate, described in this subparagraph (c) to Lender on a monthly basis (such requirements to be modified as appropriate to reflect the fact that the information shall be required to be provided monthly (e.g., monthly rent rolls, monthly and year-to-date operating statements, a calculation reflecting the Debt Service Coverage Ratio for the immediately preceding twelve (12) month period as of the last day of such month), in each case within no more than thirty (30) days following the end of each calendar month.

(d) For the partial year period commencing on the date hereof, and for each Fiscal Year thereafter, Borrower shall submit to Lender for informational purposes only an

(e) Intentionally Omitted.

(f) If, at the time one or more Disclosure Documents are being prepared for a public Securitization, Lender expects that Borrower alone or Borrower and one or more Affiliates of Borrower collectively, or the Properties and Related Properties collectively, will be a “**Significant Obligor**”, as that term is defined in Item 1101(k) of Regulation AB (as defined below), Borrower shall furnish to Lender upon request (i) the selected financial data or, if applicable, net operating income, required under Item 1112(b)(1) of Regulation AB, if Lender expects that the principal amount of the Loan together with any other loans made to an Affiliate of Borrower or secured by a Related Property, that is included in a Securitization with the Loan (each, a “**Related Loan**”) as of the cut-off date for such Securitization may, or if the principal amount of the Loan together with any Related Loans as of the cut-off date for such Securitization and at any time during which the Loan and any Related Loans are included in a Securitization does, equal or exceed ten percent (10%) (but less than twenty percent (20%)) of the aggregate principal amount of all loans included or expected to be included, as applicable, in the Securitization or (ii) the financial statements required under Item 1112(b)(2) of Regulation AB, if Lender expects that the principal amount of the Loan together with any Related Loans as of the cut-off date for such Securitization may, or if the principal amount of the Loan together with any Related Loans as of the cut-off date for such Securitization and at any time during which the Loan and any Related Loans are included in a Securitization does, equal or exceed twenty percent (20%) of the aggregate principal amount of all loans included or expected to be included, as applicable, in the Securitization. Such financial data or financial statements shall be furnished to Lender (A) within ten (10) Business Days after written notice from Lender in connection with the preparation of Disclosure Documents for the Securitization, (B) not later than thirty (30) days after the end of each fiscal quarter of Borrower and (C) not later than sixty (60) days after the end of each fiscal year of Borrower; provided, however, that Borrower shall not be obligated to furnish financial data or financial statements pursuant to clauses (B) or (C) of this sentence with respect to any period for which a filing pursuant to the Exchange Act in connection with or relating to the Securitization (an “**Exchange Act Filing**”) is not required. If requested by Lender, in writing, Borrower shall use commercially reasonable efforts to furnish to Lender financial data and/or financial statements for any tenant of any of the Properties (other than a tenant that is a reporting company under the Exchange Act) if, in connection with a Securitization, Lender expects there to be, with respect to such tenant or group of affiliated tenants, a concentration within all of the loans included or expected to be included, as applicable, in the Securitization such that such tenant or group of affiliated tenants would constitute a Significant Obligor. “**Related Property**” shall mean a parcel of real property, together with improvements thereon and personal property related thereto, that is “related”, within the meaning of the definition of Significant Obligor, to any of the Properties. “**Regulation AB**” shall mean Regulation AB under the Securities Act and the Exchange Act, as such Regulation may be amended from time to time.

(g) All financial data and financial statements provided by Borrower, Senior Mezzanine Borrower, Mortgage Borrower and Operating Company hereunder pursuant to Section 5.1.11(f) shall be prepared in accordance with GAAP, and all such financial statements

shall meet the requirements of Regulation AB, Regulation S-X, Regulation S-K to the extent applicable and any other applicable legal requirements. All financial statements referred to in clause (ii) of Section 5.1.11(f) shall be audited by independent accountants of Borrower reasonably acceptable to Lender in accordance with Regulation AB, Regulation S-X, Regulation S-K to the extent applicable and all other applicable legal requirements, shall be accompanied by the manually executed report of the independent accountants thereon, which report shall meet the requirements of Regulation AB, Regulation S-X, Regulation S-K to the extent applicable and all other applicable legal requirements, and shall be further accompanied by a manually executed written consent of the independent accountants, in form and substance reasonably acceptable to Lender, to the inclusion of such financial statements in any Disclosure Document and any Exchange Act Filing and to the use of the name of such independent accountants and the reference to such independent accountants as “experts” in any Disclosure Document and Exchange Act Filing, all of which shall be provided at the same time as the related financial statements are required to be provided, in each case if applicable (*i.e.*, in the case of a public securitization). All financial data and financial statements (audited or unaudited) provided by Borrower under this Section 5.1.11(g) shall be accompanied by an Officer’s Certificate which shall state that such financial statements meet the requirements set forth in the first sentence of this Section 5.1.11(g) to the extent applicable.

(h) If requested by Lender, Borrower shall provide Lender, promptly upon request, with any other or additional financial statements, or financial, statistical or operating information, as Lender shall reasonably determine to be required pursuant to Regulation AB, Regulation S-X, Regulation S-K or any amendment, modification or replacement thereto or other legal requirements in connection with any Disclosure Document or any Exchange Act Filing or as shall otherwise be reasonably requested by the Lender.

(i) In the event Lender reasonably determines, in connection with a Securitization, that the financial data and financial statements required in order to comply with Regulation AB, Regulation S-X, Regulation S-K or any amendment, modification or replacement thereto or other legal requirements are other than as provided herein, then notwithstanding the provisions of Sections 5.1.11(f) and (g), Lender may request, and Borrower shall promptly provide, such other financial statements as Lender determines to be necessary or appropriate for such compliance.

(j) Any reports, statements or other information required to be delivered under this Agreement shall be delivered (i) in paper form, and (ii) if requested by Lender and within the capabilities of Borrower’s data systems without change or modification thereto, in electronic form and prepared using a Microsoft Word for Windows or WordPerfect for Windows files (which files may be prepared using a spreadsheet program and saved as word processing files). Borrower agrees that Lender may disclose information regarding any of the Properties, the Collateral, the Senior Mezzanine Collateral, Mortgage Borrower, Senior Mezzanine Borrower, Borrower and Operating Company that is provided to Lender pursuant to this Section in connection with the Securitization to such parties reasonably requesting such information in connection with such Securitization.

**5.1.12 Business and Operations.** Borrower will, and will cause Mortgage Borrower and Operating Company to, continue to engage in the businesses presently conducted

by it as and to the extent the same are necessary for the ownership, maintenance, management and operation of the Properties. Borrower will and will cause Senior Mezzanine Borrower, Mortgage Borrower and Operating Company to qualify to do business and will remain in good standing under the laws of each jurisdiction as and to the extent the same are required for the ownership, maintenance, management and operation of the Properties.

**5.1.13 Title to the Properties.** Borrower will cause Mortgage Borrower to warrant and defend (a) the title to each Individual Property and every part thereof, subject only to Liens permitted hereunder (including Permitted Encumbrances) and (b) the validity and priority of the Liens of the Mortgages and the Assignments of Leases, subject only to Liens permitted hereunder (including Permitted Encumbrances), in each case against the claims of all Persons whomsoever. Borrower shall reimburse Lender for any actual out-of-pocket losses, costs, damages or expenses (including reasonable attorneys' fees and court costs) incurred by Lender if an interest in any Individual Property, other than as permitted hereunder, is claimed by another Person. Borrower will warrant and defend (a) the title to the Collateral and every part thereof, subject only to Liens permitted hereunder and (b) the validity and priority of the Liens of the Pledge Agreement, in each case against the claims of all Persons whomsoever. Borrower shall reimburse Lender for any actual out-of-pocket losses, costs, damages or expenses (including reasonable attorneys' fees and court costs) incurred by Lender if an interest in any part of the Collateral, other than as permitted hereunder, is claimed by another Person.

**5.1.14 Costs of Enforcement.** In the event (a) that any Mortgage encumbering any Individual Property or the Lien of the Pledge Agreement is foreclosed in whole or in part or that any such Mortgage or Pledge Agreement is put into the hands of an attorney for collection, suit, action or foreclosure, (b) of the foreclosure of any mortgage prior to or subsequent to any Mortgage or any Lien prior to or subsequent to the Lien of the Pledge Agreement in which proceeding Mortgage Lender or Lender is made a party or exercises any or all of its rights or remedies under such Mortgage or the Pledge Agreement or any other Loan Documents as and when permitted thereby, or (c) of the bankruptcy, insolvency, rehabilitation or other similar proceeding in respect of Borrower, Senior Mezzanine Borrower, Mortgage Borrower or Operating Company or an assignment by Borrower, Senior Mezzanine Borrower, Mortgage Borrower or Operating Company for the benefit of its creditors, Borrower, its successors or assigns, shall be chargeable with and agrees to pay all reasonable out-of-pocket costs of collection and defense, including reasonable out-of-pocket attorneys' fees and costs, incurred by Lender, Mortgage Borrower, Senior Mezzanine Borrower or Borrower in connection therewith and in connection with any appellate proceeding or post-judgment action involved therein, together with all required service or use taxes.

**5.1.15 Estoppel Statement.** (a) After request by Lender, Borrower shall within ten (10) Business Days (but, provided there exists no Default or Event of Default, no more often than twice during the course of each fiscal year of Borrower) furnish Lender with a statement, duly acknowledged and certified, (i) with respect to the Loan, setting forth (A) the original principal amount of the Note, (B) the unpaid principal amount of the Loan, (C) the Interest Rate of the Loan, (D) the date installments of interest and/or principal were last paid, (E) any offsets or defenses to the payment of the Debt, if any, and (F) that the Note, this Agreement, the Pledge Agreement and the other Loan Documents are valid, legal and binding obligations and have not been modified or if modified, giving particulars of such modification, (ii) with respect to any

Senior Mezzanine Loan, setting forth (A) the original principal amount of the applicable Senior Mezzanine Loan, (B) the unpaid principal amount of the Senior Mezzanine Loan, (C) the interest rate of the Senior Mezzanine Loan, (D) the date installments of interest and/or principal were last paid, (E) any offsets or defenses to the payment of the debt, if any, and (F) that the Senior Mezzanine Note, the Senior Mezzanine Loan Agreement and the other Senior Mezzanine Loan Documents are valid, legal and binding obligations and have not been modified or if modified, giving particulars of such modification and (iii) with respect to the Mortgage Loan, setting forth (A) the original principal amount of the Mortgage Loan, (B) the unpaid principal amount of the Mortgage Loan, (C) the interest rate of the Mortgage Loan, (D) the date installments of interest and/or principal were last paid, (E) any offsets or defenses to the payment of the debt, if any, and (F) that the Mortgage Note, the Mortgage Loan Agreement, the Security Instruments and the other Mortgage Loan Documents are valid, legal and binding obligations and have not been modified or if modified, giving particulars of such modification.

(b) Borrower shall exercise reasonable best efforts to deliver to Lender upon request, tenant estoppel certificates from each space tenant leasing space at the Properties, and shall exercise reasonable best efforts to deliver an estoppel certificate from each Ground Lessor, each in form and substance reasonably satisfactory to Lender provided that Borrower shall not be required to deliver such certificates more frequently than two (2) times in any calendar year.

(c) After request by Borrower, but not more than twice during the course of each year, Lender shall furnish Borrower with a statement setting forth (i) the original principal amount of the Loan, (ii) the unpaid principal amount of the Loan, (iii) the Interest Rate of the Loan, (iv) the date installments of interest and/or principal were last paid, and (v) that the Loan Documents have not been modified or if modified, giving particulars of such modification.

**5.1.16 Loan Proceeds.** Borrower shall use the proceeds of the Loan received by it on the Closing Date only for the purposes set forth in Section 2.1.4.

**5.1.17 Performance by Borrower.** Borrower shall in a timely manner observe, perform and fulfill each and every covenant, term and provision of each Loan Document executed and delivered by, or applicable to, Borrower, and shall not enter into or otherwise suffer or permit any amendment, waiver, supplement, termination or other modification of any Loan Document executed and delivered by, or applicable to, Borrower without the prior consent of Lender. Borrower shall cause Mortgage Borrower and Senior Mezzanine Borrower, in a timely manner, to observe, perform and fulfill each and every covenant, term and provision of each Mortgage Loan Document and Senior Mezzanine Loan Documents executed and delivered by, or applicable to, Mortgage Borrower and Senior Mezzanine Borrower, and shall not cause or permit Mortgage Borrower or Senior Mezzanine Borrower to enter into or otherwise suffer or permit any amendment, waiver, supplement, termination or other modification of any Mortgage Loan Document or Senior Mezzanine Loan Document executed and delivered by, or applicable to, Mortgage Borrower or Senior Mezzanine Borrower without the prior written consent of Lender.

**5.1.18 Confirmation of Representations.** Borrower shall deliver, in connection with any Securitization, (a) one or more Officer's Certificates certifying as to the accuracy of all representations made by Borrower in the Loan Documents as of the date of the closing of such Securitization in all relevant jurisdictions, and (b) certificates of the relevant Governmental

Authorities in all relevant jurisdictions indicating the good standing and qualification of Mortgage Borrower, Senior Mezzanine Borrower, Borrower and Holdings as of the date of the Securitization.

**5.1.19 No Joint Assessment.** Borrower shall not, and shall not permit Mortgage Borrower to, suffer, permit or initiate the joint assessment of any Individual Property (a) with any other real property constituting a tax lot separate from such Individual Property, and (b) which constitutes real property with any portion of such Individual Property which may be deemed to constitute personal property, or any other procedure whereby the lien of any taxes which may be levied against such personal property shall be assessed or levied or charged to such real property portion of the Individual Property, except as required by Legal Requirements.

**5.1.20 Leasing Matters.** (a) Borrower shall not (and shall cause Mortgage Borrower and Guarantor (Operating Lease) not to), without the prior written consent of Lender (and, if a Securitization shall have occurred, Borrower shall have obtained and delivered to Lender a Rating Agency Confirmation) restate, materially modify, materially amend or materially supplement (or permit the restatement, material modification, amendment or supplement of) any Operating Lease or Operating Lease Guaranty (provided, that any modification, amendment or supplement affecting any of the economic terms of any Operating Lease or any of the terms of the Operating Lease Guaranty shall be deemed to be material for purposes hereof), terminate or accept the surrender (or permit the termination or surrender) of any Operating Lease or Operating Lease Guaranty, or release or materially waive (or permit the release or material waiver of) the Operating Company or Guarantor (Operating Lease) from the performance or observance of any obligation or condition under the Operating Leases or Operating Lease Guaranty. In connection with a material modification, Lender may request, and in such event, Borrower shall not effect such modification without, an Additional True Lease Opinion in form and substance reasonably satisfactory to Lender issued by Borrower's counsel (at Borrower's expense). Borrower shall not permit (or cause or permit Mortgage Borrower to permit) the prepayment of any rents under the Operating Leases for more than one (1) month prior to the due date thereof. Notwithstanding the foregoing, Lender's consent shall not be required in connection with any modification, amendment or waiver of any provision of the Operating Lease as may be reasonably necessary to comply with the requirements of this Agreement or any other Loan Document or that makes the provisions of the Operating Lease consistent with the provisions of this Agreement or any other Loan Document. Notwithstanding anything contained in this Section 5.1.20(a) to the contrary, (x) Lender's consent to any amendment, modification or supplement of the Operating Lease (or any new Operating Lease) or the Operating Lease Guaranty may also be conditioned on the delivery by Borrower, upon the reasonable request of Lender, of an Additional Insolvency Opinion and/or an Additional True Lease Opinion acceptable to Lender (and, if a Securitization shall have occurred, acceptable to the Rating Agencies), and (y) Lender's consent to any assignment of any Operating Lease or Operating Lease Guaranty (or of any interest therein) or any material amendment, material modification or material supplement of any Operating Lease shall also be conditioned on the delivery by Borrower, upon the reasonable request of Lender, of an Additional Insolvency Opinion and an Additional True Lease Opinion acceptable to Lender (and, if a Securitization shall have occurred, acceptable to the Rating Agencies).

(b) Borrower shall not permit (or consent to) an assignment by any Operating Company of any such Operating Company's interest(s) under any Operating Lease or an assignment by any Mortgage Borrower of any such Mortgage Borrower's interest(s) under any Operating Lease Guaranty without, in each case, Lender's prior written consent (and, if a Securitization shall have occurred, at Lender's request, without Borrower providing to Lender a Rating Agency Confirmation and an Additional True Lease Opinion).

(c) All space Leases and all renewals of space Leases executed after the date hereof entered into by Operating Company shall (i) provide for rental rates, rent credits and free rent periods comparable to existing local market rates for comparable properties, (ii) be on commercially reasonable terms, (iii) provide that such Lease is subordinate to the Mortgage encumbering the Individual Property in question and that the lessee will attorn to Mortgage Lender and any purchaser at a foreclosure sale; (iv) not contain any terms which would materially adversely affect Lender's rights under the Loan Documents; (v) not grant to the Tenants thereunder any option or right to purchase the applicable Individual Property (or any portion thereof); and (v) in the case of Major Leases, have initial terms less than twenty (20) consecutive years, in each case (unless otherwise consented to by Lender pursuant to clause (d) below).

(d) (i) Any Major Lease entered into by Operating Company with respect to an Individual Property executed after the date hereof (and any renewal of any Major Lease with respect to an Individual Property), and any space Lease or space Lease renewal proposed to be entered into by Operating Company after the date hereof and that does not meet the criteria set forth in Sections 5.1.20(a) and subparagraph (c) above, shall be subject to the prior written approval of Lender, which approval shall not be unreasonably withheld, conditioned or delayed. Borrower shall not terminate or accept the surrender of (and shall not permit Operating Company or Mortgage Borrower to terminate or accept the surrender of) a Major Lease (unless by reason of a tenant default) without the consent of Lender.

(ii) Every submission to Lender of any proposed Major Lease (or Major Lease renewal, amendment, modification or termination) for Lender's approval shall be forwarded to Lender together with a notice from Borrower (in bold typeface) that states "YOUR FAILURE TO RESPOND TO THIS NOTICE AND REQUEST FOR APPROVAL WITHIN TEN (10) BUSINESS DAYS OF YOUR RECEIPT OF THIS NOTICE SHALL CONSTITUTE YOUR DEEMED CONSENT TO THE MATTERS DESCRIBED IN OR THAT ARE THE SUBJECT OF THIS NOTICE". If Lender responds to Borrower's request by identifying missing documents or materials that are incomplete or inaccurate (and that are the subject of the request for approval), then Borrower shall re-submit such documents or materials to Lender for its approval together with a second notice from Borrower that complies with this section.

(iii) If Lender fails to approve or disapprove any such proposed request or submission attached to a first notice or request sent by Borrower (or the matters that are the subject of the re-submitted notice or request for approval) within ten (10) Business Days of receipt of same, Borrower shall re-submit such instruments or materials to Lender for Lender's approval and give Lender a second notice (in bold typeface) that states "SECOND NOTICE — YOUR FAILURE TO RESPOND TO THIS NOTICE AND REQUEST FOR APPROVAL WITHIN FIVE (5) BUSINESS DAYS OF YOUR RECEIPT OF THIS NOTICE SHALL

CONSTITUTE YOUR DEEMED CONSENT TO THE MATTERS DESCRIBED IN OR THAT ARE THE SUBJECT OF THIS NOTICE". If Lender fails to respond to such second notice within five (5) Business Days of receipt of same, then Lender's consent to the proposed request or submission that is the subject of such notice shall be deemed granted.

(e) Borrower shall and shall cause Mortgage Borrower and Operating Company to (i) observe and perform the obligations imposed upon the lessor under the Leases in a commercially reasonable manner; (ii) enforce the terms, covenants and conditions contained in the Leases upon the part of the lessee thereunder to be observed or performed in a commercially reasonable manner and in a manner not to impair the value of the Individual Property involved; (iii) not collect any of the rents more than one (1) month in advance (other than security deposits); (iv) not execute any other assignment of lessor's interest in the Leases or the Rents (except as contemplated by the Loan Documents); (v) not alter, modify or change the terms of the Leases in a manner inconsistent with the provisions of the Loan Documents; and (vi) execute and deliver at the request of Lender all such further assurances, confirmations and assignments in connection with the Leases as Lender shall from time to time reasonably require.

(f) Upon request, Borrower shall furnish Lender with executed copies of all new Leases or Lease renewals or amendments.

(g) Notwithstanding anything to the contrary contained herein, Borrower shall not enter into (or permit Operating Company or Mortgage Borrower to enter into) a lease of all or substantially all of any Individual Property without Lender's prior consent.

**5.1.21 Alterations.** (a) Borrower shall cause all Alterations with respect to any portion of any of the Properties to be conducted and performed with due diligence in a good and workmanlike manner, and all materials used and work done shall be in accordance with all applicable Legal Requirements. In addition, with respect to the Convention Center Project and the Tower Project, to the extent such projects are pursued, Borrower agrees to cause Mortgage Borrower to (i) diligently pursue each such project to completion in a timely manner, subject to delays arising from Force Majeure events, (ii) cause the work to be performed in connection with each such project in substantial conformance with the plans and specifications for such project, and otherwise in conformity with the Mortgage Loan Agreement, each Senior Mezzanine Loan Agreement and this Agreement, (iii) provide Lender with reasonably detailed monthly progress reports (and such information as Lender shall reasonably request from time to time) regarding the status of the Convention Center Project and the Tower Project, (iv) upon the substantial completion of each such project, provide Lender with evidence of the substantial completion of each such project, copies of final unconditional lien waivers from the general contractors, construction managers or subcontractors for such project (if requested by Lender) and evidence of the final payment of all amounts due in connection with each such project, and a title search for the affected Individual Property indicating that such Individual Property is free from all liens, claims and other encumbrances not previously approved by Lender, and (v) upon final completion of each such project, provide Lender with a final survey acceptable to Lender showing the "as-built" location of the completed Improvements and all easements appurtenant thereto, and "as-built" plans and specifications for Lender's file and a certificate of occupancy to the extent issued by the relevant Governmental Authority.

(b) Borrower shall obtain Lender's prior consent to (i) any Material Alterations (unless collateral or a completion guaranty is provided as set forth in subparagraph (c) below) or (ii) any Alterations to any of the Improvements (even if otherwise described in clause (i), above) that is reasonably likely to have an Individual Material Adverse Effect. Lender's consent shall not be required for any Alterations other than the Alterations described in the preceding sentence. Notwithstanding any provision hereof to the contrary, without Lender's consent, not to be unreasonably withheld or delayed, in no event shall Borrower close or shutter, or undertake or permit any Tenant or other Person to undertake, an Alteration that, alone or together with other work then being undertaken, closes or shutters, more than ten percent (10%) of the income-generating space in any Individual Property at any one time. Prior to undertaking any Alteration with respect to an Individual Property in excess of five percent (5%) of the sum of the Allocated Loan Amount for such Individual Property and the "Allocated Loan Amounts" under (and as defined in each of) the Mortgage Loan Agreement and the Other Mezzanine Loan Agreements for such Individual Property, to afford Lender a prior and reasonable opportunity to determine whether or not the proposed Alteration would have an Individual Material Adverse Effect, Borrower will deliver such plans, specifications, project schedules, logistical plans, construction budgets (including a statement of sources and uses) and such other information as Lender may reasonably request in respect of such Alteration for review by Lender (and its consultants). All reasonable out-of-pocket costs and expenses incurred by Lender in connection with reviewing said Alterations proposal, including, without limitation, reasonable counsel fees and disbursements and Lender's consultants, shall be paid by Borrower. The above-referenced submission to Lender shall be delivered with a notice from Borrower (in bold typeface) that states "YOUR FAILURE TO RESPOND TO THIS NOTICE AND REQUEST FOR APPROVAL WITHIN TEN (10) BUSINESS DAYS OF YOUR RECEIPT OF THIS NOTICE SHALL CONSTITUTE YOUR DEEMED CONSENT TO THE MATTERS DESCRIBED IN OR THAT ARE THE SUBJECT OF THIS NOTICE". If Lender responds to Borrower's request by identifying missing documents or materials that are incomplete or inaccurate (and that are the subject of the request for approval), then Borrower shall re-submit such documents or materials to Lender for its approval together with a second notice from Borrower that complies with this Section. If Lender fails to approve or disapprove any such proposed request or submission attached to a first notice or request sent by Borrower (or the matters that are the subject of the re-submitted notice or request for approval) within ten (10) Business Days of receipt of same, Borrower shall re-submit such instruments or materials to Lender for Lender's approval and give Lender a second notice (in bold typeface) that states "SECOND NOTICE — YOUR FAILURE TO RESPOND TO THIS NOTICE AND REQUEST FOR APPROVAL WITHIN TEN (10) BUSINESS DAYS OF YOUR RECEIPT OF THIS NOTICE SHALL CONSTITUTE YOUR DEEMED CONSENT TO THE MATTERS DESCRIBED IN OR THAT ARE THE SUBJECT OF THIS NOTICE". If Lender fails to respond to such second notice within ten (10) Business Days of receipt of same, then Lender's consent to the proposed request or submission that is the subject of such notice shall be deemed granted.

(c) With respect to any Material Alteration, unless otherwise consented to by Lender, Borrower shall promptly deliver to Mortgage Lender as security for the payment of such amounts and as additional security for Borrower's obligations under the Loan Documents any of the following: (A) cash, (B) U.S. Obligations, (C) other securities having a rating acceptable to Lender and that the applicable Rating Agencies have confirmed in writing will not, in and of itself, result in a downgrade, withdrawal or qualification of the initial, or, if higher, then current

ratings assigned to any Securities or any class thereof in connection with any Securitization, (D) a completion and performance bond or an irrevocable letter of credit (payable on sight draft only) issued by an Eligible Institution, or (E) a completion guaranty from an Approved Guarantor in the form attached hereto as Exhibit A (with such changes as Lender shall approve), together with evidence reasonably satisfactory to Lender that the Approved Guarantor has reasonable liquidity taking into account the nature and amount of the guaranteed obligations under such completion guaranty (it being agreed that, if the Approved Guarantor in question is Holdings, then the amounts available for repayment of such obligations under any revolving credit facility in effect at such time in favor of Harrah's Operating Company, Inc. will be taken into account in determining whether Holdings has reasonable liquidity), and with, if required by applicable Rating Agency requirements, an Additional Insolvency Opinion. Such security, including the amount of the guaranteed obligations under any completion guaranty delivered as aforesaid, shall be in an amount equal to the sum of (i) the excess of the total unpaid amounts with respect to alterations to the Improvements on the applicable Individual Property (other than such amounts to be paid or reimbursed by tenants under the Leases) over the Threshold Amount and (ii) the costs of collection, and, upon the occurrence and during the continuance of an Event of Default, Lender may apply such security from time to time at the option of Lender to pay for such alterations.

**5.1.22 Operation of Properties.** (a) Borrower shall cause Mortgage Borrower to cause each of the Properties to be operated, in all material respects, in accordance with the Operating Leases and in accordance with all applicable Legal Requirements, including Gaming Laws, and all Gaming Licenses and other Operating Permits and in a manner consistent with their respective use as of the Closing Date. Borrower shall cause Operating Company to post all required bonds, if any, with any Gaming Authority as and in the amounts required under all applicable Legal Requirements (and shall, if Lender makes a request therefor, promptly provide Lender with copies of all such bonds).

(b) Borrower shall not, without Lender's prior written consent, permit Operating Company to assign or transfer, and Operating Company shall not, without Lender's prior written consent, assign or transfer, or delegate any responsibilities with respect to, any Gaming License or Operating Permit.

(c) Borrower shall cause Operating Company to make all filings required under the Gaming Laws, or in connection with any Gaming Licenses or Operating Permits, including in connection with the origination of the Mortgage Loan and the Mezzanine Loans, and shall deliver copies of such filings as Lender shall reasonably request to Lender, promptly upon request. Borrower will timely pay all fees, investigative fees and costs required by the Gaming Authorities with respect to any such approvals and licenses. Borrower will and will cause Mortgage Borrower to diligently and comprehensively respond to any inquiries and requests from the Gaming Authorities and promptly file or cause to be filed any additional information required in connection with any required filings as soon as practicable after receipt of requests therefor.

(d) Upon request of Lender, Borrower shall deliver to Lender (or cause Operating Company to deliver to Lender) such evidence of compliance (by Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company and each Individual Property) with

all Legal Requirements, including Gaming Laws as shall be reasonably requested by Lender. Borrower shall immediately deliver to Lender (and shall cause Operating Company and Mortgage Borrower to deliver to Lender) any notice of material non-compliance or material violation of any Legal Requirement, or of any material inquiry or investigation commenced by the Gaming Authorities in connection with any of the Properties. Borrower shall immediately notify Lender if it, Senior Mezzanine Borrower, Mortgage Borrower or Operating Company believe that any material license, including any Gaming License, is being or could be revoked or suspended, or that any action is pending, being considered or being, or could be, taken to revoke or suspend Borrower's, Senior Mezzanine Borrower's, Mortgage Borrower's or Operating Company's material licenses, including the Gaming Licenses, or to fine, penalize or impose remedies upon Borrower, Mortgage Borrower, Senior Mezzanine Borrower or Operating Company, or that any action is pending, being considered, or being, or could be, taken to discontinue, suspend, deny, decrease or recoup any payments due, made or coming due to Borrower, Senior Mezzanine Borrower, Mortgage Borrower or Operating Company, in each case if same might reasonably be expected to have an Individual Material Adverse Effect. Borrower shall immediately deliver to Lender any notice received by Borrower, Senior Mezzanine Borrower, Mortgage Borrower or Operating Company alleging or relating to the material non-compliance by Borrower, Senior Mezzanine Borrower, Mortgage Borrower or Operating Company with any Legal Requirements, including Gaming Laws.

(e) In the event that any of the Operating Leases expire or are terminated (without limiting any obligation of Borrower to obtain Lender's consent to any termination or modification of any of the Operating Leases in accordance with the terms and provisions of this Agreement), Borrower shall cause Mortgage Borrower to promptly enter into a replacement Operating Lease (in form and substance satisfactory to Lender) with Operating Company or another operating company reasonably satisfactory to Lender, provided Borrower will obtain a Rating Agency Confirmation as a condition to the effectiveness of such replacement Operating Lease and that Borrower will cause Guarantor (Operating Lease) to execute and deliver an operating lease guaranty in the same form and substance as the Operating Lease Guaranty.

(f) Borrower shall cause Mortgage Borrower to: (i) promptly perform and/or observe, in all material respects, all of the covenants and agreements required to be performed and observed by it under the Operating Lease and do all things necessary to preserve and to keep unimpaired its material rights thereunder; (ii) promptly notify Lender of any material default under any Operating Lease or Operating Lease Guaranty of which it is aware; (iii) promptly deliver to Lender a copy of each financial statement, business plan, capital expenditures plan, notice, report and estimate received by it under each Operating Lease; and (iv) enforce the performance and observance of all of the material covenants and agreements required to be performed and/or observed by each Operating Company under each Operating Lease and by each Guarantor (Operating Lease) under each Operating Lease Guaranty, in a commercially reasonable manner.

(g) Borrower shall cause Mortgage Borrower to cause the Hotel Components to be at all times open for business as a hotel and the Casino Components to be open for business as a casino, except to the extent necessary to undertake any alterations or repairs (subject to the provisions of this Agreement with respect to the performance of any such alterations or repairs). Borrower shall cause each Individual Property to be at all times operated, managed and

maintained, at all times and in the manner and accordance with the standards required pursuant to the Operating Leases and all applicable Legal Requirements in all material respects.

(h) If Mortgage Borrower shall be in material default under any Operating Lease, then, subject to the terms of such Operating Lease, Borrower shall cause Mortgage Borrower (subject to any applicable Legal Requirements) to grant Lender the right (but not the obligation), to cause the default or defaults under such Operating Lease to be remedied and otherwise exercise any and all rights of Mortgage Borrower under such Operating Lease, as may be necessary to prevent or cure any default provided such actions are necessary to protect Lender's interest under the Loan Documents, and Lender shall have the right to enter all or any portion of the affected Individual Property at such times and in such manner as Lender deems necessary, to prevent or to cure any such default. The actions or payments of Lender to cure any default by Mortgage Borrower under any Operating Lease shall not remove or waive, as between Borrower and Lender, any default that may occur or occurred under this Agreement by virtue of such default by Mortgage Borrower under such Operating Lease. All out-of-pocket sums reasonably expended by Lender to cure any such default shall be paid by Borrower to Lender, upon demand, with interest on such sum at the rate set forth in this Agreement from the date such sum is expended to and including the date the reimbursement payment is made to Lender. All such indebtedness shall be deemed to be secured by the Pledge Agreement and the Collateral.

(i) Borrower shall notify Lender promptly in writing of (i) the occurrence, to Borrower's knowledge, of any material default by any party to any Operating Lease or any Operating Lease Guaranty, (ii) the occurrence, to Borrower's knowledge, of any event that, with the passage of time or service of notice, or both, would constitute a material default by any party under any Operating Lease or any Operating Lease Guaranty, and (iii) the receipt by Borrower or its Affiliate of any notice (written or otherwise) from any party under any Operating Lease or any Operating Lease Guaranty noting or claiming the occurrence of any material default by Borrower under such Operating Lease or such Operating Lease Guaranty.

(j) Borrower shall (subject to any applicable Legal Requirements) promptly cause Mortgage Borrower to execute, acknowledge and deliver to Lender such instruments as may reasonably be required to permit Lender to cure any material default under any Operating Lease or permit Lender to take such other action required to enable Lender to cure or remedy the matter in default and preserve the value of the security interest of Lender under the Loan Documents with respect to the Collateral. Upon the occurrence and during the continuance of an Event of Default, Borrower irrevocably appoints Lender as its true and lawful attorney-in-fact to do, in its name or otherwise, any and all acts and to execute any and all documents that are necessary to preserve any rights of Mortgage Borrower under or with respect to any Operating Lease, including, without limitation, the right to effectuate any extension or renewal of any Operating Lease, or to preserve any rights of Mortgage Borrower whatsoever in respect of any part of any Operating Lease (and the above powers granted to Lender are coupled with an interest and shall be irrevocable).

(k) With respect to any Operating Lease or any Operating Lease Guaranty, Borrower shall, from time to time, upon ten (10) Business Days' prior written request from Lender, execute, acknowledge and deliver to Lender, a statement containing the following: (A) a statement that such Operating Lease or such Operating Lease Guaranty is unmodified and in full

force and effect or, if there have been modifications, that the Operating Lease or the Operating Lease Guaranty is in full force and effect as modified and setting forth such modifications, (B) a statement that Mortgage Borrower is not in default thereunder beyond any applicable grace, cure or notice period or, if any such default shall exist thereunder, a description of such default and the steps being taken to cure such default, (C) a statement that, to Borrower's knowledge, either the other party thereto is not in default thereunder beyond any applicable grace, cure or notice period or, if any such default shall exist thereunder, a description of such default and the steps being taken to cure such default and (D) such other information with respect to the Operating Lease or the Operating Lease Guaranty as Lender shall reasonably request.

(l) With respect to any Operating Lease, Borrower shall, from time to time, upon ten (10) Business Days of Lender's prior written request from Lender, provide Lender with a statement from each Operating Company containing the following: (A) a statement that such Operating Lease is unmodified and in full force and effect or, if there have been modifications, that the Operating Lease is in full force and effect as modified and setting forth such modifications, (B) a statement that Operating Company is not in default thereunder beyond any applicable grace, cure or notice period or, if any such default shall exist thereunder, a description of such default and the steps being taken to cure such default, (C) a statement that, to Operating Company's knowledge, the Mortgage Borrower is not in default thereunder beyond any applicable grace, cure or notice period or, if any such default shall exist thereunder, a description of such default and the steps being taken to cure such default and (D) such other information with respect to Operating Company, any Operating Lease and/or any Operating Lease Guaranty as Lender shall reasonably request.

(m) With respect to any Operating Lease Guaranty, Borrower shall, from time to time, upon ten (10) Business Days of Lender's prior written request from Lender, provide Lender with a statement from Guarantor (Operating Lease) containing the following: (A) a statement that such Operating Lease Guaranty is unmodified and in full force and effect or, if there have been modifications, that the Operating Lease Guaranty is in full force and effect as modified and setting forth such modifications; (B) a statement that Guarantor (Operating Lease) is not in default thereunder beyond any applicable grace, cure or notice period or, if any such default shall exist thereunder, a description of such default and the steps being taken to cure such default; and (C) such other information with respect to such Guarantor (Operating Lease) and/or Operating Lease Guaranty as Lender shall reasonably request.

**5.1.23 Ground Lease Estoppel.** Borrower shall, on or prior to May 28, 2008, either (i) effect the substitution of the Properties commonly known as "Paris Las Vegas" and "Harrah's Laughlin" for the Individual Properties referred to as "Harrah's Lake Tahoe", "Harvey's Lake Tahoe", "Bill's Lake Tahoe" and "Showboat Atlantic City" as described in Section 2.5.2 of this Agreement or (ii) (x) cause the occurrence of the events set forth in paragraph 1, clause (ii) of the Ground Lease Side Letter and (y) in connection therewith, deliver to Lender updates to its UCC Title Insurance Policy and any endorsements to the Mortgage Borrower's owner's policies delivered to Lender in connection with the closing of the Loan, together with such other documents, instruments and new or updated opinions (including as to enforceability, non-consolidation and true lease matters) as Lender may reasonably request. The failure by Borrower to cause the occurrence of the event described in clause (i) or of the events described in clause (ii) above, on or prior to May 28, 2008 shall constitute a "Ground Lease

Estoppel Trigger Event” hereunder, but shall not constitute a Default or an Event of Default hereunder.

**5.1.24 Mortgage Loan Reserve Funds.** Borrower shall cause Mortgage Borrower and Senior Mezzanine Borrower to deposit and maintain each of the Mortgage Loan Reserve Funds and Senior Mezzanine Loan Reserve Funds (if any) as more particularly set forth in Article VII of the Mortgage Loan Agreement and Senior Mezzanine Loan Agreement and to perform and comply with all the terms and provisions relating thereto. Borrower grants to Lender a first-priority perfected security interest in Borrower’s interest in each of the Mortgage Loan Reserve Funds and Senior Mezzanine Loan Reserve Funds, if any, subject to the prior rights of Mortgage Lender and Senior Mezzanine Lender, and any and all monies now or hereafter deposited in each Mortgage Loan Reserve Fund and Senior Mezzanine Loan Reserve Funds as additional security for payment of the Debt to the extent Borrower has an interest in same. Subject to the qualifications regarding Mortgage Lender’s and Senior Mezzanine Lender’s interest in the Mortgage Loan Reserve Funds and Senior Mezzanine Loan Reserve Funds (as applicable), if any, until expended or applied in accordance with the Mortgage Loan Documents, Senior Mezzanine Loan Documents or the Loan Documents, Borrower’s interest in the Mortgage Loan Reserve Funds and Senior Mezzanine Loan Reserve Funds shall constitute additional security for the Debt and upon the occurrence of an Event of Default, Lender may, in addition to any and all other remedies available to Lender, apply any sums then present in any or all of the Mortgage Loan Reserve Funds and Senior Mezzanine Loan Reserve Funds to the payment of the Debt in any order in its sole discretion and/or hold the same as Collateral for the Loan.

**5.1.25 Notices.** Borrower shall give notice, or cause notice to be given to Lender promptly upon the occurrence and during the continuance of an Event of Default and upon any of the following:

(a) any Mortgage Loan Event of Default or Senior Mezzanine Loan Event of Default;

(b) any default or event of default under any contractual obligation of Borrower, or, to the knowledge of Borrower, Senior Mezzanine Borrower, Mortgage Borrower, Operating Company, Principal or Guarantor that could reasonably be expected to have an Individual Material Adverse Affect or an Aggregate Material Adverse Affect;

(c) any litigation or proceeding affecting Borrower, or, to the knowledge of Borrower, affecting any of Mortgage Borrower, Senior Mezzanine Borrower, Operating Company, Principal or Guarantor, which could or could reasonably be expected to have an Individual Material Adverse Effect or an Aggregate Material Adverse Effect; or

(d) a change in the business, operations, property or financial or other condition or prospects of Borrower, or, to the knowledge of Borrower, Senior Mezzanine Borrower, Mortgage Borrower, Operating Company, Principal or Guarantor which could reasonably be expected to have an Individual Material Adverse Affect or an Aggregate Material Adverse Affect.

**5.1.26 Special Distributions.** On each date on which amounts are required to be paid to Lender under any of the Loan Documents (or required be disbursed to the Mezzanine Collection Account, if applicable) Borrower shall exercise its rights under the First Mezzanine Borrower Company Agreement to cause Senior Mezzanine Borrower to make to Borrower a distribution in an aggregate amount such that Lender shall receive the amount required to be disbursed to the Mezzanine Collection Account or otherwise paid to Lender on such date.

**5.1.27 Curing.** Lender shall have the right, but shall not have the obligation, to exercise Borrower's rights under the First Mezzanine Borrower Company Agreement (a) to cure a Mortgage Loan Default, or Senior Mezzanine Loan Default, (b) to cure a Mortgage Loan Event of Default, or Senior Mezzanine Loan Event of Default, (c) to satisfy any Liens, claims or judgments against the Properties (except for Liens permitted by the Mortgage Loan Documents or Senior Mezzanine Loan Documents), (d) to satisfy any Liens, claims or judgments against the Senior Mezzanine Collateral, in the case of either (a), (b) or (c), unless Borrower, Senior Mezzanine Borrower or Mortgage Borrower shall be diligently pursuing remedies to cure the Mortgage Loan Default, the Senior Mezzanine Loan Default, the Senior Mezzanine Loan Event of Default or Mortgage Loan Event of Default or to satisfy any such Liens, claims or judgments, in either case to Lender's sole satisfaction. Borrower shall reimburse Lender on demand for any and all costs incurred by Lender in connection with curing any such Mortgage Loan Default, Senior Mezzanine Loan Default, Mortgage Loan Event of Default or Senior Mezzanine Loan Event of Default or satisfying any Liens, claims or judgments against any of the Properties or the Senior Mezzanine Collateral.

**5.1.28 Senior Borrower Covenants.** Borrower shall cause Mortgage Borrower and Senior Mezzanine Borrower to comply with all obligations with which Mortgage Borrower and/or Senior Mezzanine Borrower have covenanted to comply under the Mortgage Loan Agreement, Senior Mezzanine Loan Agreement, all Senior Mezzanine Loan Documents and all other Mortgage Loan Documents, as applicable (including, without limitation, those certain affirmative and negative covenants set forth in Article V of the Mortgage Loan Agreement and Senior Mezzanine Loan Agreement), unless otherwise consented to in writing by Lender.

**Section 5.2. Negative Covenants.** From the date hereof until payment and performance in full of all obligations of Borrower under the Loan Documents or the earlier release of the Liens of the Collateral in accordance with the terms of this Agreement and the other Loan Documents, Borrower covenants and agrees with Lender that it will not do, directly or indirectly, any of the following (without, in each case, the prior written consent of Lender):

**5.2.1 Operation of Properties.** (a) Borrower shall not cause or permit Mortgage Borrower to, without Lender's prior consent: (i) surrender, terminate or cancel (or permit to be surrendered, terminated or canceled) any of the Operating Leases or any Operating Lease Guaranty; (ii) reduce or consent to the reduction of (or permit the reduction or the consent to the reduction) of the term of any of the Operating Leases; (iii) decrease or consent to any decrease (or permit to be decreased or the consent to the decrease) of the amount of any rent or other charges payable under any of the Operating Leases; (iv) Transfer, convey, assign, sell, mortgage, encumber, pledge, hypothecate, grant a security interest in, grant an option or options with respect to, or otherwise dispose of (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, whether or not for consideration) the Properties or any collateral

for the Mortgage Loan (or permit Operating Company to do so), in each case without the prior written consent of Lender or except as expressly permitted in Section 5.2.10, or (v) otherwise modify, change, supplement, alter or amend, or waive or release (or permit to be modified, changed, supplemented, altered, amended, waived or released) any of the rights and remedies of Borrower, Mortgage Borrower or any Operating Company under any of the Operating Leases in any material respect or any Operating Lease Guaranty (provided that Lender shall not unreasonably withhold its consent to any modification, change, supplement, alteration, amendment, waiver or release of the Operating Lease as may be reasonably necessary to comply with the requirements of this Agreement or any other Loan Document).

(b) During the continuance of an Event of Default, Borrower shall not exercise (and shall not cause or permit Mortgage Borrower to exercise) any rights, make any decisions, grant any approvals or otherwise take any action under any Operating Lease, Operating Lease Guaranty or any management agreement without, in each instance, the prior written consent of Lender, which consent may be withheld in Lender's sole discretion.

**5.2.2 Liens.** (a) Borrower shall not create, incur, assume or suffer to exist any Lien on any of the Collateral, except Liens created by or permitted pursuant to the Loan Documents. Borrower shall not, and shall not cause or permit Mortgage Borrower or Senior Mezzanine Borrower to create, incur, assume or suffer to exist any Lien on any portion of any Individual Property or Senior Mezzanine Collateral or permit any such action to be taken, except:

(i) Permitted Encumbrances;

(ii) Liens created by or permitted pursuant to the Loan Documents, Senior Mezzanine Loan Documents or Mortgage Loan Documents; and

(iii) Liens for Taxes or Other Charges not yet due.

(b) Borrower shall not incur any Indebtedness other than the Loan, shall not permit Mortgage Borrower to incur any Indebtedness other than the Mortgage Loan and Permitted Indebtedness (as defined in the Mortgage Loan Agreement), and shall not permit Senior Mezzanine Borrower to incur any Indebtedness other than the Senior Mezzanine Loans. Borrower shall not permit any Operating Company to incur Indebtedness in excess or other than Permitted Indebtedness (Operating Company).

**5.2.3 Dissolution.** Borrower shall not, and shall not permit Mortgage Borrower, Senior Mezzanine Borrower or Operating Company to, (a) engage in any dissolution, liquidation or consolidation or merger with or into any other business entity, (b) engage in any business activity not related to (i) in the case of Borrower, the ownership of the Collateral, (ii) in the case of Senior Mezzanine Borrower, ownership of the Senior Mezzanine Collateral, (iii) in the case of Mortgage Borrower, the ownership and operation of the Properties and (iv) in the case of Operating Company, the leasing and operation of the Properties, (c) transfer, lease or sell, in one transaction or any combination of transactions, the assets or all or substantially all of the properties or assets of Borrower, Senior Mezzanine Borrower or Mortgage Borrower except to the extent permitted by the Loan Documents, (d) modify (in any material respect), amend (in any

material respect), waive or terminate its organizational documents or its qualification and good standing in any jurisdiction or (e) cause Holdings to (i) dissolve, wind up or liquidate or take any action, or omit to take an action, as a result of which Holdings, Senior Mezzanine Borrower or Mortgage Borrower would be dissolved, wound up or liquidated in whole or in part, or (ii) amend (in any material respect), modify (in any material respect), waive or terminate the certificate of incorporation or bylaws of Holdings, Senior Mezzanine Borrower or Mortgage Borrower, in each case, without obtaining the prior consent of Lender.

**5.2.4 Change in Business.** Borrower shall not cause Mortgage Borrower to enter into any line of business other than the ownership and operation of any of the Properties and other activities reasonably ancillary thereto, or make any material change in the scope or nature of its business objectives, purposes or operations, or undertake or participate in activities other than the continuance of its present business. In addition, Borrower shall not permit or cause Mortgage Borrower to cancel or otherwise forgive or release any material claim or debt (other than termination of Leases in accordance herewith) owed to Mortgage Borrower by any Person, except for adequate consideration and in the ordinary cause of Mortgage Borrower's business. Borrower shall not enter into any line of business other than the ownership of the Collateral, or make any material change in the scope or nature of its business objectives, purposes or operations, or undertake or participate in activities other than the continuance of its present business. Borrower shall not allow Senior Mezzanine Borrower to enter into any line of business other than the direct or indirect ownership of the applicable Senior Mezzanine Collateral or make any material change in the scope or nature of its business objectives, purposes or operations, or undertake or participate in activities other than the continuance of its present business.

**5.2.5 Debt Cancellation.** Borrower shall not, and shall not permit Mortgage Borrower, Senior Mezzanine Borrower or Operating Company to, cancel or otherwise forgive or release any claim or debt (other than termination of Leases in accordance herewith) owed to Mortgage Borrower, Borrower or Senior Mezzanine Borrower by any Person, except for adequate consideration and in the ordinary course of Mortgage Borrower's, Borrower's or Senior Mezzanine Borrower's business. In addition, Borrower shall not permit or cause itself, Senior Mezzanine Borrower, or Mortgage Borrower to cancel or otherwise forgive or release any material claim or debt (other than termination of Leases in accordance herewith) owed to Senior Mezzanine Borrower, Borrower or Mortgage Borrower by any Person, except for adequate consideration and in the ordinary course of Mortgage Borrower's, Borrower's or Senior Mezzanine Borrower's business.

**5.2.6 Zoning.** Borrower shall not, and shall not permit Mortgage Borrower or Operating Company to, initiate or consent to any zoning reclassification of any portion of any Individual Property or seek any variance under any existing zoning ordinance or use or permit the use of any portion of any Individual Property in any manner that could result in such use becoming a non-conforming use under any zoning ordinance or any other applicable land use law, rule or regulation, without the prior consent of Lender.

**5.2.7 Ground Lease.** Borrower shall not (or shall not cause or permit Mortgage Borrower or Ground Lease Subsidiary, as applicable, to) (a) fail to pay any rent, additional rent or other charge mentioned in or made payable under any Ground Lease as and when such rent or

other charge is due (unless waived in writing by the ground lessor under such Ground Lease), (b) permit to occur any event of default (beyond any applicable notice, grace or cure periods) by any Mortgage Borrower or Ground Lease Subsidiary, as applicable, as tenant under the related Ground Lease, in the observance or performance of any term, covenant or condition of such Ground Lease on the part of such Mortgage Borrower or Ground Lease Subsidiary, as applicable, to be observed or performed (unless waived in writing by the ground lessor under such Ground Lease), (c) permit any one or more of the events referred to in any Ground Lease to occur which would cause such Ground Lease to terminate without notice or action by the ground lessor under such Ground Lease or which would entitle such ground lessor to terminate such Ground Lease and the term thereof by giving notice to the related Mortgage Borrower or Ground Lease Subsidiary, as applicable, as tenant thereunder (unless waived in writing by the ground lessor under such Ground Lease), (d) permit the leasehold estate created by any Ground Lease to be surrendered or any Ground Lease to be terminated or canceled for any reason or under any circumstances whatsoever or (e) permit any of the terms, covenants or conditions of any Ground Lease to be materially modified, materially changed, materially supplemented, materially altered, or materially amended without the consent of Lender except as otherwise may be permitted by this Agreement.

**5.2.8 Principal Place of Business and Organization.** Borrower shall not, nor shall Borrower permit Mortgage Borrower, Senior Mezzanine Borrower or Operating Company to, change the place of its organization as set forth in Section 4.1.28 without the consent of Lender, which consent shall not be unreasonably withheld. Upon Lender's request, Borrower shall (and shall cause Mortgage Borrower, Senior Mezzanine Borrower or Operating Company to) execute and deliver additional financing statements, security agreements and other instruments which may be necessary to effectively evidence or perfect Mortgage Lender's security interest in any of the Properties, any Senior Mezzanine Lender's Security Interest in the related Senior Mezzanine Collateral or Lender's security interest in the Collateral as a result of such change of place of organization.

**5.2.9 ERISA.** (a) Borrower shall not engage in any transaction which would cause any obligation, or action taken or to be taken, hereunder (or the exercise by Lender of any of its rights under the Note, this Agreement or the other Loan Documents) to be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under ERISA.

(b) Borrower further covenants and agrees to deliver to Lender such certifications or other evidence from time to time throughout the term of the Loan, as requested by Lender in its sole discretion, that (i) Borrower is not an "employee benefit plan" as defined in Section 3(3) of ERISA, which is subject to Title I of ERISA, or a "governmental plan" within the meaning of Section 3(32) of ERISA; (ii) Borrower is not subject to any state statute regulating investments of, or fiduciary obligations with respect to, governmental plans; and (iii) one or more of the following circumstances is true:

(A) Equity interests in Borrower are publicly offered securities, within the meaning of 29 C.F.R. § 2510.3-101(b)(2);

(B) Less than twenty-five percent (25%) of each outstanding class of equity interests in Borrower is held by “benefit plan investors” within the meaning of 29 C.F.R. § 2510.3-101(f)(2); or

(C) Borrower qualifies as an “operating company” or a “real estate operating company” within the meaning of 29 C.F.R. § 2510.3-101(c) or (e).

**5.2.10 Transfers.** (a) Without the prior consent of Lender and except to the extent otherwise set forth in this Section 5.2.10, Borrower shall not, and shall not permit any other Person holding any direct or indirect legal, economic, beneficial or other ownership interest in Borrower, the Collateral, the Senior Mezzanine Collateral or one or more of the Properties to, (1) Transfer all or any part of the Collateral, the Senior Mezzanine Collateral or one or more of the Properties, (2) permit any Transfer (directly or indirectly) of any direct or indirect interest in Borrower, or (3) permit any Transfer (directly or indirectly) of any direct or indirect interest in Operating Company or any transfer or assignment or subletting (of all or substantially of any Individual Property) by any Operating Company under any Operating Lease.

(b) A Transfer of (but not a mortgage, pledge, hypothecation, encumbrance or grant of a security interest in) a direct or indirect beneficial interest in Borrower consisting of ownership interests in or at any level above the level of Ninth Mezzanine Borrower shall be permitted without Lender’s consent (but subject to the last sentence of Section 5.2.10(d)), provided that (i) immediately prior to such Transfer, no Event of Default shall have occurred and be continuing, (ii) Borrower is at all times Controlled and at least fifty percent (50%) owned (directly or indirectly) by Qualified Transferees, (iii) subsequent to such Transfer, Borrower will continue to be a Special Purpose Entity, (iv) if (1) such Transfer causes the Transferee to own, in the aggregate with the ownership interests of its Affiliates, more than a forty nine percent (49%) interest in Borrower (and the Transferee (together with the ownership interests of its Affiliates) did not, prior to such Transfer, own more than a forty nine percent (49%) interest in Borrower), or (2) such Transfer, together with all other Transfers by Borrower, whether in a single Transfer or in a series of Transfers and whether or not effected simultaneously, results in a Transfer of more than forty nine percent (49%) of the aggregate interests in Borrower, then, if required by applicable Rating Agency requirements, an acceptable non-consolidation opinion is delivered to the holder of the Loan and to each of the Rating Agencies concerning, as applicable, Borrower, the new Transferee and/or their respective owners, and (v) subsequent to such Transfer, the beneficial ownership of Borrower and Operating Company will be substantially identical. For purposes hereof, Control shall not be deemed absent solely because other parties have veto rights with respect to major decisions. Further, a Change in Control shall be deemed a Transfer hereunder and, unless clauses (ii) through (v) of this Section 5.2.10(b) shall be satisfied, the same shall be an Event of Default hereunder (and for the sake of clarity, nothing else contained in this Section 5.2.10 or this Agreement shall be deemed to limit or qualify the above terms of this sentence).

(c) A Transfer of (but not a mortgage, pledge, hypothecation, encumbrance or grant of a security interest in) a direct or indirect beneficial interest in Operating Company shall be permitted without Lender’s consent (but subject to the last sentence of Section 5.2.10(d)), provided that (i) immediately prior to such Transfer, no Event of Default shall have occurred and be continuing, (ii) Operating Company is at all times Controlled and at least fifty percent (50%)

owned (directly or indirectly) by Qualified Transferees, and (iii) subsequent to such Transfer, the beneficial ownership of Borrower and Operating Company will be substantially identical. For purposes hereof, Control shall not be deemed absent solely because other parties have veto rights with respect to major decisions.

(d) In the event that a permitted Transfer of more than a forty nine percent (49%) interest in Borrower is made pursuant to this Section 5.2.10, at Borrower's request, Lender shall release Guarantor from (i) the obligations and liabilities under any Guaranty for obligations and liabilities that occurred subsequent to such Transfer, provided that a replacement guarantor(s) reasonably satisfactory to Lender shall have executed and delivered to Lender replacement guarantees in form and substance substantially similar to the applicable Guaranty, pursuant to which such replacement guarantor(s) expressly assumes all of Guarantor's obligations under the applicable Guaranty for obligations and liabilities arising from and after the date of such Transfer, and (ii) the obligations and liabilities under any Guaranty for obligations and liabilities that occurred either prior or subsequent to such Transfer, provided that a replacement guarantor(s) reasonably satisfactory to Lender shall have executed and delivered to Lender replacement guarantees in form and substance substantially similar to the applicable Guaranty, pursuant to which such replacement guarantor(s) expressly assumes all of Guarantor's obligations under the applicable Guaranty, including those which occurred prior to the Transfer. Notwithstanding the foregoing or anything else that may be construed to the contrary, in no event may Borrower effect a Transfer, or permit or suffer any Transfer, that would result in any loss or impairment of any Gaming License or in any similar event that would have an Individual Property Material Adverse Effect or Aggregate Property Material Adverse Effect.

(e) Notwithstanding the foregoing or anything herein to the contrary, but subject to the final sentence of Section 5.2.10(d), nothing contained in this Agreement or the other Loan Documents shall in any way restrict or prohibit, nor shall any notice to Lender or consent of Lender or Rating Agency Confirmation be required in connection with the Transfer or issuance in the ordinary course of any securities in any Person whose securities are publicly traded on a national exchange (except to the extent that the same would cause a Change of Control) or with an initial public offering of securities issued by Holdings or of subsidiary of Holdings (other than the Borrower and any Mezzanine Borrower (provided that, in the case of an issuance by a subsidiary, such issuance would not cause a Change of Control)).

(f) Assumptions of the Loan shall be permitted, provided that the following conditions are satisfied and/or occur to Lender's satisfaction:

(i) such sale has been approved or deemed approved under the Mortgage Loan Documents and Senior Mezzanine Loan Documents and all conditions set forth in the Mortgage Loan Documents and Senior Mezzanine Loan Documents relating thereto have been satisfied;

(ii) an assumption of this Agreement, the Note, the Pledge Agreement and the other Loan Documents as so modified by the proposed transferee, subject to the provisions of Section 9.3 hereof;

(iii) payment of all of reasonable out-of-pocket costs and expenses incurred in connection with such Transfer including, without limitation, the cost of any legal fees and expenses, Rating Agency fees and expenses or required legal opinions;

(iv) the payment of a non-refundable assumption fee equal to Lender's Share of One Million and No/100 Dollars (\$1,000,000) per transaction (effecting an assumption of the Loan) or series of related transactions (effected to implement an assumption of the Loan);

(v) the delivery of an Additional Insolvency Opinion reflecting the proposed transfer satisfactory in form and substance to Lender; and the delivery of an Additional True-Lease Opinion in form and substance satisfactory to Lender;

(vi) the proposed Transferee being Controlled and at least 50% owned, directly or indirectly, by one or more Qualified Transferees;

(vii) the Operating Company being Controlled and at least 50% owned, directly or indirectly, by one or more Qualified Transferees, having sufficient experience (or having a manager that has sufficient experience) in the management of properties similar to the Properties, and such Operating Company or its manager not having materially less than the same level of experience in the operation of properties similar to the Properties as the current Operating Company under the Operating Lease and, in each case, Lender shall be provided with reasonable evidence thereof (and Lender reserves the right to approve the Transferee(s) without approving the substitution of the Operating Company) and the operating tenant shall be either the Operating Company or, if permitted by applicable Legal Requirements, a manager acceptable to Lender under a management agreement acceptable to Lender; provided that so long as the Operating Lease is in force and effect and the current Operating Company shall continue to be the tenant thereunder and owned and Controlled by the same Person(s) that currently own and Control the Operating Company, the condition with respect to the Operating Company set forth in this subclause (vi) shall be deemed to have been met in all respects;

(viii) the delivery of evidence reasonably satisfactory to Lender that the single purpose nature and bankruptcy remoteness of Borrower, its shareholders, partners or members, as the case may be, following such transfers are in accordance with the then current standards of Lender and the Rating Agencies; and the Transferee(s)' continued compliance with the representations and covenants set forth in Section 4.1.30 and Section 5.2.9 hereof;

(ix) Borrower's delivery to Lender of evidence reasonably satisfactory to Lender of any required approval or consent of any Governmental Authority, including the Gaming Authorities, that has direct or indirect authority or oversight over Borrower, Mortgage Borrower, Senior Mezzanine Borrower, the Properties, Operating Company or the operations conducted at the Properties to the change in ownership and/or operator of the Properties (or any part thereof);

(x) prior to any release of the Guarantor, a substitute guarantor reasonably acceptable to Lender shall have assumed all of the obligations of the Guarantor under the Guaranty (FF&E), the Guaranty (Recourse Carveouts), the Operating Lease Guaranty, the Guaranty (Ground Lease Estoppel), any completion guaranty provided under Section 5.1.21 and the Environmental Indemnity or executed replacement guaranties and an environmental indemnity reasonably satisfactory to Lender;

(xi) receipt of evidence satisfactory to Lender that all of the entities which own interests in the transferee similar to the interests in Borrower owned by the Eighth Mezzanine Borrower (1) shall assume the Eighth Mezzanine Loan (if still outstanding) and all the agreements of Eighth Mezzanine Borrower under the Eighth Mezzanine Loan Documents (and without limiting the foregoing, all of the ownership interests in Borrower, all payments thereon and all proceeds thereof shall be pledged to Lender on terms no less favorable than the pledge of the Collateral under the applicable Pledge Agreement), (2) shall each be a bankruptcy-remote single purpose entity, and (3) shall otherwise have a legal, financial and ownership structure that is (a) substantially the same as the Eighth Mezzanine Borrower or (b) at least as favorable to the Eighth Mezzanine Lender, as determined by the Eighth Mezzanine Lender in its reasonable discretion, as the legal, financial and ownership structure of Eighth Mezzanine Borrower;

(xii) receipt of evidence satisfactory to Lender that all of the entities which own interests in the transferee similar to the interests in Eighth Mezzanine Borrower owned by the Ninth Mezzanine Borrower (1) shall assume the Ninth Mezzanine Loan (if still outstanding) and all the agreements of Ninth Mezzanine Borrower under the Ninth Mezzanine Loan Documents (and without limiting the foregoing, all of the ownership interests in Eighth Mezzanine Borrower, all payments thereon and all proceeds thereof shall be pledged to Lender on terms no less favorable than the pledge of the Collateral under the applicable Pledge Agreement), (2) shall each be a bankruptcy remote single purpose entity, and (3) shall otherwise have a legal, financial and ownership structure that is (a) substantially the same as the Ninth Mezzanine Borrower or (b) at least as favorable to the Ninth Mezzanine Lender, as determined by the Ninth Mezzanine Lender in its reasonable discretion, as the legal, financial and ownership structure of Ninth Mezzanine Borrower;

(xiii) a written consent to the transfer from the lender under each Mezzanine Loan (and, if any, a Permitted Mezzanine Loan) or receipt by Lender of other evidence satisfactory to Lender that all conditions imposed under the terms of each Mezzanine Loan and Permitted Mezzanine Loan shall have been complied with by the borrower thereunder or otherwise waived by the applicable lender;

(xiv) subsequent to such assumption of the Loan, the beneficial ownership of Borrower and Operating Company will be substantially identical; and

(xv) the delivery of a new Owner's Title Policy, in an amount equal to the value of the Properties, together with an endorsement to Lender in form and substance reasonably satisfactory to Lender.

Lender agrees to provide a written consent to a transfer pursuant to this Section 5.2.10(f) upon satisfaction of all of the conditions set forth in this Section 5.2.10(f) other than the condition set forth in clause (xiv) of this Section 5.2.10(f).

(g) Restrictions on Transfers set forth herein or in the Pledge shall not apply to (i) the pledge of the Collateral to Lender pursuant to the Pledge Agreement, (ii) the pledge by First Mezzanine Borrower of the ownership interests in Mortgage Borrower as security for the First Mezzanine Loan pursuant to the First Mezzanine Loan Agreement, (iii) the pledge by Second Mezzanine Borrower of the ownership interests in First Mezzanine Borrower as security for the Second Mezzanine Loan pursuant to the Second Mezzanine Loan Agreement, (iv) the pledge by Third Mezzanine Borrower of the ownership interests in Second Mezzanine Borrower as security for the Third Mezzanine Loan pursuant to the Third Mezzanine Loan Agreement, (v) the pledge by Fourth Mezzanine Borrower of the ownership interests in Third Mezzanine Borrower as security for the Fourth Mezzanine Loan pursuant to the Fourth Mezzanine Loan Agreement, (vi) the pledge by Fifth Mezzanine Borrower of the ownership interests in Fourth Mezzanine Borrower as security for the Fifth Mezzanine Loan pursuant to the Fifth Mezzanine Loan Agreement, (vii) the pledge by Sixth Mezzanine Borrower of the ownership interests in Fifth Mezzanine Borrower as security for the Sixth Mezzanine Loan pursuant to the Sixth Mezzanine Loan Agreement, (viii) the pledge by Eighth Mezzanine Borrower of the ownership interests in Borrower as security for the Eighth Mezzanine Loan pursuant to the Eighth Mezzanine Loan Agreement, (ix) the pledge by Ninth Mezzanine Borrower of the ownership interests in Eighth Mezzanine Borrower as security for the Ninth Mezzanine Loan pursuant to the Ninth Mezzanine Loan Agreement, (x) any pledge pursuant to a New Mezzanine Loan or (xi) the Transfer or pledge of any direct or indirect interest in Holdings, provided that no Change in Control shall occur.

(h) Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Debt immediately due and payable upon a Transfer without Lender's consent. This provision shall apply to every Transfer regardless of whether voluntary or not, or whether or not Lender has consented to any previous Transfer.

**5.2.11 Operating Lease Subsidiary.** Borrower shall not cause or permit Mortgage Borrower to Transfer any of its interests in Ground Lease Subsidiary without the prior written consent of Lender; Borrower shall not permit Mortgage Borrower to cause or permit Ground Lease Subsidiary to own any assets other than its interests in the Ground Lease or to incur any liabilities other than liabilities under the Ground Lease; Borrower shall not permit Mortgage Borrower to cause or permit Ground Lease Subsidiary to engage in any business other than that related to its ownership of interests in the Ground Lease.

**5.2.12 Limitations on Distributions.** Following the occurrence and during the continuance of an Event of Default, Borrower shall not make any distributions to its members. If any Distributions shall be received by Borrower or any Affiliate of Borrower after the occurrence and during the continuance of an Event of Default, Borrower shall hold, or shall cause the same to be held, in trust for the benefit of Lender.

**5.2.13 Other Limitations.** Prior to the payment in full of the Debt, neither Borrower nor any of its Affiliates shall, without the prior written consent of Lender (which may be furnished or withheld at its sole and absolute discretion), give its consent or approval to any of the following actions or items: the distribution by Mortgage Borrower or Senior Mezzanine Borrower of property other than cash.

**5.2.14 Refinancing.** Borrower shall not consent to or permit a refinancing of the Mortgage Loan or Senior Mezzanine Loan unless it obtains the prior consent of Lender, unless the Loan shall be paid in full in connection with such refinancing in accordance with this Agreement. Borrower shall not consent to or permit a prepayment in full or in part of the Mortgage Loan or Senior Mezzanine Loan unless it obtains the prior consent of Lender, unless the Loan shall likewise be prepaid (in the same proportion, in the case of any partial prepayment) in accordance with this Agreement.

**Section 5.3. General.** For avoidance of doubt, all requirements contained in this Article V with respect to the Operating Company shall mean that it shall be a Default or Event of Default hereunder if Operating Company fails to perform in the specified manner, but Lender acknowledges that Operating Company is not a party to this Agreement and that Borrower does not control Operating Company.

## **VI. INSURANCE; CASUALTY; CONDEMNATION**

**Section 6.1. Insurance.** (a) Borrower shall cause Mortgage Borrower to maintain at all times during the term of the Loan the Policies required under Section 6.1 of the Mortgage Loan Agreement, including, without limitation, meeting all insurer requirements thereunder. In addition, Borrower shall cause Lender to be named “as their interest may appear”, under the Policies required under Sections 6.1(a)(i),(ii),(iii),(iv),(v),(vi),(vii),(viii),(ix),(x) and (xi) of the Mortgage Loan Agreement and as an “additional insured” with respect to liability coverages. Borrower shall also cause all insurance policies required under this Section 6.1 to provide for at least thirty (30) days’ prior notice to Lender in the event of policy cancellation or material changes. Borrower shall provide Lender with evidence of all such insurance required hereunder on or before the date on which Mortgage Borrower is required to provide such evidence to Mortgage Lender. For purposes of this Agreement, Lender shall have the same approval rights over the insurance referred to above and in the Mortgage Loan Agreement (including, without limitation, the insurers, deductibles and coverages thereunder, as well as the right to require other reasonable insurance pursuant to Section 6.1 of the Mortgage Loan Agreement) as are provided in favor of the Mortgage Lender in the Mortgage Loan Agreement.

(b) If at any time Lender is not in receipt of written evidence that all insurance required hereunder is in full force and effect, Lender shall have the right, without notice to Borrower, to take such action as Lender deems necessary to protect its interest in any of the Properties or the Collateral, including, without limitation, the obtaining of such insurance coverage as Lender in its sole discretion deems appropriate (but limited to the coverages and amounts required under the Mortgage Loan Agreement) and all premiums incurred by Lender in connection with such action or in obtaining such insurance and keeping it in effect shall be paid by Borrower to Lender upon demand and shall bear interest at the Default Rate.

**Section 6.2. Casualty.** If the Individual Property shall be materially damaged or destroyed, in whole or in part, by fire or other casualty (a “Casualty”), Borrower shall give prompt notice of such damage to Lender and shall cause Mortgage Borrower to promptly commence and diligently prosecute the completion of the Restoration of the Individual Property as nearly as possible to the condition the Individual Property was in immediately prior to such Casualty, with such alterations as may be reasonably approved by Lender and otherwise in accordance with Section 6.4 of the Mortgage Loan Agreement. Borrower shall cause Mortgage Borrower to pay all costs of such Restoration whether or not such costs are covered by insurance. Lender may, but shall not be obligated to make proof of loss if not made promptly by Borrower or Mortgage Borrower. In addition, Lender may participate in any settlement discussions with any insurance companies with respect to any Casualty in which the Net Proceeds or the costs of completing the Restoration are equal to or greater than, in the case of each Casualty, an amount equal to five percent (5%) of the sum of the Allocated Loan Amount for the affected Individual Property and the “Allocated Loan Amounts” under (and as defined in each of) the Mortgage Loan Agreement and the Other Mezzanine Loan Agreements for the affected Individual Property, and Borrower shall deliver to Lender all instruments required by Lender to permit such participation.

**Section 6.3. Condemnation.** Borrower shall promptly give Lender notice of the actual or threatened commencement of any proceeding for the Condemnation of any Individual Property and shall cause Mortgage Borrower to deliver to Lender copies of any and all papers served in connection with such proceedings. Lender may participate in any such proceedings, and Borrower shall from time to time deliver to Lender all instruments requested by it to permit such participation. Borrower shall, at its expense, diligently prosecute any such proceedings, and shall consult with Lender, its attorneys and experts, and cooperate with them in the carrying on or defense of any such proceedings. Notwithstanding any taking by any public or quasi-public authority through Condemnation or otherwise (including, but not limited to, any transfer made in lieu of or in anticipation of the exercise of such taking), Borrower shall continue to pay the Debt at the time and in the manner provided for its payment in the Note and in this Agreement and the Debt shall not be reduced until any Award shall have been actually received and applied by Lender, after the deduction of expenses of collection, to the reduction or discharge of the Debt. Lender shall not be limited to the interest paid on the Award by the condemning authority but shall be entitled to receive out of the Award interest at the rate or rates provided herein or in the Note. If any Individual Property or any portion thereof is taken by a condemning authority, Borrower shall cause Mortgage Borrower to promptly commence and diligently prosecute the Restoration of the applicable Individual Property and otherwise comply with the provisions of Section 6.4 of the Mortgage Loan Agreement. If any Individual Property is sold, through foreclosure or otherwise, prior to the receipt by Lender of the Award, Lender shall have the right, whether or not a deficiency judgment on the Note shall have been sought, recovered or denied, to receive the Award, or a portion thereof sufficient to pay the Debt.

**Section 6.4. Restoration.** Borrower shall, or shall cause Mortgage Borrower to, deliver to Lender all reports, plans, specifications, documents and other materials that are delivered to Mortgage Lender under Section 6.4 of the Mortgage Loan Agreement in connection with the Restoration of any Individual Property after a Casualty or Condemnation.

## VII. RESERVE FUNDS

### Section 7.1. Intentionally Omitted.

**Section 7.2. Tax and Insurance Escrow Fund.** (a) If (and for so long as) a Trigger Event shall have occurred and shall not have been cured by a Trigger Event Cure, on each Payment Date during such period, Borrower shall pay to Lender (or Servicer, as directed by Lender) an amount equal to (i) one-twelfth of the Taxes that Lender estimates will be payable during the next ensuing twelve (12) months in order to accumulate with Lender sufficient funds to pay all such Taxes at least thirty (30) days prior to their respective due dates, and (ii) one-twelfth of the Insurance Premiums that Lender estimates will be payable for the renewal of the coverage afforded by the Policies upon the expiration thereof in order to accumulate with Lender sufficient funds to pay all such Insurance Premiums at least thirty (30) days prior to the expiration of the Policies (said amounts in (i) and (ii) above hereinafter called the "**Tax and Insurance Escrow Fund**"). Lender shall apply the Tax and Insurance Escrow Fund to payments of Taxes and Insurance Premiums required to be made by Borrower pursuant to Section 5.1.2 hereof and under the Mortgage Loan Agreement. In making any payment relating to the Tax and Insurance Escrow Fund, Lender may do so according to any bill, statement or estimate procured from the appropriate public office (with respect to Taxes) or insurer or agent (with respect to Insurance Premiums), without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof. If the amount of the Tax and Insurance Escrow Fund shall exceed the amounts due for Taxes and Insurance Premiums pursuant to Section 5.1.2 hereof, provided no Event of Default shall have occurred and be continuing, then Lender shall return any excess to Borrower (or to Operating Company, if so directed by Borrower). In allocating such excess, Lender may deal with the Person shown on the records of Lender to be the owner of the Properties. If at any time Lender reasonably determines that the Tax and Insurance Escrow Fund is not or will not be sufficient to pay Taxes and Insurance Premiums by the dates set forth in (i) and (ii) above, Lender shall notify Borrower of such determination and Borrower shall increase its monthly payments to Lender by the amount that Lender estimates is sufficient to make up the deficiency at least thirty (30) days prior to the due date of the Taxes and/or thirty (30) days prior to expiration of the Policies, as the case may be.

(b) Notwithstanding the foregoing, Borrower shall not be required to make any deposits into the Tax and Insurance Escrow Fund on account of Insurance Premiums if (and for so long as) Borrower shall maintain a blanket insurance policy in respect of the Properties that is in accordance with the provisions of Section 6.1(a) and otherwise satisfactory to Lender in all material respects.

(c) Any amount remaining in the Tax and Insurance Escrow Fund following the occurrence of a Trigger Event Cure shall be returned to Borrower (or Operating Company, as directed by Borrower).

**7.2.2 Waiver of Tax Escrow.** Borrower shall be relieved of its obligation to make deposits of Tax and Insurance Escrow Fund under Section 7.2 above, provided that (a) Mortgage Borrower or Senior Mezzanine Borrower is required to and does make monthly deposits to a tax escrow account under the Mortgage Loan or Senior Mezzanine Loan, and

(b) Lender receives evidence acceptable to it of the making of such deposits and of the payment of all such Taxes.

**7.2.3 Tax and Insurance Escrow Funds After Debt Paid.** Any Tax and Insurance Escrow Funds remaining after the Debt has been paid in full shall be remitted (i) if the Eighth Mezzanine Loan is outstanding, then to the Eighth Mezzanine Lender or (ii) if the Eighth Mezzanine Loan is no longer outstanding, then to the Ninth Mezzanine Lender in accordance with the Eighth Mezzanine Loan Agreement or (iii) if the Eighth Mezzanine Loan and the Ninth Mezzanine Loan are no longer outstanding then to Borrower or, at Borrower's election, shall be credited against the Debt simultaneously with the satisfaction of the balance of the Loan.

**Section 7.3. FF&E Reserve Account.**

**7.3.1 FF&E Reserve Fund.** (a) Unless Borrower shall have delivered to Lender a Guaranty (FF&E), Borrower shall pay to Lender (or Servicer, as directed by Lender) on each Payment Date an amount equal to (i) one-twelfth of three percent (3%) of the amount of all Revenues for the full calendar year prior to the first (1st) day of the month in which such Payment Date occurs, less (ii) any amount spent during the previous calendar month by Borrower or Operating Company on behalf of Borrower in accordance with the Operating Lease on account of FF&E (other than from the FF&E Reserve Fund, it being understood that amounts expended on account of FF&E from the FF&E Reserve Fund shall not be included in any deductions required pursuant to the preceding subclause (i) and that any FF&E that is purchased through disbursements from the FF&E Reserve Fund may not be subsequently financed by Borrower or Operating Company). Notwithstanding anything to the contrary contained herein, in no event shall Borrower be required to maintain in the FF&E Reserve Account an amount in excess of the aggregate amount of all FF&E deposits required to be made in the preceding calendar year (as determined, for purposes of this sentence, utilizing the monthly formula set forth in the preceding sentence). In addition, notwithstanding anything to the contrary contained herein, for purposes of determining the amount of any required FF&E Reserve Fund deposits (and for purposes of calculating such amount, monthly, based on the formula set forth in the first sentence of this Section 7.3.1), Revenues shall include Revenue from the Hotel Component and the Casino Component but shall not include non-Hotel or Casino related Revenues (e.g., Rents from retail tenants).

(b) Amounts deposited by Borrower as described in this Section 7.3.1 shall hereinafter be referred to as the “**FF&E Reserve Fund**” and the account in which such amounts are held shall hereinafter be referred to as the “**FF&E Reserve Account**”.

**7.3.2 Disbursements from FF&E Reserve Account.** (a) All disbursements from the FF&E Reserve Account shall be made solely for the purpose of reimbursing Borrower (or Operating Company for FF&E bought on behalf and in the name of Borrower in accordance with the Operating Lease, as directed by Borrower) for its costs and expenses incurred, or for paying costs to be incurred, in connection with the repair, replacement and/or upgrade of FF&E at the Properties. Provided no Event of Default shall have occurred and be continuing, Lender shall, within ten (10) days following request by Borrower, make disbursements from the FF&E Reserve Fund no more frequently than once in any thirty (30) day period, in amounts no less than \$10,000 per disbursement (or a lesser amount if the total amount in the FF&E Reserve Account

is less than \$10,000, in which case only one disbursement of the amount remaining in the account shall be made), and upon delivery by Borrower (or Operating Company) of Lender's standard form of draw request accompanied by copies of invoices for the amounts requested and, if required by Lender for requests in excess of \$50,000 for a single item, receipts and releases from all parties furnishing materials and/or services in connection with the requested payment.

(b) Disbursements may be made from the FF&E Reserve Account, at Borrower's election, directly to third parties (as directed by Borrower).

(c) In no event shall funds in the FF&E Reserve Account be utilized to pay (or reimburse any Person) for any Capital Expenditures or non-recurring work being performed at the Properties.

**7.3.3 Balance in the FF&E Reserve Account.** (a) The insufficiency of any balance in the FF&E Reserve Account shall not relieve Borrower from its obligation to fulfill all preservation and maintenance covenants in the Loan Documents.

**7.3.4 Waiver of FF&E Reserve.** Borrower shall be relieved of its obligation to make deposits of FF&E Reserve Fund under Section 7.3 above, provided that either (a) (i) Mortgage Borrower or Senior Mezzanine Borrower is required to and does make monthly deposits to a FF&E reserve account under the Mortgage Loan or Senior Mezzanine Loan, and (ii) Lender receives evidence acceptable to it of the making of such deposits or (b) an FF&E Guaranty is provided to Mortgage Lender.

**7.3.5 FF&E Reserve Funds After Debt Paid.** Any FF&E Reserve Funds remaining after the Debt has been paid in full shall be remitted (i) if the Eighth Mezzanine Loan is outstanding, then to the Eighth Mezzanine Lender or (ii) if the Eighth Mezzanine Loan is no longer outstanding, then to the Ninth Mezzanine Lender in accordance with the Eighth Mezzanine Loan Agreement or (iii) if the Eighth Mezzanine Loan and the Ninth Mezzanine Loan are no longer outstanding then to Borrower or, at Borrower's election, shall be credited against the Debt simultaneously with the satisfaction of the balance of the Loan.

#### **Section 7.4. Ground Rent Funds.**

**7.4.1 Deposits of Ground Rent Funds.** If (and for so long as) a Trigger Event shall have occurred and shall not have been cured by a Trigger Event Cure, Borrower shall deposit with Lender (or Servicer, as directed by Lender), at least ten (10) Business Days prior to each Payment Date during such period, an amount equal to the Ground Rent that will be payable under the Ground Lease for the month in which such Payment Date occurs. Amounts deposited by Borrower as described in this Section 7.4.1 shall hereinafter be referred to as the "**Ground Rent Reserve Fund**" and the account in which such amounts are held shall hereinafter be referred to as the "**Ground Rent Reserve Account**". Such deposit may be increased by Lender in the amount Lender deems is necessary in its reasonable discretion based on any increases in the Ground Rent.

**7.4.2 Release of Ground Rent Funds.** Provided no Event of Default has occurred and is continuing, Lender shall apply the Ground Rent Reserve Funds to payments of Ground Rent. In making any payment relating to Ground Rent, Lender may do so according to

any bill or statement given by the Ground Lessor without inquiry into the accuracy of such bill or statement or into the validity of any rent, additional rent or other charge thereof. If the amount of the Ground Rent Reserve Funds shall exceed the amounts due for Ground Rent, Lender shall return any excess to Borrower.

**7.4.3 Waiver of Ground Rent Reserve.** Borrower shall be relieved of its obligation to make deposits of Ground Rent Reserve Funds under Section 7.4 above, provided that (a) Mortgage Borrower or Senior Mezzanine Borrower is required to and does make monthly deposits to a ground rent reserve account under the Mortgage Loan or Senior Mezzanine Loan, and (b) Lender receives evidence acceptable to it of the making of such deposits and of the payment of all Ground Rent.

**7.4.4 Ground Rent Reserve Funds After Debt Paid.** Any Ground Rent Reserve Funds remaining after the Debt has been paid in full shall be remitted (i) if the Eighth Mezzanine Loan is outstanding, then to the Eighth Mezzanine Lender or (ii) if the Eighth Mezzanine Loan is no longer outstanding, then to the Ninth Mezzanine Lender in accordance with the Eighth Mezzanine Loan Agreement or (iii) if the Eighth Mezzanine Loan and the Ninth Mezzanine Loan are no longer outstanding then to Borrower or, at Borrower's election, shall be credited against the Debt simultaneously with the satisfaction of the balance of the Loan.

**Section 7.5. Reserve Funds, Generally.** (a) Borrower grants to Lender a first-priority perfected security interest in each of the Reserve Funds and any and all monies now or hereafter deposited in each Reserve Fund as additional security for payment of the Debt. Until expended or applied in accordance herewith, the Reserve Funds shall constitute additional security for the Debt. Upon the occurrence and during the continuance of an Event of Default, Lender may, in addition to any and all other rights and remedies available to Lender, apply any sums then present in any or all of the Reserve Funds to the payment of the Debt in any order in its sole discretion. The Reserve Funds shall not constitute trust funds and may be commingled with other monies held by Lender.

(b) Borrower shall not, without obtaining the prior consent of Lender, further pledge, assign or grant any security interest in any Reserve Fund or the monies deposited therein or permit any lien or encumbrance to attach thereto, or any levy to be made thereon, or any UCC-1 Financing Statements, except those naming Lender as the secured party, to be filed with respect thereto.

(c) The Reserve Funds shall be held by Lender (or Servicer) and may be invested at Borrower's election and direction in Permitted Investments routinely offered by the Servicer of the Securitization for investment by Borrower. All interest or other earnings on a Reserve Fund shall be added to and become a part of such Reserve Fund for the benefit of Borrower and shall be disbursed in the same manner as other monies deposited in such Reserve Fund. Borrower shall have the right to direct Lender (or Servicer) to invest sums on deposit in the Eligible Account in Permitted Investments provided (a) such investments are permitted by applicable federal, state and local rules, regulations and laws, (b) the maturity date of the Permitted Investment is not later than the date on which the applicable Reserve Funds are required for payment of an obligation for which such Reserve Fund was created, and (c) no Event of Default shall have occurred and be continuing. Borrower shall be responsible for

payment of any federal, state or local income or other tax applicable to the interest or income earned on the Reserve Funds. No other investments of the sums on deposit in the Reserve Funds shall be permitted except as set forth in this Section 7.5. Borrower shall bear all reasonable costs associated with the investment of the sums in the account in Permitted Investments. Such costs shall be deducted from the income or earnings on such investment, if any, and to the extent such income or earnings shall not be sufficient to pay such costs, such costs shall be paid by Borrower promptly on demand by Lender. Lender shall have no liability for the rate of return earned or losses incurred on the investment of the sums in Permitted Investments.

(d) Borrower shall indemnify Lender and hold Lender harmless from and against any and all actions, suits, claims, demands, liabilities, losses, damages, obligations and costs and expenses (including litigation costs and reasonable attorneys fees and expenses) arising from or in any way connected with the Reserve Funds or the performance of the obligations for which the Reserve Funds were established. Borrower shall assign to Lender all rights and claims Borrower may have against all Persons supplying labor, materials or other services which are to be paid from or secured by the Reserve Funds; provided, however, that Lender may not pursue any such right or claim unless an Event of Default has occurred and remains uncured.

**Section 7.6. Transfer of Reserve Funds Under Mortgage Loan and Senior Mezzanine Loan.** If Mortgage Lender or Senior Mezzanine Lender waives any reserves or escrow accounts required in accordance with the terms of the Mortgage Loan Agreement or Senior Mezzanine Loan Agreement which reserves or escrow accounts are also required in accordance with the terms of this Article VII, or if the Mortgage Loan or Senior Mezzanine Loan is refinanced or paid off in full (without a prepayment of the Loan) and Reserve Funds that are required hereunder are not required under the new mortgage loan, if any, then Borrower shall cause any amounts that would have been deposited into any reserves or escrow accounts in accordance with the terms of the Mortgage Loan Agreement or Senior Mezzanine Loan Agreement to be paid to and deposited with Lender in accordance with the terms of this Article VII (and Borrower shall enter into lockbox and cash management agreements for the benefit of Lender in form and substance acceptable to Lender).

## VIII. DEFAULTS

**Section 8.1. Event of Default.** (a) Each of the following events shall constitute an event of default hereunder (an “**Event of Default**”):

(i) if (A) any portion of the Debt is not paid in full on the Maturity Date, (B) the Debt Service is not paid in full on or before the related Payment Date, or (C) any other portion of the Debt is not paid within five (5) days of when due;

(ii) if any of the Taxes or Other Charges are not paid (with respect to each Individual Property) prior to Delinquency;

(iii) if the Policies (with respect to each Individual Property) are not kept in full force and effect, or if certified copies of the Policies (for each Individual Property) are not delivered to Lender upon request (or certificates thereof, if a Policy shall be renewed and certified copies of the Policy are not immediately available upon such

renewal (Borrower agreeing in such instance to provide copies of the Policies to Lender promptly thereafter));

(iv) if Borrower Transfers or otherwise encumbers any portion of the Properties or the Collateral or Senior Mezzanine Collateral, or there shall otherwise occur a Transfer, without Lender's prior consent in violation of the provisions of this Agreement, the Pledge Agreement or any other Loan Document or any Transfer is made in violation of the provisions of Section 5.2.10;

(v) if any representation or warranty made by Borrower or any other Loan Party herein or in any other Loan Document, or in any report, certificate, financial statement or other instrument, agreement or document furnished to Lender shall have been false or misleading in any material respect as of the date the representation or warranty was made (and, with respect to any such breach which is not the subject of any other subsection of this Section 8.1 and which is capable of being cured, Borrower fails to remedy such condition within ten (10) days following notice to Borrower from Lender, in the case of any such breach which can be cured by the payment of a sum of money, or within thirty (30) days following notice from Lender in the case of any other such breach);

(vi) if Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Principal, Holdings, Operating Company or any Guarantor shall make an assignment for the benefit of creditors;

(vii) if a receiver, liquidator or trustee shall be appointed for Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Principal, Holdings, Operating Company or Guarantor, or if Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Principal, Holdings, Operating Company or Guarantor shall be adjudicated a bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to federal bankruptcy law, or any similar federal or state law, shall be filed by or against, consented to, or acquiesced in by, Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Principal, Holdings, Operating Company or Guarantor, or if any proceeding for the dissolution or liquidation of Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Principal, Holdings, Operating Company or Guarantor shall be instituted; provided, however, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Principal, Holdings, Operating Company or Guarantor, upon the same not being discharged, stayed or dismissed within ninety (90) days;

(viii) if Borrower attempts to assign its rights under this Agreement or any of the other Loan Documents or any interest herein or therein in contravention of the Loan Documents;

(ix) if Borrower breaches any of its respective negative covenants contained in Section 5.2 or any covenant contained in Section 4.1.30 or Section 5.1.11 hereof (and, with respect to any such breach of any covenant set forth in Section 5.1.11 which is not the subject of any other subsection of this Section 8.1, Borrower fails to remedy such

condition within ten (10) days after notice to Borrower from Lender, in the case of any such Default under Section 5.1.11 which can be cured by the payment of a sum of money, or for thirty (30) days after notice from Lender in the case of any other such Default under Section 5.1.11);

(x) with respect to any term, covenant or provision set forth herein which specifically contains a notice requirement or grace period, if Borrower shall be in default under such term, covenant or condition after the giving of such notice or the expiration of such grace period;

(xi) if any of the assumptions contained in the Insolvency Opinion delivered to Lender in connection with the Loan, or in the Additional Insolvency Opinion delivered subsequent to the closing of the Loan, is or shall become untrue in any material respect; or if any of the assumptions contained in the True Lease Opinion delivered to Lender in connection with the Loan, or in the Additional True Lease Opinion delivered subsequent to the closing of the Loan, is or shall become untrue in any material respect;

(xii) if Mortgage Borrower, Operating Company or Guarantor (Operating Lease) is in default of any of its material obligations under the Operating Lease (or under another lease and/or management agreement in substitution for the Operating Lease in accordance herewith) or under the Operating Lease Guaranty (or under another operating lease guaranty in substitution for the Operating Lease Guaranty in accordance herewith) beyond any applicable notice and cure periods contained therein; or if any Operating Lease (or such other lease and/or management agreement) or any Operating Lease Guaranty (or such other operating lease guaranty) shall be surrendered or any Operating Lease or any Operating Lease Guaranty shall be terminated or canceled for any reason or under any circumstances whatsoever, except with the consent of Lender; or if any of the terms, covenants or conditions of the Operating Lease (or such other lease and/or management agreement) or the Operating Lease Guaranty (or such other operating lease guaranty) shall in any manner be modified, changed, supplemented, altered, restated or amended without the consent of Lender except as may otherwise expressly permitted in this Agreement;

(xiii) if any Affiliate of Borrower that is or becomes a party to the Windstorm Insurance Intercreditor Agreement is in default of any of its material obligations under the Windstorm Insurance Intercreditor Agreement beyond any applicable notice and cure periods contained therein; or if the Windstorm Insurance Intercreditor Agreement shall be surrendered, terminated or canceled for any reason or under any circumstances whatsoever, except with the consent of Lender; or if any of the terms, covenants or conditions of the Windstorm Insurance Intercreditor Agreement shall in any manner be modified, changed, supplemented, altered, restated or amended without the consent of Lender;

(xiv) if Borrower, Senior Mezzanine Borrower or Mortgage Borrower fails to comply with the covenants as to Prescribed Laws set forth in Section 5.1.1 hereof;

(xv) if (A) subject to any notice and cure periods contained in the applicable Ground Lease, Mortgage Borrower or Ground Lease Subsidiary, as applicable, shall fail in the payment of any rent, additional rent or other charge mentioned in or made payable by such Ground Lease as and when such rent or other charge is payable (unless waived by the landlord under such Ground Lease), (B) subject to any notice and cure periods contained in the applicable Ground Lease, there shall occur any default by Mortgage Borrower or Ground Lease Subsidiary, as applicable, as tenant under such Ground Lease, in the observance or performance of any term, covenant or condition of the Ground Lease on the part of Mortgage Borrower or Ground Lease Subsidiary, as applicable, to be observed or performed (unless waived by the landlord under the Ground Lease) (other than any such default being contested by Borrower in good faith by appropriate proceedings, provided that (i) no Event of Default has occurred and remains uncured, (ii) such proceeding shall be conducted in accordance with all applicable statutes, laws and ordinances, (iii) in Lender's reasonable determination, the Ground Lease is not in imminent danger of being forfeited, terminated, cancelled or lost and the Operating Company's use and operation of the ground leased premises in connection with the operation of Harrah's Lake Tahoe", "Harvey's Lake Tahoe" or "Bill's Lake Tahoe" is not in imminent danger of being denied, forfeited, terminated, cancelled or lost and (iv) Borrower shall furnish such security as may be reasonably requested by Lender), (C) any one or more of the events referred to in any Ground Lease shall occur which would cause the Ground Lease to terminate without notice or action by the landlord under the Ground Lease or which would entitle the landlord to terminate the Ground Lease and the term thereof by giving notice to Mortgage Borrower or Ground Lease Subsidiary, as applicable, as tenant thereunder (unless waived by the landlord under the Ground Lease), (D) the leasehold estate created by any Ground Lease shall be surrendered or the Ground Lease shall be terminated or canceled for any reason or under any circumstances whatsoever unless Mortgage Borrower or Ground Lease Subsidiary, as applicable, acquires the fee interest and mortgages same to Lender (unless Mortgage Borrower or Ground Lease Subsidiary, as applicable, acquires the fee interest, with Lender's prior reasonable approval, and mortgages same to Mortgage Lender) or (E) if any of the terms, covenants or conditions of any Ground Lease shall in any manner be modified, changed, supplemented, altered, or amended without the consent of Lender except as otherwise permitted by this Agreement;

(xvi) any Gaming License shall be refused, suspended, revoked, modified in a materially adverse manner or canceled or allowed to lapse or any proceeding is commenced by any Governmental Authority for the purpose of suspending, revoking or canceling any Gaming License in any materially adverse respect, or any Governmental Authority shall have appointed a conservator, supervisor or trustee to or for any of the Casino Components and, in each case of the foregoing, such action could reasonably be expected to (A) have an Individual Material Adverse Effect, (B) materially and adversely effect the continued operation of the Casino Components in the usual course of business and in substantially the same manner and to at least the same standard as was maintained prior to such action, or (C) result in any material decrease in the then expected cash flow and revenues to be derived from the Casino Components;

(xvii) if Borrower shall continue to be in Default under any of the other terms, covenants or conditions of this Agreement not specified in subsections (i) to (xv) above, for ten (10) days after notice to Borrower from Lender, in the case of any Default which can be cured by the payment of a sum of money, or for thirty (30) days after notice from Lender in the case of any other Default; provided, however, that if such non-monetary Default is susceptible of cure but cannot reasonably be cured within such thirty (30) day period and provided further that Borrower shall have commenced to cure such Default within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for such time as is reasonably necessary for Borrower in the exercise of due diligence to cure such Default, such additional period not to exceed one hundred twenty (120) days;

(xviii) if there shall be a default under any of the other Loan Documents beyond any applicable cure periods contained in such documents, whether as to Borrower, Mortgage Borrower, Senior Mezzanine Borrower, the Collateral or any Individual Property, or if any other such event shall occur or condition shall exist, if the effect of such event or condition is to accelerate the maturity of any portion of the Debt or to permit Lender to accelerate the maturity of all or any portion of the Debt;

(xix) if the Liens created pursuant to any Loan Document shall cease to be a fully protected enforceable first priority security interest in the Collateral, or any portion of the Collateral is Transferred without Lender's prior written consent except as permitted hereunder; or

(xx) if a Mortgage Loan Event of Default or Senior Mezzanine Loan Event of Default shall occur.

(b) Upon the occurrence of an Event of Default (other than an Event of Default described in clauses (vi) or (vii) above) and at any time thereafter, in addition to any other rights or remedies available to it pursuant to this Agreement and the other Loan Documents or at law or in equity, Lender may take such action, without notice or demand, that Lender deems advisable to protect and enforce its rights against Borrower and in and to all or any of the Collateral, including, without limitation, declaring the Debt to be immediately due and payable, and Lender may enforce or avail itself of any or all rights or remedies provided in the Loan Documents and may exercise all the rights and remedies of a secured party under the Uniform Commercial Code, as adopted and enacted by the State or States where any of the Collateral is located against Borrower and any or all of the Collateral, including, without limitation, all rights or remedies available at law or in equity; and upon any Event of Default described in clauses (vi) or (vii) above, the Debt and all other obligations of Borrower hereunder and under the other Loan Documents shall immediately and automatically become due and payable, without notice or demand, and Borrower hereby expressly waives any such notice or demand, anything contained herein or in any other Loan Document to the contrary notwithstanding.

**Section 8.2. Remedies.** (a) Upon the occurrence of an Event of Default, but in compliance with applicable Gaming Laws, all or any one or more of the rights, powers, privileges and other remedies available to Lender against Borrower under this Agreement or any of the other Loan Documents executed and delivered by, or applicable to, Borrower or at law or

in equity may be exercised by Lender at any time and from time to time, whether or not all or any of the Debt shall be declared due and payable, and whether or not Lender shall have commenced any foreclosure proceeding or other action for the enforcement of its rights and remedies under any of the Loan Documents with respect to all or any of the Collateral. Any such actions taken by Lender shall be cumulative and concurrent and may be pursued independently, singularly, successively, together or otherwise, at such time and in such order as Lender may determine in its sole discretion, to the fullest extent permitted by law, without impairing or otherwise affecting the other rights and remedies of Lender permitted by law, equity or contract or as set forth herein or in the other Loan Documents. Without limiting the generality of the foregoing, Borrower agrees that if an Event of Default is continuing (i) Lender is not subject to any "one action" or "election of remedies" law or rule, and (ii) all liens and other rights, remedies or privileges provided to Lender shall remain in full force and effect until Lender has exhausted all of its remedies against the Collateral and the Collateral has been foreclosed upon, sold and/or otherwise realized upon in satisfaction of the Debt or the Debt has been paid in full.

(b) With respect to Borrower and the Collateral, nothing contained herein or in any other Loan Document shall be construed as requiring Lender to resort to any portion of the Collateral for the satisfaction of any of the Debt in preference or priority to any other portion of the Collateral, and Lender may seek satisfaction out of all of the Collateral or any part thereof, in its absolute discretion in respect of the Debt. In addition, Lender shall have the right from time to time to partially foreclose upon the Collateral in any manner and for any amounts secured by the Pledge Agreement then due and payable as determined by Lender in its sole discretion including, without limitation, the following circumstances: (i) in the event Borrower defaults beyond any applicable grace period in the payment of one or more scheduled payments of principal and interest, Lender may foreclose upon the Collateral to recover such delinquent payments, or (ii) in the event Lender elects to accelerate less than the entire outstanding principal balance of the Loan, Lender may foreclose upon the Collateral to recover so much of the principal balance of the Loan as Lender may accelerate and such other sums secured by the Collateral as Lender may elect. Notwithstanding one or more partial foreclosures, the Collateral shall remain subject to the Pledge Agreement and the other Loan Documents to secure payment of sums secured by the Pledge Agreement and other Loan Documents and not previously recovered.

(c) Upon the occurrence and during the continuance of an Event of Default, Lender shall have the right from time to time to sever the Note and the other Loan Documents into one or more separate notes, pledges and other security documents (the "**Severed Loan Documents**") in such denominations as Lender shall determine in its sole discretion for purposes of evidencing and enforcing its rights and remedies provided hereunder. Borrower shall execute and deliver to Lender from time to time, promptly after the request of Lender, a severance agreement and such other documents as Lender shall request in order to effect the severance described in the preceding sentence, all in form and substance reasonably satisfactory to Lender. Borrower hereby absolutely and irrevocably appoints Lender as its true and lawful attorney, coupled with an interest, in its name and stead to make and execute all documents necessary or desirable to effect the aforesaid severance, Borrower ratifying all that its said attorney shall do by virtue thereof; provided, however, Lender shall not make or execute any such documents under such power until three (3) days after notice has been given to Borrower by Lender of Lender's intent to exercise its rights under such power. Borrower shall be obligated to pay any costs or

expenses incurred in connection with the preparation, execution, recording or filing of the Severed Loan Documents. The Severed Loan Documents shall not contain any representations, warranties or covenants not contained in the Loan Documents and any such representations and warranties contained in the Severed Loan Documents will be given by Borrower only as of the Closing Date. The Severed Loan Documents shall (a) not increase the aggregate stated principal amount of the Loan, (b) provide that the weighted average spread of the Loan on the date of such severance shall equal the weighted average spread which was applicable to the Loan immediately prior to such severance (Borrower acknowledging that such Severed Loan Document may, in connection with the application of principal to the amounts evidenced by such Severed Loan Documents, subsequently cause the weighted average spread of such new notes or modified notes to change), (c) not adversely affect the overall economics to Borrower of the Loan, taken as a whole, or (d) expose Borrower to any additional costs or increased risk of any liability (beyond that or greater than that existing in the Loan Documents in effect on the date hereof).

(d) The rights, powers and remedies of Lender under this Agreement shall be cumulative and not exclusive of any other right, power or remedy which Lender may have against Borrower pursuant to this Agreement or the other Loan Documents, or existing at law or in equity or otherwise. Lender's rights, powers and remedies may be pursued singularly, concurrently or otherwise, at such time and in such order as Lender may determine in Lender's sole discretion. No delay or omission to exercise any remedy, right or power accruing upon an Event of Default shall impair any such remedy, right or power or shall be construed as a waiver thereof, but any such remedy, right or power may be exercised from time to time and as often as may be deemed expedient. A waiver of one Default or Event of Default with respect to Borrower shall not be construed to be a waiver of any subsequent Default or Event of Default by Borrower or to impair any remedy, right or power consequent thereon.

(e) Any amounts recovered from the Collateral after an Event of Default may be applied by Lender toward the payment of any interest and/or principal of the Loan and/or any other amounts due under the Loan Documents in such order, priority and proportions as Lender in its sole discretion shall determine.

(f) Upon the occurrence and during the continuance of an Event of Default, Lender may, but without any obligation to do so and without notice to or demand on Borrower and without releasing Borrower from any obligation hereunder or being deemed to have cured any Event of Default hereunder, make, do or perform any obligation of Borrower hereunder in such manner and to such extent as Lender may deem necessary. Borrower shall cause Mortgage Borrower to permit Lender to enter upon any Individual Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in any Individual Property for such purposes, and the cost and expense thereof (including reasonable attorneys' fees to the extent permitted by law), with interest as provided in this Section 8.2, shall constitute a portion of the Debt and shall be due and payable to Lender upon demand. All such costs and expenses incurred by Lender in remedying such Event of Default or such failed payment or act or in appearing in, defending, or bringing any action or proceeding shall bear interest at the Default Rate, for the period after such cost or expense was incurred into the date of payment to Lender. All such costs and expenses incurred by Lender together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and be secured by the liens,

claims and security interests provided to Lender under the Loan Documents and shall be immediately due and payable upon demand by Lender therefore. Upon the occurrence and during the continuance of a Senior Mezzanine Loan Event of Default, Lender may, but without any obligation to do so and without notice to or demand on Borrower or Senior Mezzanine Borrower and without releasing Senior Mezzanine Borrower from any obligation under the Senior Mezzanine Loan Documents or being deemed to have cured any Senior Mezzanine Loan Event of Default, make, do or perform any obligation of Senior Mezzanine Borrower under Senior Mezzanine Loan Documents in such manner and to such extent as Lender may deem necessary. All such costs and expenses incurred by Lender in remedying such Senior Mezzanine Loan Event of Default or such failed payment or act shall bear interest at the Default Rate, for the period after such cost or expense was incurred into the date of payment to Lender. All such costs and expenses incurred by Lender together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and be secured by the liens, claims and security interests provided to Lender under the Loan Documents and shall be immediately due and payable upon demand by Lender therefor. Upon the occurrence and during the continuance of a Mortgage Loan Event of Default, Lender may, but without any obligation to do so and without notice to or demand on Borrower or Mortgage Borrower and without releasing Mortgage Borrower from any obligation under the Mortgage Loan Documents or being deemed to have cured any Mortgage Loan Event of Default, make, do or perform any obligation of Mortgage Borrower under Mortgage Loan Documents in such manner and to such extent as Lender may deem necessary. All such costs and expenses incurred by Lender in remedying such Mortgage Loan Event of Default or such failed payment or act shall bear interest at the Default Rate, for the period after such cost or expense was incurred into the date of payment to Lender. All such costs and expenses incurred by Lender together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and be secured by the liens, claims and security interests provided to Lender under the Loan Documents and shall be immediately due and payable upon demand by Lender therefor.

(g) For the purpose of carrying out the provisions and exercising the rights, powers and privileges granted in this Section 8.2, Borrower hereby irrevocably constitutes and appoints the Lender its true and lawful attorney-in-fact to execute, acknowledge and deliver any instruments and do and perform any acts such as are referred to in this subsection in the name and on behalf of Borrower upon the occurrence and during the continuance of an Event of Default. This power of attorney is a power coupled with an interest and cannot be revoked.

**Section 8.3. Intentionally Omitted.**

**Section 8.4. Costs of Collection.** In the event that after an Event of Default and during the continuance thereof: (a) the Note or any of the Loan Documents is placed in the hands of an attorney for collection or enforcement or is collected or enforced through any legal proceeding; (b) an attorney is retained to represent Lender in any bankruptcy, reorganization, receivership, or other proceedings affecting creditors' rights and involving a claim under the Note or any of the Loan Documents or (c) an attorney is retained to protect or enforce the lien or any of the terms of this Agreement, the Pledge Agreement or any of the Loan Documents, then, in any such instance, Borrower shall pay to Lender all reasonable attorneys' fees, costs and expenses actually incurred in connection therewith, including costs of appeal, together with interest on any judgment obtained by Lender at the Default Rate.

## IX. SPECIAL PROVISIONS

**Section 9.1. Sale of Notes and Securitization.** Borrower acknowledges and agrees that the Lender may sell all or any portion of the Loan and the Loan Documents, or issue one or more participations therein, or consummate one or more private or public securitizations of rated single- or multi-class securities (the “**Securities**”) secured by or evidencing ownership interests in all or any portion of the Loan and the Loan Documents or a pool of assets that include the Loan and the Loan Documents (such sales, participations and/or securitizations, collectively, a “**Securitization**”). At the request of Lender, and to the extent not already required to be provided by Borrower under this Agreement, Borrower shall use reasonable efforts to provide information not in the possession of Lender or which may be reasonably required by Lender in order to satisfy the market standards to which Lender customarily adheres or which may be reasonably required by prospective investors and/or the Rating Agencies in connection with any such Securitization including, without limitation, to:

(a) provide or cause Mortgage Borrower and Senior Mezzanine Borrower to provide additional and/or updated Provided Information, together with appropriate verification and/or consents related to the Provided Information through letters of auditors or opinions of counsel of independent attorneys reasonably acceptable to Lender and the Rating Agencies;

(b) cooperate in good faith in the preparation of descriptive materials for presentations to any or all of the Rating Agencies, and work with, and if requested, supervise, third-party service providers engaged by Borrower, Holdings and their respective affiliates to obtain, collect, and deliver information requested or required by Lender or the Rating Agencies;

(c) deliver, if required or requested by any Rating Agency, (i) updated opinions of counsel as to non-consolidation, due execution and enforceability with respect to the Properties, Borrower, Mortgage Borrower, Senior Mezzanine Borrower, the Collateral, the Senior Mezzanine Collateral, Principal, Holdings and their respective Affiliates and the Loan Documents, and (ii) revised organizational documents for Borrower, which counsel opinions and organizational documents shall be reasonably satisfactory to Lender and the Rating Agencies;

(d) if required by any Rating Agency, use commercially reasonable efforts to deliver such additional tenant estoppel letters, subordination agreements or other agreements from parties to agreements that affect any of the Properties, which estoppel letters, subordination agreements or other agreements shall be reasonably satisfactory to Lender and the Rating Agencies;

(e) execute such amendments to the Loan Documents as may be requested by Lender or the Rating Agencies to effect the Securitization and/or deliver one or more new component notes to replace the original note or modify the original note to reflect multiple components of the Loan such that the pricing and marketability of the Securities and the size of each class of Securities and the rating assigned to each such class by the Rating Agencies shall provide the most favorable rating levels and achieve the optimum rating levels for the Loan, provided that, (i) the aggregate stated principal amount of the notes, following such amendments or deliver of new or component notes, shall equal the aggregate stated principal amount of the Loan immediately prior thereto, (ii) the weighted average spread of the Loan on the date of such

amendment or delivery of new or component notes shall equal the weighted average spread which was applicable to the Loan immediately prior to such adjustment (Borrower acknowledging that such new notes or modified notes may, in connection with the application of principal to such new notes or modified note following the occurrence of an Event of Default, but not otherwise, subsequently cause the weighted average spread of such new notes or modified notes to change and (iii) the provisions of Section 2.1.5 otherwise shall apply to any such amendments and delivery of new or component notes (such provisions being incorporated herein by this reference);

(f) if requested by Lender, review any information regarding any of the Properties, Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Principal, the Collateral, the Senior Mezzanine Collateral, Holdings, the Operating Company and the Loan which is contained in a preliminary or final private placement memorandum, prospectus, prospectus supplement (including any amendment or supplement to either thereof), or other disclosure document to be used by Lender or any affiliate thereof; and

(g) supply to Lender such documentation, financial statements and reports in form and substance required in order to comply with any applicable securities laws (to the extent in Borrower's possession, or in the possession of Borrower's advisors, agents or employees), including, without limitation, if applicable, information necessary to comply with any applicable reporting or information requirements under Regulation D under the Securities Act of 1933 or Regulation S under the Securities Act of 1933.

Lender and Borrower each shall pay their respective costs and expenses incurred in connection with the foregoing, including, without limitation, legal fees in connection with any of the foregoing matters; except that all costs and expenses of Lender and Borrower associated with any restructuring of the Loan requested by Lender, including under Sections 2.1.5, 2.1.6 and 2.1.7, shall be paid solely by Lender.

**Section 9.2. Securitization Indemnification.** (a) Borrower understands that certain of the Provided Information may be included in Disclosure Documents in connection with the Securitization and may also be included in filings with the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended (the "**Securities Act**"), or the Securities and Exchange Act of 1934, as amended (the "**Exchange Act**"), or provided or made available to investors or prospective investors in the Securities, the Rating Agencies, and service providers relating to the Securitization. In the event that the Disclosure Document is required to be revised prior to the sale of all Securities, Borrower will cooperate with the holder of the Note in updating the Disclosure Document by providing all current information necessary to keep the Disclosure Document accurate and complete in all material respects to the extent in Borrower's possession.

(b) Borrower agrees to provide, in connection with the Securitization, an indemnification agreement (i) certifying that (A) Borrower has carefully examined the Disclosure Documents, including, without limitation, the sections entitled "Risk Factors," "Special Considerations," "Description of the Collateral," "Description of the Mezzanine Loans," "The Operating Company," "The Borrower" and "Certain Legal Aspects of the Mezzanine Loans," and (B) such sections and such other information in the Disclosure

Documents (to the extent such information relates to or includes any Provided Information or any information regarding the Properties, Borrower, Mortgage Borrower, the Collateral, the Senior Mezzanine Collateral and/or Operating Company) (collectively with the Provided Information, the “**Covered Disclosure Information**”) do not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, (ii) indemnifying Lender, each Noteholder, JPM (whether or not it is the Lender), any Affiliate of JPM or a Noteholder that has filed any registration statement relating to the Securitization or has acted as the sponsor or depositor in connection with the Securitization, any Affiliate of JPM or a Noteholder that acts as an underwriter, placement agent or initial purchaser of Securities issued in the Securitization, any other co-underwriters, co-placement agents or co-initial purchasers of Securities issued in the Securitization, and each of their respective officers, directors, partners, employees, representatives, agents and Affiliates and each Person or entity who controls any such Person within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act (collectively, the “**Indemnified Persons**”), for any losses, claims, damages, liabilities, costs or expenses (including, without limitation, legal fees and expenses for enforcement of these obligations (collectively, the “**Liabilities**”)) to which any such Indemnified Person may become subject insofar as the Liabilities arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in the Covered Disclosure Information or arise out of or are based upon the omission or alleged omission to state in the Covered Disclosure Information a material fact required to be stated therein or necessary in order to make the statements in the Covered Disclosure Information, in light of the circumstances under which they were made, not misleading and (iii) agreeing to reimburse each Indemnified Person for any legal or other expenses incurred by such Indemnified Person, as they are incurred, in connection with investigating or defending the Liabilities provided, however, that Borrower shall have liability with respect to Liabilities arising out of or based upon the Covered Disclosure Information only to the extent that such Liabilities arise out of or are based upon any such untrue statement or omission made in the Covered Disclosure Information in reliance upon and in conformity with information furnished to Lender or such Noteholder by or on behalf of Borrower in connection with the preparation of the Disclosure Documents or in connection with the underwriting or the closing of the Loan (including without limitation financial statements of Borrower and operating statements and rent rolls with respect to the Properties), and in no event shall Borrower be liable for Liabilities arising from information contained in a Disclosure Document that was not provided to Borrower for comment at least five (5) Business Days prior to its dissemination or on which Borrower provided comments to Lender in writing and Lender failed to incorporate such comments (assuming such comments were accurate). This indemnity agreement will be in addition to any liability which Borrower may otherwise have. Moreover, the indemnification provided for in clauses (ii) and (iii) above shall be effective whether or not an indemnification agreement described in clause (i) above is provided.

(c) In connection with filings under the Exchange Act (if any), Borrower agrees to indemnify (i) the Indemnified Persons for Liabilities to which any such Indemnified Person may become subject insofar as the Liabilities arise out of or are based upon any untrue statement or alleged untrue statement of any material fact in the Covered Disclosure Information, or the omission or alleged omission to state in the Covered Disclosure Information a material fact required to be stated therein or necessary in order to make the statements in the Covered Disclosure Information, in light of the circumstances under which they were made, not

misleading and (ii) reimburse each Indemnified Person for any legal or other expenses incurred by such Indemnified Persons, as they are incurred, in connection with defending or investigating the Liabilities.

(d) Promptly after receipt by an Indemnified Person of notice of any claim or the commencement of any action, the Indemnified Person shall, if a claim in respect thereof is to be made against Borrower, notify Borrower in writing of the claim or the commencement of that action; provided, however, that the failure to notify Borrower shall not relieve it from any liability which it may have under the indemnification provisions of this Section 9.2 except to the extent that it has been materially prejudiced by such failure and, provided, further, that the failure to notify Borrower shall not relieve it from any liability which it may have to an Indemnified Person otherwise than under the provisions of this Section 9.2. If any such claim or action shall be brought against an Indemnified Person, and it shall notify Borrower thereof, Borrower shall be entitled to participate therein and, to the extent that it wishes, assume the defense thereof with counsel reasonably satisfactory to the Indemnified Person. After notice from any Borrower to an Indemnified Person of its election to assume the defense of such claim or action, Borrower shall not be liable to the Indemnified Person for any legal or other expenses subsequently incurred by the Indemnified Person in connection with the defense thereof except as provided in the following sentence; provided, however, if the defendants in any such action include both Borrower, on the one hand, and one or more Indemnified Persons on the other hand, and an Indemnified Person shall have reasonably concluded that there are any legal defenses available to it and/or other Indemnified Persons that are different or in addition to those available to Borrower, the Indemnified Person or Persons shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on behalf of such Indemnified Person or Persons. The Indemnified Person shall instruct its counsel to maintain reasonably detailed billing records for fees and disbursements for which such Indemnified Person is seeking reimbursement hereunder and shall submit copies of such detailed billing records to substantiate that such counsel's fees and disbursements are solely related to the defense of a claim for which Borrower is required hereunder to indemnify such Indemnified Person. Borrower shall not be liable for the expenses of more than one (1) such separate counsel unless such Indemnified Person shall have reasonably concluded that there may be legal defenses available to it that are different from or additional to those available to another Indemnified Person.

(e) Without the prior consent of the Indemnified Person in question (which consent shall not be unreasonably withheld), Borrower shall not settle or compromise or consent to the entry of any judgment in any pending or threatened claim, action, suit or proceeding in respect of which indemnification may be sought hereunder (whether or not any Indemnified Person is an actual or potential party to such claim, action, suit or proceeding) unless Borrower shall have given such Indemnified Person reasonable prior notice thereof and shall have obtained an unconditional release of each Indemnified Person hereunder from all liability arising out of such claim, action, suit or proceedings. As long as Borrower has complied with its obligations to defend and indemnify hereunder, Borrower shall not be liable for any settlement made by any Indemnified Person without the consent of Borrower (which consent shall not be unreasonably withheld).

(f) Borrower agrees that if any indemnification or reimbursement sought pursuant to this Section 9.2 is finally judicially determined to be unavailable for any reason or is insufficient to hold any Indemnified Person harmless (with respect only to the Liabilities that are the subject of this Section 9.2), then Borrower, on the one hand, and such Indemnified Person, on the other hand, shall contribute to the Liabilities for which such indemnification or reimbursement is held unavailable or is insufficient: (x) in such proportion as is appropriate to reflect the relative benefits to Borrower, on the one hand, and such Indemnified Person, on the other hand, from the transactions to which such indemnification or reimbursement relates; or (y) if the allocation provided by clause (x) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (x) but also the relative faults of Borrower, on the one hand, and all Indemnified Persons, on the other hand, as well as any other equitable considerations. Notwithstanding the provisions of this Section 9.2, (A) no party found liable for a fraudulent misrepresentation shall be entitled to contribution from any other party who is not also found liable for such fraudulent misrepresentation, and (B) Borrower agrees that in no event shall the amount to be contributed by the Indemnified Persons collectively pursuant to this paragraph exceed the amount of the fees (by underwriting discount or otherwise) actually received by the Indemnified Persons in connection with the closing of the Loan or the Securitization.

(g) Borrower agrees that the indemnification, contribution and reimbursement obligations set forth in this Section 9.2 shall apply whether or not any Indemnified Person is a formal party to any lawsuits, claims or other proceedings. Borrower further agrees that the Indemnified Persons are intended third party beneficiaries under this Section 9.2.

(h) The liabilities and obligations of the Indemnified Persons and Borrower under this Section 9.2 shall survive the termination of this Agreement and the satisfaction and discharge of the Debt.

(i) Notwithstanding anything to the contrary contained herein, Borrower shall have no obligation to act as depositor with respect to the Loan or an issuer or registrant with respect to the Securities issued in any Securitization.

**Section 9.3. Exculpation.** (a) Subject to the qualifications below, Lender shall not enforce the liability and obligation of Borrower to perform and observe the obligations contained in the Note, this Agreement, the Pledge Agreement or the other Loan Documents by any action or proceeding wherein a money judgment shall be sought against Borrower, except that Lender may bring a foreclosure action, an action for specific performance or any other appropriate action or proceeding to enable Lender and each Noteholder to enforce and realize upon its interest under the Note, this Agreement, the Pledge Agreement and the other Loan Documents, or in the Collateral, or any other collateral given to Lender pursuant to the Loan Documents; provided, however, that, except as specifically provided herein, any judgment in any such action or proceeding shall be enforceable against Borrower only to the extent of Borrower's interest in the Collateral and in any other collateral given to Lender, and Lender, by accepting the Note, this Agreement, the Pledge Agreement and the other Loan Documents, agrees that it shall not sue for, seek or demand any deficiency judgment against Borrower in any such action or proceeding under, or by reason of, or in connection with, the Note, this Agreement, the Pledge Agreement or the other Loan Documents. The provisions of this Section shall not, however,

(a) constitute a waiver, release or impairment of any obligation evidenced or secured by any of the Loan Documents; (b) impair the right of Lender to name Borrower as a party defendant in any action or suit for foreclosure and sale under the Pledge Agreement; (c) affect the validity or enforceability of or any Guaranty made in connection with the Loan or any of the rights and remedies of Lender thereunder; (d) impair the right of Lender to obtain the appointment of a receiver; (e) intentionally omitted; (f) constitute a prohibition against Lender to seek a deficiency judgment against Borrower in order to fully realize the security granted by the Pledge Agreement or to commence any other appropriate action or proceeding in order for Lender to exercise its remedies against all of the Collateral; or (g) constitute a waiver of the right of Lender to enforce the liability and obligation of Borrower, by money judgment or otherwise, to the extent of any actual loss, damage, cost, expense, liability, claim or other obligation incurred by Lender (including attorneys' fees and costs reasonably incurred) arising out of or in connection with the following:

(i) fraud or intentional misrepresentation by Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor in connection with the execution and delivery of the Loan Documents and/or the Loan;

(ii) the misappropriation, conversion or misapplication in contravention of the Loan Documents by Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor of any funds of Borrower, Senior Mezzanine Borrower, Mortgage Borrower or Operating Company, including, without limitation, (A) any Revenues, (B) any Net Liquidation Proceeds or Insurance Proceeds, (C) any Awards received in connection with a Condemnation, (D) any Rents or security deposits (or any item of Revenue, from whatever source) following an Event of Default, or (E) any distribution or other payments made in connection with any part of the Collateral or Senior Mezzanine Collateral;

(iii) the misappropriation, conversion or misapplication by Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor of any security deposits or Rents paid more than one (1) month in advance;

(iv) any act of actual intentional physical waste by Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor;

(v) the breach of any representation, warranty, covenant or indemnification provision in the Environmental Indemnity Agreement concerning environmental laws, hazardous substances and asbestos and any indemnification of Lender with respect thereto in either document;

(vi) if Borrower, Mortgage Borrower, Senior Mezzanine Borrower or Operating Company fails to obtain Lender's prior consent to any voluntary intentional Transfer as required by this Agreement, the Mortgage Loan Agreement or the Mortgages, as applicable;

(vii) any security deposits, advance deposits or any other deposits collected with respect to any of the Properties which are not delivered to Mortgage Lender upon a

foreclosure of any of the Properties or action in lieu thereof, except to the extent any such security deposits were applied in accordance with the terms and conditions of any of the Leases prior to the occurrence of the Event of Default that gave rise to such foreclosure or action in lieu thereof;

(viii) in the event of: (A) Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor filing a voluntary petition under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (B) the filing of an involuntary petition against Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law by any Person in which Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor or any of their respective Affiliates, agents or employees colludes with or such other Person, or Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor soliciting or causing to be solicited petitioning creditors for any involuntary petition against Borrower, Operating Company or any Guarantor from any Person; (C) Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor filing an answer consenting to or otherwise acquiescing in or joining in any involuntary petition filed against it by any other Person, other than Lender, under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (D) Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor consenting to or acquiescing in or joining in an application for the appointment of a custodian, receiver, trustee, or examiner for Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor or any of the Properties, the Collateral, the Senior Mezzanine Collateral or any portion thereof, other than at the request of Lender; or (E) Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor making an assignment for the benefit of creditors (other than Lender), or admitting, in writing or in any legal proceeding, its insolvency or inability to pay its debts as they become due;

(ix) if Borrower, Senior Mezzanine Borrower or Mortgage Borrower fails to maintain its status as a Special Purpose Entity or breaches any material representation or warranty set forth in Section 4.1.30 of this Agreement; and

(x) if Borrower, Mortgage Borrower, Senior Mezzanine Borrower or Operating Company fails to obtain Lender's prior consent to any voluntary Indebtedness (other than (x) with respect to Mortgage Borrower, Permitted Indebtedness and (y) with respect to Operating Company, Permitted Indebtedness (Operating Company), as applicable) or voluntary Lien (other than Permitted Encumbrances) encumbering any of the Properties, Senior Mezzanine Collateral or Collateral as required by this Agreement, the Senior Mezzanine Loan Agreement, the Mortgage Loan Agreement, the Pledge Agreement or the Mortgages.

Notwithstanding anything to the contrary under this Agreement, neither any present or future Affiliate of Borrower (other than Guarantor, to the extent provided under the Guaranty) nor any present or future shareholder, officer, director, employee, trustee, beneficiary, advisor, partner, member, principal, participant or agent of or in any Borrower or of or in any person or entity that

is or becomes an Affiliate of any Borrower shall have any personal liability, directly or indirectly, under or in connection with the Loan Documents. Neither the negative capital account of any Affiliate of Borrower in Borrower, or in any other Affiliate of Borrower in any other Affiliate of Borrower, nor any obligation of any Affiliate of Borrower in any Borrower to restore a negative capital account or to contribute or loan capital to any Borrower or to any other Affiliate of Borrower shall at any time be deemed to be the property or an asset of any Borrower (or any other Affiliate of Borrower) and neither Lender nor its successors or assigns shall have any right to collect, enforce or proceed against any such negative capital account or obligation to restore, contribute or loan capital.

(b) Notwithstanding anything to the contrary in this Agreement, the Note or any of the Loan Documents, Lender shall not be deemed to have waived any right which Lender may have under Section 506(a), 506(b), 1111(b) or any other provisions of the Bankruptcy Code to file a claim for the full amount of the Indebtedness or to require that all collateral shall continue to secure all of the Indebtedness owing to Lender in accordance with the Loan Documents.

**Section 9.4. Servicer.** (a) At the option of Lender, the Loan may be serviced by a servicer/trustee (the “**Servicer**”) selected by Lender and Lender may delegate all or any portion of its responsibilities under this Agreement and the other Loan Documents to the Servicer pursuant to a servicing agreement (the “**Servicing Agreement**”) between Lender and Servicer. Lender shall be responsible for any set-up fees or any other initial costs relating to or arising under the Servicing Agreement (arising in connection with the Securitization) and the payment of the monthly servicing fee due to Servicer under the Servicing Agreement, and, unless otherwise specifically set forth herein, Borrower shall be responsible for the payment of all fees and other reasonable out-of-pocket expenses incurred by Servicer resulting from any Borrower requests (for approvals or otherwise) to Servicer.

(b) In the event of a Securitization or syndication, the grant of participations in the Loan or any secondary marketing by Lender, Mortgage Borrower and the Mezzanine Borrowers, collectively may rely upon approvals or consents given by one (1) agent or representative in respect of the Mortgage Lender and the Mezzanine Lenders for the matter in question (which such parties shall designate, and pending further notice from Lender, such agent shall be JPM). Borrower shall only pay legal fees for the outside counsel of one Servicer.

**Section 9.5. Assignments and Participations.** (a) In addition to the rights Lender has under Section 9.1, Lender shall have the right, subject to this Section 9.5, to assign, sell, negotiate, pledge or hypothecate all or any portion of their rights and obligations hereunder (a “**Syndication**”). Except in connection with a Securitization, no Lender shall assign, sell, negotiate, pledge, hypothecate or otherwise transfer all or any portion of its rights in and to the Loan to any other Person (an “**Assignee**”) (a) other than in compliance with Section 9.9 hereof; and (b) unless such transaction shall be an assignment of a constant (and not varying), ratable percentage of such Lender’s interest in the Loan; provided, however, any Lender shall have the right at any time without the consent of or notice to any other Lender or other Person to grant a security interest in all or any portion of such Lender’s interest in the Loan to any Federal Reserve Bank or the central reserve bank or similar authority of any other country to secure any obligation of such Lender to such bank or similar authority (a “**Central Bank Pledge**”).

Effective on any such assignment and assumption by the assignee and on compliance with Section 9.9 hereof, the assigning Lender shall have no further liability hereunder with respect to the interest of such Lender that was the subject of such transfer and such Assignee shall be a Lender with respect to such interest, and Borrower shall have the same rights as to such Assignee with respect to such interest from and after the date of such assignment as if such Lender were an original Lender hereunder. Except for a Central Bank Pledge or financing transaction under a repurchase agreement, a Lender making any such assignment shall notify Borrower of same, specifying the Assignee thereof and the amount of the assignment and shall provide such other detail as Borrower may reasonably request to substantiate compliance with the foregoing.

**Section 9.6. Participation.** Lender may, without the consent of the Borrower, in compliance with applicable law, sell participations to one or more banks or other entities (a “**Participant**”), in all or a portion of Lender’s rights and obligations under this Agreement (including all or a portion of the Loan owing to it); provided that (A) Lender’s obligations under this Agreement shall remain unchanged, (B) Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) the Borrower shall continue to deal solely and directly with Lender in connection with Lender’s rights and obligations under this Agreement. The Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.2.3 and 2.2.4 (subject to requirements and limitations therein) to the same extent as if it were a Noteholder and had acquired its interest by assignment pursuant to Section 9.5. Each Lender that sells a participation shall, acting solely for this purpose as an agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each participant’s interest in the Loans or other obligations under this Agreement (the “**Participant Register**”). The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each person whose name is recorded in the Participant Register as the owner of such Loan or other obligation hereunder as the owner thereof for all purposes of this Agreement notwithstanding any notice to the contrary.

**Section 9.7. Borrower’s Facilitation of Transfer.** In order to facilitate permitted assignments and other transfers to Assignees and sales to Participants, Borrower shall execute and deliver to Lender and shall cause Guarantor to execute and deliver to Lender such further documents, instruments or agreements as Lender may reasonably require, including, if required by Lender, supplemental notes in the principal amount of such Lender’s pro rata share of the Loan substantially in the form of such Lender’s Note against surrender of the prior notes, and such supplemental note shall (i) be payable to order of such Lender, (ii) be dated as of the date hereof, and (iii) mature on the Maturity Date. Such supplemental note shall provide that it evidences a portion of the existing indebtedness hereunder and under the Notes and not any new or additional indebtedness of Borrower. The term “Note” as used in this Agreement and in all the other Loan Documents shall include all such supplemental notes but exclude any Note it replaces. Notwithstanding the foregoing, such documents, instruments or agreements shall not (a) increase the obligations or liabilities of any such Person hereunder or under the other Loan Documents in excess of the obligations or liabilities intended to be provided herein or in the other Loan Documents or (b) decrease such Person’s rights hereunder or under the other Loan Documents to less than what they were prior to the execution of such documents, instruments or agreements. In addition, Borrower agrees to reasonably cooperate with Lender, including providing such information and documentation regarding Borrower, Senior Mezzanine Borrower, Mortgage Borrower, Holdings, the Operating Company and any other Person as

Lender or any potential Assignee or Participant may reasonably request and to meet with potential Assignees and Participants upon reasonable notice. Lender and Borrower each shall pay their respective costs and expenses incurred in connection with the foregoing, including, without limitation, legal fees in connection with any of the foregoing matters, except that all costs and expenses of Lender and Borrower associated with any restructuring of the Loan requested by Lender, including under Section 2.1.5, 2.1.6 and 2.1.7, shall be paid solely by Lender.

**Section 9.8. Notice; Registration Requirement.** No Syndication of any part of Lender's interest in and to the Loan shall be effective or permitted under Section 9.5 until (a) an assignment and acceptance agreement in a form reasonably acceptable to Lender (an "**Assignment and Acceptance**") with respect to such Syndication shall have been delivered to Lender, (b) Lender shall have registered such Assignee's name and address in the Register which Lender maintains for the recordation of the names, addresses and interests of Noteholders, and (c) if such Assignee is not already a Lender hereunder, such Assignee shall deliver any tax forms required hereunder. The entries in the Register shall be conclusive, absent manifest error. This Section 9.8 shall not apply to any Central Bank Pledge.

**Section 9.9. Registry.** Borrower hereby designates Lender to serve as Borrower's agent, solely for purposes of this Section 9.9, to maintain at one of its offices a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the names and addresses of each Assignee, and the principal amount of the Loan (or portions thereof) owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). Failure to make any such recordation, or any error in such recordation shall not affect Borrower's obligations in respect of the Loan. With respect to any Lender, the transfer of the rights to the principal of, and interest on, its interest in the Loan shall not be effective until such transfer is recorded on the Register maintained by Lender with respect to ownership of such Loan and prior to such recordation all amounts owing to the transferor with respect to such Note shall remain owing to the transferor. The registration of a transfer of all or part of the Loan shall be recorded by Lender on the Register only upon the acceptance by Lender of a properly executed and delivered Assignment and Acceptance by the assignor and assignee. At the assigning Lender's option, concurrently with the delivery of an Assignment and Acceptance pursuant to which an interest of such Lender in the Loan was assigned to such Assignee, the assigning Lender shall surrender to Borrower its Note, if any, evidencing the portion of the Loan corresponding to the interest so transferred and Borrower shall deliver to Lender one or more new promissory notes in the same aggregate principal amount issued to the assigning Lender and/or the Assignee.

**Section 9.10. Cooperation in Syndication.** Borrower agrees to assist the Lender in completing a Syndication satisfactory to the Lender. Such assistance shall include (i) direct contact between senior management and advisors of Borrower and the proposed Assignees and/or Participants, (ii) assistance in the preparation of a confidential information memorandum and other marketing materials to be used in connection with the Syndication, (iii) the hosting, with the Lender, of one or more meetings of prospective Assignees and/or Participants, (iv) the delivery of appraisals satisfactory to the Lender if required. To assist the Lender in its Syndication efforts, Borrower agrees promptly to prepare and provide to the Lender all information with respect to Borrower, Senior Mezzanine Borrower, Mortgage Borrower, Holdings, the Operating Company, Guarantor, the Collateral, the Senior Mezzanine Collateral and the Properties contemplated hereby, including all financial information and projections (the

“**Projections**”), as the Lender may reasonably request in connection with the Syndication of the Loan. If required in connection with the Syndication, Borrower hereby agrees to:

(a) deliver updated financial and operating statements and other information reasonably required by the Lender to facilitate the Syndication;

(b) use reasonable efforts to deliver reliance letters reasonably satisfactory to the Lender with respect to the environmental assessments and reports delivered to the Lender prior to the Closing Date, which will run to the Lender and its successors and assigns;

(c) execute modifications to the Loan Documents required by the Lender, provided that such modification will not (except as set forth in (d)) change any material or economic terms of the Loan Documents, or otherwise increase the obligations or decrease the rights of Borrower pursuant to the Loan Documents (except to a de minimis extent); and

(d) if the Lender elects, in its sole discretion, prior to or upon a Syndication, to exercise its rights under Section 2.1.5, Borrower agrees to cooperate with the Lender in connection with the foregoing and to execute the required modifications and amendments to the Notes, this Agreement and the Loan Documents and to use reasonable efforts to provide opinions necessary to effectuate the same. Such Notes or components may be assigned different interest rates, so long as the weighted average of such interest rates does not exceed the Applicable Interest Rate, except in connection with the application of principal to such Notes or components following the occurrence of an Event of Default.

Lender and Borrower each shall pay their respective costs and expenses incurred in connection with the foregoing, including, without limitation, legal fees in connection with any of the foregoing matters, except that all costs and expenses of Lender and Borrower associated with any restructuring of the Loan requested by Lender, including under Sections 2.1.5, 2.1.6 and 2.1.7, shall be paid solely by Lender.

## **X. MISCELLANEOUS**

**Section 10.1. Survival.** This Agreement and all covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the making by Lender of the Loan and the execution and delivery to Lender of the Note, and shall continue in full force and effect so long as all or any of the Debt is outstanding and unpaid unless a longer period is expressly set forth herein or in the other Loan Documents. Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the legal representatives, successors and assigns of such party. All covenants, promises and agreements in this Agreement, by or on behalf of Borrower, shall inure to the benefit of the legal representatives, successors and assigns of Lender.

**Section 10.2. Lender's Discretion.** Whenever pursuant to this Agreement, Lender exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Lender, the decision of Lender to approve or disapprove or to decide whether arrangements or terms are satisfactory or not satisfactory shall (except as is otherwise specifically herein provided) be in the sole discretion of Lender and shall be final and conclusive.

Whenever this Agreement expressly provides that Lender may not withhold or shall be reasonable in granting its consent or its approval of an arrangement or term, such provisions shall also be deemed to prohibit Lender from delaying or conditioning such consent or approval.

**Section 10.3. Governing Law.** (a) THIS AGREEMENT WAS NEGOTIATED IN THE STATE OF NEW YORK, THE LOAN WAS MADE BY LENDER AND ACCEPTED BY BORROWER IN THE STATE OF NEW YORK, AND THE PROCEEDS OF THE LOAN DELIVERED PURSUANT HERETO WERE DISBURSED FROM THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS AND THE OBLIGATIONS ARISING HEREUNDER AND THEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA. TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER AND LENDER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVE ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS, AND THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER OR BORROWER ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS MAY AT LENDER'S OPTION BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW AND BORROWER WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND BORROWER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. BORROWER DOES HEREBY DESIGNATE AND APPOINT:

Corporation Service Company  
2711 Centerville Road, Suite 400  
Wilmington, DE 19808

AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON ITS BEHALF SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY FEDERAL OR STATE

COURT IN NEW YORK, NEW YORK, AND AGREES THAT SERVICE OF PROCESS UPON SAID AGENT AT SAID ADDRESS AND NOTICE OF SAID SERVICE MAILED OR DELIVERED TO BORROWER IN THE MANNER PROVIDED HEREIN SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON BORROWER IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE STATE OF NEW YORK. BORROWER (I) SHALL GIVE PROMPT NOTICE TO LENDER OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER, (II) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN NEW YORK, NEW YORK (WHICH SUBSTITUTE AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS), AND (III) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE IF ITS AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN NEW YORK, NEW YORK OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR.

**Section 10.4. Modification, Waiver in Writing.** No modification, amendment, extension, discharge, termination or waiver of any provision of this Agreement, or of the Note, or of any other Loan Document, nor consent to any departure by Borrower therefrom, shall in any event be effective unless the same shall be in a writing signed by the party against whom enforcement is sought, and then such waiver or consent shall be effective only in the specific instance, and for the purpose, for which given. Except as otherwise expressly provided herein, no notice to, or demand on Borrower, shall entitle Borrower to any other or future notice or demand in the same, similar or other circumstances. To the extent required by any Gaming Law, Borrower shall notify all relevant Gaming Authorities of any amendment to this Agreement or any Loan Document.

**Section 10.5. Delay Not a Waiver.** Except as expressly set forth herein, neither any failure nor any delay on the part of Lender in insisting upon strict performance of any term, condition, covenant or agreement, or exercising any right, power, remedy or privilege hereunder, or under the Note or under any other Loan Document, or any other instrument given as security therefor, shall operate as or constitute a waiver thereof, nor shall a single or partial exercise thereof preclude any other future exercise, or the exercise of any other right, power, remedy or privilege. In particular, and not by way of limitation, by accepting payment after the due date of any amount payable under this Agreement, the Note or any other Loan Document, Lender shall not be deemed to have waived any right either to require prompt payment when due of all other amounts due under this Agreement, the Note or the other Loan Documents, or to declare a default for failure to effect prompt payment of any such other amount.

**Section 10.6. Notices.** All notices, consents, approvals and requests required or permitted hereunder or under any other Loan Document shall be given in writing and shall be effective for all purposes if hand delivered or sent by (a) certified or registered United States mail, postage prepaid, return receipt requested or (b) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery, and by telecopier (with answer back acknowledged), addressed as follows (or at such other address and Person as shall be designated from time to time by any party hereto, as the case may be, in a notice to the other parties hereto in the manner provided for in this Section 10.6):

If to Lender: JPMorgan Chase Bank, N.A.  
270 Park Avenue, 10th Floor  
New York, New York 10017  
Attention: Michael Mesard  
Facsimile No.: (212) 834-6592

with a copy to: Sullivan & Cromwell LLP  
125 Broad Street  
New York, New York 10004  
Attention: Arthur S. Adler  
Facsimile No.: 212-558-3588

and

Cadwalader, Wickersham & Taft LLP  
One World Financial Center  
New York, New York 10281  
Attention: Fredric L. Altschuler  
Facsimile No.: (212) 504-6666

If to Borrower: One Caesars Palace Drive  
Las Vegas, Nevada 89109  
Attention: Chief Financial Officer  
Facsimile No.: (702) 407-6081

With a copy to: One Caesars Palace Drive  
Las Vegas, Nevada 89109  
Attention: General Counsel  
Facsimile No.: (702) 407-6418

and

Cleary Gottlieb Steen & Hamilton LLP  
One Liberty Plaza  
New York, New York 10006  
Attention: Michael Weinberger  
Facsimile No.: (212) 225-3999

and

Pircher, Nichols & Meeks  
1925 Century Park East, Seventeenth Floor  
Los Angeles, California 90067  
Attention: David Packer  
Facsimile No.: (310) 201-8922

A notice shall be deemed to have been given: in the case of hand delivery, at the time of delivery; in the case of registered or certified mail, when delivered or the first attempted delivery on a Business Day; or in the case of expedited prepaid delivery and telecopy, upon the first attempted delivery on a Business Day; or in the case of telecopy, upon sender's receipt of a machine-generated confirmation of successful transmission after advice by telephone to recipient that a telecopy notice is forthcoming. Each Borrower hereby designates Tahoe Mezz 7, LLC, a Delaware limited liability company ("**Borrower Agent**"), as the party to give and receive notices on behalf of Borrower hereunder, and any notice received by Lender by a Borrower other than Borrower Agent shall not constitute effective notice to, or be binding upon Lender hereunder. Notwithstanding the foregoing, any notice by Lender to one or more Borrowers other than Borrower Agent shall be deemed to constitute effective notice to all of the Borrowers.

**Section 10.7. Trial by Jury. BORROWER AND LENDER HEREBY AGREE NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVE ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY BORROWER AND LENDER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. BORROWER AND LENDER ARE HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER.**

**Section 10.8. Headings.** The Article and/or Section headings and the Table of Contents in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

**Section 10.9. Severability.** Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

**Section 10.10. Preferences.** Lender shall have the continuing and exclusive right to apply or reverse and reapply any and all payments by Borrower to any portion of the obligations of Borrower hereunder (except that, unless there exists an Event of Default, payments of principal shall be applied to components of the Note on a pro-rata basis). To the extent Borrower makes a payment or payments to Lender, which payment or proceeds or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable cause, then, to the extent of such payment or proceeds received, the obligations hereunder or part thereof intended to be satisfied shall be revived and continue in full force and effect, as if such payment or proceeds had not been received by Lender.

**Section 10.11. Waiver of Notice.** Borrower hereby expressly waives, and shall not be entitled to, any notices of any nature whatsoever from Lender except with respect to matters for which this Agreement or the other Loan Documents specifically and expressly provide for the giving of notice by Lender to Borrower and except with respect to matters for which Borrower is not, pursuant to applicable Legal Requirements, permitted to waive the giving of notice.

**Section 10.12. Remedies of Borrower.** In the event that a claim or adjudication is made that Lender or its agents have acted unreasonably or unreasonably delayed acting in any case where by law or under this Agreement or the other Loan Documents, Lender or such agent, as the case may be, has an obligation to act reasonably or promptly, Borrower agrees that neither Lender nor its agents shall be liable for any monetary damages, and Borrower's sole remedies shall be limited to commencing an action seeking injunctive relief or declaratory judgment (except in cases of bad faith, gross negligence or willful misconduct). The parties hereto agree that any action or proceeding to determine whether Lender has acted reasonably shall be determined by an action seeking declaratory judgment.

**Section 10.13. Expenses; Indemnity.** (a) Borrower covenants and agrees to pay or, if Borrower fails to pay, to reimburse, Lender and each Noteholder upon receipt of notice from such Person for all reasonable out-of-pocket costs and expenses (including reasonable attorneys' fees and disbursements) incurred by such Person in connection with (i) the preparation, negotiation, execution and delivery of this Agreement and the other Loan Documents and the consummation of the transactions contemplated hereby and thereby and all the costs of furnishing all opinions by counsel for Borrower (including, without limitation, any opinions requested by such Person as to any legal matters arising under this Agreement or the other Loan Documents with respect to the Properties); (ii) Borrower's ongoing performance of and compliance with Borrower's respective agreements and covenants contained in this Agreement and the other Loan Documents on its part to be performed or complied with after the Closing Date, including, without limitation, confirming compliance with environmental, gaming and insurance requirements if necessary or advisable due to reasonably suspected non-compliance; (iii) the negotiation, preparation, execution, delivery and administration of any consents, amendments, waivers or other modifications to this Agreement and the other Loan Documents and any other documents or matters requested by Borrower; (iv) securing Borrower's compliance with any requests made pursuant to the provisions of this Agreement, if Borrower defaults in its obligations hereunder; (v) the filing and recording fees and expenses, title insurance and reasonable fees and expenses of counsel for providing to Lender or any Noteholder all required legal opinions, and other similar expenses incurred in creating and perfecting the Liens in favor of Lender (or, as applicable, any Noteholder) pursuant to this Agreement and the other Loan Documents; (vi) enforcing or preserving any rights, either in response to third party claims or in prosecuting or defending any action or proceeding or other litigation, in each case against, under or affecting Borrower, Senior Mezzanine Borrower, Mortgage Borrower, Operating Company, this Agreement, the other Loan Documents, the Properties, the Collateral or any other security given for the Loan; and (vii) enforcing any obligations of or collecting any payments due from Borrower under this Agreement, the other Loan Documents or with respect to the Properties, Operating Company or in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a "work-out" or of any insolvency or bankruptcy proceedings; provided, however, that

Borrower shall not be liable for the payment of any such costs and expenses to any Person to the extent the same arise by reason of the gross negligence, illegal acts, fraud or willful misconduct of such Person. Any cost and expenses due and payable to Lender or any Noteholder may be paid from any amounts in the Mezzanine Collection Account upon the occurrence and during the continuance of an Event of Default.

(b) Borrower shall indemnify, defend and hold harmless Lender from and against any and all other actual liabilities, obligations, losses, damages (excluding, however, any punitive and consequential damages), penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel for Lender in connection with any investigative, administrative or judicial proceeding commenced or threatened, whether or not Lender shall be designated a party thereto), that may be imposed on, incurred by, or asserted against Lender in any manner relating to or arising out of (i) any breach by Borrower of its obligations under, or any material misrepresentation by Borrower contained in, this Agreement or the other Loan Documents, (ii) the use or intended use of the proceeds of the Loan, (iii) the Leases or any of the duties, responsibilities or obligations of Borrower or any Operating Company thereunder, (iv) the transactions contemplated in the Collection Account Agreements or (v) any third-party claims alleging that the Loan, the Senior Mezzanine Loan or the Mortgage Loan, the Operating Lease, the Operating Lease Guaranty or any of the Loan Documents violates any agreements or Legal Requirements binding on the Borrower or its Affiliates or their respective properties (collectively, the “**Indemnified Liabilities**”); provided, however, that Borrower shall not have any obligation to Lender hereunder to the extent that such Indemnified Liabilities arise from the gross negligence, illegal acts, fraud or willful misconduct of Lender. To the extent that the undertaking to indemnify, defend and hold harmless set forth in the preceding sentence may be unenforceable because it violates any law or public policy, Borrower shall pay the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by Lender.

(c) Borrower covenants and agrees to pay for or, if Borrower fails to pay, to reimburse Lender for, any fees and expenses incurred by any Rating Agency in connection with any request by Borrower that required Rating Agency Confirmation pursuant to the terms hereof.

**Section 10.14. Schedules Incorporated.** The Schedules annexed hereto are hereby incorporated herein as a part of this Agreement with the same effect as if set forth in the body hereof.

**Section 10.15. Offsets, Counterclaims and Defenses.** Any assignee of Lender’s interest in and to this Agreement, the Note and the other Loan Documents shall take the same free and clear of all offsets, counterclaims or defenses which are unrelated to such documents which Borrower may otherwise have against any assignor of such documents, and no such unrelated counterclaim or defense shall be interposed or asserted by Borrower in any action or proceeding brought by any such assignee upon such documents and any such right to interpose or assert any such unrelated offset, counterclaim or defense in any such action or proceeding is hereby expressly waived by Borrower.

**Section 10.16. No Joint Venture or Partnership; No Third Party Beneficiaries.** (a) Borrower and Lender intend that the relationships created hereunder and under the other Loan Documents be solely that of borrower and lender. Nothing herein or therein is intended to create a joint venture, partnership, tenancy-in-common, or joint tenancy relationship between Borrower and Lender nor to grant Lender any interest in the Properties other than that of mortgagee, beneficiary or lender.

(b) Except as expressly provided herein, this Agreement and the other Loan Documents are solely for the benefit of Lender and Borrower and nothing contained in this Agreement or the other Loan Documents shall be deemed to confer upon anyone other than Lender and Borrower any right to insist upon or to enforce the performance or observance of any of the obligations contained herein or therein. Lender and Borrower acknowledge and agree that the Noteholders are intended third party beneficiaries of all rights and remedies of the Lender hereunder. All conditions to the obligations of Lender to make the Loan hereunder are imposed solely and exclusively for the benefit of Lender and no other Person shall have standing to require satisfaction of such conditions in accordance with their terms or be entitled to assume that Lender will refuse to make the Loan in the absence of strict compliance with any or all thereof and no other Person shall under any circumstances be deemed to be a beneficiary of such conditions, any or all of which may be freely waived in whole or in part by Lender if, in Lender's sole discretion, Lender deems it advisable or desirable to do so.

**Section 10.17. Intentionally Omitted.**

**Section 10.18. Waiver of Marshalling of Assets.** To the fullest extent permitted by law, Borrower, for itself and its successors and assigns, waives all rights to a marshalling of the assets of Borrower, Borrower's partners and others with interests in Borrower, and of the Properties, or to a sale in inverse order of alienation in the event of foreclosure of all or any of the Mortgages, and agrees not to assert any right under any laws pertaining to the marshalling of assets, the sale in inverse order of alienation, homestead exemption, the administration of estates of decedents, or any other matters whatsoever to defeat, reduce or affect the right of Lender under the Loan Documents to a sale of the Properties for the collection of the Debt without any prior or different resort for collection or of the right of Lender to the payment of the Debt out of the net proceeds of the Properties in preference to every other claimant whatsoever. In addition, Borrower, for itself and its successors and assigns, waives in the event of foreclosure of any or all of the Collateral, any equitable right otherwise available to Borrower which would require the separate sale of the Collateral with respect to each Mortgage Borrower or require Lender to exhaust its remedies against any Collateral with respect to each Mortgage Borrower or any combination of such Collateral before proceeding against any other Collateral with respect to one or more Mortgage Borrowers; and further in the event of such foreclosure Borrower does hereby expressly consent to and authorize, at the option of Lender, the foreclosure and sale either separately or together of any combination of the Collateral.

**Section 10.19. Waiver of Counterclaim.** Borrower hereby waives the right to assert a counterclaim, other than a compulsory counterclaim, in any action or proceeding brought against it by Lender or its agents.

**Section 10.20. Conflict; Construction of Documents; Reliance.** In the event of any conflict between the provisions of this Loan Agreement and any of the other Loan Documents, the provisions of this Loan Agreement shall control. The parties hereto acknowledge that they were represented by competent counsel in connection with the negotiation, drafting and execution of the Loan Documents and that such Loan Documents shall not be subject to the principle of construing their meaning against the party which drafted same. Borrower acknowledges that, with respect to the Loan, Borrower shall rely solely on its own judgment and advisors in entering into the Loan without relying in any manner on any statements, representations or recommendations of Lender or any parent, subsidiary or Affiliate of Lender. Lender shall not be subject to any limitation whatsoever in the exercise of any rights or remedies available to it under any of the Loan Documents or any other agreements or instruments which govern the Loan by virtue of the ownership by it or any parent, subsidiary or Affiliate of Lender of any equity interest any of them may acquire in Borrower, and Borrower hereby irrevocably waives the right to raise any defense or take any action on the basis of the foregoing with respect to Lender's exercise of any such rights or remedies. Borrower acknowledges that Lender engages in the business of real estate financings and other real estate transactions and investments which may be viewed as adverse to or competitive with the business of Borrower or its Affiliates.

**Section 10.21. Brokers and Financial Advisors.** Borrower hereby represents that it has dealt with no financial advisors, brokers, underwriters, placement agents, agents or finders in connection with the transactions contemplated by this Agreement (other than those the fees and other claims of which shall be paid by Borrower). Borrower hereby agrees to indemnify, defend and hold Lender and each Noteholder harmless from and against any and all claims, liabilities, costs and expenses of any kind (including Lender's attorneys' fees and expenses) in any way relating to or arising from a claim by any Person that such Person acted on behalf of Borrower or Lender in connection with the transactions contemplated herein. Each of Lender and (by its acceptance of its respective Note) the Noteholders hereby represents that it has dealt with no financial advisors, brokers, underwriters, placement agents, agents or finders in connection with the transactions contemplated by this Agreement. The provisions of this Section 10.21 shall survive the expiration and termination of this Agreement and the payment of the Debt.

**Section 10.22. Prior Agreements.** This Agreement and the other Loan Documents contain the entire agreement of the parties hereto and thereto in respect of the transactions contemplated hereby and thereby, and all prior agreements among or between such parties, whether oral or written, including, without limitation, the Commitment Letter dated December 19, 2006 between Affiliates of Borrower and Lender are superseded by the terms of this Agreement and the other Loan Documents.

**Section 10.23. Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which counterparts together shall constitute one agreement with the same effect as if the parties had signed the same signature page.

**Section 10.24. Intentionally Omitted.**

**Section 10.25. Gaming Laws.** All rights, remedies and powers in or under this Agreement may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of the Gaming Laws.

**Section 10.26. Certain Additional Rights of Lender (VCOC).** Notwithstanding anything to the contrary contained in this Agreement, Lender shall have:

(a) the right to routinely consult with and advise Borrower's management regarding the significant business activities and business and financial developments of Borrower, Senior Mezzanine Borrower and Mortgage Borrower, provided that any such advice or consultation shall be completely nonbinding on Borrower, and; provided, however, that such consultations shall not include discussions of environmental compliance programs or disposal of hazardous substances;

(b) the right, in accordance with the terms of this Agreement, to examine the books and records of Borrower, Senior Mezzanine Borrower and Mortgage Borrower at any reasonable times upon reasonable notice;

(c) the right, in accordance with the terms of this Agreement, including, without limitation, Section 5.1.11 hereof, to receive monthly, quarterly and year end financial reports, including balance sheets, statements of income, shareholder's equity and cash flow, a management report and schedules of outstanding indebtedness, in each case to the extent explicitly set forth herein; and

(d) the right, without restricting any other rights of Lender under this Agreement (including any similar right), to reasonably approve any acquisition by Borrower, Senior Mezzanine Borrower or Mortgage Borrower of any other significant real property.

The rights described above in this Section 10.26 may be exercised by any entity which owns and controls, directly or indirectly, substantially all of the interests in Lender.

## **XI. JOINT AND SEVERAL LIABILITY; WAIVERS**

**Section 11.1. Joint and Several Liability; Primary Obligors.** Each entity comprising Borrower (each, a "**Borrower Entity**") shall be a primary obligor with respect to payment of the Debt and performance of Borrower's obligations under the Loan Documents and all such Borrower Entities shall be jointly and severally liable for payment of the Debt and performance of such other obligations. As used in this Article, references to "**Other Borrowers**" shall mean all Borrower Entities other than the particular Borrower Entity referred to.

**Section 11.2. Waivers.** Without limiting the primary liability of each Borrower Entity as set forth above, to the extent any such Borrower Entity is determined to be secondarily liable with respect to any portion of the Debt or any other obligation hereunder, the following shall apply:

**11.2.1 No Duty to Pursue Others.** It shall not be necessary for Lender (and each Borrower Entity hereby waives any rights which such Borrower Entity may have to require Lender), in order to enforce the obligations of such Borrower Entity hereunder, first to (a) institute suit or exhaust its remedies against any Other Borrower or others liable on the Debt or any other person, (b) enforce Lender's rights against any collateral mortgaged, pledged or granted by any Other Borrower which shall ever have been given to secure the Debt ("**Other Borrower Collateral**"), (c) enforce Lender's rights against any other guarantors of the Debt, (d) join Borrower or any others liable on the Debt in any action against any Other Borrower seeking to enforce the Loan Documents, (e) exhaust any remedies available to Lender against any collateral which shall ever have been given to secure the Debt, or (f) resort to any other means of obtaining payment of the Loan by any Other Borrower. Lender shall not be required to mitigate damages or take any other action pertaining to any Other Borrower or any Other Borrower Collateral to reduce, collect or enforce the Debt from any Other Borrower.

**11.2.2 Waivers.** Such Borrower Entity agrees to the provisions of the Loan Documents, and hereby waives notice of (a) any loans or advances made by Lender to any Other Borrower, (b) acceptance of the Loan Documents, (c) any amendment or extension of the Note, the Loan Agreement or of any other Loan Documents entered into by any Other Borrower, (d) the execution and delivery by any Other Borrower and Lender of any other loan or credit agreement or of any Other Borrower's execution and delivery of any promissory notes or other documents arising under the Loan Documents or in connection with the Other Borrower Collateral, (e) the occurrence of any breach by any Other Borrower or an Event of Default with respect to any Other Borrower or Other Borrower Collateral, (f) Lender's transfer or disposition of the Debt, or any part thereof, (g) sale or foreclosure (or posting or advertising for sale or foreclosure) of any Other Borrower Collateral, (h) protest, proof of non-payment or default by any Other Borrower and (i) any other action at any time taken or omitted by Lender, and, generally, all demands and notices to any Other Borrower of every kind in connection with the Loan Documents, any documents or agreements evidencing, securing or relating to any of the Debt.

**11.2.3 Waiver of Subrogation, Reimbursement and Contribution.** Notwithstanding anything to the contrary contained in the Loan Documents, each Borrower hereby unconditionally and irrevocably waives, releases and abrogates, prior to the payment in full of the Loan and for a period of ninety-one (91) days thereafter any and all rights it may now or hereafter have under any agreement, at law or in equity (including any law subrogating such Borrower Entity to the rights of Lender), to assert any claim against or seek contribution, indemnification or any other form of reimbursement (other than pursuant to the express provisions of the Contribution Agreement) from any Other Borrower or any other party liable for payment of any or all of the Debt for any payment made by such Borrower Entity under or in connection with the Loan Documents or otherwise.

**11.2.4 Events and Circumstances Not Reducing or Discharging Guarantor's Obligations.** Each Borrower Entity hereby consents and agrees to each of the following, and agrees that such Borrower Entity's obligations under the Loan Documents shall not be released, diminished, impaired, reduced or adversely affected by any of the following, and waives any common law, equitable, statutory or other rights (including rights to notice) which such Borrower Entity might otherwise have as a result of or in connection with any of the following:

(a) Modifications. Any renewal, extension, increase, modification, alteration, restatement or rearrangement entered into by any Other Borrower of all or any part of the Debt, the Note, the Loan Agreement, the other Loan Documents, or any other document, instrument, contract or understanding between any Other Borrower and Lender, or any other parties, pertaining to the Debt or any failure of Lender to notify Borrower Entity of any such action.

(b) Adjustment. Any adjustment, indulgence, forbearance or compromise that might be granted or given by Lender to any Other Borrower.

(c) Condition of Borrower or Borrower Entity. The insolvency, bankruptcy, arrangement, adjustment, composition, liquidation, disability, dissolution or lack of power of any Other Borrower or any other party at any time liable for the payment of all or part of the Debt; or any dissolution of any Other Borrower, or any sale, lease or transfer of any or all of the assets of Borrower or of any Other Borrower, or any changes in the shareholders, partners or members of any Other Borrower; or any reorganization of any Other Borrower.

(d) Invalidity of Debt. The invalidity, illegality or unenforceability of all or any part of the Debt, or any document or agreement executed in connection with the Debt, for any reason whatsoever, including the fact that (a) the Debt, or any part thereof, exceeds the amount permitted by law, (b) the act of creating the Debt or any part thereof is ultra vires, (c) the officers or representatives executing the Note, the Loan Agreement or the other Loan Documents or otherwise creating the Debt acted in excess of their authority, (d) the Debt violate applicable usury laws, (e) any Other Borrower has valid defenses, claims or offsets (whether at law, in equity or by agreement) which render the Debt wholly or partially uncollectible from such Other Borrower, (f) the creation, performance or repayment of the Debt (or the execution, delivery and performance of any document or instrument by any Other Borrower representing part of the Debt or executed in connection with the Debt, or given to secure the repayment of the Debt) is illegal, uncollectible or unenforceable, or (g) the Note, the Loan Agreement or any of the other Loan Documents have been forged or otherwise are irregular or not genuine or authentic, it being agreed that such Borrower Entity shall remain liable hereon regardless of whether any Other Borrower or any other Person be found not liable on the Debt or any part thereof for any reason.

(e) Release of Obligors. Any full or partial release of the liability of any Other Borrower on the Debt, or any part thereof, or of any guarantor(s) thereof, or any other person or entity now or hereafter liable, whether directly or indirectly, jointly, severally, or jointly and severally, to pay, perform, guarantee or assure the payment of the Debt, or any part thereof, it being recognized, acknowledged and agreed by such Borrower Entity that such Borrower Entity may be required to pay the Debt in full without assistance or support of any other party, and such Borrower Entity has not been induced to enter into the Loan Documents on the basis of a contemplation, belief, understanding or agreement that other Persons will be liable to pay or perform the Debt, or that Lender will look to other Persons to pay or perform the Debt.

(f) Other Collateral. The taking or accepting of any other security, collateral or guaranty, or other assurance of payment, for all or any part of the Debt.

(g) Release of Collateral. Any release, surrender, exchange, subordination, deterioration, waste, loss or impairment (including negligent, willful, unreasonable or

unjustifiable impairment) of any collateral, property or security at any time existing in connection with, or assuring or securing payment of, all or any part of the Debt.

(h) Care and Diligence. The failure of Lender or any other party to exercise diligence or reasonable care in the preservation, protection, enforcement, sale or other handling or treatment of Other Borrower Collateral, all or any part of such collateral, property or security, including any neglect, delay, omission, failure or refusal of Lender (a) to take or prosecute any action for the collection of any of the Debt or (b) to foreclose, or initiate any action to foreclose, or, once commenced, prosecute to completion any action to foreclose upon Other Borrower Collateral, or (c) to take or prosecute any action in connection with any instrument or agreement evidencing or securing all or any part of the Debt.

(i) Unenforceability. The fact that any collateral, security, security interest or lien contemplated or intended to be given, created or granted as security for the repayment of the Debt, or any part thereof, shall not be properly perfected or created, or shall prove to be unenforceable or subordinate to any other security interest or lien, it being recognized and agreed by such Borrower Entity that such Borrower Entity is not entering into the Loan Documents in reliance on, or in contemplation of the benefits of, the validity, enforceability, collectibility or value of any of the collateral for the Debt.

(j) Offset. Any existing or future right of offset, claim or defense of Borrower against Lender, or any other Person, or against payment of the Debt by any Other Borrower, whether such right of offset, claim or defense arises in connection with the Debt (or the transactions creating the Debt) or otherwise.

(k) Merger. The reorganization, merger or consolidation of any Other Borrower into or with any other corporation or entity.

(l) Preference. Any payment by Borrower to Lender is held to constitute a preference under bankruptcy laws, or for any reason Lender is required to refund such payment or pay such amount to Borrower or someone else.

**Section 11.3. Other Actions Taken or Omitted.** Any other action taken or omitted to be taken with respect to the Loan Documents, the Debt, or Other Borrower Collateral, whether or not such action or omission prejudices such Borrower Entity or increases the likelihood that such Borrower Entity will be required to pay the Debt pursuant to the terms hereof, it is the unambiguous and unequivocal intention of such Borrower Entity that such Borrower Entity shall be obligated to pay the Debt when due, notwithstanding any occurrence, circumstance, event, action, or omission whatsoever pertaining to any Other Borrower or any Other Borrower Collateral, whether contemplated or not, and whether or not otherwise or particularly described herein, which obligation shall be deemed satisfied only upon the full and final payment and satisfaction of the Debt.

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**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed by their duly authorized representatives, all as of the day and year first above written.

**BORROWER:**

**HARRAH'S LAS VEGAS MEZZ 7, LLC,**  
a Delaware limited liability company

By: /s/ Jonathan S. Halkyard

Name: Jonathan S. Halkyard

Title: President and Treasurer

**HARRAH'S ATLANTIC CITY MEZZ 7, LLC,**  
a Delaware limited liability company

By: /s/ Jonathan S. Halkyard

Name: Jonathan S. Halkyard

Title: President and Treasurer

**TAHOE MEZZ 7, LLC,**  
a Delaware limited liability company

By: /s/ Jonathan S. Halkyard

Name: Jonathan S. Halkyard

Title: President and Treasurer

**RIO MEZZ 7, LLC,**  
a Delaware limited liability company

By: /s/ Jonathan S. Halkyard

Name: Jonathan S. Halkyard

Title: President and Treasurer

**FLAMINGO LAS VEGAS MEZZ 7, LLC,**  
a Delaware limited liability company

By: /s/ Jonathan S. Halkyard

Name: Jonathan S. Halkyard

Title: President and Treasurer

**SHOWBOAT ATLANTIC CITY MEZZ 7, LLC,**  
a Delaware limited liability company

By: /s/ Jonathan S. Halkyard

Name: Jonathan S. Halkyard

Title: President and Treasurer

**LENDER:**

**JPMORGAN CHASE BANK, N.A.**

By: /s/ Jennifer A. Loughrey

Name: Jennifer A. Loughrey

Title: Vice President

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**EIGHTH MEZZANINE LOAN AGREEMENT**

Dated as of January 28, 2008

Between

**THE ENTITIES IDENTIFIED ON THE SIGNATURE PAGES  
HEREOF AS BORROWER,**  
collectively, as Borrower

and

**JPMORGAN CHASE BANK N.A.,**  
as Lender

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Exhibit A	–	Form of Completion Guaranty

## EIGHTH MEZZANINE LOAN AGREEMENT

**THIS EIGHTH MEZZANINE LOAN AGREEMENT**, dated as of January 28, 2008 (as amended, restated, replaced, supplemented or otherwise modified from time to time, this “**Agreement**”), between **JPMORGAN CHASE BANK, N.A.**, a banking association chartered under the laws of the United States of America, having an address at 270 Park Avenue, New York, New York 10017 (“**Lender**”), and **THE ENTITIES IDENTIFIED ON THE SIGNATURE PAGES HEREOF AS BORROWER**, each a Delaware limited liability company having its principal place of business at the addresses set forth on Schedule I attached hereto (collectively, “**Borrower**”).

### WITNESSETH:

**WHEREAS**, JPMorgan Chase Bank, N.A., having an address at 270 Park Avenue, New York, New York 10017, as mortgage lender (“**Mortgage Lender**”), is making a loan in the principal amount of Four Billion and No/100 Dollars (\$4,000,000,000) (the “**Mortgage Loan**”) to Mortgage Borrower (as hereinafter defined) pursuant to that certain Loan Agreement, dated as of the date hereof (as the same may be amended, supplemented, replaced or otherwise modified from time to time, the “**Mortgage Loan Agreement**”), which Mortgage Loan is evidenced by the Mortgage Note (as hereinafter defined) made by Mortgage Borrower to Mortgage Lender and secured by, among other things, the Mortgage (as hereinafter defined) given by Mortgage Borrower in favor of Mortgage Lender pursuant to which Mortgage Borrower has granted Mortgage Lender a first priority mortgage on, among other things, the Properties and other collateral as more fully described in the Mortgage;

**WHEREAS**, JPMorgan Chase Bank, N.A., having an address at 270 Park Avenue, New York, New York 10017, as first mezzanine lender (“**First Mezzanine Lender**”), is making a loan in the principal amount of \$300,000,000 (the “**First Mezzanine Loan**”) to First Mezzanine Borrower (as hereinafter defined) pursuant to that certain First Mezzanine Loan Agreement, dated as of the date hereof (as the same may be amended, supplemented, replaced or otherwise modified from time to time, the “**First Mezzanine Loan Agreement**”), which First Mezzanine Loan is evidenced by the First Mezzanine Note (as hereinafter defined) made by First Mezzanine Borrower to First Mezzanine Lender and secured by, among other things, the First Mezzanine Pledge Agreement (as hereinafter defined) given by First Mezzanine Borrower in favor of First Mezzanine Lender pursuant to which First Mezzanine Borrower has granted First Mezzanine Lender a first priority security interest on, among other things, the Collateral (as defined in the First Mezzanine Pledge Agreement);

**WHEREAS**, JPMorgan Chase Bank, N.A., having an address at 270 Park Avenue, New York, New York 10017, as second mezzanine lender (“**Second Mezzanine Lender**”), is making a loan in the principal amount of \$275,000,000 (the “**Second Mezzanine Loan**”) to Second Mezzanine Borrower (as hereinafter defined) pursuant to that certain Second Mezzanine Loan Agreement, dated as of the date hereof (as the same may be amended, supplemented, replaced or otherwise modified from time to time, the “**Second Mezzanine Loan Agreement**”), which Second Mezzanine Loan is evidenced by the Second Mezzanine Note (as

hereinafter defined) made by Second Mezzanine Borrower to Second Mezzanine Lender and secured by, among other things, the Second Mezzanine Pledge Agreement (as hereinafter defined) given by Second Mezzanine Borrower in favor of Second Mezzanine Lender pursuant to which Second Mezzanine Borrower has granted Second Mezzanine Lender a first priority security interest on, among other things, the Collateral (as defined in the Second Mezzanine Pledge Agreement);

**WHEREAS**, JPMorgan Chase Bank, N.A., having an address at 270 Park Avenue, New York, New York 10017, as third mezzanine lender (“**Third Mezzanine Lender**”), is making a loan in the principal amount of \$275,000,000 (the “**Third Mezzanine Loan**”) to Third Mezzanine Borrower (as hereinafter defined) pursuant to that certain Third Mezzanine Loan Agreement, dated as of the date hereof (as the same may be amended, supplemented, replaced or otherwise modified from time to time, the “**Third Mezzanine Loan Agreement**”), which Third Mezzanine Loan is evidenced by the Third Mezzanine Note (as hereinafter defined) made by Third Mezzanine Borrower to Third Mezzanine Lender and secured by, among other things, the Third Mezzanine Pledge Agreement (as hereinafter defined) given by Third Mezzanine Borrower in favor of Third Mezzanine Lender pursuant to which Third Mezzanine Borrower has granted Third Mezzanine Lender a first priority security interest on, among other things, the Collateral (as defined in the Third Mezzanine Pledge Agreement);

**WHEREAS**, JPMorgan Chase Bank, N.A., having an address at 270 Park Avenue, New York, New York 10017, as fourth mezzanine lender (“**Fourth Mezzanine Lender**”), is making a loan in the principal amount of \$275,000,000 (the “**Fourth Mezzanine Loan**”) to Fourth Mezzanine Borrower (as hereinafter defined) pursuant to that certain Fourth Mezzanine Loan Agreement, dated as of the date hereof (as the same may be amended, supplemented, replaced or otherwise modified from time to time, the “**Fourth Mezzanine Loan Agreement**”), which Fourth Mezzanine Loan is evidenced by the Fourth Mezzanine Note (as hereinafter defined) made by Fourth Mezzanine Borrower to Fourth Mezzanine Lender and secured by, among other things, the Fourth Mezzanine Pledge Agreement (as hereinafter defined) given by Fourth Mezzanine Borrower in favor of Fourth Mezzanine Lender pursuant to which Fourth Mezzanine Borrower has granted Fourth Mezzanine Lender a first priority security interest on, among other things, the Collateral (as defined in the Fourth Mezzanine Pledge Agreement);

**WHEREAS**, JPMorgan Chase Bank, N.A., having an address at 270 Park Avenue, New York, New York 10017, as sixth mezzanine lender (“**Sixth Mezzanine Lender**”), is making a loan in the principal amount of \$275,000,000 (the “**Sixth Mezzanine Loan**”) to Sixth Mezzanine Borrower (as hereinafter defined) pursuant to that certain Sixth Mezzanine Loan Agreement, dated as of the date hereof (as the same may be amended, supplemented, replaced or otherwise modified from time to time, the “**Sixth Mezzanine Loan Agreement**”), which Sixth Mezzanine Loan is evidenced by the Sixth Mezzanine Note (as hereinafter defined) made by Sixth Mezzanine Borrower to Sixth Mezzanine Lender and secured by, among other things, the Sixth Mezzanine Pledge Agreement (as hereinafter defined) given by Sixth Mezzanine Borrower in favor of Sixth Mezzanine Lender pursuant to which Sixth Mezzanine Borrower has granted Sixth Mezzanine Lender a first priority security interest on, among other things, the Collateral (as defined in the Sixth Mezzanine Pledge Agreement);

**WHEREAS**, JPMorgan Chase Bank, N.A., having an address at 270 Park Avenue, New York, New York 10017, as seventh mezzanine lender (“**Seventh Mezzanine Lender**”), is making a loan in the principal amount of \$275,000,000 (the “**Seventh Mezzanine Loan**”) to Seventh Mezzanine Borrower (as hereinafter defined) pursuant to that certain Seventh Mezzanine Loan Agreement, dated as of the date hereof (as the same may be amended, supplemented, replaced or otherwise modified from time to time, the “**Seventh Mezzanine Loan Agreement**”), which Seventh Mezzanine Loan is evidenced by the Seventh Mezzanine Note (as hereinafter defined) made by Seventh Mezzanine Borrower to Seventh Mezzanine Lender and secured by, among other things, the Seventh Mezzanine Pledge Agreement (as hereinafter defined) given by Seventh Mezzanine Borrower in favor of Seventh Mezzanine Lender pursuant to which Seventh Mezzanine Borrower has granted Seventh Mezzanine Lender a first priority security interest on, among other things, the Collateral (as defined in the Seventh Mezzanine Pledge Agreement);

**WHEREAS**, First Mezzanine Borrower is the legal and beneficial owner of all of the interests in Mortgage Borrower;

**WHEREAS**, Second Mezzanine Borrower is the legal and beneficial owner of all of the interests in First Mezzanine Borrower;

**WHEREAS**, Third Mezzanine Borrower is the legal and beneficial owner of all of the interests in Second Mezzanine Borrower;

**WHEREAS**, Fourth Mezzanine Borrower is the legal and beneficial owner of all of the interests in Third Mezzanine Borrower;

**WHEREAS**, Fifth Mezzanine Borrower is the legal and beneficial owner of all of the interests in Fourth Mezzanine Borrower;

**WHEREAS**, Sixth Mezzanine Borrower is the legal and beneficial owner of all of the interests in Fifth Mezzanine Borrower;

**WHEREAS**, Seventh Mezzanine Borrower is the legal and beneficial owner of all of the interests in Sixth Mezzanine Borrower;

**WHEREAS**, Borrower is the legal and beneficial owner of all of the interests in Seventh Mezzanine Borrower;

**WHEREAS**, Borrower desires to obtain the Loan (as hereinafter defined) from Lender;

**WHEREAS**, as a condition precedent to the obligation of Lender to make the Loan to Borrower, Borrower has entered into that certain Pledge and Security Agreement (Eighth Mezzanine Loan), dated as of the date hereof, in favor of Lender (as amended, supplemented or otherwise modified from time to time, the “**Pledge Agreement**”), pursuant to which Borrower

has granted to Lender a first priority security interest in the Collateral (as defined in the Pledge Agreement) as collateral security for the Debt (as hereinafter defined); and

**WHEREAS**, Lender is willing to make the Loan to Borrower, subject to and in accordance with the terms of this Agreement and the other Loan Documents (as hereinafter defined).

**NOW THEREFORE**, in consideration of the making of the Loan by Lender and the covenants, agreements, representations and warranties set forth in this Agreement, the parties hereto hereby covenant, agree, represent and warrant as follows:

## **I. DEFINITIONS; PRINCIPLES OF CONSTRUCTION**

**Section 1.1. Definitions.** For all purposes of this Agreement, except as otherwise expressly required or unless the context clearly indicates a contrary intent:

“**Acceptable Counterparty**” shall mean any counterparty to the Interest Rate Cap Agreement that has and shall maintain, until the expiration of the applicable Interest Rate Cap Agreement, a long-term unsecured debt rating of at least “A+” by S&P and “Aa3” from Moody’s, which rating shall not include a “t” or otherwise reflect a termination risk and is otherwise reasonably acceptable to Lender.

“**Additional Insolvency Opinion**” shall have the meaning set forth in Section 4.1.30(c) hereof.

“**Additional True Lease Opinion**” shall have the meaning set forth in Section 4.1.30(d) hereof.

“**Affiliate**” shall mean, as to any Person, any other Person that, directly or indirectly, is in Control of, is Controlled by or is under common Control with such Person or is a director or officer of such Person or of an Affiliate of such Person.

“**Aggregate Debt Service**” shall mean, with respect to any particular period of time, the sum of (a) the Debt Service, (b) the Mortgage Debt Service and (c) the Other Mezzanine Debt Service.

“**Aggregate Material Adverse Effect**” shall mean any event or condition that, either singly or in the aggregate, could reasonably be expected to have or result in a material adverse effect upon (a) the business, operations, economic performance, prospects, assets or condition (financial or otherwise) of (i) Mortgage Borrower, Senior Mezzanine Borrower or Borrower (taken as a whole), (ii) Guarantor, (iii) Operating Company (taken as a whole), (iv) the Operating Lease or the Operating Lease Guaranty (taken as a whole) or (v) the Properties (taken as a whole), the Collateral, the Senior Mezzanine Collateral, the Hotel Components (taken as a whole) or the Casino Components (taken as a whole); (b) the ability of Mortgage Borrower (taken as a whole), Senior Mezzanine Borrower (taken as a whole), Borrower (taken as a whole) or Guarantor to perform, in all material respects, its obligations under the Loan Documents,

Senior Mezzanine Loan Documents or Mortgage Loan Documents (taken as a whole) to which such entity is a party; (c) the ability of Operating Company (taken as a whole) to perform, in all material respects, the obligations under the Operating Leases (taken as a whole); or the ability of Guarantor (Operating Lease) (taken as a whole) to perform, in all material respects, the obligations under the Operating Lease Guaranty (taken as a whole); (d) the enforceability or validity of (i) the Operating Lease (taken as a whole) or the Operating Lease Guaranty (taken as a whole), (ii) the Loan Documents, Senior Mezzanine Loan Documents or Mortgage Loan Documents (taken as a whole) or the perfection or priority of the Liens created under the Loan Documents, Senior Mezzanine Loan Documents or Mortgage Loan Documents (taken as a whole); (e) the value of, or cash flow from, the Properties or the operations thereof (taken as a whole) or the Collateral; or (f) the material rights, interests and remedies of Lender under the Loan Documents (taken as a whole).

“**Allocated Loan Amount**” shall mean, for an Individual Property, the amount set forth on Schedule II attached hereto.

“**ALTA**” shall mean American Land Title Association, or any successor thereto.

“**Alteration**” shall mean, with respect to any Individual Property, any alteration, improvement, demolition, construction or removal of all or any portion of the Improvements at such Individual Property.

“**Annual Budget**” shall mean, individually and collectively as the context requires, (a) the Borrower Annual Budget and (b) the Operating Company Annual Budget.

“**Applicable Interest Rate**” shall mean the rate or rates at which the outstanding principal amount of the Loan bears interest from time to time in accordance with the provisions of Section 2.2.3 hereof.

“**Approved Guarantor**” means (x) Holdings, for so long Holdings meets the Minimum Value Test, or (y) any other guarantor that meets the Minimum Value Test and is otherwise reasonably satisfactory to Lender.

“**Assignee**” shall have the meaning set forth in Section 9.5 hereof.

“**Assignment and Acceptance**” shall have the meaning set forth in Section 9.8 hereof.

“**Award**” shall mean any compensation paid by any Governmental Authority in connection with a Condemnation with respect to all or any part of any Individual Property.

“**Bankruptcy Action**” shall mean with respect to any Person (a) such Person filing a voluntary petition under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (b) the filing of an involuntary petition against such Person under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law, or soliciting or causing to be solicited petitioning creditors for any involuntary petition against such Person; (c) such Person filing an answer consenting to or otherwise acquiescing in or joining in any involuntary petition filed against it, by any other Person under the Bankruptcy Code or any other

Federal or state bankruptcy or insolvency law, or soliciting or causing to be solicited petitioning creditors for any involuntary petition from any Person; (d) such Person consenting to or acquiescing in or joining in an application for the appointment of a custodian, receiver, trustee, or examiner for such Person or any portion of its property; or (e) such Person making an assignment for the benefit of creditors, or admitting, in writing or in any legal proceeding, its insolvency or inability to pay its debts as they become due.

“**Bankruptcy Code**” shall mean Title 11 of the United States Code, 11 U.S.C. §101, et seq., as the same may be amended from time to time, and any successor statute or statutes and all rules and regulations from time to time promulgated thereunder, and any comparable foreign laws relating to bankruptcy, insolvency or creditors’ rights or any other Federal or state bankruptcy or insolvency law.

“**Basic Carrying Costs**” shall mean, for any period, with respect to each Individual Property, the sum of the following costs associated with such Individual Property for such period: (a) Taxes, (b) Insurance Premiums and (c) Ground Rent.

“**Bill’s Lake Tahoe Casino**” shall mean that certain property identified on Schedule II as “Bill’s Lake Tahoe” having a street address of 15 Highway 50, Stateline, Nevada.

“**Borrower**” shall have the meaning set forth in the introductory paragraph hereto, together with its successors and permitted assigns. As used herein, the term “Borrower” shall mean one of the Borrowers individually, or the Borrowers collectively, as the context shall require.

“**Borrower Agent**” shall have the meaning set forth in Section 10.6 hereof.

“**Borrower Annual Budget**” shall mean the operating budget of Mortgage Borrower, prepared by Mortgage Borrower for the applicable Fiscal Year or other period.

“**Borrower Entity**” shall have the meaning set forth in Section 11.1 hereof.

“**Business Day**” shall mean any day other than a Saturday, Sunday or any other day on which national banks in New York, New York are not open for business.

“**Capital Expenditures**” shall mean, for any period, the amount expended for items capitalized under GAAP (including expenditures for building improvements or major repairs, leasing commissions, tenant improvements and Fixtures).

“**Capitalized Software Expenditures**” shall mean, for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities) by a Person during such period in respect of licensed or purchased software or internally developed software and software enhancements that, in accordance with GAAP, are or are required to be reflected as capitalized costs on the consolidated balance sheet of such Person.

“**Cash Management Account**” shall have the meaning set forth in the Mortgage Loan Agreement.

“**Casino Components**” shall mean, collectively, those portions of each Individual Property devoted to the operation of casino gaming operations, including (without limitation) those areas devoted to the conduct of games of chance, facilities associated directly with gaming operations including, without limitation, casino support areas such as surveillance and security areas, cash cages, counting and accounting areas and gaming back-of-the-house areas in each case, to the extent the operation thereof requires a Gaming License under applicable Gaming Laws. The Casino Components are more particularly described and set forth in each Operating Lease, as appropriate.

“**Casualty**” shall have the meaning set forth in Section 6.2 hereof.

“**Change in Control**” shall mean (1) a “Change in Control” as defined in the Credit Agreement, dated the date hereof, among Hamlet Merger Inc., a Delaware corporation, Harrah’s Operating Company, Inc., a Delaware corporation, the Lenders party thereto from time to time, Bank of America, N.A., as administrative agent and collateral agent for the Lenders, and certain other parties thereto, or (2) a Change in Control as defined in clause (b) of said definition except that references therein to Borrower shall be deemed to refer to Holdings.

“**Closing Date**” shall mean the date of the funding of the Loan.

“**Code**” shall mean the Internal Revenue Code of 1986, as amended, as it may be further amended from time to time, and any successor statutes thereto, and applicable U.S. Department of Treasury regulations issued pursuant thereto in temporary or final form.

“**Collateral**” shall have the meaning set forth in the Pledge Agreement.

“**Collateral Assignment of Interest Rate Cap Agreement**” shall mean that certain Collateral Assignment of Interest Rate Cap Agreement, dated as of the date hereof, executed by Borrower in connection with the Loan for the benefit of the Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Collection Account**” shall have the meaning set forth in the Mortgage Loan Agreement.

“**Collection Banks**” shall mean (a) any Eligible Institution(s) designated by Mortgage Borrower as Collection Bank and reasonably approved by Lender from time to time in accordance with the terms hereof, or (b) any other financial institution otherwise reasonably approved by Lender and, if a Securitization has occurred, with respect to which a Rating Agency Confirmation has been obtained.

“**Condemnation**” shall mean a temporary or permanent taking by any Governmental Authority as the result or in lieu or in anticipation of the exercise of the right of condemnation or eminent domain, of all or any part of any Individual Property, or any interest therein or right accruing thereto, including any right of access thereto or any change of grade affecting such Individual Property or any part thereof.

“**Consolidated Net Income**” shall mean, with respect to any Person for any period, the aggregate of the Net Income of such Person for such period, on a consolidated basis; provided, however, that, without duplication,

(i) any net after-tax extraordinary, nonrecurring or unusual gains or losses or income or expense or charge (less all fees and expenses relating thereto), including, without limitation, any severance, relocation or other restructuring expenses, any expenses related to any reconstruction, decommissioning, recommissioning or reconfiguration of fixed assets for alternative uses, fees, expenses or charges relating to new product lines, curtailments or modifications to pension and post-retirement employee benefit plans, excess pension charges, acquisition integration costs, facilities opening costs, project start-up costs, business optimization costs, signing, retention or completion bonuses, shall be excluded,

(ii) any net after tax income or loss from disposed, abandoned, transferred, closed or discontinued operations and any net after tax gain or loss on disposal of disposed, abandoned, transferred, closed or discontinued operations shall be excluded,

(iii) any net after tax gain or loss (less all fees and expenses or charges relating thereto) attributable to business dispositions or asset dispositions other than in the ordinary course of business (as determined in good faith by the management of the Borrower) shall be excluded,

(iv) Consolidated Net Income for such period shall not include the cumulative effect of a change in accounting principles during such period,

(v) effects of purchase accounting adjustments (including the effects of such adjustments pushed down to such Person) in component amounts required or permitted by GAAP, resulting from the application of purchase accounting in relation to any consummated acquisition or the amortization or write-off of any amounts thereof, net of taxes, shall be excluded,

(vi) any impairment charges or asset write-offs, in each case pursuant to GAAP, and the amortization of intangibles arising pursuant to GAAP, shall be excluded,

(vii) any non cash compensation charge or expenses realized or resulting from stock option plans, employee benefit plans or post-employment benefit plans, or grants or sales of stock, stock appreciation or similar rights, stock options, restricted stock, preferred stock or other rights shall be excluded,

(viii) accruals and reserves that are established or adjusted within twelve months after the Closing Date and that are so required to be established or adjusted in accordance with GAAP or as a result of adoption or modification of accounting policies shall be excluded,

(ix) non-cash gains, losses, income and expenses resulting from fair value accounting required by the applicable standard under GAAP and related interpretations shall be excluded,

(x) (i) the non-cash portion of “straight-line” rent expense shall be excluded and (ii) the cash portion of “straight-line” rent expense which exceeds the amount expensed in respect of such rent expense shall be included,

(xi) to the extent covered by insurance and actually reimbursed, or, so long as such Person has made a determination that there exists reasonable evidence that such amount will in fact be reimbursed by the insurer and only to the extent that such amount is (i) not denied by the applicable carrier in writing within 180 days and (ii) in fact reimbursed within 365 days of the date of such evidence (with a deduction for any amount so added back to the extent not so reimbursed within 365 days), expenses with respect to liability or casualty events or business interruption shall be excluded, and

(xii) non-cash charges for deferred tax asset valuation allowances shall be excluded.

“**Contribution Agreement**” shall mean that certain Contribution Agreement, dated as of the date hereof, between Borrower and Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Control**” shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management, policies or activities of a Person, whether through ownership of voting securities, by contract or otherwise. “**Controlled**” and “**Controlling**” shall have correlative meanings.

“**Convention Center Parcel**” shall mean the parcel shown on Schedule XXII and comprising a part of the Harrah’s Atlantic City Property.

“**Convention Center Project**” shall mean that certain conference center currently contemplated to be constructed on the Convention Center Parcel by the Mortgage Borrower and/or the Operating Company owning the Harrah’s Atlantic City Property, and more fully described in the schematic designs for the Convention Center Project provided by Mortgage Borrower to Mortgage Lender. The Convention Center Project will not be funded with the proceeds of the Loan (but will be funded by Mortgage Borrower, including with capital contributions).

“**Counterparty**” shall mean, with respect to the Interest Rate Cap Agreement and any Replacement Interest Rate Cap Agreement, any Acceptable Counterparty.

“**Covered Disclosure Information**” shall have the meaning set forth in Section 9.2(b) hereof.

“**Debt**” shall mean the outstanding principal amount set forth in, and evidenced by, this Agreement and the Notes together with all interest accrued and unpaid thereon (including any interest that would accrue on the outstanding principal amount of the Loan through and including the end of any applicable Interest Period, even if such Interest Period extends beyond any applicable Payment Date, prepayment date or the Maturity Date) and all other sums due to Lender in respect of the Loan under the Notes, this Agreement, the Pledge Agreement and the other Loan Documents.

“**Debt Service**” shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under this Agreement and the Note.

“**Debt Service Coverage Ratio**” shall mean a ratio for the applicable period in which:

(a) the numerator is EBITDAR of the Operating Company for the four (4) quarter period preceding the date of determination, as set forth in the financial statements required hereunder; and

(b) the denominator is the sum of (i) the aggregate amount of Mortgage Debt Service which was due and payable for such preceding four (4) quarter period calculated, for these purposes, assuming that (A) the spread on the Mortgage Loan is the Spread (as defined in the Mortgage Loan Agreement) and (B) LIBOR is equal to the lesser of (y) LIBOR on the date of determination, or (z) the applicable Strike Price, (ii) the aggregate amount of Mezzanine Debt Service (including the Debt Service) which was due and payable for such preceding four (4) quarter period calculated, for these purposes, assuming that (A) the spread on the Mezzanine Loans is the “Spread” as defined in each Mezzanine Loan Agreement and (B) LIBOR is equal to the lesser of (y) LIBOR on the date of determination, or (z) the applicable Strike Price (as defined in the Mortgage Loan Agreement), and (iii) the aggregate amount of the Permitted Mezzanine Debt Service which was due and payable for such preceding four (4) quarter period (or the annualized amount, if the Permitted Mezzanine Loan were outstanding for less than 12 calendar months) calculated, for these purposes, assuming that (A) the spread on the Permitted Mezzanine Loan is the “Spread” (as defined in the documents evidencing the Permitted Mezzanine Loan Documents and (B) LIBOR is equal to the lesser of (y) LIBOR on the date of determination, or (z) the strike price under the related interest rate cap purchased in connection with the Permitted Mezzanine Loan);

provided, however, that, solely for the purpose of Section 2.5, the Debt Service Coverage Ratio shall be determined as described in Section 2.5.1(c).

“**Default**” shall mean the occurrence of any event hereunder or under any other Loan Document which, but for the giving of notice or passage of time, or both, would be an Event of Default.

“**Default Rate**” shall mean a rate per annum equal to the lesser of (a) the Maximum Legal Rate and (b) two percent (2%) above the Applicable Interest Rate.

“**Delinquency**” shall mean, with respect to each Individual Property, the latest date on which Taxes or Other Charges may be paid (with respect to such Individual Property) without the payment of a premium, penalty or interest.

“**Determination Date**” shall mean, with respect to any Interest Period, the date that is two (2) London Business Days prior to the fifteenth (15<sup>th</sup>) day of the calendar month in which such Interest Period commences.

**“Disclosure Document”** shall mean a prospectus, prospectus supplement, private placement memorandum, offering memorandum, offering circular, term sheet, road show presentation materials or other offering documents or marketing materials, in each case in preliminary or final form, used to offer Securities in connection with a Securitization.

**“EBITDAR”** shall mean, with respect to any Person for any period, the Consolidated Net Income of such Person plus the sum of (in each case without duplication and to the extent the respective amounts described in subclauses (i) through (vi) below reduced such Consolidated Net Income (and were not excluded therefrom) for the respective period for which EBITDAR is being determined):

(i) provision for Taxes based on income, profits or capital for such period, including, without limitation, state, franchise and similar taxes and foreign withholding taxes (including penalties and interest related to taxes or arising from tax examinations);

(ii) Interest Expense for such period (net of interest income for such period);

(iii) depreciation and amortization expenses for such period including, but not exclusively, the amortization of intangible assets, deferred financing fees and Capitalized Software Expenditures and amortization of unrecognized prior service costs and actuarial gains and losses related to pensions and other post-employment benefits;

(iv) any expenses or charges (other than depreciation or amortization expense as described in the preceding clause (iii)) related to any acquisition, disposition, recapitalization or the incurrence, modification or repayment of Indebtedness permitted to be incurred by this Agreement (including a refinancing thereof) (whether or not successful), including (y) any amendment or other modification of such Indebtedness, and (z) commissions, discounts, yield and other fees and charges (including any interest expense) related to any such Indebtedness;

(v) restructuring charges or reserves (which, for the avoidance of doubt, shall include, without limitation, the effect of inventory optimization programs, retention, severance, systems establishment costs, contract termination costs, future lease commitments and excess pension charges), to the extent that such expenses, charges or reserves are considered to be extraordinary expenses under GAAP;

(vi) any costs or expense incurred pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement or any stock subscription or shareholder agreement, to the extent that such cost or expenses are funded with cash proceeds contributed to the capital of such Person;

(vii) with respect to the Operating Company, the Fixed Rent payable under the Operating Lease; and

(viii) if the Captive Insurance Company shall be utilized to provide terrorism coverage hereunder, the amount of the premiums expended by Mortgage Borrower to obtain such terrorism coverage to the extent such amount exceeds the Terrorism Premium Limit and such excess is retained by the Captive Insurance Company;

provided that EBITDAR shall be reduced by the sum of the following for the respective period for which EBITDAR is being determined:

(A) management fees equal to the greater of (x) 3 percent per annum of gross revenues at the Properties and (y) the actual management fees payable under any management agreement (provided the foregoing shall not be construed as Lender's approval of any management agreement except in accordance with the terms hereof), without double counting actual amounts incurred and otherwise reflected in the calculation of EBITDAR, and

(B) FF&E reserves equal to 3 percent per annum of gross hotel and casino revenues at the Properties without double counting actual amounts incurred and otherwise reflected in the calculation of EBITDAR.

**"EBITDAR (Closing Date)"** shall mean EBITDAR for calendar year 2007, as agreed upon between Borrower and Lender.

**"Eligibility Requirements"** means, with respect to any Person, that such Person (a) has total assets (in name or under management) in excess of \$4,000,000,000 and (except with respect to a pension advisory firm or similar fiduciary) capital/statutory surplus or shareholder's equity of \$1,000,000,000, (b) is regularly engaged in the business of owning and operating commercial real estate properties, (c) is not currently, and its principals are not currently, subject to a Bankruptcy Action and for the immediately preceding 10 years, neither it nor any material subsidiary has been subject to a Bankruptcy Action, and (d) has not been, and its principals have not been, convicted and is not under current indictment for a felony or crime involving moral turpitude, has not been found by a court of competent jurisdiction to have violated federal or state securities laws, and is not an organized crime figure.

**"Eligible Account"** shall mean a separate and identifiable account from all other funds held by the holding institution that is either (a) an account or accounts maintained with a federal or state-chartered depository institution or trust company which complies with the definition of Eligible Institution or (b) a segregated trust account or accounts maintained with a federal or state chartered depository institution or trust company acting in its fiduciary capacity which, in the case of a state chartered depository institution or trust company, is subject to regulations substantially similar to 12 C.F.R. § 9.10(b), having in either case a combined capital and surplus of at least \$50,000,000 and subject to supervision or examination by federal and state authority. An Eligible Account will not be evidenced by a certificate of deposit, passbook or other instrument.

**"Eligible Institution"** shall mean a depository institution or trust company, the short term unsecured debt obligations or commercial paper of which are rated at least "A-1" by S&P, "P-1" by Moody's and "F-1" by Fitch in the case of accounts in which funds are held for thirty (30) days or less (or, in the case of accounts in which funds are held for more than thirty (30) days, the long term unsecured debt obligations of which are rated at least "A" by Fitch and S&P and "A2" by Moody's). After a Securitization of all or any portion of the Loan, only

the ratings of those Rating Agencies rating the Securities shall be taken into account in determining whether institutions or trust companies constitute Eligible Institutions.

“**Embargoed Person**” shall have the meaning set forth in Section 4.1.35 hereof.

“**Environmental Indemnity**” shall mean that certain Environmental Indemnity Agreement, dated as of the date hereof, executed by Borrower and Guarantor in connection with the Loan for the benefit of Lender and the Noteholders, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Equipment**” shall mean, with respect to each Individual Property, any equipment now owned or hereafter acquired by Mortgage Borrower or Operating Company, which is used at or in connection with the Improvements or such Individual Property or is located thereon or therein, including (without limitation) all Gaming Equipment, all machinery, equipment, furnishings, and electronic data-processing and other office equipment now owned or hereafter acquired by or on behalf of Mortgage Borrower or Operating Company and any and all additions, substitutions and replacements of any of the foregoing), together with all attachments, components, parts, equipment and accessories installed thereon or affixed thereto.

“**ERISA**” shall mean the Employee Retirement Income Security Act of 1974, as amended.

“**Event of Default**” shall have the meaning set forth in Section 8.1(a) hereof.

“**Exchange Act**” shall have the meaning set forth in Section 9.2(a) hereof.

“**Exchange Act Filing**” shall have the meaning set forth in Section 5.1.11(f) hereof.

“**FF&E**” shall mean, with respect to each Individual Property, collectively, furnishings, fixtures (other than Fixtures) and Equipment located in the guest rooms, hallways, lobbies, restaurants, lounges, meeting and banquet rooms, parking facilities, public areas or otherwise in any portion of such Individual Property, including (without limitation) all fixed asset supplies (including, but not limited to, linen, china, glassware, tableware, uniforms, other hotel inventory and similar items, whether used in connection with public space or guest rooms), beds, chairs, bookcases, tables, carpeting, drapes, couches, luggage carts, luggage racks, bars, bar fixtures, radios, television sets, intercom and paging equipment, electric and electronic equipment, heating, lighting and plumbing fixtures, fire prevention and extinguishing apparatus, cooling and air-conditioning systems, elevators, escalators, stoves, ranges, refrigerators, laundry machines, tools, machinery, boilers, incinerators, switchboards, conduits, compressors, vacuum cleaning systems, floor cleaning, waxing and polishing equipment, cabinets, lockers, shelving, dishwashers, garbage disposals, washer and dryers, gaming equipment and other casino equipment and all other customary hotel and casino resort equipment and other tangible property owned by Mortgage Borrower or Operating Company, or in which Mortgage Borrower or Operating Company has or shall have an interest, now or hereafter located at such Individual Property and useable in connection with the present or future operation and occupancy of such Individual Property; provided, however, that FF&E shall not include items owned by tenants

under space Leases (other than the Operating Lease) or by third party operators (other than Operating Company).

“**FF&E Reserve Account**” shall have the meaning set forth in Section 7.3 hereof.

“**FF&E Reserve Fund**” shall have the meaning set forth in Section 7.3 hereof.

“**Fifth Mezzanine Borrower**” shall mean, collectively, the entities set forth on Schedule XVII hereto, each a Delaware limited liability company, together with their respective successors and permitted assigns. As used herein, the term “Fifth Mezzanine Borrower” shall mean one of the Fifth Mezzanine Borrowers individually, or the Fifth Mezzanine Borrowers collectively, as the context shall require.

“**Fifth Mezzanine Debt Service**” shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Fifth Mezzanine Notes.

“**Fifth Mezzanine Lender**” shall mean JPMorgan Chase Bank, N.A., in its capacity as the holder of the Fifth Mezzanine Loan, together with its successors and assigns.

“**Fifth Mezzanine Loan**” shall mean that certain loan in the original principal amount of Two Hundred Seventy-Five Million and No/100 Dollars (\$275,000,000) of even date herewith made by Fifth Mezzanine Lender to Fifth Mezzanine Borrower.

“**Fifth Mezzanine Loan Agreement**” shall mean that certain Fifth Mezzanine Loan Agreement, dated as of the date hereof, between Fifth Mezzanine Borrower and Fifth Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Fifth Mezzanine Loan Documents**” shall mean the Fifth Mezzanine Loan Agreement, the Fifth Mezzanine Notes and all other documents and instruments executed and delivered in connection with the Fifth Mezzanine Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

“**Fifth Mezzanine Notes**” shall mean the “Notes” as defined in the Fifth Mezzanine Loan Agreement.

“**Fifth Mezzanine Pledge Agreement**” shall mean that certain Pledge and Security Agreement (Fifth Mezzanine Loan), dated as of the date hereof, between Fifth Mezzanine Borrower and Fifth Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**First Mezzanine Borrower**” shall mean, collectively, the entities set forth on Schedule XIV hereto, each a Delaware limited liability company, together with their respective successors and permitted assigns. As used herein, the term “First Mezzanine Borrower” shall mean one of the First Mezzanine Borrowers individually, or the First Mezzanine Borrowers collectively, as the context shall require.

**“First Mezzanine Borrower Company Agreements”** shall mean, collectively, the Limited Liability Company Agreements of First Mezzanine Borrower, by each Borrower, as sole member, dated as of the date hereof.

**“First Mezzanine Debt Service”** shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the First Mezzanine Note.

**“First Mezzanine Lender”** shall have the meaning set forth in the Recitals.

**“First Mezzanine Loan”** shall have the meaning set forth in the Recitals.

**“First Mezzanine Loan Agreement”** shall have the meaning set forth in the Recitals.

**“First Mezzanine Notes”** shall mean the “Notes” as defined in the First Mezzanine Loan Agreement.

**“First Mezzanine Pledge Agreement”** shall mean that certain Pledge and Security Agreement (First Mezzanine Loan), dated as of the date hereof, between First Mezzanine Borrower and First Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**“Fiscal Year”** shall mean each twelve (12) month period commencing on January 1 and ending on December 31 during each year of the term of the Loan.

**“Fitch”** shall mean Fitch, Inc.

**“Fixed Rent”** shall mean the Base Rent (as defined in the Operating Lease) payable under the Operating Lease.

**“Fixtures”** shall mean, with respect to each Individual Property, all Equipment now owned, or the ownership of which is hereafter acquired, by Mortgage Borrower which is so related to the Land and the Improvements forming part of the Individual Property in question that it is deemed fixtures or real property under applicable Legal Requirements, including, without limitation, all building or construction materials intended for construction, reconstruction, alteration, decoration or repair of or installation on the applicable Individual Property, construction equipment, appliances, machinery, plant equipment, fittings, apparatuses, fixtures and other items now or hereafter attached to, installed in or used in connection with (temporarily or permanently) any of the Improvements or the Land, including, but not limited to, engines, devices for the operation of pumps, pipes, plumbing, call and sprinkler systems, fire extinguishing apparatuses and equipment, heating, ventilating, incinerating, electrical, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances

and equipment, pollution control equipment, security systems, disposals, dishwashers, refrigerators and ranges, recreational equipment and facilities of all kinds, and water, electrical, storm and sanitary sewer facilities, utility lines and equipment (whether owned individually or jointly with others, and, if owned jointly, to the extent of Mortgage Borrower's interest therein) and all other utilities whether or not situated in easements, all water tanks, water supply, water power sites, fuel stations, fuel tanks, fuel supply, and all other structures, together with all accessions, appurtenances, additions, replacements, betterments and substitutions or any of the foregoing and the proceeds thereof.

**"Flamingo Las Vegas"** shall mean that certain Individual Property identified on Schedule II as the "Flamingo Las Vegas" and having a street address of 3555 Las Vegas Boulevard South, Las Vegas, Nevada.

**"Force Majeure"** shall mean any delay caused by reason of strike, lock-out or other labor trouble, casualty, governmental preemption of priorities or other controls in connection with a national or other public emergency or shortages of fuel, supplies or labor resulting therefrom or other causes beyond Borrower's reasonable control.

**"Foreign Taxes"** shall have the meaning set forth in Section 2.2.3(e) hereof.

**"Fourth Mezzanine Borrower"** shall mean, collectively, the entities set forth on Schedule XVI hereto, each a Delaware limited liability company, together with their respective successors and permitted assigns. As used herein, the term "Fourth Mezzanine Borrower" shall mean one of the Fourth Mezzanine Borrowers individually, or the Fourth Mezzanine Borrowers collectively, as the context shall require.

**"Fourth Mezzanine Debt Service"** shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Fourth Mezzanine Notes.

**"Fourth Mezzanine Lender"** shall mean JPMorgan Chase Bank, N.A., in its capacity as the holder of the Fourth Mezzanine Loan, together with its successors and assigns.

**"Fourth Mezzanine Loan"** shall mean that certain loan in the original principal amount of Two Hundred Seventy-Five Million and No/100 Dollars (\$275,000,000) of even date herewith made by Fourth Mezzanine Lender to Fourth Mezzanine Borrower.

**"Fourth Mezzanine Loan Agreement"** shall mean that certain Fourth Mezzanine Loan Agreement, dated as of the date hereof, between Fourth Mezzanine Borrower and Fourth Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**"Fourth Mezzanine Loan Documents"** shall mean the Fourth Mezzanine Loan Agreement, the Fourth Mezzanine Notes and all other documents and instruments executed and delivered in connection with the Fourth Mezzanine Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

**“Fourth Mezzanine Notes”** shall mean the “Notes” as defined in the Fourth Mezzanine Loan Agreement.

**“Fourth Mezzanine Pledge Agreement”** shall mean that certain Pledge and Security Agreement (Fourth Mezzanine Loan), dated as of the date hereof, between Fourth Mezzanine Borrower and Fourth Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**“GAAP”** shall mean generally accepted accounting principles in the United States of America as of the date of the applicable financial report.

**“Gaming Authorities”** shall mean, in any jurisdiction in which Borrower, Senior Mezzanine Borrower, Mortgage Borrower, Operating Company or any of their respective subsidiaries manages or conducts any casino, gaming business or activities, the applicable gaming board, commission, or other governmental gaming regulatory authority, body or agency which (a) has, or may at any time after the Closing Date have, jurisdiction over the gaming activities at any of the Properties or any successor to such authority or (b) is, or may at any time after the Closing Date be, responsible for interpreting, administering and enforcing the Gaming Laws.

**“Gaming Equipment”** shall mean any and all gaming devices, gaming device parts inventory and other related gaming equipment and supplies used in connection with the operation of a casino, including (without limitation), slot machines, gaming tables, cards, dice, chips, tokens, player tracking systems, cashless wagering systems, electronic betting systems, mobile gaming systems and associated equipment which are located at the Casino Components, owned or leased by Operating Company or Mortgage Borrower and used or useable exclusively in the present or future operation of slot machines and live games at the Casino Component, together with all improvements and/or additions thereto.

**“Gaming Laws”** or **“Gaming Regulations”** shall mean all applicable constitutions, treaties, laws, statutes and municipal ordinances pursuant to which any Gaming Authority possesses regulatory, licensing or permitting authority over gaming, gambling or casino or casino-related activities and all rules, rulings, orders, ordinances and regulations of any Gaming Authority applicable to the gambling, casino, gaming businesses or casino or casino-related activities of Borrower, Senior Mezzanine Borrower, Mortgage Borrower or the Operating Companies or any of their respective subsidiaries in any jurisdiction, as in effect from time to time, including the policies, interpretations and administration thereof by the Gaming Authorities.

**“Gaming License”** shall mean, in any jurisdiction in which Borrower, Senior Mezzanine Borrower, Mortgage Borrower, Operating Company or any of their respective subsidiaries conducts any casino and gaming business or activities, any license, qualification, franchise, accreditation, approval, registration, permit, finding of suitability or other authorization relating to gaming, the gaming business or the operation of a casino under the Gaming Laws or required by the Gaming Authorities or otherwise necessary for the operation of gaming, the gaming business or a resort casino.

**“Gaming Liquidity Requirement”** shall mean the minimum bankroll requirements for cash and cash equivalents required to be maintained by each Operating Company pursuant to Gaming Laws in an amount no greater than is mandated by applicable law, which requirements may be subject to (a) adjustment in an amount equal to any incremental increase or decrease in the amount of the Gaming Liquidity Requirement that is required to be maintained by Operating Company under applicable Gaming Laws as a result of any increase or decrease in gaming business at the applicable Casino Component, or (b) subject to increase or decrease due to any change in the applicable requirements under Gaming Laws generally.

**“Gaming Operating Reserve”** shall mean, with respect to the Casino Component, such cash funds and reserves that are held and maintained on-site at each Individual Property by Operating Company, in its capacity as the duly licensed operator of the Casino Component, including (without limitation) casino chips, tokens, checks and markers; provided, however, that all such Gaming Operating Reserves (a) are established and maintained in compliance with all applicable Gaming Liquidity Requirements, (b) are solely for use in the day-to-day operation and management of each Casino Component in the ordinary course of business, and (c) in the case of each Individual Property, are in amounts customary and generally comparable for casinos comparable to the Individual Property in question.

**“Governmental Authority”** shall mean any court, board, agency, commission, office or other authority of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence, including, without limitation, all Gaming Authorities having jurisdiction over the Properties (and any operations conducted thereat), Mortgage Borrower, Borrower and Operating Company. For the avoidance of doubt, the term “Governmental Authority” shall include, and be deemed to include, all Gaming Authorities.

**“Ground Lease”** shall mean, individually and collectively, as the context requires, those certain ground leases listed in Schedule IV, as the same may be amended, supplemented, replaced or otherwise modified from time to time in accordance with the provisions hereof.

**“Ground Lease Estoppel Reserve Amount”** shall have the meaning set forth in the Ground Lease Side Letter.

**“Ground Lease Estoppel Trigger Event”** shall have the meaning set forth in Section 5.1.23 hereof.

**“Ground Lease Estoppel Trigger Spread”** shall have the meaning set forth in the Ground Lease Side Letter.

**“Ground Lease Side Letter”** shall have the meaning assigned to such term in the Mortgage Loan Agreement.

**“Ground Lease Subsidiary”** shall have the meaning assigned to such term in the Mortgage Loan Agreement.

“**Ground Rent**” shall mean any rent, additional rent or other charge payable by the tenant under the Ground Lease.

“**Ground Rent Reserve Account**” shall have the meaning set forth in Section 7.4 hereof.

“**Ground Rent Reserve Funds**” shall have the meaning set forth in Section 7.4.

“**Guarantor**” shall mean, collectively, Guarantor (FF&E), Guarantor (Recourse Carveouts), Guarantor (Operating Lease), Guarantor (Ground Lease Estoppel) and any guarantor under any completion guaranty provided under Section 5.1.21.

“**Guarantor (FF&E)**” shall mean any Approved Guarantor. Initially, Guarantor (FF&E) shall mean Holdings, and its successors. If Holdings fails to meet the Minimum Value Test, then Borrower shall replace Holdings, as the guarantor under the Guaranty (FF&E), with an Approved Guarantor.

“**Guarantor (Ground Lease Estoppel)**” shall mean Holdings, and its successors.

“**Guarantor (Operating Lease)**” shall mean Holdings, and its successors.

“**Guarantor (Recourse Carveouts)**” shall mean Holdings, and its successors.

“**Guaranty**” shall mean, collectively, the Guaranty (FF&E), the Guaranty (Recourse Carveouts), the Guaranty (Ground Lease Estoppel), the Operating Lease Guaranty and any completion guaranty provided under Section 5.1.21.

“**Guaranty (FF&E)**” shall mean that certain Guaranty (FF&E) (Eighth Mezzanine Loan), dated as of the date hereof, from Guarantor (FF&E) to Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Guaranty (Ground Lease Estoppel)**” shall mean that certain Guaranty (Harvey’s - Payment) (Eighth Mezzanine), dated as of the date hereof, from Guarantor (Ground Lease Estoppel) to Lender, as the same may be amended, restated, supplemented or modified from time to time.

“**Guaranty (Recourse Carveouts)**” shall mean that certain Guaranty (Recourse Carveouts) (Eighth Mezzanine Loan), dated as of the date hereof, from Guarantor (Recourse Carveouts) to Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Harrah’s Atlantic City Property**” shall mean that certain Individual Property identified on Schedule II as “Harrah’s Atlantic City” and having a street address of 777 Harrah’s Boulevard, Atlantic City, New Jersey.

“**Holdings**” shall mean Harrah’s Entertainment, Inc., and its successors.

**“Hotel Components”** shall mean, collectively, those portions of each Individual Property devoted to the operation of a hotel and related facilities, excluding the Casino Component, but including (without limitation) (a) all guest rooms and suites, hotel amenities, restaurants, conference centers, meeting, banquet and other public rooms, spa, parking spaces and other facilities of the hotel portion of such Individual Property, and (b) any theaters or performing arts spaces in the Individual Property in question. The Hotel Components are more particularly described and set forth in each Operating Lease, as applicable.

**“Improvements”** shall have the meaning set forth in the granting clause of the related Mortgage with respect to each Individual Property.

**“Indebtedness”** of a Person, at a particular date, means the sum (without duplication) at such date of (a) all indebtedness of such Person (including, without limitation, amounts for borrowed money and indebtedness in the form of mezzanine debt and preferred equity); (b) obligations evidenced by bonds, debentures, notes, or other similar instruments; (c) obligations for the deferred purchase price of property or services (including trade obligations); (d) obligations under letters of credit; (e) obligations under acceptance facilities; (f) all guaranties, endorsements (other than for collection or deposit in the ordinary course of business) and other contingent obligations to purchase, to provide funds for payment, to supply funds, to invest in any Person or entity, or otherwise to assure a creditor against loss; and (g) obligations secured by any Liens, whether or not the obligations have been assumed.

**“Indemnified Liabilities”** shall have the meaning set forth in Section 10.13 hereof.

**“Indemnified Person”** shall have the meaning set forth in Section 9.2(b) hereof.

**“Independent Director”** or **“Independent Manager”** shall mean a natural person who is not and will not be while serving and has not been during the five years preceding his or her initial appointment to such position any of the following: (a) a stockholder (other than a stockholder who owns a *de minimis* amount of shares and receive *de minimis* income therefrom, or who indirectly owns stock through its interest in one or more mutual funds), member (other than as a Special Member or Springing Member of Borrower), director, manager (except in his or her capacity as an Independent Manager on the Board of Managers of Borrower), officer, employee, partner, attorney, trustee or counsel of Borrower or any Affiliate of Borrower or any direct or indirect parent of either of them, including Holdings, (b) a creditor, customer (other than a retail customer of an Individual Property), supplier or other Person who derives any of its purchases or revenues from its activities with Borrower or any Affiliate of Borrower, including Holdings, (c) a Person or other entity controlling or under common control with any such stockholder, partner, member, director, manager or officer, customer, supplier or other Person excluded from serving as Independent Director or Independent Manager described in the foregoing subclause (a) or subclause (b), or (d) a member of the immediate family by blood or marriage of any such stockholder, member, manager, director, officer, employee, partner, attorney, customer, supplier or other Person excluded from serving as Independent Director or Independent Manager in subclause (a) or subclause (b). A natural person who satisfies the foregoing definition other than subclause (b) above shall not be disqualified from serving as an Independent Manager, if such individual is an independent director provided by a

nationally recognized company that provides professional independent directors and managers, it being hereby acknowledged and agreed that Corporation Service Company satisfies such criteria. Further, a natural person who otherwise satisfies the foregoing definition except for subclause (a) by reason of being the independent director of a "special purpose entity" affiliated with the Borrower shall not be disqualified from serving as an Independent Director of the Borrower if such individual is either (i) a Professional Independent Director or (ii) the fees and other income that such individual earns from serving as independent director of affiliates of the Borrower in any given year constitute in the aggregate less than five percent (5%) of such individual's annual income for that year. Notwithstanding the immediately preceding sentence, an Independent Director may not simultaneously serve as Independent Director of the Borrower and independent director of a special purpose entity that owns a direct or indirect equity interest in the Borrower or a direct or indirect interest in any co-borrower with the Borrower. For purposes of this paragraph, a "special purpose entity" is an entity, whose organizational documents contain restrictions on its activities and impose requirements intended to preserve such entity's separateness that are substantially similar to the "special purpose entity" provisions of this Agreement. Notwithstanding anything herein to the contrary, an Independent Director may not simultaneously serve as Independent Director of a Borrower and an independent director of a special purpose entity that owns a direct or indirect equity interest in any Borrower; provided, however, that one Independent Director of Borrower (but not both Independent Directors simultaneously) may serve as an independent director of each Other Mezzanine Borrower.

**"Individual Material Adverse Effect"** shall mean any event or condition that, either singly or in the aggregate, could reasonably be expected to have or result in a material adverse effect upon (a) the business, operations, economic performance, prospects, assets or condition (financial or otherwise) of (i) any Borrower, any Senior Mezzanine Borrower or any Mortgage Borrower, (ii) Guarantor, (iii) any Operating Company, (iv) any Operating Lease or Operating Lease Guaranty or (v) the Collateral, the Senior Mezzanine Collateral or any Individual Property or any Hotel Component or Casino Component thereon; (b) the ability of any Borrower, any Senior Mezzanine Borrower, any Mortgage Borrower or Guarantor to perform, in all material respects, its obligations under each of the Loan Documents, Senior Mezzanine Loan Documents or Mortgage Loan Documents to which it is a party; (c) the ability of any Operating Company to perform, in all material respects, its obligations under its Lease; (d) the enforceability or validity of (i) any Operating Lease or Operating Lease Guaranty, or (ii) any Loan Document, Senior Mezzanine Loan Document, Mortgage Loan Document or the perfection or priority of any Lien created under any Loan Document, Senior Mezzanine Loan Document or Mortgage Loan Document; (e) the value of, or cash flow from, any Individual Property, the Collateral, the Senior Mezzanine Collateral or the operations thereof; or (f) the material rights, interests and remedies of Lender under any of the Loan Documents.

**"Individual Property"** shall mean, individually, any one of the properties identified on Schedule II (it being the Improvements thereon and all Fixtures and all Equipment, FF&E and personal property owned by Mortgage Borrower and encumbered by a Mortgage, together with all rights pertaining to such property and Improvements, as more particularly described in the Granting Clauses of each Mortgage and referred to therein as the "Property". For all purposes herein and in the other Loan Documents and to the extent not prohibited by the Ground Lease, the premises leased by Ground Lease Subsidiary or Borrower, as applicable, under the Ground Lease shall constitute a part of the Individual Property known as "Harvey's

Lake Tahoe”, “Harrah’s Lake Tahoe” and “Bill’s Lake Tahoe”, except that such ground leased premises shall not be subject to a lien of a Mortgage or an Operating Lease unless and until required pursuant hereto, the Mortgage Loan Agreement or pursuant to the Ground Lease Side Letter.

“**Insolvency Opinion**” shall mean that certain non-consolidation opinion letter dated the date hereof delivered by Cleary Gottlieb Steen & Hamilton LLP in connection with the Loan.

“**Institutional Lender**” shall mean any Person reasonably acceptable to Lender in all respects that is either (a) a real estate investment trust, bank, saving and loan association, investment bank, insurance company, trust company, commercial credit corporation, pension plan, pension fund or pension advisory firm, mutual fund, government entity or plan, provided that any such Person referred to in this clause (a) satisfies the Eligibility Requirements; (b) an investment company, money management firm or “qualified institutional buyer” within the meaning of Rule 144A under the Securities Act of 1933, as amended, or an institutional “accredited investor” within the meaning of Regulation D under the Securities Act of 1933, as amended, provided that any such Person referred to in this clause (b) satisfies the Eligibility Requirements; (c) an institution substantially similar to any of the foregoing entities described in clauses (a) or (b) that satisfies the Eligibility Requirements; (d) any entity controlled by any of the entities described in clauses (a) or (c) above; or (e) an investment fund, limited liability company, limited partnership or general partnership where a Permitted Fund Manager or an entity that is otherwise an Institutional Lender under clauses (a), (b), (c) or (d) of this definition acts as the general partner, managing member or fund manager and at least fifty percent (50%) of the equity interests in such investment fund are owned, directly or indirectly, by one or more entities that are otherwise Institutional Lenders under clauses (a), (b), (c) or (d) of this definition.

“**Insurance Premiums**” shall have the meaning set forth in the Mortgage Loan Agreement.

“**Insurance Proceeds**” shall have the meaning set forth in the Mortgage Loan Agreement.

“**Interest Expense**” shall mean, with respect to any Person for any period, the sum of (a) gross interest expense of such Person for such period on a consolidated basis, including (i) the amortization of debt discounts, (ii) the amortization of all fees payable in connection with the incurrence of Indebtedness to the extent included in interest expense and (iii) the portion of any payments or accruals with respect to equipment financing and equipment leases allocable to interest expense, (b) capitalized interest of such Person, and (c) commissions, discounts, yield and other fees and charges incurred in connection with any indebtedness which are payable to any Person other than Borrower. For purposes of the foregoing, interest on equipment financing or equipment leases shall be deemed to accrue at an interest rate reasonably determined by the Borrower to be the rate of interest implicit in such equipment financing or equipment lease in accordance with GAAP.

“**Interest Period**” shall mean (a) for the first interest period hereunder, (i) if the Closing Date occurs on or before the fourteenth (14<sup>th</sup>) day of a calendar month, the period

commencing on the Closing Date and ending on (and including) the fourteenth (14<sup>th</sup>) day of the calendar month in which the Closing Date occurs, and (ii) if the Closing Date occurs on or after the fifteenth (15<sup>th</sup>) day of a calendar month, the period commencing on the Closing Date and ending on (and including) the fourteenth (14<sup>th</sup>) day of the following calendar month and (b) for each interest period thereafter commencing February 15, 2008, the period commencing on the fifteenth (15<sup>th</sup>) day of each calendar month and ending on (and including) the fourteenth (14<sup>th</sup>) day of the following calendar month. Each Interest Period as set forth in clause (b) above shall be a full month and shall not be shortened by reason of any payment of the Loan prior to the expiration of such Interest Period. Notwithstanding the foregoing, Lender shall have the right, in connection with a Securitization, to change the Interest Period and Payment Date, provided that in doing so, Lender shall not increase Borrower's costs hereunder (other than the direct costs of implementing such change, such as legal fees, which Borrower hereby agrees to pay).

**"Interest Rate Cap Agreement"** shall mean, as applicable, an Interest Rate Cap Agreement (together with the confirmation and schedules relating thereto) in form and substance reasonably satisfactory to Lender between Borrower and an Acceptable Counterparty or a Replacement Interest Rate Cap Agreement.

**"JPM"** shall mean JPMorgan Chase Bank, N.A. and its successors in interest.

**"Lease"** shall mean any lease (including the Operating Lease), sublease or subsublease, letting, license, concession or other agreement (whether written or oral and whether now or hereafter in effect) pursuant to which any Person is granted a possessory interest in, or right to use or occupy all or any portion of any space in any Individual Property (other than short term arrangements with transient hotel guests entered into in the usual course of business), and (a) every modification, amendment or other agreement relating to such lease, sublease, subsublease, or other agreement entered into in connection with such lease, sublease, subsublease, or other agreement and (b) every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto (including the Operating Lease Guaranty).

**"Legal Requirements"** shall mean, with respect to each Individual Property and the Collateral, all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions of Governmental Authorities affecting such Individual Property, the Senior Mezzanine Collateral, the Collateral or any part thereof (including, without limitation, all Gaming Laws), or affecting the construction, use, alteration or operation thereof, or any part thereof, whether now or hereafter enacted and in force, and all permits, licenses and authorizations and regulations relating thereto (including, without limitation, all Gaming Licenses and Operating Permits), and all covenants, agreements, restrictions and encumbrances contained in any instruments, either of record or known to Borrower, Mortgage Borrower or Operating Company, at any time in force affecting such Individual Property or any part thereof, including, without limitation, any which may (a) require repairs, modifications or alterations in or to such Individual Property or any part thereof, or (b) in any way limit the use and enjoyment thereof. Legal Requirements shall include any (x) judicial, administrative or other governmental or quasi governmental order, injunction, writ, judgment, decree, ruling, interpretation, finding or other directive, whether domestic or foreign; (y) arbitrator's, mediator's or referee's decision, finding, award or recommendation; or

(z) charter, rule, regulation or other organizational or governance document of any self-regulatory or governing body or organization. For the avoidance of doubt, the term "Legal Requirements" shall include, and be deemed to include, all applicable Gaming Laws and Gaming Regulations.

"**Lender**" shall have the meaning set forth in the introductory paragraph hereto, together with its successors and assigns.

"**Lender's Share**" shall mean a fraction, the numerator of which is the outstanding principal amount of the Loan and the denominator of which is the sum of the outstanding principal amounts of the Mortgage Loan, the Loan and the Other Mezzanine Loans (in each case, as of the date of determination).

"**Liabilities**" shall have the meaning set forth in Section 9.2(b) hereof.

"**LIBOR**" shall mean, with respect to each Interest Period, the rate (expressed as a percentage per annum and rounded to the next nearest 1/100 of 1%) for deposits in U.S. dollars, for a one-month period, that appears on Reuters Screen LIBOR01 Page (or the successor thereto) as of 11:00 a.m., London time, on the related Determination Date. If such rate does not appear on Reuters Screen LIBOR01 Page as of 11:00 a.m., London time, on such Determination Date, LIBOR shall be the arithmetic mean of the offered rates (expressed as a percentage per annum) for deposits in U.S. dollars for a one-month period that appear on the Reuters Screen Libor Page as of 11:00 a.m., London time, on such Determination Date, if at least two such offered rates so appear. If fewer than two such offered rates appear on the Reuters Screen Libor Page as of 11:00 a.m., London time, on such Determination Date, Lender shall request the principal London office of any four major reference banks in the London interbank market selected by Lender to provide such bank's offered quotation (expressed as a percentage per annum) to prime banks in the London interbank market for deposits in U.S. dollars for a one-month period as of 11:00 a.m., London time, on such Determination Date for the amounts of not less than U.S. \$1,000,000. If at least two such offered quotations are so provided, LIBOR shall be the arithmetic mean of such quotations. If fewer than two such quotations are so provided, Lender shall request any three major banks in New York City selected by Lender to provide such bank's rate (expressed as a percentage per annum) for loans in U.S. dollars to leading European banks for a one-month period as of approximately 11:00 a.m., New York City time on the applicable Determination Date for amounts of not less than U.S. \$1,000,000. If at least two such rates are so provided, LIBOR shall be the arithmetic mean of such rates. LIBOR shall be determined conclusively by Lender or its agent. Notwithstanding the foregoing, for the Interest Period ending February 14, 2008, LIBOR is 3.31%.

"**LIBOR Loan**" shall mean the Loan at such time as interest thereon accrues at a rate of interest based upon LIBOR.

"**Lien**" shall mean, with respect to each Individual Property, the Senior Mezzanine Collateral and the Collateral, any mortgage, deed of trust, lien, pledge, hypothecation, assignment, security interest, or any other encumbrance, charge or restriction on transfer of, on or affecting Borrower, Senior Mezzanine Borrower, Mortgage Borrower, any Individual Property, the Senior Mezzanine Collateral or the Collateral, any portion of either or any interest

therein, including, without limitation, any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, the filing of any financing statement, and mechanic's, materialmen's and other similar liens and encumbrances, in each case whether arising by contract, operation of law, or otherwise.

**"Liquidation Event"** shall have the meaning set forth in Section 2.4.2 hereof.

**"Loan"** shall mean the loan made by Lender to Borrower pursuant to this Agreement.

**"Loan Adjustment"** shall have the meaning set forth in Section 2.1.6 hereof.

**"Loan Amount"** shall mean, as determined from time to time, the outstanding principal amount of the Loan.

**"Loan Documents"** shall mean, collectively, this Agreement, the Note, the Pledge Agreement, the Environmental Indemnity, the O&M Agreement, the Guaranty (Recourse Carveouts), the Guaranty (FF&E), the Guaranty (Ground Lease Estoppel), the Collateral Assignment of Interest Rate Cap Agreement, the Contribution Agreement and all other documents executed and/or delivered in connection with the Loan.

**"Loan Party"** shall mean, collectively, Mortgage Borrower, Borrower, Senior Mezzanine Borrower, Principal and Guarantor.

**"London Business Day"** shall mean any day other than a Saturday, Sunday or any other day on which commercial banks in London, England are not open for business.

**"Major Lease"** shall mean any of the following: (a) with respect to any Individual Property, any Lease (i) covering in excess of forty thousand (40,000) net rentable square feet at such Individual Property or (ii) made with a Tenant that is a Tenant under another Lease at such Individual Property (or with a Tenant that is an Affiliate of a Tenant under another Lease at such Individual Property) if any such Leases, together, cover in excess of forty thousand (40,000) net rentable square feet or more at such Individual Property, (b) any Lease of space at any Individual Property with an Affiliate of Mortgage Borrower, or (c) any Lease that is not the result of arm's length negotiations; provided, however, that the Operating Lease shall not constitute a Major Lease for purposes of this Agreement.

**"Material Alteration"** shall mean any Alteration with respect to all or a portion of any Individual Property that (i) when aggregated with all other Alterations at such Individual Property then being conducted involve an estimated total cost in excess of an amount equal to ten percent (10%) of the sum of the Allocated Loan Amount for such Individual Property and the "Allocated Loan Amounts" under (and as defined in each of) the Mortgage Loan Agreement and the Other Mezzanine Loan Agreements for such Individual Property or (ii) when aggregated with all other Alterations at the Properties, including such Individual Property, then being conducted, involve an estimated total cost in excess of an amount equal to five percent (5%) of the sum of the Loan Amount, the Mortgage Loan Amount and the Other Mezzanine Loan Amount (and, as used herein, **"Threshold Amount"** shall mean whichever of said 5% or 10% amount shall have been exceeded, provided that if both shall have been exceeded, then the lower of such two

amounts shall be the “Threshold Amount”); provided, that, in determining whether one or more Alterations comprise a Material Alteration, there shall not be included (a) merely decorative work such as painting, wall papering, carpeting and replacement of FF&E to the extent the same are of a routine and recurring nature, performed in the ordinary course of business; (b) tenant improvement work performed by a tenant pursuant to the terms of any Lease (other than the Operating Lease) entered into in accordance with the terms hereof, so long as such work does not adversely affect any structural component of any Improvements, any utility or HVAC system contained in any Improvements or the exterior of any building constituting a part of any Improvements, (c) any Alterations which are performed in connection with the Restoration of any portion of any Individual Property after the occurrence of a Casualty or Condemnation in accordance with the terms and provisions of this Agreement, or (d) the Tower Project or the Convention Center Project.

“**Maturity Date**” shall mean the Scheduled Maturity Date or such other date on which the final payment of principal of the Notes becomes due and payable as therein or herein provided, whether at such Scheduled Maturity, by declaration of acceleration, or otherwise.

“**Maximum Legal Rate**” shall mean the maximum nonusurious interest rate, if any, that at any time or from time to time may be contracted for, taken, reserved, charged or received on the indebtedness evidenced by the Note and as provided for herein or the other Loan Documents, under the laws of such state or states whose laws are held by any court of competent jurisdiction to govern the interest rate provisions of the Loan.

“**Mezzanine Borrowers**” shall mean, collectively, Borrower, First Mezzanine Borrower, Second Mezzanine Borrower, Third Mezzanine Borrower, Fourth Mezzanine Borrower, Fifth Mezzanine Borrower, Sixth Mezzanine Borrower, Seventh Mezzanine Borrower, Ninth Mezzanine Borrower and any New Mezzanine Borrower.

“**Mezzanine Collection Account**” shall have the meaning set forth in Section 2.6.4 hereof.

“**Mezzanine Debt Service**” shall mean, with respect to any particular period of time, the sum of (a) the Debt Service, (b) the First Mezzanine Debt Service, (c) the Second Mezzanine Debt Service, (d) the Third Mezzanine Debt Service, (e) the Fourth Mezzanine Debt Service, (f) the Fifth Mezzanine Debt Service, (g) the Sixth Mezzanine Debt Service, (h) the Seventh Mezzanine Debt Service, (i) the Ninth Mezzanine Debt Service, and (j) debt service on any New Mezzanine Loan.

“**Mezzanine Lenders**” shall mean, collectively, Lender, First Mezzanine Lender, Second Mezzanine Lender, Third Mezzanine Lender, Fourth Mezzanine Lender, Fifth Mezzanine Lender, Sixth Mezzanine Lender, Seventh Mezzanine Lender, Ninth Mezzanine Lender and Lender, as lender under any New Mezzanine Loan.

“**Mezzanine Loan Agreements**” shall mean, collectively, this Agreement, the First Mezzanine Loan Agreement, the Second Mezzanine Loan Agreement, the Third Mezzanine Loan Agreement, the Fourth Mezzanine Loan Agreement, the Fifth Mezzanine Loan Agreement,

the Sixth Mezzanine Loan Agreement, the Seventh Mezzanine Loan Agreement, the Ninth Mezzanine Loan Agreement and any New Mezzanine Loan Agreement.

“**Mezzanine Loan Amount**” shall mean, as determined from time to time, the outstanding principal amount of the Mezzanine Loans.

“**Mezzanine Loan Documents**” shall mean, collectively, the Loan Documents, the First Mezzanine Loan Documents, the Second Mezzanine Loan Documents, the Third Mezzanine Loan Documents, the Fourth Mezzanine Loan Documents, the Fifth Mezzanine Loan Documents, the Sixth Mezzanine Loan Documents, the Seventh Mezzanine Loan Documents, the Ninth Mezzanine Loan Documents and any loan documents entered into in connection with any New Mezzanine Loan.

“**Mezzanine Loans**” shall mean, collectively, this Loan, the First Mezzanine Loan, the Second Mezzanine Loan, the Third Mezzanine Loan, the Fourth Mezzanine Loan, the Fifth Mezzanine Loan, the Sixth Mezzanine Loan, the Seventh Mezzanine Loan, the Ninth Mezzanine Loan and any New Mezzanine Loan.

“**Minimum Value Test**” shall mean, with respect to any Person, that the greater of the book value or the fair market value of the assets of such Person (excluding, for purposes of making such determination, the value of the Properties) exceeds Five Billion and no/100 Dollars (\$5,000,000,000.00) in the aggregate, as certified to Lender in an Officer’s Certificate prepared in good faith based on the most recent financial statements of such Person.

“**Monthly Disbursements**” shall have the meaning provided in Section 2.6.2.

“**Monthly FF&E Reserve Amount**” means the monthly deposit for FF&E required pursuant to Section 7.3 of this Agreement.

“**Monthly Ground Rent Reserve Amount**” means the monthly deposit for Ground Rent required pursuant to Section 7.4 of this Agreement.

“**Monthly Tax and Insurance Amount**” means the monthly deposit for Taxes and Insurance required pursuant to Section 7.2 of this Agreement.

“**Moody’s**” shall mean Moody’s Investors Service, Inc.

“**Mortgage**” shall mean, with respect to each Individual Property, that certain first priority Mortgage (or Deed of Trust or Deed to Secure Debt) and Security Agreement, dated the date hereof, executed and delivered by Mortgage Borrower as security for the Mortgage Loan and encumbering such Individual Property and any first priority Mortgage (Deed of Trust or Deed to Secure Debt) and Security Agreement delivered pursuant to the Ground Lease Side Letter, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Mortgage Borrower**” shall mean, collectively, the entities set forth on Schedule XIII hereto, each a Delaware limited liability company, together with their respective successors and permitted assigns. As used herein the term “Mortgage Borrower” shall mean one

of the Mortgage Borrowers individually or the Mortgage Borrowers collectively, as the context shall require.

**“Mortgage Debt Service”** shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Mortgage Note and the Mortgage Loan Agreement.

**“Mortgage Lender”** shall have the meaning set forth in the Recitals.

**“Mortgage Loan”** shall have the meaning set forth in the Recitals.

**“Mortgage Loan Agreement”** shall have the meaning set forth in the Recitals.

**“Mortgage Loan Amount”** shall mean, as determined from time to time, the outstanding principal amount of the Mortgage Loan.

**“Mortgage Loan Default”** shall mean a “Default” as defined in the Mortgage Loan Agreement.

**“Mortgage Loan Documents”** shall mean the Mortgage Loan Agreement, the Mortgage Note, the Mortgage and all other documents and instruments executed and delivered in connection with the Mortgage Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

**“Mortgage Loan Event of Default”** shall mean an “Event of Default” as defined in the Mortgage Loan Agreement.

**“Mortgage Loan Reserve Funds”** shall mean the “Reserve Funds” as defined in the Mortgage Loan Agreement.

**“Mortgage Note”** shall mean the “Note” as defined in the Mortgage Loan Agreement.

**“Net Income”** shall mean, with respect to any Person, the net income (loss) of such Person, determined in accordance with GAAP and before any reduction in respect of preferred stock dividends.

**“Net Liquidation Proceeds After Debt Service”** shall mean, with respect to any Liquidation Event, all amounts paid to or received by or on behalf of Borrower, Senior Mezzanine Borrower or Mortgage Borrower in connection with such Liquidation Event, including, without limitation, proceeds of any sale, refinancing or other disposition or liquidation, less (a) Lender’s, Senior Mezzanine Lender’s and/or Mortgage Lender’s reasonable costs incurred in connection with the recovery thereof, (b) amounts required or permitted to be deducted therefrom and amounts paid pursuant to the Mortgage Loan Documents and Senior Mezzanine Loan Documents to Mortgage Lender and/or Senior Mezzanine Lender (as applicable), (c) in the case of a foreclosure sale, disposition or Transfer of any Individual Property in connection with realization thereon following a Mortgage Loan Event of Default, such reasonable and customary costs and expenses of sale or other disposition (including

attorneys' fees and brokerage commissions), (d) in the case of a foreclosure sale, disposition or Transfer of any Senior Mezzanine Collateral in connection with realization thereon following a Senior Mezzanine Loan Default under any Senior Mezzanine Loan Documents, such reasonable and customary costs and expenses of sale or other disposition (including attorneys' fees and brokerage commissions), (e) in the case of a foreclosure sale, such costs and expenses incurred by Mortgage Lender under the Mortgage Loan Documents as Mortgage Lender shall be entitled to receive reimbursement for under the terms of the Mortgage Loan Documents, (f) in the case of a foreclosure sale, such costs and expenses incurred by Senior Mezzanine Lender under the Senior Mezzanine Loan Documents as Senior Mezzanine Lender shall be entitled to receive reimbursement for under the terms of the Senior Mezzanine Loan Documents, (g) in the case of a refinancing of the Mortgage Loan and/or Senior Mezzanine Loan, such costs and expenses (including attorneys' fees) of such refinancing as shall be reasonably approved by Mortgage Lender and/or Senior Mezzanine Lender, as the case may be, and (h) the amount of any prepayments required pursuant to the Mortgage Loan Documents, Senior Mezzanine Loan Documents, and/or the Loan Documents, in connection with any such Liquidation Event.

“**Net Proceeds**” shall have the meaning set forth in Section 6.4 hereof.

“**New Mezzanine Borrower**” shall have the meaning set forth in Section 2.1.7.

“**New Mezzanine Loan**” shall have the meaning set forth in Section 2.1.7.

“**Ninth Mezzanine Borrower**” shall mean, collectively, the entities set forth on Schedule XXI hereto, each a Delaware limited liability company, together with their respective successors and permitted assigns. As used herein, the term “Ninth Mezzanine Borrower” shall mean one of the Ninth Mezzanine Borrowers individually, or the Ninth Mezzanine Borrowers collectively, as the context shall require.

“**Ninth Mezzanine Debt Service**” shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Ninth Mezzanine Notes.

“**Ninth Mezzanine Lender**” shall mean JPMorgan Chase Bank, N.A., in its capacity as the holder of the Ninth Mezzanine Loan, together with its successors and assigns.

“**Ninth Mezzanine Loan**” shall mean that certain loan in the original principal amount of Two Hundred Seventy-Five Million and No/100 Dollars (\$275,000,000) of even date herewith made by Ninth Mezzanine Lender to Ninth Mezzanine Borrower.

“**Ninth Mezzanine Loan Agreement**” shall mean that certain Ninth Mezzanine Loan Agreement, dated as of the date hereof, between Ninth Mezzanine Borrower and Ninth Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Ninth Mezzanine Loan Documents**” shall mean the Ninth Mezzanine Loan Agreement, the Ninth Mezzanine Notes and all other documents and instruments executed and delivered in connection with the Ninth Mezzanine Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

“**Ninth Mezzanine Note**” shall mean the “Notes” as defined in the Ninth Mezzanine Loan Agreement.

“**Note**” or “**Notes**” shall mean, collectively, Note A-1, Note A-2, Note A-3, Note A-4, Note A-5, Note A-6, Note A-7, Note A-8 and Note A-9.

“**Note A-1**” shall mean that certain Promissory Note A-1 (Eighth Mezzanine Loan), dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of Forty-One Million Two Hundred Fifty-Four Thousand Five Hundred Eighty-Three and 34/100 Dollars (\$41,254,583.34), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Note A-2**” shall mean that certain Promissory Note A-2 (Eighth Mezzanine Loan), dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of Forty-One Million Two Hundred Fifty-Four Thousand Five Hundred Eighty-Three and 34/100 Dollars (\$41,254,583.34), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Note A-3**” shall mean that certain Promissory Note A-3 (Eighth Mezzanine Loan), dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of Forty-One Million Two Hundred Fifty-Four Thousand Five Hundred Eighty-Three and 33/100 Dollars (\$41,254,583.33), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Note A-4**” shall mean that certain Promissory Note A-4 (Eighth Mezzanine Loan), dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of Forty-One Million Two Hundred Fifty-Four Thousand Five Hundred Eighty-Three and 33/100 Dollars (\$41,254,583.33), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Note A-5**” shall mean that certain Promissory Note A-5 (Eighth Mezzanine Loan), dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of Forty-One Million Two Hundred Fifty-Four Thousand Five Hundred Eighty-Three and 33/100 Dollars (\$41,254,583.33), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Note A-6**” shall mean that certain Promissory Note A-6 (Eighth Mezzanine Loan), dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of Forty-One Million Two Hundred Fifty-Four Thousand Five Hundred Eighty-Three and 33/100 Dollars (\$41,254,583.33), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Note A-7**” shall mean that certain Promissory Note A-7 (Eighth Mezzanine Loan), dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of Nine Million One Hundred Fifty-Seven Thousand Five Hundred and No/100 Dollars (\$9,157,500.00), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Note A-8**” shall mean that certain Promissory Note A-8 (Eighth Mezzanine Loan), dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of Nine Million One Hundred Fifty-Seven Thousand Five Hundred and No/100 Dollars (\$9,157,500.00), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Note A-9**” shall mean that certain Promissory Note A-9 (Eighth Mezzanine Loan), dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of Nine Million One Hundred Fifty-Seven Thousand Five Hundred and No/100 Dollars (\$9,157,500.00), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Noteholders**” shall mean, collectively, the holders of the Notes from time to time and a “**Noteholder**” shall mean any holder of a Note from time to time (provided that the transfer of a Note shall not result in any prior Noteholder’s loss of any indemnification provided for hereunder to a Noteholder).

“**OC Accounts**” shall have the meaning set forth in Section 2.6.1(c).

“**O&M Agreement**” shall mean, with respect to each Individual Property (to the extent required by the environmental reports referenced in Section 3.1.3(e) hereof, that certain Operations and Maintenance Agreement (Eighth Mezzanine Loan), dated as of the date hereof, between Borrower and Lender given in connection with the Loan, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Officer’s Certificate**” shall mean a certificate delivered to Lender by Borrower which is signed by an authorized senior officer of Borrower or the general partner or managing member of Borrower, as applicable.

“**Off-Shore Accounts**” shall mean the accounts more particularly described on Schedule V.

“**Operating Company**” shall mean, collectively, the tenants under the Operating Leases, and their successors and permitted assigns.

“**Operating Company Annual Budget**” shall mean, individually and collectively as the context requires, with respect to each Operating Company, the operating budget of such Operating Company, including all planned Capital Expenditures, prepared by such Operating Company for the applicable Fiscal Year or other period.

“**Operating Lease**” shall mean, collectively, those certain Lease Agreements listed on Schedule VI, dated as of the date hereof, having a term of fifteen (15) years commencing on the Closing Date, and any similar Lease Agreement executed and delivered pursuant to the Ground Lease Side Letter, as the same may be amended, supplemented, replaced or otherwise modified from time to time in accordance with the provisions hereof.

“**Operating Lease Guaranty**” shall mean, collectively, those certain Lease Guaranty Agreements listed on Schedule VIA, executed and delivered by Guarantor (Operating

Lease), dated as of the date hereof, unconditionally guaranteeing the payment and performance by the Operating Company of all of its obligations under the Operating Lease, and any similar Lease Guaranty Agreement executed and delivered pursuant to the Ground Lease Side Letter, as such Lease Guaranty Agreements may be amended, supplemented, replaced or otherwise modified from time to time in accordance with the provisions hereof.

“**Operating Permits**” shall have the meaning set forth in Section 4.1.22 hereof.

“**O’Shea’s**” shall have the meaning ascribed to such term in the Mortgage Loan Agreement.

“**Other Borrower Collateral**” shall have the meaning set forth in Section 11.2.1 hereof.

“**Other Borrowers**” shall have the meaning set forth in Section 11.1 hereof.

“**Other Charges**” shall mean all ground rents, maintenance charges, impositions other than Taxes, and any other charges, including, without limitation, vault charges and license fees for the use of vaults, chutes and similar areas adjoining any Individual Property, now or hereafter levied or assessed or imposed against such Individual Property or any part thereof.

“**Other Mezzanine Borrowers**” shall mean, individually or collectively as the context may require, all of the Mezzanine Borrowers other than Borrower.

“**Other Mezzanine Debt Service**” shall mean, individually or collectively as the context may require, all of the Mezzanine Debt Service other than the Debt Service.

“**Other Mezzanine Lenders**” shall mean, individually or collectively as the context may require, all of the Mezzanine Lenders other than Lender.

“**Other Mezzanine Loans**” shall mean, individually or collectively as the context may require, all of the Mezzanine Loans other than the Loan.

“**Other Mezzanine Loan Agreements**” shall mean, individually or collectively as the context may require, all of the Mezzanine Loan Agreements other than this Agreement.

“**Other Mezzanine Loan Amounts**” shall mean, as determined from time to time, the outstanding principal amounts of all of the Mezzanine Loans other than the Loan.

“**Owner’s Title Policy**” shall mean those certain ALTA extended coverage owner’s policies of title insurance issued in connection with the closing of the Mortgage Loan insuring the Mortgage Borrower as the owner of the Property.

“**Participant**” shall have the meaning set forth in Section 9.6 hereof.

“**Participant Register**” shall have the meaning set forth in Section 9.6 hereof.

**“Payment Date”** shall mean the ninth (9<sup>th</sup>) calendar day of each calendar month during the term of the Loan, and if such day is not a Business Day, then the Business Day immediately preceding such day, commencing on March 9, 2008 and continuing to and including the Maturity Date. Notwithstanding the foregoing, the Payment Date in the final Interest Period shall be the Maturity Date (*i.e.*, the second to last Business Day in such Interest Period rather than the ninth calendar day of such month).

**“Permitted Encumbrances”** shall mean, with respect to an Individual Property, collectively (a) the Liens and security interests created by the Mortgage Loan Documents; (b) all Liens, encumbrances and other matters disclosed in the Title Insurance Policies relating to such Individual Property or any part thereof; (c) Liens, if any, for Taxes and Other Charges imposed by any Governmental Authority not yet due or delinquent; (d) the Operating Lease; (e) such other title and survey exceptions as Lender has approved or may approve in writing in Lender’s reasonable discretion; (f) any Lien being contested by Borrower in good faith by appropriate proceedings, provided that (i) no Default or Event of Default has occurred and remains uncured, (ii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any applicable material instrument to which Mortgage Borrower is subject and shall not constitute a default thereunder and such proceeding shall be conducted in accordance with all applicable statutes, laws and ordinances, (iii) no Individual Property nor any part thereof or interest therein will be in imminent danger of being sold, forfeited, terminated, cancelled or lost, (iv) such proceeding shall suspend the enforcement of the contested Lien against Mortgage Borrower and any Individual Property, and (v) Borrower shall furnish such security as may be required by GAAP or as may be reasonably requested by Lender; (g) statutory Liens for amounts not yet due and payable, provided that no Individual Property nor any part thereof or interest therein will be in imminent danger of being sold, forfeited, terminated, cancelled or lost; (h) Liens incurred in the ordinary course of business in connection with workers’ compensation, unemployment insurance and other types of social security; (i) any Lien securing the financing of FF&E (including equipment leases) entered into by Mortgage Borrower or Operating Company in the ordinary course of business, subject to the limitations specified in the definitions of “Permitted Indebtedness” and “Permitted Indebtedness (Operating Company)”, as applicable; (j) rights of tenants under Leases, as tenants only; (k) rights of hotel guests at the Hotel Components of the Properties; (l) zoning restrictions, easements, rights-of-way, restrictions on use of real property and other similar encumbrances incurred or entered into in the ordinary course of business which do not, in each case, have an Individual Material Adverse Effect; and (m) liens granted by Operating Company securing equipment financing leases and/or equipment acquisition financings permitted hereunder as “Permitted Indebtedness (Operating Company),” subject to the final sentence of said definition, or as “Permitted Indebtedness”.

**“Permitted Fund Manager”** means any Person that on the date of determination (a) is one of the entities listed on Schedule VII or any other nationally-recognized manager of investment funds investing in debt or equity interests relating to commercial real estate, (b) is investing through a fund with committed capital of at least \$1,000,000,000, (c) is not subject to a Bankruptcy Action, (d) has not been, and none of its material subsidiaries has been, subject to a Bankruptcy Action for the preceding 5 years, (e) has not been convicted and is not under current indictment for a felony or crime involving moral turpitude, (f) has not been found by a court of competent jurisdiction to have violated federal or state securities laws, and (g) is not an organized crime figure (as determined by Lender in its reasonable discretion).

“**Permitted Indebtedness**” shall have the meaning assigned to such term in the Mortgage Loan Agreement.

“**Permitted Indebtedness (Operating Company)**” shall mean, collectively, (a) trade and operational debt (including equipment financing leases, such as leases with providers of Gaming Equipment) relating to the operation of the Properties and the routine administration of Operating Company incurred in the ordinary course of business with trade creditors and in amounts as are normal and reasonable under the circumstances, are not evidenced by a note, are required to be paid within ninety (90) days after same are incurred (except in the case of operating leases) and are paid when due, (b) accrued and unpaid payroll, benefits and payroll taxes with respect to employees of Operating Company or its Affiliates engaged with respect to the Properties incurred in the ordinary course of business and paid when due, (c) debt owed to affiliates, provided such debt is made subject to an intercreditor and standstill agreement in favor of Lender in form and substance reasonably satisfactory to Lender, and (d) such other Indebtedness specifically permitted pursuant to the Operating Lease (including the Gaming Equipment Facility Agreements (as defined in the Mortgage Loan Agreement)). In no event shall the Permitted Indebtedness (Operating Company) and Permitted Indebtedness of each Operating Company and Mortgage Borrower on an aggregate basis, excluding for purposes of this sentence the Indebtedness described in subclause (b) of the preceding sentence, exceed five percent (5%) of the sum of the Loan Amount, the Mortgage Loan Amount and the Other Mezzanine Loan Amounts in the aggregate (each as determined from time to time).

“**Permitted Investments**” shall have the meaning set forth in the Mortgage Loan Agreement.

“**Permitted Mezzanine Debt Loan-to-Value Ratio**” shall mean the ratio, as of a particular date, in which (a) the numerator is equal to the sum of (i) the outstanding principal amount of the Mortgage Loan, (ii) the outstanding principal amount of the Mezzanine Loans, and any New Mezzanine Loan, plus (iii) the amount of the Permitted Mezzanine Loan, and (b) the denominator is equal to the appraised value of the Properties subject to the Lien of the Mortgage as determined by Lender based on Appraisals obtained by Lender (at Borrower’s sole cost and expense) and satisfactory to Lender and dated no earlier than ninety (90) days prior to the date of determination or such other Appraisals as are approved by Lender in its sole discretion.

“**Permitted Mezzanine Debt Service**” shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Permitted Mezzanine Loan Documents.

“**Permitted Mezzanine DSCR**” shall mean, for the applicable period, the ratio of (a) EBITDAR for such period from the Properties to (b) the sum of (i) the Mortgage Debt Service and Mezzanine Debt Service for such period, plus (ii) principal and/or interest due and payable (or, for purposes of the calculation to be made pursuant to Section 2.8(d), that would have been due and payable had the Permitted Mezzanine Loan then been in place) for such period on the Permitted Mezzanine Loan at the interest rate set forth in the Permitted Mezzanine Loan Documents or, if the Permitted Mezzanine Loan is a floating rate loan, assuming that (A) the spread on the Permitted Mezzanine Loan is the “Spread” as defined in the documents

evidencing the Permitted Mezzanine Loan and (B) LIBOR is equal to the lesser of (y) LIBOR on the date of determination, or (z) the strike price under the related interest rate cap purchased in connection with the Permitted Mezzanine Loan.

“**Permitted Mezzanine Loan**” shall have the meaning set forth in Section 2.8 hereof.

“**Permitted Mezzanine Loan Documents**” shall have the meaning set forth in Section 2.8(g) hereof.

“**Permitted Mezzanine Loan Election**” shall have the meaning set forth in Section 2.8 hereof.

“**Permitted Mezzanine Loan Lender**” shall have the meaning set forth in Section 2.8 hereof.

“**Person**” shall mean any individual, corporation, partnership, joint venture, limited liability company, estate, trust, unincorporated association, any federal, state, county or municipal government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

“**Physical Conditions Report**” shall mean, with respect to each Individual Property, a report prepared by a company satisfactory to Lender regarding the physical condition of such Individual Property, satisfactory in form and substance to Lender in its sole discretion.

“**Pledge Agreement**” shall mean that certain Pledge and Security Agreement (Loan), dated as of the date hereof, between Borrower and Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Pledged Company Interests**” shall have the meaning set forth in the Pledge Agreement.

“**Policies**” shall have the meaning specified in Section 6.1(b) hereof.

“**Prepayment Date**” shall have the meaning specified in Section 2.4.1 hereof.

“**Prescribed Laws**” shall mean, collectively, (a) the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56) (The USA PATRIOT Act), as amended, (b) Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, and relating to Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, (c) the International Emergency Economic Power Act, 50 U.S.C. § 1701 *et seq.* and (d) all other Legal Requirements relating to money laundering or terrorism.

“**Prime Rate**” shall mean the annual rate of interest publicly announced by Citibank, N.A. in New York, New York, as its base rate, as such rate shall change from time to time. If Citibank, N.A. ceases to announce a base rate, Prime Rate shall mean the rate of interest published in The Wall Street Journal from time to time as the “Prime Rate.” If more than one

“Prime Rate” is published in The Wall Street Journal for a day, the average of such “Prime Rates” shall be used, and such average shall be rounded up to the nearest one-eighth of one percent (0.125%). If The Wall Street Journal ceases to publish the “Prime Rate,” Lender shall select an equivalent publication that publishes such “Prime Rate,” and if such “Prime Rates” are no longer generally published or are limited, regulated or administered by a governmental or quasi-governmental body, then Lender shall select a comparable interest rate index.

“**Prime Rate Loan**” shall mean the Loan at such time as interest thereon accrues at a rate of interest based upon the Prime Rate.

“**Prime Rate Spread**” shall mean the difference (expressed as the number of basis points) between (a) LIBOR plus the Spread on the date LIBOR was last applicable to the Loan and (b) the Prime Rate on the date that LIBOR was last applicable to the Loan; provided, however, in no event shall such difference be a negative number.

“**Principal**” shall mean Ninth Mezzanine Borrower.

“**Projections**” shall have the meaning set forth in Section 9.10 hereof.

“**Properties**” shall mean, collectively, each and every Individual Property which is subject to the terms of this Agreement.

“**Provided Information**” shall mean any and all financial and other information provided at any time by, or on behalf of, Borrower, Senior Mezzanine Borrower, or Mortgage Borrower with respect to the Properties, Borrower, any Affiliates of Borrower, including Holdings, Guarantor and/or Operating Company.

“**Qualified Transferee**” means (a) any of the Mezzanine Lenders, (b) Apollo Management, L.P., TPG Capital, L.P. f/k/a Texas Pacific Group, their respective Affiliates and senior or executive principals of Apollo Management, L.P. or TPG Capital, L.P. who are the holders from time to time of voting interests in Holdings, and investment funds Controlled by either of them (but excluding for purposes of this clause (b) “portfolio companies” of the foregoing), or (c) one or more of the following:

(i) a real estate investment trust, bank, saving and loan association, investment bank, insurance company, trust company, commercial credit corporation, pension plan, pension fund or pension advisory firm, mutual fund, government entity or plan, provided that any such Person referred to in this clause (i) satisfies the Eligibility Requirements;

(ii) an investment company, money management firm or “qualified institutional buyer” within the meaning of Rule 144A under the Securities Act of 1933, as amended, or an institutional “accredited investor” within the meaning of Regulation D under the Securities Act of 1933, as amended, provided that any such Person referred to in this clause (ii) satisfies the Eligibility Requirements;

(iii) an institution substantially similar to any of the foregoing entities described in clauses (c)(i) or (c)(ii) that satisfies the Eligibility Requirements;

(iv) any entity Controlled by any of the entities described in clause (a) or clauses (c)(i) or (c)(iii) above, or Holdings or any entity Controlled by Holdings (provided in each case there shall have occurred no Change in Control);

(v) a Qualified Trustee in connection with a securitization of, the creation of collateralized debt obligations (“CDO”) secured by or financing through an “owner trust” of, any Mezzanine Loan (collectively, “**Securitization Vehicles**”), so long as (A) the special servicer or manager of such Securitization Vehicle has the Required Special Servicer Rating and (B) the entire “controlling class” of such Securitization Vehicle, other than with respect to a CDO Securitization Vehicle, is held by one or more entities that are otherwise Qualified Transferees under clauses (c)(i), (ii), (iii) or (iv) of this definition; provided that the operative documents of the related Securitization Vehicle require that (1) in the case of a CDO Securitization Vehicle, the “equity interest” in such Securitization Vehicle is owned by one or more entities that are Qualified Transferees under clauses (c)(i), (ii), (iii) or (iv) of this definition and (2) if any of the relevant trustee, special servicer, manager fails to meet the requirements of this clause (v), such Person must be replaced by a Person meeting the requirements of this clause (v) within thirty (30) days; or

(vi) an investment fund, limited liability company, limited partnership or general partnership where a Permitted Fund Manager or an entity that is otherwise a Qualified Transferee under clauses (c)(i), (ii), (iii) or (iv) of this definition acts as the general partner, managing member or fund manager and at least 50% of the equity interests in such investment vehicle are owned, directly or indirectly, by one or more entities that are otherwise Qualified Transferees under clauses (c)(i), (ii), (iii) or (iv) of this definition;

provided, however, that no Transferee shall be a Qualified Transferee if (and for so long as) such Transferee is, or is Controlled by, an Embargoed Person or a Person that has been found “unsuitable,” for any reason, by a Gaming Authority.

“**Qualified Trustee**” means (a) a corporation, national bank, national banking association or a trust company, organized and doing business under the laws of any state or the United States of America, authorized under such laws to exercise corporate trust powers and to accept the trust conferred, having a combined capital and surplus of at least \$100,000,000 and subject to supervision or examination by federal or state authority, (b) an institution insured by the Federal Deposit Insurance Corporation or (c) an institution whose long-term senior unsecured debt is rated either of the then in effect top two rating categories of each of the Rating Agencies.

“**Rating Agencies**” shall mean each of S&P, Moody’s and Fitch, or any other nationally recognized statistical rating agency which has been approved by Lender and that rates a Securitization of the Loan (or any component thereof).

“**Rating Agency Confirmation**” means, collectively, a written affirmation from each of the Rating Agencies that the credit rating of the Securities given by such Rating Agency of such Securities immediately prior to the occurrence of the event with respect to which such Rating Agency Confirmation is sought will not be qualified, downgraded or withdrawn as a

result of the occurrence of such event, which affirmation may be granted or withheld in such Rating Agency's sole and absolute discretion. In the event that, at any given time, no such Securities shall have been issued and are then outstanding, then the term Rating Agency Confirmation shall be deemed instead to require the written approval of Lender based on its good faith determination of whether the Rating Agencies would issue a Rating Agency Confirmation if any such Securities were outstanding.

**"Regulation AB"** shall have the meaning set forth in Section 5.1.11(f) hereof.

**"Regulation S-K"** shall mean Regulation S-K under the Securities Act of 1933 and the Securities Exchange Act of 1934, as amended.

**"Regulation S-X"** shall mean Regulation S-X under the Securities Act of 1933 and the Securities Exchange Act of 1934, as amended.

**"Related Loan"** shall have the meaning set forth in Section 5.1.11(f) hereof.

**"Related Property"** shall have the meaning set forth in Section 5.1.11(f) hereof.

**"Release"** shall have the meaning set forth in Section 2.5.1 hereof.

**"Release Borrower"** shall have the meaning set forth in Section 2.5.1 hereof.

**"Release Price"** shall mean, in connection with a release of an Individual Property from the Lien of a Mortgage as provided in Section 2.5, an amount equal to one hundred ten percent (110%) of the applicable Allocated Loan Amount for the first and second Individual Properties released, 115% of the applicable Allocated Loan Amount for the third and fourth Individual Properties released and (110%) of the applicable Allocated Loan Amount for any Individual Property thereafter released; provided if the Paris Las Vegas property becomes an Individual Property as contemplated by the last paragraph of Section 2.5.2, then such Individual Property shall have a Release Price of 120% of its Allocated Loan Amount and each other Individual Property shall have a Release Price of 110% of its Allocated Loan Amount.

**"Rents"** shall mean, with respect to each Individual Property, and without duplication, all rents, rent equivalents, moneys payable as damages or in lieu of rent or rent equivalents, royalties (including, without limitation, all oil and gas or other mineral royalties and bonuses), income, receivables, receipts, revenues, deposits (including, without limitation, security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, and other consideration of whatever form or nature received by or paid to or for the account of or benefit of Mortgage Borrower or the Operating Company (or employees of Mortgage Borrower or the Operating Company) from any and all sources arising from or attributable to such Individual Property, and proceeds, if any, from business interruption or other loss of income or insurance, including, without limitation, all hotel receipts, revenues and credit card receipts collected from guest rooms, restaurants, bars, meeting rooms, banquet rooms and recreational facilities, all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of property or rendering of services by Mortgage Borrower or any operator or manager of the Hotel Components or the

commercial spaces located in the Improvements or acquired from others (including, without limitation, from the rental of any office space, retail space, guest rooms or other space, halls, stores and offices, and deposits securing reservations of such space), license, lease, sublease and concession fees and rentals, health club membership fees, food and beverage wholesale and retail sales, service charges, vending machine sales and proceeds, if any, from business interruption or other loss of income insurance.

**“Replacement Interest Rate Cap Agreement”** means an interest rate cap agreement from an Acceptable Counterparty with terms identical to the Interest Rate Cap Agreement except that the same shall be effective in connection with replacement of the Interest Rate Cap Agreement following a downgrade, withdrawal or qualification of the long-term unsecured debt rating of the Counterparty; provided that to the extent any such interest rate cap agreement does not meet the foregoing requirements, a “Replacement Interest Rate Cap Agreement” shall be such interest rate cap agreement approved in writing by each of the Rating Agencies and Lender with respect thereto.

**“Reserve Account”** shall mean any one of the Tax and Insurance Escrow Account, the FF&E Reserve Account, the Ground Rent Reserve Account and any other escrow fund or reserve account established pursuant to the Loan Documents.

**“Reserve Funds”** shall mean, collectively, the Tax and Insurance Escrow Fund, the FF&E Reserve Fund, the Ground Rent Reserve Fund, the Ground Lease Estoppel Reserve Amount and any other escrow fund established pursuant to the Loan Documents.

**“Restoration”** shall mean the repair and restoration of an Individual Property after a Casualty or Condemnation as nearly as possible to the condition the Individual Property was in immediately prior to such Casualty or Condemnation, with such alterations as may be reasonably approved by Lender.

**“Revenue”** shall mean all Rents and items of income or revenue (of any kind) collected by Mortgage Borrower or Operating Company.

**“S&P”** shall mean Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc.

**“Sale or Pledge”** shall mean a voluntary or involuntary sale, conveyance, assignment, transfer, encumbrance or pledge of a legal or beneficial interest.

**“Scheduled Maturity Date”** shall mean February 13, 2013.

**“Second Mezzanine Borrower”** shall mean, collectively, the entities set forth on Schedule XIV hereto, each a Delaware limited liability company, together with their respective successors and permitted assigns. As used herein, the term “Second Mezzanine Borrower” shall mean one of the Second Mezzanine Borrowers individually, or the Second Mezzanine Borrowers collectively, as the context shall require.

“**Second Mezzanine Debt Service**” shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Second Mezzanine Notes.

“**Second Mezzanine Lender**” shall mean JPMorgan Chase Bank, N.A., in its capacity as the holder of the Second Mezzanine Loan, together with its successors and assigns.

“**Second Mezzanine Loan**” shall mean that certain loan in the original principal amount of Two Hundred Seventy-Five Million and No/100 Dollars (\$275,000,000) of even date herewith made by Second Mezzanine Lender to Second Mezzanine Borrower.

“**Second Mezzanine Loan Agreement**” shall mean that certain Second Mezzanine Loan Agreement, dated as of the date hereof, between Second Mezzanine Borrower and Second Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Second Mezzanine Loan Documents**” shall mean the Second Mezzanine Loan Agreement, the Second Mezzanine Notes and all other documents and instruments executed and delivered in connection with the Second Mezzanine Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

“**Second Mezzanine Notes**” shall mean the “Notes” as defined in the Second Mezzanine Loan Agreement.

“**Second Mezzanine Pledge Agreement**” shall mean that certain Pledge and Security Agreement (Second Mezzanine Loan), dated as of the date hereof, between Second Mezzanine Borrower and Second Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Securities**” shall have the meaning set forth in Section 9.1 hereof.

“**Securities Act**” shall have the meaning set forth in Section 9.2(a) hereof.

“**Securitization**” shall have the meaning set forth in Section 9.1 hereof.

“**Senior Mezzanine Borrower**” shall mean, collectively, First Mezzanine Borrower, Second Mezzanine Borrower, Third Mezzanine Borrower, Fourth Mezzanine Borrower, Fifth Mezzanine Borrower, Sixth Mezzanine Borrower and Seventh Mezzanine Borrower.

“**Senior Mezzanine Collateral**” shall mean, collectively, the “Collateral” as defined in each Senior Mezzanine Loan Agreement.

“**Senior Mezzanine Lender**” shall mean, collectively, First Mezzanine Lender, Second Mezzanine Lender, Third Mezzanine Lender, Fourth Mezzanine Lender, Fifth Mezzanine Lender, Sixth Mezzanine Lender and Seventh Mezzanine Lender.

“**Senior Mezzanine Loan**” shall mean the First Mezzanine Loan, the Second Mezzanine Loan, the Third Mezzanine Loan, the Fourth Mezzanine Loan, the Fifth Mezzanine Loan, the Sixth Mezzanine Loan and the Seventh Mezzanine Loan.

“**Senior Mezzanine Loan Agreement**” shall mean the First Mezzanine Loan Agreement, the Second Mezzanine Loan Agreement, the Third Mezzanine Loan Agreement, the Fourth Mezzanine Loan Agreement, the Fifth Mezzanine Loan Agreement, the Sixth Mezzanine Loan Agreement and the Seventh Mezzanine Loan Agreement.

“**Senior Mezzanine Loan Default**” shall mean, collectively, a “Default” under any of the Senior Mezzanine Loan Documents.

“**Senior Mezzanine Loan Documents**” shall mean, collectively, the First Mezzanine Loan Documents, the Second Mezzanine Loan Documents, the Third Mezzanine Loan Documents, the Fourth Mezzanine Loan Documents, the Fifth Mezzanine Loan Documents, the Sixth Mezzanine Loan Documents and the Seventh Mezzanine Loan Documents.

“**Senior Mezzanine Loan Event of Default**” shall mean, collectively, an “Event of Default” under any of the Senior Mezzanine Loan Documents.

“**Senior Mezzanine Loan Reserve Funds**” shall mean, collectively, the “Reserve Funds” as defined in the Senior Mezzanine Loan Agreement.

“**Servicer**” shall have the meaning set forth in Section 9.4 hereof.

“**Servicing Agreement**” shall have the meaning set forth in Section 9.4 hereof.

“**Seventh Mezzanine Borrower**” shall mean, collectively, the entities set forth on Schedule XIX hereto, each a Delaware limited liability company, together with their respective successors and permitted assigns. As used herein, the term “Seventh Mezzanine Borrower” shall mean one of the Seventh Mezzanine Borrowers individually, or the Seventh Mezzanine Borrowers collectively, as the context shall require.

“**Seventh Mezzanine Debt Service**” shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Seventh Mezzanine Notes.

“**Seventh Mezzanine Lender**” shall mean JPMorgan Chase Bank, N.A., in its capacity as the holder of the Seventh Mezzanine Loan, together with its successors and assigns.

“**Seventh Mezzanine Loan**” shall mean that certain loan in the original principal amount of Two Hundred Seventy-Five Million and No/100 Dollars (\$275,000,000) of even date herewith made by Seventh Mezzanine Lender to Seventh Mezzanine Borrower.

“**Seventh Mezzanine Loan Agreement**” shall mean that certain Seventh Mezzanine Loan Agreement, dated as of the date hereof, between Seventh Mezzanine Borrower

and Seventh Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Seventh Mezzanine Loan Documents**” shall mean the Seventh Mezzanine Loan Agreement, the Seventh Mezzanine Notes and all other documents and instruments executed and delivered in connection with the Seventh Mezzanine Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

“**Seventh Mezzanine Notes**” shall mean the “Notes” as defined in the Seventh Mezzanine Loan Agreement.

“**Seventh Mezzanine Pledge Agreement**” shall mean that certain Pledge and Security Agreement (Seventh Mezzanine Loan), dated as of the date hereof, between Seventh Mezzanine Borrower and Seventh Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Severed Loan Documents**” shall have the meaning set forth in Section 8.2(c) hereof.

“**Significant Obligor**” shall have the meaning set forth in Section 5.1.11(f) hereof.

“**Sixth Mezzanine Borrower**” shall mean, collectively, the entities set forth on Schedule XVIII hereto, each a Delaware limited liability company, together with their respective successors and permitted assigns. As used herein, the term “Sixth Mezzanine Borrower” shall mean one of the Sixth Mezzanine Borrowers individually, or the Sixth Mezzanine Borrowers collectively, as the context shall require.

“**Sixth Mezzanine Debt Service**” shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Sixth Mezzanine Notes.

“**Sixth Mezzanine Lender**” shall mean JPMorgan Chase Bank, N.A., in its capacity as the holder of the Sixth Mezzanine Loan, together with its successors and assigns.

“**Sixth Mezzanine Loan**” shall mean that certain loan in the original principal amount of Two Hundred Seventy-Five Million and No/100 Dollars (\$275,000,000) of even date herewith made by Sixth Mezzanine Lender to Sixth Mezzanine Borrower.

“**Sixth Mezzanine Loan Agreement**” shall mean that certain Sixth Mezzanine Loan Agreement, dated as of the date hereof, between Sixth Mezzanine Borrower and Sixth Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Sixth Mezzanine Loan Documents**” shall mean the Sixth Mezzanine Loan Agreement, the Sixth Mezzanine Notes and all other documents and instruments executed and delivered in connection with the Sixth Mezzanine Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

“**Sixth Mezzanine Notes**” shall mean the “Notes” as defined in the Sixth Mezzanine Loan Agreement.

“**Sixth Mezzanine Pledge Agreement**” shall mean that certain Pledge and Security Agreement (Sixth Mezzanine Loan), dated as of the date hereof, between Sixth Mezzanine Borrower and Sixth Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Special Member**” shall mean a Springing Member in a given Delaware limited liability company who has become a member in such limited liability company to the extent so provided in such limited liability company’s operating agreement.

“**Special Purpose Entity**” shall mean a corporation, limited partnership or limited liability company which at all times on and after the date hereof:

(a) is organized solely for the purpose of (i) owning, holding, selling, transferring, exchanging, managing and operating the Collateral, entering into this Agreement with the Lender, refinancing the Collateral in connection with a permitted repayment of the Loan, and transacting lawful business that is incident, necessary and appropriate to accomplish the foregoing; or (ii) acting as a general partner of the limited partnership that owns the Collateral or member of the limited liability company that owns the Collateral;

(b) is not engaged and will not engage in any business unrelated to (i) the ownership of the Collateral, (ii) acting as general partner of the limited partnership that owns the Collateral or (iii) acting as a member of the limited liability company that owns the Collateral, as applicable;

(c) does not have and will not have any assets other than those related to the Collateral or its partnership interest in the limited partnership or the member interest in the limited liability company that owns the Collateral or acts as the general partner or managing member thereof, as applicable;

(d) has not engaged, sought or consented to and will not engage in, seek or consent to any dissolution, winding up, liquidation, consolidation, merger, sale of all or substantially all of its assets, transfer of partnership or membership interests (if such entity is a general partner in a limited partnership or a member in a limited liability company) or amendment of its limited partnership agreement, articles of incorporation, articles of organization, certificate of formation or operating agreement (as applicable) with respect to the matters set forth in this definition;

(e) if such entity is a limited partnership, has, as its only general partners, Special Purpose Entities that are corporations, limited partnerships or limited liability companies;

(f) if such entity is a corporation, has at least two (2) Independent Directors, and has not caused or allowed and will not cause or allow the board of directors of such entity to take any action requiring the unanimous affirmative vote of one hundred percent

(100%) of the members of its board of directors unless two (2) Independent Directors shall have participated in such vote;

(g) if such entity is a limited liability company with more than one member, has at least one member that is a Special Purpose Entity that is a Delaware corporation or limited liability company that has at least two (2) Independent Directors;

(h) if such entity is a limited liability company with only one member, is a limited liability company organized in the State of Delaware that has (i) as its only member a non-managing member, (ii) at least two (2) Independent Managers and has not caused or allowed and will not cause or allow the board of managers of such entity to take any action requiring the unanimous affirmative vote of one hundred percent (100%) of the managers unless two (2) Independent Managers shall have participated in such vote and (iii) at least one springing member that will become the non-managing member of such entity upon the dissolution of the existing non-managing member;

(i) if such entity is (i) a limited liability company, has articles of organization, a certificate of formation and/or an operating agreement, as applicable, (ii) a limited partnership, has a limited partnership agreement, or (iii) a corporation, has a certificate of incorporation or articles that, in each case, provide that such entity will not, while any obligations remain outstanding under the Loan Documents: (A) dissolve, merge, liquidate, consolidate; (B) sell all or substantially all of its assets or the assets of the Borrower (as applicable), except as permitted in connection with the release of an Individual Property as provided in Section 2.5.1; (C) engage in any other business activity, or amend its organizational documents with respect to the matters set forth in this definition without the consent of the Lender; or (D) without the affirmative vote of two (2) Independent Directors and of all other directors of the corporation (that is such entity or the general partner or managing or co-managing member of such entity), file a bankruptcy or insolvency petition or otherwise institute insolvency proceedings with respect to itself or to any other entity in which it has a direct or indirect legal or beneficial ownership interest;

(j) is and will remain solvent and pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from and to the extent of its assets as the same shall become due, and is maintaining and will maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations; provided, however, that the foregoing shall not require the Member to make additional capital contributions to the company;

(k) has not failed and will not fail to correct any known misunderstanding regarding the separate identity of such entity;

(l) has maintained and will maintain its bank accounts, books and records separate from any other Person and will file its own tax returns separate from those of any other Person, except to the extent the company is treated as a “disregarded entity” for tax purposes and is not required to file tax returns under applicable law;

- (m) has maintained and will maintain its own records, books, resolutions and agreements;
- (n) has not commingled and will not commingle its funds or assets with assets of any other Person;
- (o) has held and will hold its assets in its own name;
- (p) has conducted and will conduct its business in its own name;
- (q) has maintained and will maintain its financial statements, accounting records and other entity documents separate and apart from any other Person and will have its assets listed on the financial statement of any other Person; provided, however, that the company's assets may be included in a consolidated financial statement of its Affiliate, provided, that, (i) appropriate notation shall be made on such consolidated financial statements to indicate the separateness of the company from such Affiliate and to indicate the company's assets and credit are not available to satisfy the debts and other obligations of such Affiliate or any other Person and (ii) such assets shall also be listed on the company's own separate balance sheet;
- (r) has paid and will pay its own liabilities and expenses, including the salaries of its own employees (if any), out of its own funds and assets, and has maintained and will maintain a sufficient number of employees (if any) in light of its contemplated business operations;
- (s) has observed and will observe all partnership, corporate or limited liability company formalities necessary to maintain its separate existence;
- (t) has and will not incur, create, or assume any Indebtedness other than (i) the Loan and (ii) certain Indebtedness to Affiliates that was incurred in connection with the formation of Borrower and Operating Company and the transfer of the Properties to Mortgage Borrower and was satisfied and/or released in full prior to the funding of the Loan hereunder;
- (u) has not and will not assume or guarantee or become obligated for the debts of any other Person or hold out its credit as being available to satisfy the obligations of any other Person except as co-borrowers of the Loan;
- (v) has not and will not acquire obligations or securities of its partners, members or shareholders or any Affiliate (other than Mortgage Borrower);
- (w) has allocated and will allocate fairly and reasonably any overhead expenses that are shared with any Affiliate, including, but not limited to, paying for shared office space and services performed by any employee of an Affiliate;
- (x) maintains and uses and will maintain and use separate stationery, invoices and checks, if any, bearing its name. The stationery, invoices, and checks, if any, utilized by the Special Purpose Entity or utilized to collect its funds or pay its expenses shall bear

its own name and shall not bear the name of any other entity unless such entity is clearly designated as being the Special Purpose Entity's agent;

(y) has not pledged and will not pledge its assets for the benefit of any Person except as co-borrowers of the Loan;

(z) has held itself out and identified itself and will hold itself out to the public and all other Persons and identify itself as a separate and distinct entity under its own name or in a name franchised or licensed to it by an entity other than an Affiliate of Borrower and not as a division or part of any other Person;

(aa) has maintained and will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;

(bb) has not made and will not make loans to any Person or hold evidence of indebtedness issued by any other Person or entity (other than cash and investment-grade securities issued by an entity that is not an Affiliate of or subject to common ownership with such entity);

(cc) correct any known misunderstanding regarding its separate identity and has not identified and will not identify its partners, members or shareholders, or any Affiliate of any of them, as a division or part of it, and has not identified itself and shall not identify itself as a division of any other Person;

(dd) except for capital contributions or capital distributions permitted under the terms and conditions of this Agreement and properly reflected on the books and records of this company, has not entered into or been a party to, and will not enter into or be a party to, any transaction with its partners, members, shareholders or Affiliates except in the ordinary course of its business and on terms which are commercially reasonable and are no less favorable to it than would be obtained in a comparable arm's-length transaction with an unrelated third party (including an appropriate shared services agreement with Affiliates);

(ee) has not and will not have any obligation to, and will not, indemnify its partners, officers, directors or members, as the case may be, unless such an obligation is fully subordinated to the Debt and will not constitute a claim against it in the event that cash flow in excess of the amount required to pay the Debt is insufficient to pay such obligation;

(ff) if such entity is a corporation, it shall consider the interests of its creditors in connection with all corporate actions;

(gg) does not and will not have any of its obligations guaranteed by any Affiliate (except each Borrower as a co-borrower under the Loan);

(hh) has complied and will comply with all of the terms and provisions contained in its organizational documents. The statement of facts contained in its organizational documents are true and correct and will remain true and correct; and

(ii) form, acquire, or hold any subsidiary (whether corporate, partnership, limited liability company, or other) or own any equity interest in any other entity (other than, with respect to Borrower, its interest in Eighth Mezzanine Borrower, and with respect to Principal, its interest in Borrower).

“**SPE Party**” shall mean Borrower and any other Person that is required to be a “Special Purpose Entity” under applicable Rating Agency criteria so as to make Borrower a Special Purpose Entity.

“**Spread**” shall mean (i) unless and until a Ground Lease Estoppel Trigger Event exists, 3.00% and (ii) upon the occurrence of a Ground Lease Estoppel Trigger Event, the Ground Lease Estoppel Trigger Spread.

“**Spread Maintenance Outside Date**” shall mean February 10, 2009.

“**Spread Maintenance Premium**” shall mean, in connection with any repayment of any of the outstanding principal amount of the Loan prior to and including the Spread Maintenance Outside Date (whether a voluntary or mandatory prepayment), an amount equal to the product of (a) the principal amount of such prepayment, (b) the Spread and (c) a fraction, the numerator of which shall be the actual number of days from (but excluding) the date of such prepayment (or, if later, the last date of the Interest Period during which interest on the amount of such payment shall have been paid by Borrower, as required in this Agreement) through (and including) the Spread Maintenance Outside Date and the denominator of which is three hundred sixty (360).

“**Springing Member**” shall mean a Person who has signed the limited liability company agreement of a given Delaware limited liability company, which agreement provides that, upon the withdrawal, dissolution or disassociation of the last remaining member of such limited liability company (subject to applicable Gaming Laws), such Person shall become a member of such limited liability company having no economic interest therein.

“**State**” shall mean, with respect to an Individual Property, the State or Commonwealth in which such Individual Property or any part thereof is located.

“**Strike Price**” shall mean four and one-half percent (4.5%).

“**Survey**” shall mean a survey of the Individual Property in question prepared pursuant to the requirements contained in Section 3.1.3(c) hereof.

“**Syndication**” shall have the meaning set forth in Section 9.5 hereof.

“**Tax and Insurance Escrow Fund**” shall have the meaning set forth in Section 7.2 hereof.

“**Taxes**” shall mean all real estate and personal property taxes, assessments, water rates or sewer rents, now or hereafter levied or assessed or imposed against any Individual Property or part thereof.

“**Third Mezzanine Borrower**” shall mean, collectively, the entities set forth on Schedule XV hereto, each a Delaware limited liability company, together with their respective successors and permitted assigns. As used herein, the term “Third Mezzanine Borrower” shall mean one of the Third Mezzanine Borrowers individually, or the Third Mezzanine Borrowers collectively, as the context shall require.

“**Third Mezzanine Debt Service**” shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Third Mezzanine Notes.

“**Third Mezzanine Lender**” shall mean JPMorgan Chase Bank, N.A., in its capacity as the holder of the Third Mezzanine Loan, together with its successors and assigns.

“**Third Mezzanine Loan**” shall mean that certain loan in the original principal amount of Two Hundred Seventy-Five Million and No/100 Dollars (\$275,000,000) of even date herewith made by Third Mezzanine Lender to Third Mezzanine Borrower.

“**Third Mezzanine Loan Agreement**” shall mean that certain Third Mezzanine Loan Agreement, dated as of the date hereof, between Third Mezzanine Borrower and Third Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Third Mezzanine Loan Documents**” shall mean the Third Mezzanine Loan Agreement, the Third Mezzanine Notes and all other documents and instruments executed and delivered in connection with the Third Mezzanine Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

“**Third Mezzanine Notes**” shall mean the “Notes” as defined in the Third Mezzanine Loan Agreement.

“**Third Mezzanine Pledge Agreement**” shall mean that certain Pledge and Security Agreement (Third Mezzanine Loan), dated as of the date hereof, between Third Mezzanine Borrower and Third Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Threshold Amount**” shall have the meaning set forth in the definition of Material Alteration.

“**Title Insurance Policies**” shall mean, with respect to each Individual Property, an ALTA mortgagee title insurance policy in a form acceptable to Lender (or, if an Individual Property is in a State which does not permit the issuance of such ALTA policy, such form as shall be permitted in such State and acceptable to Lender) issued with respect to such Individual Property and insuring the lien of the Mortgage encumbering such Individual Property.

**“Tower Project”** shall mean that certain “New Atlantic City Tower Project” more fully described in (a) the Site, Design and Floor Plans, dated October 5, 2005, and prepared by Paul Steelman Design Group, and (b) Harrah’s Hotel/Podium/Garage Expansion: Summary of Project Costs, each delivered to Lender. The Tower Project will include a podium (of approximately 175,000 square feet) connecting the current Bayview Tower to a new approximately nine hundred (900) room tower to be built. The Tower Project will not be funded with the proceeds of the Loan (but will be funded by Mortgage Borrower or Operating Company, including with capital contributions).

**“Transfer”** shall mean to, directly or indirectly, sell, assign, convey, mortgage, transfer, pledge, hypothecate, encumber, grant a security interest in, exchange or otherwise dispose of any beneficial interest or grant any option or warrant with respect to, or where used as a noun, a direct or indirect sale, assignment, conveyance, transfer, pledge or other disposition of any beneficial interest by any means whatsoever whether voluntary, involuntary, by operation of law or otherwise. A Transfer shall include, but not be limited to, (a) an installment sales agreement wherein Mortgage Borrower agrees to sell an Individual Property or any part thereof or Borrower agrees to sell the Collateral, in each case, for a price to be paid in installments; (b) an agreement by Mortgage Borrower leasing all or a substantial part of an Individual Property for other than actual occupancy by a space tenant thereunder or a sale, assignment or other transfer of, or the grant of a security interest in, Mortgage Borrower’s right, title and interest in and to any Leases or any Rents; (c) if a Person restricted or affected by the provisions of this Agreement is a corporation, any merger, consolidation or sale or pledge of such corporation’s stock or the creation or issuance of new stock; (d) if a Person restricted or affected by the provisions of this Agreement is a limited or general partnership or joint venture, any merger or consolidation or the change, removal, resignation or addition of a general partner or the sale or pledge of the partnership interest of any general partner or any profits or proceeds relating to such partnership interest, or the sale or pledge of limited partnership interests or any profits or proceeds relating to such limited partnership interest or the creation or issuance of new limited partnership interests; (e) if a Person restricted or affected by the provisions of this Agreement is a limited liability company, any merger or consolidation or the change, removal, resignation or addition of a managing member or non-member manager (or if no managing member, any member) or the sale or pledge of the membership interest of a managing member (or if no managing member, any member) or any profits or proceeds relating to such membership interest, or the sale or pledge of non-managing membership interests or the creation or issuance of new non-managing membership interests; (f) if a Person restricted or affected by the provisions of this Agreement is a trust or nominee trust, any merger, consolidation or the sale or pledge of the legal or beneficial interest in such Person or the creation or issuance of new legal or beneficial interests; or (g) any direct or indirect sale, assignment, conveyance, transfer, pledge or other disposition (by any means whatsoever whether voluntary, involuntary, by operation of law or otherwise) of the Collateral, the Senior Mezzanine Collateral or any part thereof or any legal or beneficial interest therein.

**“Transferee”** shall mean the Person to whom a Transfer is being effected.

**“Trigger Event”** shall mean, as of the end of any calendar quarter, any period of time during which EBITDAR from the Properties, calculated for the trailing twelve (12) month

period immediately prior to the applicable calculation date, is less than eighty-five percent (85%) of the EBITDAR (Closing Date), as determined by Lender.

“**Trigger Event Cure**” shall mean that EBITDAR (excluding, in making such calculation, any capital contributions made to or for the benefit of Borrower, Mortgage Borrower or Operating Company, or payments made on the account of Borrower, Mortgage Borrower or Operating Company by any Affiliate of Borrower, Mortgage Borrower or Operating Company) from the Properties, calculated for the trailing twelve (12) month period immediately prior to the applicable calculation date, is equal to or greater than eighty-five percent (85%) of the EBITDAR (Closing Date) for two (2) consecutive calendar quarters.

“**True-Lease Opinion**” shall mean that certain true lease opinion letter dated the date hereof delivered by Cleary Gottlieb Steen & Hamilton LLP in connection with the Loan.

“**UCC**” or “**Uniform Commercial Code**” shall mean the Uniform Commercial Code as in effect in the applicable State in which an Individual Property is located.

“**UCC Title Insurance Policy**” shall have the meaning set forth in Section 3.13(b) hereof.

“**U.S. Obligations**” shall mean non-redeemable securities evidencing an obligation to timely pay principal and/or interest in a full and timely manner that are direct obligations of the United States of America for the payment of which its full faith and credit is pledged or other “government securities” within the meaning of Section 2(a)(16) of the Investment Company Act of 1940, as amended.

“**Windstorm Insurance Intercreditor Agreement**” means that certain Windstorm Insurance Intercreditor Agreement, dated as of the date hereof, by and among Lender, the Mortgage Lender, the Other Mezzanine Lenders, each of the “Other Owners” named therein and made a party thereto, Holdings, Bank of America, N.A., and the “Other Secured Parties named therein and made a party thereto, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**Section 1.2. Principles of Construction.** All references to sections and schedules are to sections and schedules in or to this Agreement unless otherwise specified. All uses of the word “including” shall mean “including, without limitation” unless the context shall indicate otherwise. Unless otherwise specified, the words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. Unless otherwise specified, all meanings attributed to defined terms herein shall be equally applicable to both the singular and plural forms of the terms so defined. With respect to cross-references contained herein to the Mortgage Loan Documents or to the Other Mezzanine Loan Documents (including with respect to any cross-references to defined terms therein), unless otherwise specifically provided herein, such cross-references shall be with respect to the Mortgage Loan Documents or the Other Mezzanine Loan Documents as the case may be, in existence as of the date hereof, and no modification or amendment to such cross-referenced sections of the Mortgage Loan Documents or the Other Mezzanine Loan Documents shall be binding upon Lender unless Lender shall have

expressly agreed in writing to be bound by such modification or amendment. Terms used herein and not otherwise defined herein (but defined in the Mortgage Loan Agreement) shall have the meaning set forth in the Mortgage Loan Agreement as of the Closing Date, notwithstanding any subsequent amendment of the Mortgage Loan Agreement to such defined terms unless Lender shall have consented to such amendment. The words “Borrower shall cause Mortgage Borrower to”, “Borrower shall not permit Mortgage Borrower to”, “Borrower shall cause Senior Mezzanine Borrower to”, “Borrower shall not permit Senior Mezzanine Borrower to”, “Borrower shall cause Operating Company to” or “Borrower shall not permit Operating Company to” (or words of similar meaning) shall mean Borrower shall cause Mortgage Borrower, Senior Mezzanine Borrower or Operating Company (subject to the provisions of Section 5.3), as applicable, to so act or not to so act, as applicable.

**Section 1.3. Direction of Mortgage Borrower or with Respect to the Properties.** Borrower and Lender hereby acknowledge and agree that, as to any clauses or provisions contained in this Agreement or any of the other Loan Documents to the effect that (i) Borrower shall cause Mortgage Borrower and/or Senior Mezzanine Borrower to act or to refrain from acting in any manner or (ii) Borrower shall cause to occur or not to occur, or otherwise be obligated in any manner with respect to, any matters pertaining to Mortgage Borrower, Senior Mezzanine Borrower or any of the Properties, such clause or provision, in each case, is intended to mean, and shall be construed as meaning, that Borrower has undertaken to act and is obligated to act only in Borrower’s capacity as the sole member of Senior Mezzanine Borrower but not directly with respect to Senior Mezzanine Borrower, Mortgage Borrower or any of the Properties or in any other manner which would violate any of the covenants contained in Section 4.1.30 (Special Purpose Entity) hereof or other similar covenants contained in Borrower’s organizational documents.

## II. GENERAL TERMS

### **Section 2.1. Loan Commitment; Disbursement to Borrower.**

**2.1.1 Agreement to Lend and Borrow.** Subject to and upon the terms and conditions set forth herein, Lender hereby agrees to make and Borrower hereby agrees to accept the Loan on the Closing Date.

**2.1.2 Single Disbursement to Borrower.** Borrower may request and receive only one borrowing hereunder in respect of the Loan and any amount borrowed and repaid hereunder in respect of the Loan may not be reborrowed.

**2.1.3 The Note, the Pledge Agreement and Loan Documents.** The Loan shall be evidenced by the Note (in the aggregate principal amount of Two Hundred Seventy-Five Million and No/100 Dollars (\$275,000,000) and secured by the Pledge Agreement and the other Loan Documents.

**2.1.4 Use of Proceeds.** Borrower shall use the proceeds of the Loan solely to (a) make an equity contribution to Mortgage Borrower (through each Senior Mezzanine Borrower) in order to cause Mortgage Borrower to use such amounts for any use permitted pursuant to Section 2.1.4 of the Mortgage Loan Agreement, (b) pay costs and expenses incurred

in connection with the closing of the Loan, as approved by Lender, and (c) distribute the balance, if any, to Borrower.

**2.1.5 Component Notes.** Lender shall have the right at any time to modify the Loan in order to create an additional note or additional notes, adjust the interest rate spread on the Notes or notes, reduce the number of notes, reallocate the principal balances of the Notes or notes or eliminate the component note structure of the Loan provided that (a) the aggregate stated principal amount of the Loan on the date of each such adjustment shall equal the aggregate stated principal amount of the Loan immediately prior to such adjustment, and (b) the weighted average spread of the Loan on the date of such adjustment shall equal the weighted average spread which was applicable to the Loan immediately prior to such adjustment (Borrower acknowledging that such new notes or modified notes may, in connection with the application of principal to such new notes or modified note following the occurrence of an Event of Default, but not otherwise, subsequently cause the weighted average spread of such new notes or modified notes to change). In connection with any such modification of the Note and notes, or the creation of additional note(s), (i) Borrower shall cooperate with all reasonable requests of Lender and shall execute and deliver such documents as shall reasonably be requested by Lender in connection therewith, all in form and substance reasonably satisfactory to Lender and, to the extent applicable, the Rating Agencies, including, without limitation, (y) revised title insurance policies and Interest Rate Protection Agreements, and (z) such amendments to the Loan Documents as are reasonably requested; (ii) Lender shall have received opinions of legal counsel with respect to due execution, authority and enforceability of the amended Loan Documents, and additional or updated nonconsolidation opinions for the Loan, each in form reasonably acceptable to Lender and prospective investors and in form acceptable to the Rating Agencies; and (iii) Lender shall pay the actual, reasonable out-of-pocket costs and expenses incurred by Borrower in connection with the foregoing, including, without limitation, the actual, reasonable out-of-pocket legal fees incurred by Borrower in connection with any of the foregoing matters. For the avoidance of doubt, and notwithstanding anything to the contrary contained herein, such modifications and any modifications under Sections 2.1.6 and 2.1.7 below shall not, absent an Event of Default, adversely affect the overall economics to Borrower of the Loan, taken as a whole, or expose Borrower to any additional costs (other than as set forth above) or increased risk of any liability (beyond that or greater than that existing in the Loan Documents in effect on the date hereof), and Borrower shall not be required to execute any document or agreement which would materially decrease its rights or materially increase its obligations relative to those set forth herein and in the other Loan Documents.

**2.1.6 Adjustment of Mortgage Loan and Mezzanine Loans.** Lender shall have the right at any time to adjust the respective principal amounts of the Mortgage Loan and the Mezzanine Loans (or either one of them) and/or to adjust the interest rate spread on the Mortgage Loan and the Mezzanine Loans (or either one of them) (such adjustment, a “**Loan Adjustment**”), provided that (a) the aggregate stated principal amount of the Mortgage Loan and the Mezzanine Loans on the date of each such Loan Adjustment shall equal the aggregate stated principal amount of the Mortgage Loan and the Mezzanine Loans immediately prior to such Loan Adjustment, and (b) Lender shall have the right to adjust the interest rate spread on the Mortgage Loan and the Mezzanine Loans, provided that the weighted average spread of the Mortgage Loan and the Mezzanine Loans on the date of each such Loan Adjustment shall equal the weighted average spread which was applicable to the Mortgage Loan and the Mezzanine

Loans immediately prior to such Loan Adjustment (it being acknowledged that the weighted average spread will remain constant except in connection with the application of principal to such new notes or modified notes following the occurrence of an Event of Default). In connection with any Loan Adjustment, (i) Mortgage Borrower and Mezzanine Borrowers shall cooperate with all reasonable requests of Lender and shall execute and deliver such documents as shall reasonably be requested by Lender in connection therewith, all in form and substance reasonably satisfactory to Lender and, to the extent applicable, the Rating Agencies, including, without limitation, (y) revised title insurance policies, mezzanine endorsements, UCC policies and Interest Rate Protection Agreements, and (z) such amendments to the Mortgage Loan Documents and the Mezzanine Loan Documents as are reasonably requested in connection with the Loan Adjustment (provided that such amendments do not or would not (i) materially decrease the rights of the Mortgage Borrower or Mezzanine Borrowers, or, absent an Event of Default, materially increase the obligations of the Mortgage Borrower or the Mezzanine Borrowers, as the case may be, under the Mortgage Loan Documents or the Mezzanine Loan Documents (as applicable) or (ii) absent an Event of Default, expose the Mortgage Borrower or any of the Mezzanine Borrowers to additional costs or increased risk of any liability under the Mortgage Loan Documents or the Mezzanine Loan Documents (as applicable) (beyond that or greater than that existing in the Mortgage Loan Documents, or the Mezzanine Loan Documents, as applicable, on the date hereof); (ii) Lender shall have received opinions of legal counsel with respect to due execution, authority and enforceability of the amended Mortgage Loan Documents or Mezzanine Loan Documents, as appropriate, and additional or updated nonconsolidation opinions for the Mortgage Loan and the Mezzanine Loans, each in form reasonably acceptable to Lender and prospective investors and in form acceptable to the Rating Agencies; and (iii) Lender shall pay the actual, reasonable out-of-pocket costs and expenses incurred by Borrower in connection with the foregoing, including, without limitation, the actual, reasonable out-of-pocket legal fees incurred by Borrower in connection with any of the foregoing matters.

**2.1.7 Creation of New Mezzanine Loans.** Lender shall at all times have the right to create one or more additional mezzanine loans (each, a “**New Mezzanine Loan**”), adjust the respective principal amounts of the Mortgage Loan and the Mezzanine Loans (or any one of them) upon the creation of the New Mezzanine Loan and/or to adjust the interest rate spread on the Mortgage Loan and the Mezzanine Loans (or any one of them) upon the creation of the New Mezzanine Loan, and to reallocate the principal balance and the interest rate spreads of the Mortgage Loan, the Mezzanine Loans and any New Mezzanine Loan amongst each other (or any one of them), provided that (a) the aggregate stated principal amount of the Mortgage Loan, the Mezzanine Loans and the New Mezzanine Loans on the date of such adjustment (and the creation of the New Mezzanine Loan) shall equal the aggregate stated principal amount of the Mortgage Loan, the Mezzanine Loans and the New Mezzanine Loan(s) immediately prior to such adjustment, (b) Lender shall have the right to adjust the interest rate spread on the Mortgage Loan, the Mezzanine Loans and the New Mezzanine Loan(s), provided that the weighted average spread of the Mortgage Loan, the Mezzanine Loans and the New Mezzanine Loan(s) on the date of such adjustment shall equal the weighted average spread which was applicable to the Mortgage Loan and the Mezzanine Loans (and the New Mezzanine Loans, if applicable) immediately prior to such adjustment (it being acknowledged that the weighted average spread will remain constant except in connection with the application of principal to such new notes or modified notes following the occurrence of an Event of Default), and (c) the terms and provisions of each of the Mortgage Loan and the Mezzanine Loans (and the New Mezzanine

Loans, if applicable) shall otherwise remain unchanged. In connection with any New Mezzanine Loan, (i) Borrower shall cause the formation of one or more special purpose, bankruptcy remote entities as required by Lender in order to serve as the borrower under any New Mezzanine Loan (each, a “**New Mezzanine Borrower**”) and the applicable organizational documents of Mortgage Borrower and each Mezzanine Borrower (and of each previously created New Mezzanine Borrower, if applicable) shall be amended and modified as necessary or required in the formation of any New Mezzanine Borrower; (ii) Mortgage Borrower and Mezzanine Borrowers (and each previously created New Mezzanine Borrower, if applicable) shall cooperate with all reasonable requests of Lender and shall execute and deliver such documents as shall reasonably be requested by Lender in connection therewith, all in form and substance reasonably satisfactory to Lender and, to the extent applicable, the Rating Agencies, including, without limitation, (x) revised title insurance policies, mezzanine endorsements, UCC policies and Interest Rate Protection Agreements, (y) in connection with the creation of any New Mezzanine Loan, a promissory note and loan documents necessary to evidence such New Mezzanine Loan, and (z) such amendments to the Mortgage Loan Documents and the Mezzanine Loan Documents (and the loan documents of any previously created New Mezzanine Borrower, if applicable) as are reasonably necessary in connection with the creation of such New Mezzanine Loan (provided that such amendments do not or would not (i) materially decrease the rights of the Mortgage Borrower or Mezzanine Borrowers (and any previously created New Mezzanine Borrowers, if applicable), or, absent an Event of Default, materially increase the obligations of the Mortgage Borrower or the Mezzanine Borrowers (and any previously created New Mezzanine Borrowers, if applicable), as the case may be, under such borrower’s applicable loan documents, or (ii) absent an Event of Default, expose the Mortgage Borrower or any of the Mezzanine Borrowers (or any previously created New Mezzanine Borrowers, if applicable) to additional costs or increased risk of any liability under such borrower’s applicable loan documents (beyond that or greater than that existing in the existing loan documents on the date hereof)); (iii) Lender shall have received opinions of legal counsel with respect to due execution, authority and enforceability of the amended Mortgage Loan Documents, the amended Mezzanine Loan Documents and the loan documents for the New Mezzanine Loan, as appropriate, and additional or updated nonconsolidation opinions for the Mortgage Loan, the Mezzanine Loans and each such New Mezzanine Loan, as appropriate, each in form reasonably acceptable to Lender and prospective investors and in form acceptable to the Rating Agencies; and (iv) Lender shall pay the actual, reasonable out-of-pocket costs and expenses incurred by Borrower in connection with the foregoing, including, without limitation, the actual, reasonable out-of-pocket legal fees incurred by Borrower in connection with any of the foregoing matters.

## **Section 2.2. Interest Rate.**

**2.2.1 Interest Generally.** Except as herein provided with respect to interest accruing at the Default Rate, interest on the principal balance of the Loan outstanding from time to time shall accrue from the Closing Date up to and including the Maturity Date (including, without limitation, all interest that would accrue on the outstanding principal balance of the Loan through the end of the Interest Period during which the Maturity Date occurs (even if such period extends beyond the Maturity Date)) at the Applicable Interest Rate. Interest on the outstanding principal balance of the Loan existing on the commencement of an Interest Period shall accrue for the entire Interest Period and shall be owed by Borrower for the entire Interest Period

regardless of whether any principal portion of the Loan is repaid prior to the expiration of such Interest Period.

**2.2.2 Interest Calculation.** Interest on the outstanding principal balance of the Loan shall be calculated by multiplying (a) the actual number of days elapsed in the period for which the calculation is being made by (b) a daily rate based on a three hundred sixty (360) day year (that is, the Applicable Interest Rate or the Default Rate, as then applicable, expressed as an annual rate divided by 360) by (c) the outstanding principal balance.

**2.2.3 Determination of Interest Rate.** (a) The Applicable Interest Rate with respect to the Loan shall be: (i) LIBOR plus the Spread with respect to the applicable Interest Period for a LIBOR Loan or (ii) the Prime Rate plus the Prime Rate Spread for a Prime Rate Loan if the Loan is converted to a Prime Rate Loan pursuant to the provisions of Section 2.2.3(c) or Section 2.2.3(f).

(b) Subject to the terms and conditions of this Section 2.2.3, the Loan shall be a LIBOR Loan and Borrower shall pay interest on the outstanding principal amount of the Loan at LIBOR plus the Spread for the applicable Interest Period. Any change in the rate of interest hereunder due to a change in the Applicable Interest Rate shall become effective as of the opening of business on the first day on which such change in the Applicable Interest Rate shall become effective. Each determination by Lender of the Applicable Interest Rate shall be conclusive and binding for all purposes, absent manifest error.

(c) In the event that Lender shall have determined (which determination shall be conclusive and binding upon Borrower absent manifest error) that by reason of circumstances affecting the interbank eurodollar market, adequate and reasonable means do not exist for ascertaining LIBOR, then Lender shall forthwith give notice by telephone of such determination, confirmed in writing, to Borrower at least one (1) Business Day prior to the last day of the related Interest Period. If such notice is given, the related outstanding LIBOR Loan shall be converted, on the last day of the then current Interest Period, to a Prime Rate Loan.

(d) If, pursuant to the terms of this Agreement, any portion of the Loan has been converted to a Prime Rate Loan and Lender shall determine (which determination shall be conclusive and binding upon Borrower absent manifest error) that the event(s) or circumstance(s) which resulted in such conversion shall no longer be applicable, Lender shall give notice by telephone of such determination, confirmed in writing, to Borrower at least one (1) Business Day prior to the last day of the related Interest Period. If such notice is given, the related outstanding Prime Rate Loan shall be converted to a LIBOR Loan on the last day of the then current Interest Period.

(e) With respect to a LIBOR Loan, all payments made by Borrower hereunder shall be made free and clear of, and without reduction for or on account of, income, stamp or other taxes, levies, imposts, duties, charges, fees, deductions, reserves or withholdings imposed, levied, collected, withheld or assessed by any Governmental Authority and imposed on any non-U.S. Lender due to a change in U.S. law after the date such non-U.S. Lender acquired its interest in the Loan (such non-excluded taxes, levies, imposts, duties, charges, fees, deductions, reserves or withholdings being referred to collectively as "**Foreign Taxes**"), excluding (i) income and

franchise taxes, (ii) any Taxes imposed by reason of any connection between the non-U.S. Lender and the taxing jurisdiction other than entering into this Agreement and receiving payments hereunder, and (iii) any Taxes imposed by reason of the non-U.S. Lender's failure to complete and deliver to the Borrower, prior to the date on which the first payment to such Lender is due hereunder and (so long as it remains eligible to do so) from time to time thereafter, (x) (i) an Internal Revenue Service Form W-9 (or successor form) establishing that the Lender is not subject to U.S. backup withholding tax, (ii) an Internal Revenue Service Form W-8BEN (or successor form) certifying that such Lender is entitled to benefits under an income tax treaty to which the United States is a party that reduces the rate of withholding tax on payments of interest to zero, or (iii) an Internal Revenue Service Form W-8ECI certifying that the income receivable pursuant to this Agreement is effectively connected with the conduct of a trade or business in the United States, as appropriate; and (y) any successor or additional form required by the Internal Revenue Service or any taxing authority reasonably requested by the Borrower in order to secure an exemption from, or reduction in the rate of, Foreign Taxes. If any Foreign Taxes are required to be withheld from any amounts payable to Lender hereunder, the amounts so payable to Lender shall be increased to the extent necessary to yield to Lender (after payment of all Foreign Taxes) interest or any such other amounts payable hereunder at the rate or in the amounts specified hereunder. Whenever any Foreign Tax is payable pursuant to applicable law by Borrower, as promptly as possible thereafter, Borrower shall send to Lender an original official receipt, if available, or certified copy thereof showing payment of such Foreign Tax. Borrower hereby indemnifies Lender for any incremental Foreign Taxes, interest or penalties that may become payable by Lender which may result from any failure by Borrower to pay any such Foreign Tax when due to the appropriate taxing authority or any failure by Borrower to remit to Lender the required receipts or other required documentary evidence thereof (provided such documents are reasonably available to the Borrower).

(f) If any requirement of law or any change therein or in the interpretation or application thereof, shall hereafter make it unlawful for Lender to make or maintain a LIBOR Loan as contemplated hereunder and the events giving rise thereto affect similarly situated banks or financial institutions generally, (i) the obligation of Lender hereunder to make a LIBOR Loan or to convert a Prime Rate Loan to a LIBOR Loan shall be canceled forthwith and (ii) any outstanding LIBOR Loan shall be converted automatically to a Prime Rate Loan on the next succeeding Payment Date or within such earlier period as required by law.

(g) In the event that any change in any requirement of law or in the interpretation or application thereof, or compliance by Lender with any request or directive (whether or not having the force of law) hereafter issued from any central bank or other Governmental Authority and the events giving rise thereto affect similarly situated banks or financial institutions generally:

(i) shall hereafter impose, modify or hold applicable any reserve, special deposit, compulsory loan or similar requirement against assets held by, or deposits or other liabilities in or for the account of, advances or loans by, or other credit extended by, or any other acquisition of funds by, the office of Lender that holds the Loan which is not otherwise included in the determination of LIBOR hereunder;

(ii) shall hereafter require the Lender to hold additional capital against the Loan in excess of that currently required by Governmental Authorities to be held against loans similar in nature to the Loan; or

(iii) shall hereafter impose on Lender any other condition affecting loans to borrowers subject to LIBOR-based interest rates and Lender determines that, by reason thereof, the cost to Lender of making or maintaining the Loan to Borrower is increased, or any amount received by Lender hereunder in respect of any portion of the Loan is reduced, in each case by an amount deemed by Lender in good faith to be material;

then, in any such case, Borrower shall promptly pay Lender, upon demand, any additional amounts necessary to compensate Lender for such additional cost or reduced amount receivable which Lender deems to be material as determined in good faith by Lender. If Lender becomes entitled to claim any additional amounts pursuant to this Section 2.2.3(g), Lender shall provide Borrower with not less than ninety (90) days notice specifying in reasonable detail the event by reason of which it has become so entitled and the additional amount required to fully compensate Lender for such additional cost or reduced amount. A certificate as to any additional costs or amounts payable pursuant to the foregoing sentence submitted by Lender to Borrower shall be conclusive in the absence of manifest error. This provision shall survive payment of the Note and the satisfaction of all other obligations of Borrower under this Agreement and the Loan Documents.

(h) Lender shall not be entitled to claim compensation pursuant to this Section 2.2.3 for any Foreign Taxes or other amounts incurred or which accrued more than ninety (90) days before the date Lender notified Borrower of the change in law or other circumstance on which such claim of compensation is based and delivered to Borrower a written statement setting forth in reasonable detail the basis for calculating the additional amounts owed to Lender under this Section 2.2.3, which statement shall be conclusive and binding upon all parties hereto absent manifest error.

(i) For purposes of this Section 2.2.3, the term "Lender" shall be deemed to include each Noteholder and Lender's (as well as each Noteholder's) present and future participants in the Loan to the extent of Foreign Taxes imposed by reason of such Noteholder or participant's interest in the Loan and each such Noteholder's or participant's increased costs or reduction in amount received or receivable hereunder or any reduced rate of return, in each case payable by Borrower under this Section 2.2.3.

**2.2.4 Additional Costs.** Lender will use reasonable efforts (consistent with legal and regulatory restrictions) to maintain the availability of the LIBOR Loan and to avoid or reduce any increased or additional costs payable by Borrower under Section 2.2.3, including, if requested by Borrower, a transfer or assignment of the Loan to a branch, office or Affiliate of Lender in another jurisdiction, or a redesignation of its lending office with respect to the Loan, in order to maintain the availability of the LIBOR Loan or to avoid or reduce such increased or additional costs, provided that the transfer or assignment or redesignation (a) would not result in any material additional costs, expenses or risk to Lender that are not reimbursed by Borrower and (b) would not be disadvantageous in any other material respect to Lender as determined by Lender in its sole, but reasonable discretion.

**2.2.5 Default Rate.** In the event that, and for so long as, any Event of Default shall have occurred and be continuing, the outstanding principal balance of the Loan and, to the extent permitted by law, all accrued and unpaid interest in respect of the Loan and any other amounts due pursuant to the Loan Documents, shall accrue interest at the Default Rate, calculated from the date such payment was due without regard to any grace or cure periods contained herein.

**2.2.6 Usury Savings.** This Agreement, the Note and the other Loan Documents are subject to the express condition that at no time shall Borrower be obligated or required to pay interest on the principal balance of the Loan at a rate which could subject Lender to either civil or criminal liability as a result of being in excess of the Maximum Legal Rate. If, by the terms of this Agreement or the other Loan Documents, Borrower is at any time required or obligated to pay interest on the principal balance due hereunder at a rate in excess of the Maximum Legal Rate, the Applicable Interest Rate or the Default Rate, as the case may be, shall be deemed to be immediately reduced to the Maximum Legal Rate and all previous payments in excess of the Maximum Legal Rate shall be deemed to have been payments in reduction of principal and not on account of the interest due hereunder. All sums paid or agreed to be paid to Lender for the use, forbearance, or detention of the sums due under the Loan, shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Loan until payment in full so that the rate or amount of interest on account of the Loan does not exceed the Maximum Legal Rate of interest from time to time in effect and applicable to the Loan for so long as the Loan is outstanding.

**2.2.7 Interest Rate Cap Agreement.** (a) On or prior to 5:00 p.m. (New York time) on the Closing Date, Borrower shall enter into an Interest Rate Cap Agreement with a LIBOR strike price equal to the required Strike Price. The Interest Rate Cap Agreement (i) shall be in a form and substance reasonably acceptable to Lender, (ii) shall be with an Acceptable Counterparty, (iii) shall direct such Acceptable Counterparty to deposit directly with Lender (or into an account or otherwise as directed by Lender) any amounts due Borrower under such Interest Rate Cap Agreement unless and until otherwise instructed by Lender (it being agreed as between Lender and Borrower that Lender will so instruct the Counterparty at such time as the Debt shall no longer exist, provided that the Debt shall be deemed to exist if the Collateral is transferred by secured party sale or otherwise), (iv) shall be for a period equal to the initial term of the Loan and (v) shall have an initial notional amount equal to the principal balance of the Loan. Borrower shall collaterally assign to Lender, pursuant to the Collateral Assignment of Interest Rate Cap Agreement, all of its right, title and interest to receive any and all payments under the Interest Rate Cap Agreement, and shall deliver to Lender an executed counterpart of such Interest Rate Cap Agreement (which shall, by its terms, authorize the assignment to Lender and require that payments be paid directly into an account pledged to Lender as provided above in this Section 2.2.7). Provided no Event of Default has occurred and is continuing, amounts contained in the foregoing pledged account shall be released to Borrower on a monthly basis to the extent not applied toward debt service on the Loan.

(b) Borrower shall comply with all of its obligations under the terms and provisions of the Interest Rate Cap Agreement. All amounts paid by the Counterparty under the Interest Rate Cap Agreement to Borrower or Lender shall be paid to Lender (or into an account or otherwise as directed by Lender). Borrower shall take all actions reasonably requested by

Lender to enforce Lender's rights under the Interest Rate Cap Agreement in the event of a default by the Counterparty and shall not waive, amend or otherwise modify any of its rights thereunder.

(c) In the event of any downgrade, withdrawal or qualification of the rating of the Counterparty by S&P or Moody's to below the ratings set forth in the definition of "Acceptable Counterparty", Borrower (i) shall replace the Interest Rate Cap Agreement with a Replacement Interest Rate Cap Agreement (or cause the Counterparty or an Affiliate thereof to post collateral acceptable to Lender and the Rating Agencies) not more than fifteen (15) Business Days following receipt of notice of such downgrade, withdrawal or qualification (and meeting the requirements set forth in this Section 2.2.7) from an Acceptable Counterparty, (ii) if a new cap is provided to Lender, then if requested by Lender shall provide to Lender an opinion of counsel to such Acceptable Counterparty in the form and containing the substance of the form of opinion set forth in Exhibit A to the Mortgage Loan Agreement (which such changes as shall be reasonably approved by Lender), and (iii) shall collaterally assign to Lender, pursuant to an assignment in the form of the Collateral Assignment of Interest Rate Cap Agreement, all of its right, title and interest to receive any and all payments under the Replacement Interest Rate Cap Agreement.

(d) In the event that Borrower fails to purchase and deliver to Lender the Interest Rate Cap Agreement or fails to maintain the Interest Rate Cap Agreement in accordance with the terms and provisions of this Agreement, Lender may purchase the Interest Rate Cap Agreement and the cost incurred by Lender in purchasing such Interest Rate Cap Agreement shall be paid by Borrower to Lender with interest thereon at the Default Rate from the date such cost was incurred by Lender until such cost is reimbursed by Borrower to Lender.

(e) In connection with any Interest Rate Cap Agreement provided to Lender as herein required, if requested by Lender, Borrower shall obtain and deliver to Lender an opinion from counsel (which counsel may be in-house counsel for the Counterparty) for the Counterparty (upon which Lender and its successors and assigns may rely) in the form and containing the substance of the form of opinion set forth in Exhibit A of the Mortgage Loan Agreement (which such changes as shall be reasonably approved by Lender).

(f) In connection with any prepayment of the Loan, provided no Event of Default shall have occurred and be continuing, Borrower may reduce the amount of any Interest Rate Cap Agreement (so that the same shall be in an initial notional amount equal to the principal balance of the Loan following such prepayment), provided that such reduction shall not affect any of the other terms of the Interest Rate Cap Agreement or the Collateral Assignment of Interest Rate Cap Agreement (or Lender's rights in respect thereof).

### **Section 2.3. Loan Payment.**

**2.3.1 Payments Generally.** Borrower shall make a payment to Lender of interest only on the Closing Date for the initial Interest Period. On the date hereof, Borrower shall make a payment to Lender of interest accruing hereunder during the period from the Closing Date up to and including the initial Interest Period, calculated in the manner set forth herein, and on the Payment Date occurring in March 2008 and on each Payment Date thereafter

to and including the Maturity Date, Borrower shall make a payment to Lender of interest accruing hereunder during the entire Interest Period in which such Payment Date occurs, calculated in the manner set forth herein. All amounts due pursuant to this Agreement and the other Loan Documents shall be payable without setoff, counterclaim, defense or any other deduction whatsoever. Each payment shall be applied *pro rata* and *pari passu* (a) first to accrued and unpaid interest on all of the Notes and (b) the balance shall be applied to principal of all the Notes.

**2.3.2 Payment on Maturity Date.** Borrower shall pay to Lender on the Maturity Date the outstanding principal balance of the Loan, all accrued and unpaid interest and all other amounts due hereunder and under the Note, the Pledge Agreement and the other Loan Documents, including, without limitation, all interest that would accrue on the outstanding principal balance of the Loan through and including the end of the Interest Period in which the Maturity Date occurs (even if such Interest Period extends beyond the Maturity Date).

**2.3.3 Late Payment Charge.** If any principal, interest or any other sums due under the Loan Documents, other than the payment of principal due on the Maturity Date, is not paid by Borrower by the date on which it is due, Borrower shall pay to Lender upon demand an amount equal to the lesser of one percent (1%) of such unpaid sum or the maximum amount permitted by applicable law in order to defray the expense incurred by Lender in handling and processing such delinquent payment and to compensate Lender for the loss of the use of such delinquent payment; provided, however, that, except with respect to the payment of any monthly Debt Service payments with respect to which no notice or demand shall be required, no such late payment charge shall be due unless such payment of principal, interest or other sum shall be delinquent for more than five (5) Business Days following the date of demand therefor. Any such amount shall be secured by the Pledge Agreement and the other Loan Documents to the extent permitted by applicable law.

**2.3.4 Method and Place of Payment.** Except as otherwise specifically provided herein, all payments and prepayments under this Agreement and the Note shall be made to Lender not later than 3:00 P.M., New York City time, on the date when due and shall be made in lawful money of the United States of America in immediately available funds at Lender's office or as otherwise directed by Lender, and any funds received by Lender after such time shall, for all purposes hereof, be deemed to have been paid on the next succeeding Business Day.

#### **Section 2.4. Prepayments.**

**2.4.1 Voluntary Prepayments.** Borrower may, at its option, prepay the Debt in whole or in part, provided, the following conditions are satisfied:

(a) No Event of Default shall have occurred and be continuing (unless, in the case of a prepayment upon the release of an Individual Property, the Event of Default relates solely to such Individual Property and therefore would be fully cured by the release of such Individual Property);

(b) Borrower shall provide prior written notice to Lender specifying the date upon which the prepayment is to be made (the "**Prepayment Date**"), which notice shall be

delivered to Lender not less than ten (10) days prior to such Prepayment Date, and which notice shall be irrevocable (or such shorter period of time as may be permitted by Lender in its sole discretion) (Lender hereby agreeing that Borrower may revoke any notice of prepayment up until the date that is one (1) Business Day prior to the proposed Prepayment Date (provided that Borrower shall be required to pay Lender, promptly upon demand, any actual, out-of-pocket expenses incurred by Lender resulting from any such revocation));

(c) each such prepayment, in the case of partial prepayments, shall be in an amount not less than Five Million and No/100 Dollars (\$5,000,000.00), unless the outstanding principal balance of the Loan (prior to such prepayment) shall be less than Five Million and No/100 Dollars (\$5,000,000.00), in which event the amount of the prepayment shall be in such amount as shall prepay the Debt and all other amounts due in connection therewith in full, as more fully provided herein;

(d) if such prepayment is made on or prior to the Payment Date occurring in the Interest Period in which such prepayment was made, then, in connection with such prepayment Borrower shall pay to Lender, simultaneously with such prepayment, all interest on the principal balance of the Note then being prepaid which would have accrued through the end of the Interest Period then in effect notwithstanding that such Interest Period extends beyond the Prepayment Date;

(e) if such prepayment is made after a Payment Date occurring in the Interest Period in which such prepayment was made, but prior to the last two (2) Business Days in such Interest Period, Borrower shall make such prepayment without paying any interest thereon (Borrower having already paid interest on such amount on the Payment Date occurring in such Interest Period);

(f) if such prepayment is made on either of the last two (2) Business Days in an Interest Period, Borrower will pay to Lender, simultaneously with such prepayment, interest on the principal amount of the Loan prepaid through the last day of the Interest Period immediately following the Interest Period in which such prepayment occurs, calculated at the Applicable Interest Rate;

(g) if such prepayment is a prepayment of the Loan in full, Lender shall have received a written consent to the repayment from the lender under each Other Mezzanine Loan (and, if any, a Permitted Mezzanine Loan) or receipt by Lender of other evidence satisfactory to Lender that all conditions imposed under the terms of each Other Mezzanine Loan and Permitted Mezzanine Loan shall have been complied with by the borrower thereunder or otherwise waived by the applicable lender, including the simultaneous *pro rata* prepayment of each Other Mezzanine Loan and Permitted Mezzanine Loan if required thereunder; and

(h) if such prepayment is made on or prior to the Spread Maintenance Outside Date, then in connection with any such prepayment, Borrower shall pay to Lender, simultaneously with such prepayment, the Spread Maintenance Premium in respect of such prepayment.

Any prepayment received by Lender on other than a Payment Date (but not any amount received between a Payment Date and the second to last Business Day in an Interest Period) shall be held by Lender in an interest-bearing account as collateral security for the Loan and shall be applied to the Debt on the next occurring Payment Date (with all interest and other income earned on such amount being for the account of Borrower and being remitted by Lender to Borrower promptly following such next Payment Date). Any prepayment made pursuant to this Section 2.4.1 shall be applied *pro rata* and *pari passu* (a) first to accrued and unpaid interest on all of the Notes and (b) the balance shall be applied to principal of all the Notes. Lender agrees that it shall provide a written consent to the repayment of the Loan upon satisfaction of the conditions set forth in clauses (a) through (f) and clause (h) of this Section 2.4.1.

**2.4.2 Mandatory Prepayments from Net Proceeds.** (a) On the next occurring Payment Date following the date on which Lender actually receives any Net Proceeds, if Lender is not obligated to make such Net Proceeds available to Borrower for the Restoration of any Individual Property, Borrower shall prepay, or authorize Lender to apply Net Proceeds as a prepayment of, the outstanding principal balance of the Note in an amount equal to, (x) if no Event of Default shall have occurred and be continuing, the product of (i) a fraction, the numerator of which is outstanding principal amount of the Loan and the denominator is the outstanding principal amount of the Mortgage Loan, the Loan and the Other Mezzanine Loans times (ii) the Net Proceeds, together with interest accruing on such amount calculated through and including the end of the Interest Period in which such Payment Date occurs (with the balance of the Net Proceeds to be paid over to the Ninth Mezzanine Lender, for application in accordance with the Ninth Mezzanine Loan Agreement), and (y) if an Event of Default shall have occurred and be continuing, 100% of the Net Proceeds. No Spread Maintenance Premium shall be due in connection with any prepayment made pursuant to this Section 2.4.2(a). Any prepayment received by Lender pursuant to this Section 2.4.2(a) on a date other than a Payment Date shall be held by Lender as collateral security for the Loan in an interest bearing account, with such interest accruing to the benefit of Borrower, and shall be applied by Lender on the next Payment Date. Following the prepayment made as described in this Section 2.4.2(a), the Allocated Loan Amount for the affected Individual Property, as set forth in this Agreement, shall be reduced in an amount equal to such prepayment. Any prepayment of the Notes made pursuant to this Section 2.4.2(a) shall be applied *pro rata* and *pari passu* (a) first to accrued and unpaid interest on all of the Notes and (b) the balance shall be applied to principal of all the Notes.

(b) In the event of (i) a Transfer of any Individual Property or any Senior Mezzanine Collateral in connection with the realization thereon following a Mortgage Loan Default or a Senior Mezzanine Loan Default, as applicable, (ii) any refinancing of any Individual Property, any Senior Mezzanine Collateral, any Senior Mezzanine Loan or the Mortgage Loan, or (iii) the receipt by Mortgage Borrower of any excess proceeds realized under its owner's title insurance policy after application of such proceeds by Mortgage Borrower to cure any title defect (each, a "**Liquidation Event**"), Borrower shall cause the related Net Liquidation Proceeds After Debt Service to be remitted directly to Lender (or as directed by Lender). On each date on which Lender actually receives a distribution of Net Liquidation Proceeds After Debt Service, Borrower shall prepay the outstanding principal balance of the Note in an amount equal to one hundred percent (100%) of such Net Liquidation Proceeds After Debt Service, together with interest accruing on such amount calculated through and including the end of the Interest Period in which such payment occurs. Any amounts of Net Liquidation Proceeds After Debt Service in

excess of the Debt shall be remitted to Ninth Mezzanine Lender (or to an account designated by Ninth Mezzanine Lender). Any prepayment received by Lender pursuant to this Section 2.4.2(b) on a date other than a Payment Date shall be held by Lender as collateral security for the Loan in an interest bearing account, with such interest accruing to the benefit of Borrower, and shall be applied by Lender on the next Payment Date. A Spread Maintenance Premium or fee may be due in connection with any prepayment made pursuant to this Section 2.4.2(b) if made prior to the Spread Maintenance Outside Date. Following the prepayment made as described in this Section 2.4.2(b), the Allocated Loan Amount for the affected Individual Property, as set forth in this Agreement, shall be reduced in an amount equal to such prepayment. Any prepayment of the Notes made pursuant to this Section 2.4.2(b) shall be applied *pro rata* and *pari passu* (a) first to accrued and unpaid interest on all of the Notes and (b) the balance shall be applied to principal of all the Notes.

(c) Borrower shall immediately notify Lender of any Liquidation Event once Borrower has knowledge of such event. Borrower shall be deemed to have knowledge of (i) a sale (other than a foreclosure sale) of any Individual Property on the date on which a contract of sale for such sale is entered into, and a foreclosure sale, on the date notice of such foreclosure sale is given, and (ii) a refinancing of any Individual Property, on the date on which a commitment for such refinancing has been entered into. The provisions of this Section 2.4.2(c) shall not be construed to contravene in any manner the restrictions and other provisions regarding refinancing of the Mortgage Loan or Transfer of any Individual Property set forth in this Agreement, the other Loan Documents and the Mortgage Loan Documents.

**2.4.3 Prepayments After Default.** If, following the occurrence and during the continuance of an Event of Default, payment of all or any part of the Debt is tendered by Borrower or any other Person and accepted by Lender or otherwise recovered by Lender (including through application of any Reserve Funds), Borrower shall pay to Lender, in addition to the outstanding principal balance, (a) all accrued and unpaid interest at the Default Rate (including, without limitation, (i) in the event that such prepayment is received on a Payment Date or on any date in any Interest Period prior to a Payment Date, interest accruing (at the Default Rate) on such amount calculated through and including the end of the Interest Period in which such payment occurs, or (ii) in the event that such prepayment is received on a date after a Payment Date up to (and including) the last day of the Interest Period in which such Payment Date occurs, interest accruing (at the Default Rate) on such amount calculated through and including the end of the Interest Period in which the next Payment Date occurs, (b) the Spread Maintenance Premium, if such prepayment is made prior to the Spread Maintenance Outside Date, and (c) any and all other amounts payable under the Loan Documents. Any payment under this Section 2.4.3 shall be applied in such order, priority and proportions as Lender may direct in its sole and absolute discretion.

**Section 2.5. Release of Collateral.** Except as set forth in this Section 2.5, no repayment or prepayment of all or any portion of the Note shall cause, give rise to a right to require, or otherwise result in, the release or assignment of any Lien of the Pledge Agreement on the Collateral.

**2.5.1 Release of Individual Property.** Concurrently with the release of an Individual Property from the Lien of the Mortgage (and related Mortgage Loan Documents)

pursuant to Section 2.5.1 of the Mortgage Loan Agreement (a “**Release**” and such Individual Property, a “**Release Property**”), Borrower may obtain the release of the related Individual Borrower with an indirect ownership interest in such Individual Property (a “**Release Borrower**”) and such Release Borrower’s obligations under the Loan Documents with respect to the Release Property (other than those expressly stated to survive), upon the satisfaction of each of the following conditions:

(a) No Event of Default shall have occurred and be continuing (unless, in the case of a prepayment upon the release of an Individual Property, the Event of Default relates solely to such Individual Property and therefore would be fully cured by the release of such Individual Property);

(b) Borrower shall submit to Lender, not less than ten (10) Business Days prior to the date of such release, a release of Lien of the Pledge Agreement (and related Loan Documents), only with respect to such Release Borrower, for execution by Lender. Such release shall contain standard provisions, if any, protecting the rights of the releasing lender;

(c) After giving effect to such release, the Debt Service Coverage Ratio for the Properties then remaining subject to the Liens of the Mortgages (including giving pro forma effect to the payment of the Release Price and any additional prepayment(s) made by Borrower in connection with such release) shall be equal to or greater than the greatest of (i) the Debt Service Coverage Ratio for the twelve (12) full calendar months immediately preceding the release of the Individual Property (assuming the contemplated release had not occurred, i.e., for all Properties subject to the Liens of the Mortgage prior to the proposed release), (ii) 90% of the Debt Service Coverage Ratio as of the Closing Date, and (iii) 1.0;

(d) (i) The Individual Property to be released shall be conveyed to a Person other than a Mortgage Borrower or Mezzanine Borrower, and other than an Affiliate of Mortgage Borrower unless, in the latter case, such Affiliate is refinancing the Loan with a construction or development loan (or repaying the Loan with equity contributions to such Affiliate) and (ii) it is such Affiliate’s immediate intention to materially redevelop such Individual Property, which loan (or equity contribution) and intention shall be described in reasonable detail and represented to in an Officer’s Certificate submitted to Lender concurrently with (or prior to) the materials described in clause (b) of this Section 2.5.1;

(e) Lender shall have received a wire transfer of immediately available federal funds in an amount equal to the Release Price for the applicable Individual Property, together with (i) all accrued and unpaid interest calculated at the Applicable Interest Rate on the amount of principal being prepaid as provided in Sections 2.4.1(d) or (e), as applicable, (ii) the Spread Maintenance Premium, if applicable and (iii) all other sums due under this Agreement, the Note or the other Loan Documents in connection with a partial prepayment;

(f) Lender shall have received a written consent to the transfer from the lender under the Mortgage Loan and each of the Other Mezzanine Loans (and, if any, a Permitted Mezzanine Loan) or receipt by Lender of other evidence satisfactory to Lender that all conditions imposed under the terms of the Mortgage Loan, each of the Other Mezzanine Loans and Permitted Mezzanine Loan shall have been complied with by the borrower thereunder or

otherwise waived by the applicable lender, including the simultaneous pro rata prepayment of each Mortgage Loan, the Other Mezzanine Loans and Permitted Mezzanine Loan if required thereunder; and

(g) Lender shall have received payment of all Lender's reasonable out-of-pocket costs and expenses, including reasonable counsel fees and disbursements incurred in connection with the release of the Individual Property and or Release Borrower from the lien of the Pledge Agreement and the review and approval of the documents and information required to be delivered in connection therewith. Lender acknowledges that it shall not charge any fee (other than costs and expenses, as provided in the preceding sentence) in connection with the release of an Individual Property or Release Borrower.

Lender agrees that it shall provide a written consent to the transfer upon satisfaction of the conditions set forth in clauses (a) through (e) and clause (g) of this Section 2.5.1.

**2.5.2 Release of Convention Center Parcel; Property Swap.** At any time after the date hereof, Mortgage Borrower may obtain the release of the Convention Center Parcel pursuant to the Mortgage Loan Agreement, without the payment of a Release Price and upon the satisfaction by Borrower of each of the following conditions:

(a) No Event of Default shall have occurred and be continuing (unless, in the case of a release of the Convention Center Parcel, the Event of Default relates solely to such parcel and therefore would be fully cured by the release of the Convention Center Parcel);

(b) The Convention Center Parcel shall be conveyed to a Person other than a Mortgage Borrower or any Mezzanine Borrower;

(c) Mortgage Borrower will enter into a restrictive covenant agreement, restricting the use of the Convention Center Parcel to the development of a Convention Center and ancillary uses which agreement shall be in form and substance reasonably satisfactory to Lender;

(d) Prior to the transfer and release of the Convention Center Parcel, each applicable municipal authority exercising jurisdiction over the Convention Center Parcel shall have approved, a lot-split ordinance or other applicable action under local law dividing the Convention Center Parcel from the remainder of the Harrah's Atlantic City Property, and a separate tax identification number has been issued for the Convention Center Parcel (with the result that, upon the transfer and release of the Convention Center Parcel, no part of the remaining Harrah's Atlantic City Property shall be part of a tax lot which includes any portion of the Convention Center Parcel);

(e) All requirements under all laws, statutes, rules and regulations (including, without limitation, all zoning and subdivision laws, setback requirements, sideline requirements, parking ratio requirements, use requirements, building and fire code requirements, environmental requirements and wetlands requirements) applicable to the Harrah's Atlantic City Property necessary to accomplish the lot split shall have been fulfilled, and all necessary variances, if any, shall have been obtained, and Borrower shall have delivered to Lender either (1) letters or other evidence from the appropriate municipal authorities confirming such compliance with laws, or

(2) a zoning report or legal opinion confirming such compliance with laws, in each case in substance reasonably satisfactory to Lender;

(f) As a result of the lot split, the remaining Harrah's Atlantic City Property with all easements appurtenant and other Permitted Encumbrances thereto will not be in violation of any then applicable law, statute, rule or regulation (including, without limitation, all zoning and subdivision laws, setback requirements, sideline requirements, parking ratio requirements, use requirements, building and fire code requirements, environmental requirements and wetland requirements) and all necessary variances, if any, shall have been obtained and evidence thereof has been delivered to Lender which in form and substance is appropriate for the jurisdiction in which the Harrah's Atlantic City Property is located;

(g) If reasonably necessary, appropriate reciprocal easement agreements for the benefit and burden of the remaining Harrah's Atlantic City Property and the Convention Center Parcel requiring no cost or expense to Mortgage Borrower regarding the use of common facilities of such parcels, including, but not limited to, roadways, parking areas, utilities and community facilities, in a form and substance that would be reasonably acceptable to an ordinary prudent lender and which easements will not materially adversely affect the remaining Harrah's Atlantic City Property, shall be declared and recorded, and the remaining Harrah's Atlantic City Property and the Convention Center Parcel shall be in compliance with all applicable covenants under all easements and property agreements contained in the Permitted Encumbrances for the Harrah's Atlantic City Property;

(h) Borrower has delivered an Officer's Certificate to the effect that, to such officer's knowledge after diligent inquiry, the conditions in subsection (a)-(g) hereof have occurred or shall occur concurrently with the transfer and release of the Convention Center Parcel;

(i) Borrower shall execute such documents and instruments and obtain such opinions of counsel as are typical for similar transactions;

(j) Lender shall have received payment of all Lender's reasonable out-of-pocket costs and expenses, including reasonable counsel fees and disbursements incurred in connection with the review and approval of the documents and information required to be delivered in connection with the release of the Convention Center Parcel from the Lien of the related Mortgage. Lender acknowledges that it shall not charge any fee (other than costs and expenses, as provided in the preceding sentence) in connection with the release of the Convention Center Parcel;

(k) Lender shall have received evidence reasonably satisfactory to it that Mortgage Borrower and each Other Mezzanine Borrower shall have satisfied all of the conditions to the proposed Release set forth in the Mortgage Loan Agreement and each Other Mezzanine Loan Agreement, as applicable; and

(l) There shall be no release of any portion of the Lien of the Pledge Agreement in connection with this Section 2.5.2.

Borrower agrees that it shall promptly use all reasonable best efforts to substitute, and Lender agrees (subject to the terms set forth below in this paragraph) that it shall accept the substitution of, the properties commonly known as “Paris Las Vegas” and “Harrah’s Laughlin” for the Individual Properties referred to as “Harrah’s Lake Tahoe”, “Harvey’s Lake Tahoe”, “Bill’s Lake Tahoe” and “Showboat Atlantic City” and the portion of the Flamingo Las Vegas Property known as O’Shea’s in a reasonably satisfactory manner, provided that Lender’s obligation to accept such substitution shall be conditioned on the following:

(i) that no Event of Default shall exist, either before or after giving effect to such substitution (unless such Event of Default would be fully cured by the substitution);

(ii) the satisfaction, with respect to both “Paris Las Vegas” and “Harrah’s Laughlin”, of the closing conditions set forth in Article III hereof and of the Mortgage Loan Agreement, except that references therein to the Closing Date shall be to the date of such substitution;

(iii) delivery of such agreements, instruments, title insurance policies, surveys, resolutions, certificates and opinions (including, without limitation, substitute notes, amendments to the Loan Documents (including amendments to adjust the Allocated Loan Amounts, the EBITDAR (Closing Date) and any other items that need to be adjusted to reflect the substitution), the Operating Lease, the Operating Lease Guaranty and the Windstorm Insurance Intercreditor Agreement, an appropriate subdivision and a reciprocal easement agreement in respect of O’Shea’s, written assurances that the substitution will have no negative effects on the existing Title Policies, updated “tie-in” endorsements for the Title Policies, an Additional True Lease Opinion and an Additional Insolvency Opinion), in each case as are reasonably required by Lender in connection with such substitution;

(iv) with respect to the release of O’Shea’s, delivery of evidence reasonably satisfactory to Lender that such release will not have either an Individual Material Adverse Effect on the remainder of the Flamingo Las Vegas Property or an Aggregate Material Adverse Effect (it being understood that, for purposes of such determinations, O’Shea’s shall be deemed to have closed as of the Closing Date and to have no value) and that the remainder of the Flamingo Las Vegas Property satisfies the conditions set forth in Sections 3.1.3(b), (c) and (f) of the Mortgage Loan Agreement and the representations and warranties set forth in Sections 4.1.4, 4.1.16, 4.1.22, 4.1.39 and 4.1.40 of the Mortgage Loan Agreement shall continue to be true and complete with respect to the remainder of the Flamingo Las Vegas Property, and satisfaction of conditions similar to those set forth in clauses (c), (d), (e), (f), (g) and (h) of Section 3.1.3 hereof, as applicable, with respect to O’Shea’s;

(v) the satisfaction, with respect to “Harrah’s Lake Tahoe”, “Harvey’s Lake Tahoe”, “Bill’s Lake Tahoe”, “Showboat Atlantic City” and O’Shea’s, of the conditions set forth above in Section 2.5.1(b) and (f) with respect to released Individual Properties to the extent applicable;

(vi) the conveyance of “Harrah’s Lake Tahoe”, “Harvey’s Lake Tahoe”, “Bill’s Lake Tahoe”, “Showboat Atlantic City” and O’Shea’s to a Person other than a Mortgage Borrower or Mezzanine Borrower;

(vii) unless otherwise extended by Lender, the substitution shall be completed on or prior to May 28, 2008;

(viii) the payment by Borrower of all Lender’s reasonable out-of-pocket costs and expenses in connection with the substitution contemplated by this paragraph, including reasonable counsel fees and disbursements, up to an aggregate amount of \$300,000, it being acknowledged that costs incurred to obtain title insurance and surveys in respect of the substituted properties shall be paid by Borrower directly and shall not be taken into account for purposes of the foregoing limitation on the reimbursement of Lender’s expenses.

Lender acknowledges that it shall not charge any fee (other than costs and expenses, as provided in the preceding sentence) in connection with the release of an Individual Property in accordance with this paragraph. In addition, if all of “Harrah’s Lake Tahoe”, “Harvey’s Lake Tahoe”, “Bill’s Lake Tahoe” and “Showboat Atlantic City” can be transferred from Mortgage Borrower as contemplated above, but O’Shea’s cannot (including by reason of an inability to get a separate gaming license for O’Shea’s independent of the “Flamingo Las Vegas”), then Borrower shall cause Mortgage Borrower to nevertheless proceed to consummate the swap without transferring O’Shea’s (subject to Borrower’s ongoing right to obtain the release of O’Shea’s from the Lien of the Mortgage in accordance with the following sentence). Upon the satisfaction of such conditions set forth above in this paragraph (including clauses (i) through (viii) hereof), Borrower will have the right to choose between an immediate release of “O’Shea’s” from the Lien of the Mortgage on the date of the swap or a free release subsequent to the date of the swap without conditions (in either case, subject to the conditions set forth above in this Section 2.5.2), except that the limitation on Borrower’s payment of Lender’s costs and expenses set forth in clause (viii) above shall not apply to any such costs and expenses incurred by Lender in connection with such release), and, pending such release, EBITDAR shall be computed without regard to O’Shea’s; provided, further, the Operating Company in respect of the “Flamingo Las Vegas” Individual Property, both before and after such release, shall be permitted to provide management and other similar services for O’Shea’s and shall be reimbursed for the allocable share of expenses attributable to O’Shea’s.

**2.5.3 Release on Payment in Full.** Lender shall, upon the written request and at the expense of Borrower, upon payment in full of all principal and interest due on the Loan and all other amounts due and payable under the Loan Documents in accordance with the terms and provisions of the Note and this Agreement, release the Lien of the Pledge Agreement on the Collateral.

## **Section 2.6. Cash Management.**

### **2.6.1 Establishment of Collection Accounts.**

(a) In accordance with the provisions of the Operating Lease, (i) Operating Company will establish within thirty (30) days after the Closing Date) and will maintain for the benefit of Mortgage Borrower, as lessor under the Operating Lease, the Collection Accounts with Collection Banks throughout the term of the Mortgage Loan and (ii) the rights of Mortgage Borrower (as landlord) under the Operating Lease will be collaterally assigned to Mortgage Lender within such 30-day period. All Revenues, other than amounts retained on-site by each Operating Company as a Gaming Operating Reserve and amounts collected and maintained in Off-Shore Accounts, will be deposited in the Collection Accounts.

(b) Borrower hereby represents and warrants as follows: when established, the Collection Accounts will be the only accounts maintained by Operating Company in any jurisdiction that include funds arising out of, or are otherwise attributable to, the Properties or relate to the operation and management of any of the Properties (other than accounts (collectively, the “OC Accounts”) that contain amounts theretofore released from Collection Accounts in accordance herewith, and other than Off-Shore Accounts, which shall not be subject to this Agreement; and neither Borrower nor Mortgage Borrower maintains any accounts that include funds arising out of, or are otherwise attributable to, any of the Properties or relate to the operation and management of any of the Properties or otherwise (except for accounts containing funds released from the Collection Accounts as herein provided and the Off-Shore Accounts). None of Mortgage Borrower, Senior Mezzanine Borrower, Borrower or Operating Company may (and Borrower shall not permit Mortgage Borrower, Senior Mezzanine Borrower or Operating Company to), without the prior consent of Lender (not to be unreasonably withheld, conditioned or delayed), open any accounts or new accounts or in any way alter the flow of funds and payment into such Collection Accounts, including, without limitation, changing the source, type or currency of any payments currently deposited and maintained in any such account (it being understood that the foregoing restriction shall not preclude Operating Company, Mortgage Borrower, Senior Mezzanine Borrower or Borrower from accepting and depositing in any Collection Accounts any capital contributions, or any disbursements from any Collection Accounts in accordance with the provisions of the Mortgage Loan Agreement, this Agreement and the Senior Mezzanine Loan Agreements. None of Mortgage Borrower, Senior Mezzanine Borrower, Borrower or Operating Company may (and Borrower shall not permit Mortgage Borrower, Senior Mezzanine Borrower, or Operating Company to), without the prior consent of Lender (not to be unreasonably withheld, conditioned or delayed), establish and maintain any accounts with financial institutions outside of the United States of America, other than the Off-Shore Accounts).

(c) Borrower shall cause Mortgage Borrower, Senior Mezzanine Borrower and Operating Company to comply with Section 2.6.1 of the Mortgage Loan Agreement and Senior Mezzanine Loan Agreement (as applicable) in all respects.

(d) Borrower hereby agrees that in the event that (i) the Mortgage Loan Documents require Mortgage Borrower and/or Operating Company to maintain the Collection Accounts, but (due to repayment of the Mortgage Loan, waiver of the requirement by Mortgage

Lender, or otherwise) the Collection Accounts are not being maintained and (ii) the Collection Accounts are not being maintained under Section 2.6.1(d) of the Senior Mezzanine Loan Agreement, Borrower shall establish or cause the Operating Company to establish or cause the Operating Company to establish collection accounts substantially the same as that required under the Mortgage Loan Documents (and shall otherwise comply with the provisions of Section 2.6.1 of the Mortgage Loan Documents, and grant to Lender security interests in such accounts for the benefit of Lender, as if such provisions were incorporated herein for the benefit of Lender). In addition, if Borrower is required to deposit amounts with Lender pursuant to Article VII hereof but (due to repayment of the Mortgage Loan, waiver of the requirement by Mortgage Lender, or otherwise) the Collection Accounts and Cash Management Account are not being maintained, Borrower shall establish collection accounts and a cash management account and system with Lender substantially the same as that required under the Mortgage Loan Documents (and shall otherwise comply with the provisions of Sections 2.6.1 and 2.6.2 of the Mortgage Loan Documents, and grant to Lender security interests in such accounts for the benefit of Lender, as if such provisions were incorporated herein for the benefit of Lender). In addition, if Mortgage Borrower is required to provide security or other collateral to the Mortgage Lender pursuant to the terms of the Mortgage Loan Agreement (excluding any mortgage lien on the Properties or assignment of leases and rents with respect to the Properties) but (due to repayment of the Mortgage Loan, waiver of the requirement by Mortgage Lender, or otherwise) such security or other collateral was not provided to Mortgage Lender, Borrower shall provide such security or other collateral to Lender in substantially the same form and amount as that required under the Mortgage Loan Documents.

**2.6.2 Disbursements from, Security Interest in, Collection Accounts.** The Operating Lease provides, among other things, that all Revenues shall be collaterally assigned by Operating Company to Mortgage Borrower as additional security for Operating Company's obligations under the Operating Lease and that Mortgage Borrower shall have the right to collaterally assign and pledge such Revenues to Lender as additional security for the Loan. In furtherance thereof, Lender and Borrower agree as follows:

(a) Except as otherwise provided in subparagraphs (b) and (c) hereof, all amounts collected in the Collection Accounts shall be transferred on each Business Day to (or as directed by) Operating Company for use or distribution by the Operating Company in its discretion free of any rights or encumbrances of Lender.

(b) Upon the occurrence and during the continuance of an Event of Default hereunder, under the Mortgage Loan Documents or under any of the Other Mezzanine Loan Documents, and provided no Event of Default (as such term is defined in the Operating Lease) shall have occurred and be continuing under any Operating Lease, Borrower shall cause Mortgage Borrower to direct and cause Collection Bank to deposit directly into the Cash Management Account, all Rent payable under the Operating Lease for the next thirty (30) days (it being the intent and agreement that, during the continuance of an Event of Default, the Cash Management Account shall at all times contain such amounts sufficient to cover the ensuing 30-day period), including the Monthly Tax and Insurance Amount, the Monthly Ground Rent Amount and Monthly FF&E Reserve Amount (the amounts described in the preceding sentence, collectively, the "**Monthly Disbursements**") provided that, notwithstanding the foregoing, Lender may not apply such Monthly Disbursements to the payment of amounts due hereunder in

an amount in excess of the amounts owed by the Operating Company under the Operating Lease. In the event Borrower shall have failed to cause Mortgage Borrower to so instruct Collection Bank, Lender shall have the right to so direct the Collection Bank on behalf of Mortgage Borrower. Any amounts not required to be so deposited into the Cash Management Account shall be transferred on each Business Day thereafter to (or as directed by) Operating Company for use or distribution by the Operating Company in its discretion free of any rights or encumbrances of Lender. If no Event of Default has occurred and is continuing hereunder, to the extent Monthly Disbursements are not applied to the payment of amounts due hereunder, such excess shall be remitted to Ninth Mezzanine Lender (or to an account designated by Ninth Mezzanine Lender); provided that, notwithstanding the foregoing, Lender shall not remit any such amounts in excess of the amounts owed by the Operating Company under the Operating Lease. If an Event of Default has occurred and is continuing hereunder, to the extent Monthly Disbursements are not applied to the payment of amounts due hereunder, Lender shall have the right to retain the amount so remitted to the Collection Account as collateral for the Loan and/or apply such amount to the payment of the Debt.

(c) Upon the occurrence and during the continuance of an Event of Default (as such term is defined in the Operating Lease) under any Operating Lease, Borrower shall cause Mortgage Borrower to notify Collection Bank to transfer to the Cash Management Account on each Business Day in immediately available funds by federal wire transfer all amounts on deposit in each Collection Account and, in the event Mortgage Borrower shall have failed to do so, Mortgage Lender (or Lender in the event of Mortgage Lender's failure to so instruct) shall have the right to so direct the Collection Bank on behalf of Mortgage Borrower. Lender shall have the right to retain all amounts to be paid into the Cash Management Account in accordance with the first sentence of this Section 2.6.2(c) as collateral for the Loan and/or apply such excess to the payment of the Debt.

(d) Borrower and its Affiliates shall (and Borrower shall cause Operating Company to) execute and deliver such documents, instruments, certificates, assignments and other writings, and do such other acts necessary or desirable, to evidence, preserve and/or protect, maintain and perfect Lender's security interest in the Collection Accounts, if any.

**2.6.3 Cash Management Account.** (a) During the term of the Loan, Borrower shall cause Mortgage Borrower and Senior Mezzanine Borrower to comply with Section 2.6.3 of the Mortgage Loan Agreement and Senior Mezzanine Loan Agreement (as applicable) which may require the establishment of the Cash Management Account to be held by and in trust for the benefit of Mortgage Lender. All costs and expenses for establishing and maintaining the Cash Management Account shall be paid by Mortgage Borrower.

(b) Borrower shall not cause or permit Mortgage Borrower or Operating Company to further pledge, assign or grant any security interest in the Cash Management Account or the monies deposited therein or permit any lien or encumbrance to attach thereto, or any levy to be made thereon, or any UCC-1 Financing Statements, except those naming Mortgage Lender as the secured party, to be filed with respect thereto.

(c) Borrower hereby agrees that in the event that (i) the Mortgage Loan Documents require Mortgage Borrower and/or Operating Company to maintain the Cash

Management Account, but (due to repayment of the Mortgage Loan, waiver of the requirement by Mortgage Lender, or otherwise) the Cash Management Account is not being maintained and (ii) the Cash Management Account is not being maintained under Section 2.6.3 of the Senior Mezzanine Loan Agreement, Borrower shall establish a cash management account and system with Lender substantially the same as that required under the Mortgage Loan Documents. If Borrower is required to deposit amounts with Lender pursuant to Article VII hereof, Borrower shall establish a cash management account and system with Lender substantially the same as that required under the Mortgage Loan Documents (and shall otherwise comply with the provisions of Section 2.6.2 of the Mortgage Loan Documents, and grant to Lender security interests in such accounts for the benefit of Lender, as if such provisions were incorporated herein for the benefit of Lender).

**2.6.4 Mezzanine Collection Account.** (a) Lender or Servicer may establish and maintain, to collect all amounts distributed to Lender under Section 2.6.3 of the Mortgage Loan Agreement, a segregated Eligible Account (the “**Mezzanine Collection Account**”) to be held by Servicer in trust for the benefit of Lender, which Mezzanine Collection Account shall be under the sole dominion and control of Lender (which may be exercised through Servicer). Lender (and its agents, including Servicer) shall have the sole right to make withdrawals from the Mezzanine Collection Account in accordance with the terms and conditions of this Agreement and the other Loan Documents, except as otherwise expressly provided in this Agreement or the other Loan Documents. Borrower shall cause Senior Mezzanine Borrower to comply with Section 2.6.4 of the Senior Mezzanine Loan Agreements.

(b) Borrower hereby grants to Lender a first priority security interest in the Mezzanine Collection Account and all deposits at any time contained therein and the proceeds thereof and will take all actions necessary to maintain in favor of Lender a perfected first priority security interest in the Mezzanine Collection Account, including, without limitation, executing and filing UCC 1 Financing Statements and continuations thereof upon Lender’s request therefor. All costs and expenses for establishing and maintaining the Mezzanine Collection Account (and any sub account thereof) shall be at Borrower’s sole cost and expense.

(c) Borrower shall be responsible for payment of any federal, state or local income or other tax applicable to the interest or income earned on the Mezzanine Collection Account and any sub-account thereof. The Mezzanine Collection Account and any sub-account thereof shall be assigned the federal tax identification numbers of each Borrower set forth on Schedule I attached hereto. Borrower shall provide Lender, at any time upon request of Lender, with a Form W-8 or W-9 to evidence that Borrower is not subject to any back-up withholding under the Code.

(d) Upon the occurrence and during the continuance of an Event of Default, all funds on deposit in the Mezzanine Collection Account shall be applied by Lender in such order and priority as Lender shall determine.

(e) The insufficiency of funds on deposit in the Mezzanine Collection Account shall not relieve Borrower from the obligation to make any payments, as and when due pursuant to this Agreement and the other Loan Documents, and such obligations shall be separate and independent, and not conditioned on any event or circumstance whatsoever.

**Section 2.7. Intentionally Omitted.**

**Section 2.8. Permitted Mezzanine Loan.** Borrower shall have the one-time right, upon thirty (30) days prior written notice to Lender (the “**Permitted Mezzanine Loan Election**”), to obtain a loan (“**Permitted Mezzanine Loan**”) secured by a pledge of the ownership interests in the indirect owners of Borrower (above the level of the Ninth Mezzanine Borrower) provided that the following conditions precedent are satisfied:

(a) no Default or Event of Default shall have occurred and remains uncured;

(b) as of the date the Permitted Mezzanine Loan is advanced, the Permitted Mezzanine Debt Loan-to-Value Ratio for the Properties subject to the Lien of the Mortgage is equal to or less than eighty percent (80%);

(c) as of the date the Permitted Mezzanine Loan is advanced, Permitted Mezzanine DSCR for the four-quarter period preceding such date for the Properties then subject to the Lien of the Mortgage(s) is equal to or greater than 1.2 to 1.0;

(d) the Permitted Mezzanine Loan shall be evidenced by one (1) Loan, that may be advanced in multiple draws provided that Borrower complies with the requirements set forth in this Section 2.8 with respect to each draw;

(e) the Permitted Mezzanine Loan shall be issued by one (1) lender (the “**Permitted Mezzanine Loan Lender**”) which shall be an Institutional Lender; provided, however, that such single Lender that is an Institutional Lender may grant participations in such Permitted Mezzanine Loan or syndicate the Permitted Mezzanine Loan to multiple lenders so long as at least fifty-one percent (51%) of such participants and syndicate lenders are Institutional Lenders and, in addition, so long a single lender serves as agent with respect to all approvals, consents and other matters relating to the Permitted Mezzanine Loan;

(f) the Permitted Mezzanine Loan shall have the same maturity date as the Maturity Date under the Loan, or a maturity date extending beyond the Maturity Date under the Loan;

(g) the Permitted Mezzanine Loan (including all of the terms, provisions and conditions of the Permitted Mezzanine Loan, including, without limitation, the loan documents evidencing and securing the Permitted Mezzanine Loan (“**Permitted Mezzanine Loan Documents**”)) shall be acceptable to Lender in its reasonable discretion (it being agreed that with respect (only) to Lender’s approval of the form of loan documents that loan documents in substantially the same form as the Ninth Mezzanine Loan Documents, appropriately modified to reflect subordination to the Mezzanine Loans still outstanding, shall be deemed to be acceptable);

(h) the Permitted Mezzanine Loan Lender shall enter into a co-lender or intercreditor agreement substantially on the standard CMSA form (or the form entered into by Lender, Other Mezzanine Lenders and Mortgage Lender in connection with the closing of the Loan) or in form and substance reasonably acceptable to Lender, acknowledging the subordination of the Permitted Mezzanine Loan in all respects to each of the Mezzanine Loans

and the Mortgage Loan (and Lender agrees to enter into such co-lender or intercreditor agreement upon request);

(i) the Permitted Mezzanine Loan shall be a fixed rate loan, or a floating rate loan containing an interest rate that is capped at an amount that satisfies the debt service coverage ratio requirement set forth in subparagraph (c) above, with interest due and payable monthly (i.e., interest does not accrue) and such interest rate shall not be subject to adjustment except after an event of default (Borrower agreeing to cause the purchase of an interest rate cap to reflect the foregoing);

(j) if requested by Lender, Borrower shall execute amendments to the Loan Documents reasonably requested by Lender, to reflect the existence of such Permitted Mezzanine Loan, provided that any such amendments or agreements will not alter the payment terms of the Loan set forth in this Agreement or the other Loan Documents or materially and adversely affect Borrower or impose additional material obligations or liabilities upon Borrower;

(k) if required by Lender, Borrower shall deliver (i) Additional Insolvency Opinions and, if the Loan Documents are amended pursuant to Section 2.8(k), opinions regarding due execution and enforceability with respect to the Properties, Mortgage Borrower, Mezzanine Borrowers, Holdings, Guarantor and their respective Affiliates and the Loan Documents, and such related matters as Lender shall reasonably require, and (ii) revised organizational documents for Borrower, which opinions and organizational documents shall be reasonably satisfactory to Lender;

(l) all necessary or appropriate governmental or other third party consents (including any approvals, notices, filings or other actions under or pursuant to the Gaming Laws or other Legal Requirements) required to be obtained or taken by Borrower, Mortgage Borrower, any Mezzanine Borrower or the Permitted Mezzanine Borrower for the execution, delivery and performance by the Permitted Mezzanine Borrower of the Permitted Mezzanine Loan shall have been obtained or taken; and

(m) all reasonable out-of-pocket costs and expenses (including reasonable attorneys' fees and expenses) incurred by Lender in connection with this Section 2.8 shall be paid by Borrower (but no approval or consent fees shall be payable in connection therewith).

### III. CONDITIONS PRECEDENT

**Section 3.1. Conditions Precedent to Closing.** The obligation of Lender to make the Loan hereunder is subject to the fulfillment by Borrower or waiver by Lender of the following conditions precedent no later than the Closing Date:

**3.1.1 Representations and Warranties; Compliance with Conditions.** The representations and warranties of Borrower contained in this Agreement and the other Loan Documents shall be true and correct in all material respects on and as of the Closing Date with the same effect as if made on and as of such date, and no Default or an Event of Default shall have occurred and be continuing; and Borrower shall be in compliance in all material respects

with all terms and conditions set forth in this Agreement and in each other Loan Document on its part to be observed or performed.

**3.1.2 Loan Agreement and Note.** Lender shall have received a copy of this Agreement and the Note, in each case, duly executed and delivered on behalf of Borrower.

**3.1.3 Delivery of Loan Documents; Title Insurance; Reports; Leases.**

(a) **Pledge Agreement.** Lender shall have received from Borrower fully executed and acknowledged counterparts of the Pledge Agreement and delivery of the Pledged Company Interests, the UCC Financing Statements, and such other documents required pursuant to the Pledge Agreement, in the reasonable judgment of Lender, so as to effectively create valid and enforceable Liens upon the Collateral, of the requisite priority, in favor of Lender, subject only to the Permitted Encumbrances and such other Liens as are permitted pursuant to the Loan Documents. Lender shall have also received from Borrower fully executed counterparts of the other Loan Documents.

(b) **Title Insurance.** Lender shall have received a UCC Title Insurance Policy (the “**UCC Title Insurance Policy**”) issued by a title company acceptable to Lender and dated as of the Closing Date, with reinsurance and direct access agreements acceptable to Lender. Such UCC Title Insurance Policy shall (i) provide coverage in amounts reasonably satisfactory to Lender, (ii) insure Lender that the Pledge Agreement and the documents executed and delivered in connection therewith create a valid lien on the Collateral of the requisite priority, free and clear of all exceptions from coverage other than Permitted Encumbrances and standard exceptions and exclusions from coverage (as modified by the terms of any endorsements), (iii) contain such endorsements and affirmative coverages as Lender may reasonably request, and (iv) name Lender as the insured. The UCC Title Insurance Policy shall be assignable. Lender also shall have received evidence that all premiums in respect of such UCC Title Insurance Policy have been paid. Lender shall have received each Owner’s Title Policy in an amount equal to the value of the Property, together with an endorsement in favor of Lender and in form and substance reasonably satisfactory to Lender.

(c) **Survey.** Lender shall have received a current Survey for each Individual Property, certified to the title company and Lender and their successors and assigns, in form and content reasonably satisfactory to Lender and prepared by a professional and properly licensed land surveyor satisfactory to Lender in accordance with the Accuracy Standards for ALTA/ACSM Land Title Surveys as adopted by ALTA, American Congress on Surveying & Mapping and National Society of Professional Surveyors in 2005. Each such Survey shall reflect the same legal description contained in the Title Insurance Policies relating to such Individual Property and shall include, among other things, a metes and bounds description (or other description reasonably satisfactory to Lender) of the real property comprising part of such Individual Property reasonably satisfactory to Lender. The surveyor’s seal shall be affixed to each Survey and the surveyor shall provide a certification for each Survey in form and substance reasonably acceptable to Lender.

(d) **Insurance.** Lender shall have received valid certificates of insurance for the Policies required hereunder, satisfactory to Lender in its reasonable discretion. Lender shall

be included as an "additional insured" under such Policies and Lender shall have received evidence of the payment of all Insurance Premiums payable for the existing policy period.

(e) **Environmental Reports.** Lender shall have received a Phase I environmental report (and, if recommended by the Phase I environmental report, a Phase II environmental report) in respect of each Individual Property, in each case satisfactory in form and substance to Lender, Lender acknowledges that the foregoing condition has been satisfied, provided that the underground storage tank at Harrah's Las Vegas shall be registered if and to the extent the same is required under Legal Requirements and Lender shall have received and reasonably approved the O&M Plans contemplated pursuant to the above-referenced environmental reports in respect of Flamingo Las Vegas and Harrah's Las Vegas.

(f) **Zoning.** With respect to each Individual Property, Lender shall have received, at Lender's option, either (i) (A) letters or other evidence with respect to each Individual Property from the appropriate municipal authorities (or other Persons) concerning applicable zoning and building laws, and (B) an ALTA 3.1 zoning endorsement for the applicable Title Insurance Policy or (ii) a zoning report, in each case in substance reasonably satisfactory to Lender.

(g) **Encumbrances.** Borrower shall have taken or caused to be taken such actions in such a manner so that Lender has a valid and perfected first priority Lien as of the Closing Date on the Collateral and with respect to the Pledge Agreement and Lender shall have received satisfactory evidence thereof.

(h) **Senior Loan Documents.** The Mortgage Loan Documents and Senior Mezzanine Loan Documents shall have been duly authorized, executed and delivered by all parties thereto, the Mortgage Loan and Senior Mezzanine Loan shall have been contemporaneously funded and Lender shall have received and approved certified copies thereof. All of the conditions precedent set forth in Article III of the Mortgage Loan Agreement and Senior Mezzanine Loan Agreements shall have been satisfied and the Mortgage Loan and Senior Mezzanine Loans shall have closed and been fully advanced in accordance therewith.

**3.1.4 Related Documents.** Each additional document not specifically referenced herein, but relating to the transactions contemplated herein, shall be in form and substance reasonably satisfactory to Lender, and shall have been duly authorized, executed and delivered by all parties thereto and Lender shall have received and approved certified copies thereof.

**3.1.5 Delivery of Organizational Documents.** Borrower shall deliver or cause to be delivered to Lender copies certified by Borrower of all organizational documentation related to Borrower and each Loan Party and/or the formation, structure, existence, good standing and/or qualification to do business, as Lender may request in its sole discretion, including, without limitation, good standing certificates, qualifications to do business in the appropriate jurisdictions, resolutions authorizing the entering into of the Loan and incumbency certificates as may be requested by Lender.

**3.1.6 Opinions of Borrower's Counsel.** Lender shall have received opinions from Borrower's counsel with respect to non-consolidation and the due execution, authority, enforceability of the Loan Documents and such other matters as Lender may require, including True-Lease Opinions, an opinion with respect to the priority and perfection of the Collateral and all such opinions shall be in form, scope and substance satisfactory to Lender and Lender's counsel in their reasonable discretion.

**3.1.7 Budgets.** Borrower shall have delivered, and Lender shall have approved in its reasonable discretion, the Annual Budget for the current Fiscal Year.

**3.1.8 Basic Carrying Costs.** Borrower shall have caused Mortgage Borrower to have paid all Basic Carrying Costs relating to the Properties which are in arrears, including, without limitation, (a) accrued but unpaid Insurance Premiums, (b) currently due Taxes (including any in arrears) and (c) currently due Other Charges, which amounts shall be funded with proceeds of the Loan.

**3.1.9 Completion of Proceedings.** All corporate and other proceedings taken or to be taken in connection with the transactions contemplated by this Agreement and other Loan Documents and all documents incidental thereto shall be satisfactory in form and substance to Lender, and Lender shall have received all such counterpart originals or certified copies of such documents as Lender may reasonably request.

**3.1.10 Payments.** All payments, deposits or escrows required to be made or established by Borrower under this Agreement, the Note and the other Loan Documents on or before the Closing Date shall have been paid.

**3.1.11 Windstorm Insurance Intercreditor Agreement.** The Windstorm Insurance Intercreditor Agreement shall have been executed by all parties thereto and delivered to Lender.

**3.1.12 Transaction Costs.** Borrower shall have paid or reimbursed Lender for all UCC Title Insurance Policy premiums, all Owner's Title Policy premiums, costs of obtaining recording and filing fees, costs of environmental reports, Physical Conditions Reports, appraisals and other reports, the reasonable fees and costs of Lender's counsel and all other third party out-of-pocket expenses reasonably incurred in connection with the origination of the Loan to the extent such costs and expenses relating to third party costs have not already been paid or reimbursed by Mortgage Borrower to Mortgage Lender.

**3.1.13 Material Adverse Change.** There shall have been no material adverse change in the financial condition or business condition of Borrower, any Loan Party, the Collateral, the Senior Mezzanine Collateral or the Properties since the date of the most recent financial statements delivered to Lender. The income and expenses of the Properties, the occupancy thereof, and all other features of the transaction shall be as represented to Lender without material adverse change. None of Borrower, any Loan Party, or any of their respective constituent Persons shall be the subject of any bankruptcy, reorganization, or insolvency proceeding.

**3.1.14 Leases and Rent Roll.** Lender shall have received copies of all Leases and certified copies of any Leases as requested by Lender. Lender shall have received a current certified rent roll of the Properties, reasonably satisfactory in form and substance to Lender.

**3.1.15 Tax Lot.** Lender shall have received evidence that each Individual Property constitutes one (1) or more separate tax lots, which evidence shall be reasonably satisfactory in form and substance to Lender.

**3.1.16 Physical Conditions Reports.** Lender shall have received Physical Conditions Reports with respect to each Individual Property, which reports shall be reasonably satisfactory in form and substance to Lender. Lender acknowledges that the foregoing condition has been satisfied.

**3.1.17 Operating Leases; Operating Lease Guaranty.** Lender shall have received copies of the Operating Leases, each Operating Lease Guaranty and the Gaming Equipment Facility Agreements, which shall be reasonably satisfactory in form and substance to Lender.

**3.1.18 Appraisal.** Lender shall have received an appraisal of each Individual Property, which shall be reasonably satisfactory in form and substance to Lender.

**3.1.19 Financial Statements.** Lender shall have received a balance sheet with respect to each Individual Property for the two most recent Fiscal Years and statements of income and statements of cash flows with respect to each Individual Property for the three most recent Fiscal Years, each in form and substance reasonably satisfactory to Lender.

**3.1.20 Further Documents.** Lender or its counsel shall have received a fully executed Interest Rate Cap Agreement and a Collateral Assignment of Interest Rate Cap Agreement, together with an opinion of counsel in form and substance satisfactory to it, or shall have received reasonably satisfactory evidence that same will be delivered promptly following the Closing Date.

**3.1.21 Gaming Authority Approvals.** Mortgage Borrower and Operating Company shall have obtained all Operating Permits from Gaming Authorities that are required in order to permit the closing of the Mortgage Loan and the Mezzanine Loans (if required), or in connection with the Operating Lease or the Operating Lease Guaranty (if required), or to permit the conveyances of any of the Properties to Mortgage Borrower (effected immediately prior hereto) and the operation of the Properties as currently conducted.

#### **IV. REPRESENTATIONS AND WARRANTIES**

**Section 4.1. Borrower Representations.** Borrower represents and warrants as of the date hereof and as of the Closing Date, except as disclosed in Schedule XXIII, that:

**4.1.1 Organization.** (a) Borrower has been duly organized and is validly existing and in good standing with requisite power and authority to own the Individual Properties

and to transact the businesses in which it is (or each of them is) now engaged. Borrower is duly qualified to do business and is in good standing in each jurisdiction where it is required to be so qualified in connection with its properties, businesses and operations. Borrower possesses all rights, licenses, permits and authorizations (governmental or otherwise) necessary to entitle it to own its properties and to transact the businesses in which it is now engaged and the failure to possess which would reasonably be expected to have an Individual Material Adverse Effect. The sole business of Borrower is the ownership of Senior Mezzanine Borrower. The ownership interests of Borrower are as set forth on the organizational chart attached hereto as Schedule VIII.

(b) Each Operating Company has been duly organized and is validly existing and in good standing with requisite power and authority to own its properties or assets, including the Gaming Equipment, and to transact the businesses in which it is now engaged. Each Operating Company is duly qualified to do business and is in good standing in each jurisdiction where it is required to be so qualified in connection with its properties, businesses and operations, including the operation of the Casino Components at each Individual Property. Each Operating Company possesses all rights, licenses, permits and authorizations (governmental or otherwise) necessary to entitle it to operate the Properties currently operated by each such Operating Company and to transact the businesses in which it is now engaged and the failure to possess which would reasonably be expected to have an Individual Material Adverse Effect. The sole business of each Operating Company is the management and operation of the Individual Property or Properties currently operated by each such Operating Company. The ownership interests of each Operating Company are as set forth on the organizational chart attached hereto as Schedule VIII.

(c) Borrower has the power and authority and the requisite ownership interests in Senior Mezzanine Borrower and Mortgage Borrower to control the actions of Senior Mezzanine Borrower and Mortgage Borrower, and upon the realization of the Collateral under the Pledge Agreement, Lender or any other party succeeding to the Borrower's interest in the Collateral described in the Pledge Agreement would have such control. Without limiting the foregoing, Borrower has sufficient control over Senior Mezzanine Borrower and Mortgage Borrower to cause Senior Mezzanine Borrower and Mortgage Borrower to (i) take any action on Senior Mezzanine Borrower's or Mortgage Borrower's part required by the Loan Documents and (ii) refrain from taking any action prohibited by the Loan Documents.

**4.1.2 Proceedings.** Borrower and Operating Company have taken all necessary action to authorize the execution, delivery and performance of this Agreement and the other Loan Documents. This Agreement and such other Loan Documents have been duly executed and delivered by or on behalf of Borrower and Operating Company and constitute legal, valid and binding obligations of Borrower and Operating Company enforceable against Borrower and Operating Company (as applicable) in accordance with their respective terms, subject only to applicable bankruptcy, insolvency and similar laws affecting rights of creditors generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

**4.1.3 No Conflicts; Approvals.** (a) The execution, delivery and performance of this Agreement and the other Loan Documents by Borrower and Operating

Company will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance (other than pursuant to the Loan Documents) upon any of the property or assets of Borrower or Operating Company pursuant to the terms of any indenture, mortgage, deed of trust, loan agreement, partnership agreement, management agreement, material lease or other material agreement or instrument to which Borrower or Operating Company (as applicable) is a party or by which any of Borrower's or Operating Company's property or assets is or are subject, nor will such action result in any violation of the provisions of any statute or any order, rule or regulation of any Governmental Authority having jurisdiction over Borrower or Operating Company any of Borrower's or Operating Company's properties or assets, and any consent, approval, authorization, order, registration or qualification of or with any such Governmental Authority required for the execution, delivery and performance by Borrower and Operating Company of this Agreement or any other Loan Documents (and the execution by Lender of the remedies provided in the Loan Documents, subject to the limitations thereon pursuant to applicable Gaming Laws) has been obtained and is in full force and effect.

(b) Borrower, Senior Mezzanine Borrower, Mortgage Borrower and Operating Company have obtained all consents and approvals, including all approvals of Governmental Authorities including Gaming Authorities, if required, in connection with the execution, delivery and performance of the Loan Documents (including by Mortgage Lender and each Mezzanine Lender), the Operating Lease, the Operating Lease Guaranty and the operation of the business currently conducted at any of the Properties, and shall promptly execute any and all such instruments and documents, deliver any certificates and do all such other acts or things required by the Gaming Authorities to maintain or keep current such approvals.

**4.1.4 Litigation.** There are no actions, suits or proceedings at law or in equity by or before any Governmental Authority or other agency now pending or, to Borrower's knowledge, threatened against or affecting any Loan Party, any Affiliates of Borrower, including Holdings, Operating Company or any Individual Property, or any prior owner or other holder of any interest in any Individual Property, which actions, suits or proceedings, if determined against any Loan Party, Holdings, Operating Company, any other Affiliate or any Individual Property (taking into account the reasonably estimated damages payable in connection therewith), is reasonably likely to materially adversely affect the condition (financial or otherwise) or business of any Loan Party, any Affiliate of Borrower that is a direct or indirect owner of Mortgage Borrower, including Holdings and Operating Company, or the condition or ownership of any Individual Property, or any of the material rights, interests and remedies of Lender under the Loan Documents (taken as a whole). None of the actions described on Schedule XXIV, if determined adversely to Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company and/or any of their respective Affiliates, as applicable, would result in the payment by Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or such Affiliate of an amount in excess of Ten Million and No/100 Dollars (\$10,000,000.00), except to the extent covered by insurance.

**4.1.5 Agreements.** None of Borrower, Senior Mezzanine Borrower, Mortgage Borrower or Operating Company is in default, in any material respect, in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any material agreement or instrument to which it is a party or by which Borrower,

Senior Mezzanine Borrower, Mortgage Borrower, Operating Company, the Collateral, the Senior Mezzanine Collateral or any of the Properties are bound. None of Borrower, Senior Mezzanine Borrower, Mortgage Borrower or Operating Company has any material financial obligation under any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which Borrower, Senior Mezzanine Borrower, Mortgage Borrower or Operating Company is a party or by which Borrower, Senior Mezzanine Borrower, Mortgage Borrower, Operating Company, the Collateral, the Senior Mezzanine Collateral or the Properties is otherwise bound, other than (a) with respect to Mortgage Borrower, obligations incurred in the ordinary course of the operation of the Properties as permitted pursuant to clause (t) of the definition of "Special Purpose Entity" set forth in Section 1.1 of the Mortgage Loan Agreement, (b) with respect to Borrower, obligations under the Loan Documents, (c) with respect to Senior Mezzanine Borrower, obligations under the Senior Mezzanine Loan Documents, and (d) with respect to Operating Company, the Operating Lease and Permitted Indebtedness (Operating Company).

**4.1.6 Title.** (a) The Borrower (as pledgor under the Pledge Agreement) is the record and beneficial owner of, and Borrower has good and marketable title to the Collateral, free and clear of all Liens whatsoever except the Liens created by the Loan Documents. The Permitted Encumbrances in the aggregate do not materially and adversely affect the value, operation or use of any of the Properties (as currently used) or Borrower's ability to repay the Loan. The Pledge Agreement, together with the delivery of the certificates evidencing ownership of the Pledged Company Interests and the endorsement in blank, as being delivered concurrently herewith, will create a valid perfected, first priority lien on, and security interest in and to, the Collateral, all in accordance with the terms thereof. There are no claims for payment for work, labor or materials affecting any of the Properties which are or may become a Lien prior to, or of equal priority with, the Liens created by the Mortgage Loan Documents.

(b) Each Operating Company has good, marketable title to the Gaming Equipment, free and clear of all Liens whatsoever (except equipment financing and leasing arrangements entered into by Operating Company in the ordinary course of its business (subject to the limitations set forth in the definition of "Permitted Indebtedness (Operating Company)").

**4.1.7 Solvency.** Borrower has (a) not entered into the transaction or executed the Note, this Agreement or any other Loan Documents with the actual intent to hinder, delay or defraud any creditor and (b) received reasonably equivalent value in exchange for its obligations under such Loan Documents. The fair saleable value of Borrower's assets exceeds and will, immediately following the making of the Loan, exceed Borrower's total liabilities, including, without limitation, subordinated, unliquidated, disputed and contingent liabilities. The fair saleable value of Borrower's assets is and will, immediately following the making of the Loan, be greater than Borrower's probable liabilities, including the maximum amount of its contingent liabilities on its debts as such debts become absolute and matured. Borrower's assets do not and, immediately following the making of the Loan will not, constitute unreasonably small capital to carry out its business as conducted or as proposed to be conducted. Borrower does not intend to, and does not believe that it will, incur debt and liabilities (including contingent liabilities and other commitments) beyond its ability to pay such debt and liabilities as they mature (taking into account the timing and amounts of cash to be received by Borrower and the amounts to be payable on or in respect of obligations of Borrower). No petition in bankruptcy has been filed against Borrower, Operating Company, any Loan Party or any

constituent Person, and none of Borrower, Operating Company, any Loan Party or any constituent Person has ever made an assignment for the benefit of creditors or taken advantage of any insolvency act for the benefit of debtors. None of Borrower, Operating Company, any Loan Party or any of their respective constituent Persons are contemplating either the filing of a petition by it under any state or federal bankruptcy or insolvency laws or the liquidation of all or a major portion of Borrower's, Operating Company's, or any Loan Party's assets or properties, and Borrower has no knowledge of any Person contemplating the filing of any such petition against it, Operating Company, any Loan Party or such constituent Persons.

**4.1.8 Full and Accurate Disclosure.** No statement of fact made by Borrower in this Agreement or in any of the other Loan Documents contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained herein or therein not misleading. There is no material fact presently known to Borrower which has not been disclosed to Lender which has, nor as far as Borrower can foresee, might reasonably be expected to have an Individual Material Adverse Effect or an Aggregate Material Adverse Effect.

**4.1.9 No Plan Assets.** Borrower is not an "employee benefit plan," as defined in Section 3(3) of ERISA, subject to Title I of ERISA, and none of the assets of Borrower constitutes or will constitute "plan assets" of one or more such plans within the meaning of 29 C.F.R. Section 2510.3-101. In addition, (a) Borrower is not a "governmental plan" within the meaning of Section 3(32) of ERISA and (b) transactions by or with Borrower are not subject to any state statute regulating investments of, or fiduciary obligations with respect to, governmental plans similar to the provisions of Section 406 of ERISA or Section 4975 of the Code currently in effect, which prohibit or otherwise restrict the transactions contemplated by this Loan Agreement.

**4.1.10 Compliance.** Except as disclosed in the zoning reports obtained by Lender in connection with the origination of the Loan, Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company and each Individual Property (including the use thereof) comply in all material respects with all applicable Legal Requirements, including, without limitation, building and zoning ordinances and codes and Prescribed Laws. Borrower, Mortgage Borrower, Senior Mezzanine Borrower and Operating Company are not in default or violation of (i) any material order, writ, injunction, decree or demand of any Gaming Authority or (ii) any material order, writ, injunction, decree or demand of any other Governmental Authority. There has not been committed by Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any other Person in occupancy of or involved with the operation or use of the Properties any act or omission affording the federal government or any other Governmental Authority the right of forfeiture as against any Individual Property or any part thereof or any monies paid in performance of Borrower's obligations under any of the Loan Documents.

**4.1.11 Financial Information.** All financial data, including, without limitation, the statements of cash flow and income and operating expense, that have been delivered to Lender in connection with the Loan, the Collateral, the Senior Mezzanine Collateral, the Properties and each Loan Party (i) are true, complete and correct in all material respects, (ii) accurately represent in all material respects the financial condition of the Properties as of the

date of such reports, and (iii) to the extent prepared or audited by an independent certified public accounting firm, have been prepared in accordance with GAAP throughout the periods covered, except as disclosed therein. Except for Permitted Encumbrances, Borrower does not have any contingent liabilities, liabilities for taxes, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments that are known to Borrower and reasonably likely to have a materially adverse effect on the Collateral, the Senior Mezzanine Collateral, Borrower, any Loan Party, any Individual Property or the operation thereof as mixed-use hotel and casino properties, except as referred to or reflected in said financial statements. Borrower has no Indebtedness other than the Loan. Except for Permitted Indebtedness (Operating Company), Operating Company does not have any Indebtedness or contingent liabilities, or due and unpaid liabilities for taxes, that are known to Borrower, Mortgage Borrower, Senior Mezzanine Borrower or Operating Company and reasonably likely to have a materially adverse effect on the Collateral, any Senior Mezzanine Collateral, Borrower, any Loan Party, any Individual Property or the operation thereof as mixed-use hotel and casino properties, except as referred to or reflected in said financial statements. Since the date of such financial statements, there has been no material adverse change in the financial condition, operation or business of Borrower or Operating Company from that set forth in said financial statements.

**4.1.12 Condemnation.** No Condemnation or other similar proceeding has been commenced or, to Borrower's best knowledge, is threatened or contemplated with respect to all or any portion of any Individual Property or for the relocation of roadways providing access to any Individual Property.

**4.1.13 Federal Reserve Regulations.** No part of the proceeds of the Loan will be used for the purpose of purchasing or acquiring any "margin stock" within the meaning of Regulation U of the Board of Governors of the Federal Reserve System or for any other purpose which would be inconsistent with such Regulation U or any other Regulations of such Board of Governors, or for any purposes prohibited by Legal Requirements or by the terms and conditions of this Agreement or the other Loan Documents.

**4.1.14 Utilities and Public Access.** Each Individual Property has rights of access to public ways and is served by water, sewer, sanitary sewer and storm drain facilities adequate to service such Individual Property for its respective intended uses. All public utilities necessary or convenient to the full use and enjoyment of each Individual Property are located either in the public right-of-way abutting such Individual Property (which are connected so as to serve such Individual Property without passing over other property) or in recorded easements serving such Individual Property and such easements are set forth in and insured by the Title Insurance Policies. All roads necessary for the use of each Individual Property for their current respective purposes have been completed and dedicated to public use and accepted by all Governmental Authorities.

**4.1.15 Not a Foreign Person.**

Borrower is not a "foreign person" within the meaning of § 1445(f)(3) of the Code.

#### **4.1.16 Separate Lots.**

Each Individual Property is comprised of one (1) or more parcels which constitute a separate tax lot or lots and does not constitute a portion of any other tax lot not a part of such Individual Property.

#### **4.1.17 Assessments.**

There are no pending or, to Borrower's knowledge, proposed special or other assessments for public improvements or otherwise affecting any Individual Property, nor are there any contemplated improvements to any Individual Property that may result in such special or other assessments.

**4.1.18 Enforceability.** The Loan Documents are not subject to any right of rescission, set-off, counterclaim or defense by Borrower, any Affiliates of Borrower including Holdings, Operating Company or Guarantor, including the defense of usury, nor would the operation of any of the terms of the Loan Documents, or the exercise of any right thereunder, render the Loan Documents unenforceable (subject to principles of equity and bankruptcy, insolvency and other laws generally affecting creditors' rights and the enforcement of debtors' obligations), and Borrower, any Affiliates of Borrower including Holdings, Operating Company and Guarantor have not asserted any right of rescission, set-off, counterclaim or defense with respect thereto.

**4.1.19 No Prior Assignment.** There are no prior assignments of the Leases (including the Operating Leases) or of the Rents (or any Revenue) due and payable or to become due and payable which are presently outstanding. There are no prior assignments of the Collateral which are presently outstanding except in accordance with the Loan Documents.

**4.1.20 Insurance.** Borrower (or Mortgage Borrower or Operating Company) has obtained and has delivered to Lender certified copies of all Policies reflecting the insurance coverages, amounts and other requirements set forth in this Agreement. No material claims have been made under any such Policies except such as have been disclosed to Lender, and no Person, including Borrower, Mortgage Borrower, Senior Mezzanine Borrower and Operating Company, has done, by act or omission, anything which would impair the coverage of any such Policies.

**4.1.21 Use of Property.** Each Individual Property is used exclusively as a mixed-use hotel and casino operation, and other appurtenant and related uses.

**4.1.22 Gaming Licenses and Operating Permits.** (a) Schedule IX contains a correct and complete list of all Gaming Licenses and other material licenses, certification and permits for each of the Properties (and the holder thereof).

(b) Borrower possesses all licenses, permits, franchises, authorizations, certificates, approvals and consents which are material to the ownership of the Collateral. Mortgage Borrower possesses all licenses, permits, franchises, authorizations, certificates, approvals and consents, including, without limitation, all certificates of occupancy, which are material to the ownership and use of each of the Properties, and Operating Company possesses all licenses, permits, franchises, authorizations, certificates, approvals and consents, including,

without limitation, all environmental, liquor, Gaming Licenses, health and safety licenses of all Governmental Authorities which are material to the conduct of their business and the use, occupation and operation of each of the Properties and the failure to possess which would have an Individual Material Adverse Effect (collectively, “**Operating Permits**”); each such Operating Permit is and will be in full force and effect (unless, in the case of any Operating Permit, such Operating Permit is no longer necessary or advisable for the conduct of Borrower’s, Senior Mezzanine Borrower’s, Mortgage Borrower’s or Operating Company’s business); Borrower, Senior Mezzanine Borrower, Mortgage Borrower, Operating Company and each of its Affiliates are in compliance in all material respects with all such Operating Permits, and no event (including, without limitation, any material violation of any law, rule or regulation) has occurred which would be reasonably likely to lead to the revocation or termination of any such Operating Permit or the imposition of any material restriction thereon.

(c) Operating Company and each of its Affiliates possesses all Gaming Licenses which are material to the conduct of their business and the ownership, use, occupation and operation of each of the Properties. Further, Borrower hereby represents and warrants as follows:

(i) Each Gaming License is in full force and effect (except for such Gaming Licenses as are no longer necessary or advisable for the conduct of Borrower’s, Senior Mezzanine Borrower’s, Mortgage Borrower’s or Operating Company’s business); Operating Company and each of its Affiliates, respective directors, members, managers, officers, key personnel and Persons holding a five percent (5%) or greater equity or economic interests directly or indirectly in Operating Company is in compliance in all material respects with all such Gaming Licenses (to the extent required by Legal Requirements), and no event (including, without limitation, any material violation of any Legal Requirements) has occurred which would be reasonably likely to lead to the revocation or termination of any such Gaming Licenses or the imposition of any restriction thereon;

(ii) Borrower has no reason to believe Mortgage Borrower and Operating Company will not be able to maintain in effect all Gaming Licenses necessary for the lawful conduct of their respective businesses or operations wherever now conducted and as planned to be conducted, including the ownership and operation of the Casino Components, pursuant to all applicable Legal Requirements;

(iii) All Gaming Licenses are in full force and effect and have not been amended or otherwise modified, rescinded, revoked or assigned in any manner that would reasonably be expected to have an Individual Material Adverse Effect;

(iv) Neither Mortgage Borrower nor Operating Company is in default in any material respect under, or in violation in any material respect of, any Gaming License (and no event has occurred, and no condition exists, which, with the giving of notice or passage of time or both, would constitute a default thereunder or violation thereof that has caused or would reasonably be expected to cause the loss of any Gaming License) (unless, in the case of any Gaming License, such Gaming License is no longer necessary or advisable for the conduct of Borrower’s or Operating Company’s business);

(v) Neither Mortgage Borrower nor Operating Company has received any notice of any violation of Legal Requirements which has caused or would reasonably be expected to cause any Gaming License to be suspended, forfeited, modified in any manner that would have an Individual Material Adverse Effect, not renewed, rescinded or revoked (unless, in the case of any Gaming License, such Gaming License is no longer necessary or advisable for the conduct of Mortgage Borrower's or Operating Company's business);

(vi) No condition exists or event has occurred which would reasonably be expected to result in the suspension, revocation, impairment, forfeiture, rescission or non-renewal of any Gaming License (unless, in the case of any Gaming License, such Gaming License is no longer necessary or advisable for the conduct of Mortgage Borrower's or Operating Company's business); and

(vii) The continuation, validity and effectiveness of all Gaming Licenses will not be adversely affected by the transactions contemplated by this Agreement.

(d) There is no proceeding, investigation, or disciplinary action (including, without limitation, before any Gaming Authority, under any Gaming Law or under any Gaming License or other Operating Permit) pending or, to Borrower's knowledge, threatened against any of Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or, to Borrower's knowledge, any of their respective directors, members, managers, officers, key personnel or Persons holding a five percent (5%) or greater direct or indirect equity or economic interest in Mortgage Borrower, Senior Mezzanine Borrower or Operating Company and that could reasonably be expected to have an Individual Material Adverse Effect.

(e) There is no proceeding (including, without limitation, before any Gaming Authority, under any Gaming Law or under any Gaming License or other Operating Permit) pending or, to Borrower's knowledge, threatened either (a) in connection with, or that seeks to restrain, enjoin, prevent the consummation of or otherwise challenge, any of the Loan Documents or any of the transactions contemplated therein, or (b) that could reasonably be expected to have an Individual Material Adverse Effect.

(f) Neither the execution, delivery or performance of any of the Loan Documents (nor the Securitization or any participations in the Loan, or the creation or sale of any of the Mortgage Loan or Mezzanine Loans) will (i) require the consent of any Gaming Authority not heretofore obtained or (ii) allow or result in the imposition of any material penalty under, or the revocation or termination of, any Gaming License or any material impairment of the rights of the holder of any Gaming License.

**4.1.23 Intentionally Omitted.**

**4.1.24 Intentionally Omitted.**

**4.1.25 Intentionally Omitted.**

**4.1.26 Leases.** (a) The Operating Leases (together with any certificates and notifications entered into in connection therewith) and the Operating Lease Guaranty provided to

Lender on the Closing Date are true, correct, accurate and complete copies of such documents and constitute the entire agreement between the parties thereto with respect to the subject matter therein and there are no written agreements modifying, amending, supplementing or restating such documents. Except as set forth on Schedule X, the Properties are not subject to any space Leases other than the Operating Lease and space Leases providing for occupancy of less than one hundred (100) square feet. Each Operating Lease is a "true lease" for all purposes of the Bankruptcy Code (including Section 365(d) and 502(b)(6) thereof) and applicable Legal Requirements, and no Operating Lease constitutes a financing or conveys any interest in the Properties other than the leasehold interest therein demised thereby. Mortgage Borrower is the owner and lessor of landlord's interest in the Operating Lease and the Operating Lease Guaranty. Currently, no Person has any possessory interest in any Individual Property or right to occupy the same except under and pursuant to the provisions of the Operating Lease, any other space Leases listed on Schedule X and, with respect to a right to occupancy only (and not a possessory interest), hotel guests. Each Operating Lease and Operating Lease Guaranty is in full force and effect and there are no material events of default thereunder by any party thereto and there are no conditions that, with the passage of time or the giving of notice, or both, would constitute a default thereunder. No Rent under any Operating Lease has been paid more than one (1) month in advance of its due date and no Rents or charges under the Operating Lease have been waived, released or otherwise discharged or compromised. There has been no prior sale, transfer or assignment, hypothecation or pledge of any Operating Lease, any Operating Lease Guaranty or of the Rents. No Operating Company has assigned the Operating Lease or sublet all or any portion of any Individual Property except pursuant to the Operating Lease and the terms hereof.

(b) The Properties are not subject to any space Leases other than the Leases described in Schedule X attached hereto. Operating Company is the owner and lessor of landlord's interest in all such space Leases. No Person has any possessory interest in any Individual Property except under and pursuant to the provisions of the space Leases, and no Person has any right to occupy any portion of any Individual Property except under and pursuant to the provisions of the space Leases and hotel guests. The current space Leases are in full force and effect and, except as shown in Schedule X attached hereto, to Borrower's knowledge, there are no material defaults thereunder by either party and there are no conditions that, with the passage of time or the giving of notice, or both, would constitute defaults thereunder. No Rent has been paid more than one (1) month in advance of its due date. Except as shown in Schedule X attached hereto, all work to be performed by Mortgage Borrower (or Operating Company) under each space Lease has been performed as and to the extent required and has been accepted by the applicable tenant, and any payments, free rent, partial rent, rebate of rent or other payments, credits, allowances or abatements required to be given by Mortgage Borrower (or Operating Company) to any tenant has already been received by such tenant. There has been no prior sale, transfer or assignment, hypothecation or pledge of any space Lease or of the Rents received therein which is still in effect. To Borrower's knowledge, except as shown on Schedule X, no tenant listed on Schedule X has assigned its space Lease or sublet all or any portion of the premises demised thereby, no such tenant holds its leased premises under assignment or sublease, nor does anyone except such tenant and its employees occupy such leased premises. No tenant under any space Lease has a right or option pursuant to such Lease or otherwise to purchase all or any part of the leased premises or the building of which the leased premises are a part. No tenant under any space Lease has any right or option for additional space in the Improvements except pursuant to such tenant's space Lease.

**4.1.27 Intentionally Omitted.**

**4.1.28 Principal Place of Business; State of Organization.** (a) Borrower's principal place of business as of the date hereof is the address set forth in Schedule I. Each Borrower is organized under the laws of the State of Delaware.

(b) Operating Company's principal place of business as of the date hereof is the address set forth in Schedule I. Each Operating Company is organized under the laws of the state of Delaware.

**4.1.29 Filing and Recording Taxes.** All transfer taxes, deed stamps, intangible taxes or other amounts in the nature of transfer taxes required to be paid by any Person under applicable Legal Requirements currently in effect in connection with the transfer of the Collateral to Borrower have been paid. All recording, stamp, intangible or other similar tax required to be paid by any Person under applicable Legal Requirements currently in effect in connection with the execution, delivery, recordation, filing, registration, perfection or enforcement of any of the Loan Documents, including, without limitation, the Pledge Agreement, have been paid, and, under current Legal Requirements, the Pledge Agreement is enforceable in accordance with their respective terms by Lender (or any subsequent holder thereof), subject to principles of equity and bankruptcy, insolvency and other laws generally applicable to creditors' rights and the enforcement of debtors' obligations.

**4.1.30 Special Purpose Entity/Separateness.** (a) Until the Debt has been paid in full, Borrower hereby represents, warrants and covenants that Borrower and each SPE Party is, shall be and shall continue to be a Special Purpose Entity.

(b) The representations, warranties and covenants set forth in Section 4.1.30(a) shall survive for so long as any amount remains payable to Lender under this Agreement or any other Loan Document.

(c) All of the assumptions made in the Insolvency Opinion, including, but not limited to, any exhibits attached thereto, are true and correct and any assumptions made in any subsequent non-consolidation opinion required to be delivered in connection with the Loan Documents (an "**Additional Insolvency Opinion**"), including, but not limited to, any exhibits attached thereto, will have been and shall be true and correct. Borrower has complied and will comply with, and Borrower shall cause each SPE Party and Operating Company to comply with, all of the assumptions made with respect to the SPE Parties and Operating Company in the Insolvency Opinion. The SPE Parties will have complied and will comply with all of the assumptions made with respect to the SPE Parties in any Additional Insolvency Opinion. Each entity with respect to which an assumption shall be made in any Additional Insolvency Opinion will have complied and will comply with all of the assumptions made with respect to it in any Additional Insolvency Opinion.

(d) All of the assumptions made in the True Lease Opinion, including, but not limited to, any exhibits attached thereto, are true and correct and any assumptions made in any subsequent true lease opinion required to be delivered in connection with the Loan Documents (an "**Additional True Lease Opinion**"), including, but not limited to, any exhibits attached

thereto, will have been and shall be true and correct. Each SPE Party has complied and will comply with, and Borrower shall cause Operating Company to comply with, all of the assumptions made with respect to such SPE Parties and Operating Company in the True Lease Opinion. Each SPE Party will have complied and will comply with all of the assumptions made with respect to such SPE Parties in any Additional True Lease Opinion. Each entity with respect to which an assumption shall be made in any Additional True Lease Opinion will have complied and will comply with all of the assumptions made with respect to it in any Additional True Lease Opinion.

**4.1.31 Operating Leases; Operating Lease Guaranty.** The Operating Leases and the Operating Lease Guaranty are in full force and effect and there is no default thereunder by any party thereto and no event has occurred that, with the passage of time and/or the giving of notice would constitute a default thereunder.

**4.1.32 Illegal Activity.** No portion of any Individual Property or the Collateral has been or will be purchased with proceeds of any illegal activity.

**4.1.33 Intentionally Omitted.**

**4.1.34 Investment Company Act.** Borrower is not an “investment company” or a company “controlled” by an “investment company,” within the meaning of the Investment Company Act of 1940, as amended.

**4.1.35 Embargoed Person.** At all times throughout the term of the Loan, including after giving effect to any Transfers permitted pursuant to the Loan Documents, (a) none of the funds or other assets of Borrower, Senior Mezzanine Borrower, Mortgage Borrower, Holdings, Operating Company and Guarantor constitute property of, or are beneficially owned, directly or indirectly, by any person, entity or government subject to trade restrictions under U.S. law, including, but not limited to, the International Emergency Economic Powers Act, 50 U.S.C. § 1701 *et seq.*, The Trading with the Enemy Act, 50 U.S.C. App. 1 *et seq.*, and any Executive Orders or regulations promulgated thereunder with the result that the investment in any Loan Party or Operating Company, as applicable (whether directly or indirectly), is prohibited by law or the Loan made by the Lender is in violation of law (“**Embargoed Person**”); (b) no Embargoed Person has any interest of any nature whatsoever in any Loan Party, Holdings or Operating Company, as applicable, with the result that the investment in any Loan Party, Holdings or Operating Company, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law; and (c) none of the funds of any Loan Party, Holdings or Operating Company, as applicable, have been derived from any unlawful activity with the result that the investment in any Loan Party, Borrower, Holdings or Operating Company, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law.

**4.1.36 Operating Lease Subsidiary.** Tahoe Propco, LLC is the owner of one hundred percent (100%) of the equity interests of Ground Lease Subsidiary; Ground Lease Subsidiary does not own any assets other than its interests in the Ground Lease and does not have any liabilities other than liabilities under the Ground Lease; Ground Lease Subsidiary does

not engage in any business other than that related to its ownership of interests in the Ground Lease.

**4.1.37 Taxes including Gaming Taxes and Fees.** Mortgage Borrower, Borrower and each of their respective Affiliates, and Operating Company and each of its Affiliates, have filed or caused to be filed all Federal, state, local and foreign tax returns (including, without limitation, all reports relating to gaming taxes and fees to the Gaming Authorities) which are required to be filed by them, on or prior to the date hereof, other than tax returns in respect of taxes that (i) are not franchise, capital or income taxes, (ii) in the aggregate are not material and (iii) would not, if unpaid, result in the imposition of any material Lien on any property or assets of Mortgage Borrower, Senior Mezzanine Borrower, Borrower or Operating Company or any of their respective Affiliates. All such filed tax returns were, to Borrower's knowledge, true, correct and complete when filed. Mortgage Borrower, Senior Mezzanine Borrower, Borrower, Operating Company and each of their respective Affiliates, have paid or caused to be paid all taxes shown to be due and payable on such filed returns or on any assessments received by them, other than any taxes or assessments the validity of which Mortgage Borrower, Senior Mezzanine Borrower, Borrower, Operating Company or such Affiliate, as applicable) is contesting in good faith by appropriate proceedings, and with respect to which Mortgage Borrower, Senior Mezzanine Borrower, Borrower, Operating Company or such Affiliate, as applicable, shall have set aside adequate reserves. None of Mortgage Borrower, Senior Mezzanine Borrower, Borrower, Operating Company or any of their respective Affiliates, has as of the date hereof requested or been granted any extension of time to file any Federal, state, local or foreign tax return. None of Mortgage Borrower, Senior Mezzanine Borrower, Borrower or Operating Company is party to (or has any obligation under) any tax sharing agreement.

**4.1.38 Intentionally Omitted.**

**4.1.39 Intentionally Omitted.**

**4.1.40 Operation of Property.**

(a) The operation, management and use of each Individual Property by Mortgage Borrower and Operating Company is in compliance in all material respects with applicable Legal Requirements, including all applicable Gaming Laws, and all other federal, state, or local governmental authorities including, without limitation, those requirements relating to such Individual Property's physical structure and environment, except to the extent that non-compliance would not reasonably be expected to have an Individual Material Adverse Effect.

(b) The licenses, permits, and regulatory agreements, approvals and registrations relating to each Individual Property, including the Gaming Licenses, (i) may not be, and have not been, transferred to any location other than any Individual Property; have not been pledged as collateral security for any other loan or indebtedness; and are held free from restrictions or known conflicts that would materially impair the use or operation of any Individual Property as intended, (ii) are in full force and effect and in good standing and (iii) are not provisional, conditional or probationary in any manner.

(c) None of Mortgage Borrower, Senior Mezzanine Borrower, Borrower, Holdings, Guarantor or Operating Company is currently the subject of any proceeding by any Governmental Authority, and no notice of any violation has been received from a Governmental Authority that, in either case, would reasonably be expected to have an Individual Material Adverse Effect or an Aggregate Material Adverse Effect.

(d) None of Mortgage Borrower, Senior Mezzanine Borrower, Borrower or Operating Company has received a statement of charges or deficiencies and no penalty enforcement actions have been undertaken against any of them relating to any Individual Property by any Governmental Authority during the last three (3) calendar years which caused or could cause an Individual Material Adverse Effect or an Aggregate Material Adverse Effect.

(e) Each Operating Lease and Operating Lease Guaranty is in full force and effect and no party to either agreement has defaulted thereunder in any material respect.

(f) None of Mortgage Borrower or Operating Company has pledged its receivables relating to any of the Properties as collateral security for any other loan or indebtedness.

**4.1.41 Loan Representations and Warranties.** All of the representations and warranties contained in the Mortgage Loan Documents and Senior Mezzanine Loan Documents are hereby incorporated into this Agreement and deemed made hereunder as and when made thereunder and shall remain incorporated without regard to any waiver, amendment or other modification thereof by the Mortgage Lender or Senior Mezzanine Lender or to whether the related Mortgage Loan Document or Senior Mezzanine Loan Document has been repaid or otherwise terminated, unless otherwise consented to in writing by Lender.

**4.1.42 Affiliates.** Effective as of the consummation of the transactions contemplated by this Agreement, the sole member of Borrower is Principal, which owns one hundred percent (100%) of the membership interests in Borrower. Borrower does not have any subsidiaries except as set forth in Schedule VIII.

**Section 4.2. Survival of Representations.** Borrower agrees that all of the representations and warranties of Borrower set forth in Section 4.1 and elsewhere in this Agreement and in the other Loan Documents shall survive for so long as any amount remains owing to Lender under this Agreement or any of the other Loan Documents by Borrower. All representations, warranties, covenants and agreements made in this Agreement or in the other Loan Documents by Borrower shall be deemed to have been relied upon by Lender notwithstanding any investigation heretofore or hereafter made by Lender or on its behalf.

## **V. BORROWER COVENANTS**

**Section 5.1. Affirmative Covenants.** From the date hereof and until payment and performance in full of all obligations of Borrower under the Loan Documents or the earlier release of the Liens of the Pledge Agreement (and all related obligations) in accordance with the terms of this Agreement and the other Loan Documents, Borrower hereby covenants and agrees with Lender that:

**5.1.1 Existence; Compliance with Legal Requirements.** Borrower shall, and shall cause Mortgage Borrower, Senior Mezzanine Borrower and Operating Company to, do or cause to be done all things necessary to preserve, renew and keep in full force and effect their existence, rights, licenses, permits and franchises and comply with all Legal Requirements applicable to Borrower, Senior Mezzanine Borrower, Mortgage Borrower, the Collateral, the Senior Mezzanine Collateral, Operating Company and the Properties, including, without limitation, Prescribed Laws. There shall never be committed by Borrower and Borrower shall not permit Mortgage Borrower or Senior Mezzanine Borrower to permit any other Person in occupancy of or involved with the operation or use of the Properties, including Operating Company, to commit any act or omission affording the federal government or any state or local government the right of forfeiture against the Collateral, the Senior Mezzanine Collateral, any Individual Property or any part thereof or any monies paid in performance of Borrower's obligations under any of the Loan Documents. Borrower hereby covenants and agrees not to commit, permit or suffer to exist any act or omission affording such right of forfeiture. Borrower shall, and shall cause Mortgage Borrower to, at all times maintain, preserve and protect all franchises and trade names and preserve all the remainder of its property used or useful in the conduct of its business and shall keep the Properties in good working order and repair. Borrower shall cause Mortgage Borrower to keep the Properties insured at all times as (and in the amounts) provided elsewhere in this Agreement. Borrower shall cause Mortgage Borrower to operate any Individual Property that is the subject of the O&M Agreement in accordance with the terms and provisions thereof in all material respects. After prior notice to Lender, Borrower, at its own expense, may contest (or cause Mortgage Borrower to contest) by appropriate legal proceeding promptly initiated and conducted in good faith and with due diligence, the validity of any Legal Requirement, the applicability of any Legal Requirement to Borrower, Senior Mezzanine Borrower, Mortgage Borrower, the Collateral, the Senior Mezzanine Collateral or any Individual Property or any alleged violation of any Legal Requirement, provided that (i) no Event of Default has occurred and remains uncured; (ii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any applicable material instrument to which Borrower, Senior Mezzanine Borrower or Mortgage Borrower is subject and shall not constitute a default thereunder and such proceeding shall be conducted in accordance with all Legal Requirements; (iii) none of the Collateral, the Senior Mezzanine Collateral or any Individual Property nor any material part thereof or interest therein will be in imminent danger of being sold, forfeited, terminated, cancelled or lost; (iv) Borrower shall promptly upon receipt of a final, non-appealable determination thereof comply with any such Legal Requirement determined to be valid or applicable or cure any violation of any such Legal Requirement; (v) such proceeding shall suspend the enforcement of the contested Legal Requirement against Borrower, Senior Mezzanine Borrower, Mortgage Borrower, the Collateral, the Senior Mezzanine Collateral and any Individual Property; and (vi) Borrower shall furnish such security as may be required in the proceeding, or as may be reasonably requested by Lender, to insure compliance with such Legal Requirement, together with all interest and penalties payable in connection therewith. Lender may apply any such security, as necessary to cause compliance with such Legal Requirement at any time when, in the reasonable judgment of Lender, the validity, applicability or violation of such Legal Requirement is finally established or the Collateral, the Senior Mezzanine Collateral or any Individual Property (or any part thereof or interest therein) shall be in imminent danger of being sold, forfeited, terminated, cancelled or lost.

**5.1.2 Taxes and Other Charges.** Borrower shall pay or shall cause Mortgage Borrower to pay or cause to be paid all Taxes and Other Charges now or hereafter levied or assessed or imposed against the Properties or any part thereof as the same become due and payable; provided, however, Borrower's obligation to cause Mortgage Borrower to directly pay or cause to be paid Taxes shall be suspended for so long as Borrower complies with the terms and provisions of Section 7.2 hereof. Borrower will deliver or cause to be delivered to Lender receipts for payment or other evidence satisfactory to Lender that the Taxes and Other Charges have been so paid or are not then delinquent no later than the date on which the Taxes and/or Other Charges would otherwise be delinquent if not paid. Borrower shall furnish or cause to be furnished to Lender receipts for the payment of the Taxes and the Other Charges prior to the date the same shall become delinquent provided, however, Borrower is not required to furnish such receipts for payment of Taxes in the event that such Taxes have been paid by Lender pursuant to Section 7.2 hereof. Borrower shall not suffer (and shall not permit Mortgage Borrower to suffer) and shall promptly pay or cause to be paid and discharged (or cause Mortgage Borrower to pay or cause to be paid and discharged any Lien or charge whatsoever which may be or become a Lien or charge against the Properties other than Permitted Encumbrances, and shall promptly pay or cause to be paid for all utility services provided to the Properties. After prior notice to Lender, Borrower, at its own expense, may contest (or cause Mortgage Borrower to contest) by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any Taxes or Other Charges, provided that (a) no Default or Event of Default has occurred and remains uncured; (b) such proceeding shall be permitted under and be conducted in accordance with the provisions of any applicable material other instrument to which Borrower or Mortgage Borrower is subject and shall not constitute a default thereunder and such proceeding shall be conducted in accordance with all Legal Requirements; (c) none of the Collateral, the Senior Mezzanine Collateral, any Individual Property or any part of either or interest in either will be in imminent danger of being sold, forfeited, terminated, cancelled or lost; (d) Borrower shall promptly upon receipt of a final, non-appealable determination thereof pay (or cause Mortgage Borrower to pay) the amount of any such Taxes or Other Charges, together with all costs, interest and penalties which may be payable in connection therewith; (e) such proceeding shall suspend the collection of such contested Taxes or Other Charges from the applicable Individual Property; and (f) Borrower shall furnish or cause Mortgage Borrower to furnish such security as may be required in the proceeding, or as may be reasonably requested by Lender, to insure the payment of any such Taxes or Other Charges, together with all interest and penalties thereon. Lender may pay over any such cash deposit or part thereof held by Lender to the claimant entitled thereto at any time when, in the judgment of Lender, the entitlement of such claimant is established or any Individual Property (or part thereof or interest therein) shall be in danger of being sold, forfeited, terminated, cancelled or lost or there shall be any danger of the Lien of any Mortgage being primed by any related Lien.

**5.1.3 Litigation.** Borrower shall give prompt notice to Lender of any litigation or governmental proceedings pending or, to Borrower's knowledge, threatened against Borrower, Senior Mezzanine Borrower, Mortgage Borrower, the Collateral, Operating Company, Holdings or Guarantor which, in any such case, might materially adversely affect Borrower's, Senior Mezzanine Borrower's, Mortgage Borrower's, the Collateral's, Operating Company's, Holdings's or Guarantor's condition (financial or otherwise) or business or any Individual Property. Borrower shall not, without the prior written consent of Lender (which may be

furnished or withheld at its sole and absolute discretion), give its consent or approval to the settlement of any claim against Borrower, other than a fully insured third party claim, in any amount greater than One Hundred Thousand and no/100 Dollars (\$100,000.00).

**5.1.4 Access to Properties.** Borrower shall cause Mortgage Borrower to permit agents, representatives and employees of Lender and any Noteholder, and prospective purchasers of any Note or any interest therein, to inspect the Properties or any part thereof at reasonable hours upon reasonable advance notice, and Borrower shall cause Operating Company to permit such access by Lender, in each case subject to the rights of tenants under Leases and Hotel guests.

**5.1.5 Notice of Default.** Borrower shall promptly advise Lender of any material Default or Event of Default of which Borrower has knowledge, including any Mortgage Loan Default, Senior Mezzanine Loan Default, Senior Mezzanine Loan Event of Default or Mortgage Loan Event of Default.

**5.1.6 Cooperate in Legal Proceedings.** Borrower shall cooperate fully with Lender with respect to any proceedings before any court, board or other Governmental Authority which may in any way affect the rights of Lender hereunder or any rights obtained by Lender under any of the other Loan Documents and, in connection therewith, permit Lender, at its election, to participate in any such proceedings.

**5.1.7 Perform Loan Documents.** Borrower shall observe, perform and satisfy all the terms, provisions, covenants and conditions of, and shall pay when due all costs, fees and expenses to the extent required under the Loan Documents executed and delivered by, or applicable to, Borrower.

**5.1.8 Award and Insurance Benefits.** Borrower shall cooperate with Lender in obtaining for Lender the benefits of any Awards or Insurance Proceeds lawfully or equitably payable in connection with any Individual Property, and Lender shall be reimbursed for any actual, reasonable out-of-pocket expenses incurred in connection therewith (including actual, reasonable out-of-pocket attorneys' fees and disbursements, and, if reasonably required, the payment by Borrower of the expense of an appraisal on behalf of Lender in case of Casualty or Condemnation affecting any Individual Property or any part thereof) out of such Insurance Proceeds.

**5.1.9 Further Assurances.** Borrower shall and shall cause Mortgage Borrower, Senior Mezzanine Borrower, Guarantor and Operating Company to, at Borrower's sole cost and expense:

(a) furnish to Lender all instruments, documents, boundary surveys, footing or foundation surveys, certificates, plans and specifications, appraisals, title and other insurance reports and agreements, and each and every other document, certificate, agreement and instrument, in each case in such party's possession, not subject to confidentiality restrictions barring the delivery of such materials, and which are either required to be furnished by Borrower or Operating Company pursuant to the terms of the Loan Documents or which are reasonably requested by Lender in connection therewith;

(b) execute and deliver to Lender such documents, instruments, certificates, assignments and other writings, and do such other acts necessary or desirable, to evidence, preserve and/or protect the collateral at any time securing or intended to secure the obligations of Borrower under the Loan Documents, as Lender may reasonably require; and

(c) do and execute all and such further lawful and reasonable acts, conveyances and assurances for the better and more effective carrying out of the intents and purposes of this Agreement and the other Loan Documents, as Lender shall reasonably require from time to time.

**5.1.10 Mortgage Taxes.** Borrower represents that it has caused Mortgage Borrower to pay all state, county and municipal recording and all other taxes imposed upon the execution and recordation of the Mortgage.

**5.1.11 Financial Reporting.** (a) Borrower will keep or will cause to be kept and maintained on a Fiscal Year basis, in accordance with GAAP (or such other accounting basis acceptable to Lender), books, records and accounts reflecting all of the financial affairs of Borrower, Senior Mezzanine Borrower and Mortgage Borrower and all items of income and expense in connection with the operation on an individual basis of the Properties. Lender (at Lender's sole cost and expense) shall have the right from time to time at all times during normal business hours upon reasonable notice to examine the books, records and accounts of Borrower, Senior Mezzanine Borrower and Mortgage Borrower at the office of Borrower or any other Person maintaining such books, records and accounts and to make such copies or extracts thereof as Lender shall desire. After the occurrence and during the continuance of an Event of Default, Borrower shall pay any costs and expenses incurred by Lender to examine Borrower's, Senior Mezzanine Borrower's, Mortgage Borrower's or to the extent permitted under the Operating Lease, Operating Company's accounting records with respect to the Properties, as Lender shall determine to be necessary or appropriate in the protection of Lender's interest.

(b) Borrower will furnish or cause to be furnished to Lender annually, by no later than April 30, 2009, and thereafter within no more than one hundred twenty (120) days following the end of each Fiscal Year of Borrower, a complete copy of the annual financial statements of the Operating Companies, Mortgage Borrower, Senior Mezzanine Borrower and Borrower (and of no other entity or Person), audited by a "Big Four" accounting firm or other independent certified public accountant acceptable to Lender in accordance with GAAP (or such other accounting basis acceptable to Lender) covering the Properties on a combined basis for such Fiscal Year (and no other Persons, Properties or assets) and containing statements of profit and loss for the Operating Companies, Borrower, Senior Mezzanine Borrower, Mortgage Borrower and the Properties (on a combined basis) and a balance sheet for the Operating Companies, Borrower, Senior Mezzanine Borrower, Mortgage Borrower and the Properties (on a combined basis), in each case showing no other assets than the Properties (and the interests of Operating Companies, Mortgage Borrower, Senior Mezzanine Borrower and Borrower therein). In addition, Borrower will furnish or cause to be furnished to Lender by no later than April 30, 2008 (i) a "balance sheet only audit" prepared by a "Big Four" accounting firm or other independent certified public accountant acceptable to Lender (for the Fiscal Year ending December 31, 2007) and (ii) a complete copy of annual financial statements for the Operating Company, Mortgage Borrower, Senior Mezzanine Borrower and Borrower prepared in

accordance with GAAP (or such other accounting basis acceptable to Lender) covering the Operating Companies, Mortgage Borrower, Borrower, Senior Mezzanine Borrower, and the Properties on a combined basis for such Fiscal Year (ending December 31, 2007) and containing statements of profit and loss for the Operating Companies, Mortgage Borrower, Senior Mezzanine Borrower, Borrower and the Properties (in each case, on a combined basis), and a balance sheet for the Operating Companies, Mortgage Borrower, Senior Mezzanine Borrower, Borrower and the Properties (in each case on a combined basis). All such statements (including statements for the Fiscal Year ending December 31, 2007, and thereafter for all statements provided yearly to Lender) shall set forth the financial condition and the results of operations for the Properties for such Fiscal Year, and shall include, but not be limited to, amounts representing Borrower's reasonable and good faith determination of aggregate annual EBITDAR from all of the Properties and capital expenditures (allocated between maintenance and growth) at the Properties (it being acknowledged that Borrower's statement of EBITDAR pursuant to the above provisions of this sentence and the balance of this Section 5.1.11 shall not be binding on Lender and shall be subject to Lender's reasonable review). All such statements (including statements for the Fiscal Year ending December 31, 2007, and thereafter for all statements provided yearly to Lender) shall also set forth unaudited schedules for each Individual Property, detailing the statements of profit and loss and a balance sheet for each Individual Property, as well as gross revenues, gross hotel and casino revenues, EBITDAR and capital expenditures (allocated between maintenance and growth). The annual financial statements, as described above, shall be accompanied by (1) a comparison of the budgeted income and expenses and the actual income and expenses for the prior Fiscal Year, (2) in the case of any financial statements for Fiscal Year 2008 and thereafter, an unqualified opinion of a "Big Four" accounting firm or other independent certified public accountant reasonably acceptable to Lender, (3) room rate reports and RevPAR calculations, and (4) an Officer's Certificate certifying (A) that each annual financial statement presents fairly the financial condition and the results of operations of the Operating Companies, Borrower, Mortgage Borrower, Senior Mezzanine Borrower and the Properties being reported upon, (B) that such financial statements have been prepared in accordance with GAAP (or such other accounting basis acceptable to Lender) and (C) as of the date thereof whether there exists an event or circumstance which constitutes a Default or Event of Default, and if such Default or Event of Default exists, the nature thereof, the period of time it has existed and the action then being taken to remedy the same. Any audits performed by Borrower (and any audited materials and other information provided to Lender, as required hereunder in order for Borrower to comply with the requirements of this subparagraph (b)) may be performed with respect to the Properties on a "combining basis" (so that a single audit of the Properties, rather than individual audits of each of the separate Properties, may be performed and provided).

(c) Borrower will furnish, or cause to be furnished, to Lender on or before sixty (60) days after the end of each fiscal quarter the following items, accompanied by an Officer's Certificate stating that such items fairly present the financial condition and results of the Operating Companies, Mortgage Borrower, Senior Mezzanine Borrower, Borrower and the Properties, subject to normal year end adjustments, as applicable: (i) quarterly and year to date operating statements (including Capital Expenditures) noting such information as is necessary and sufficient to fairly represent the financial position and results of operation of the Properties during such quarter, and containing a comparison of budgeted income and expenses and the actual income and expenses together with a detailed explanation of any variances of ten percent (10%) or more between budgeted and actual amounts for such periods, all in form reasonably

satisfactory to Lender; and (ii) a calculation reflecting the Debt Service Coverage Ratio, gross revenues, gross hotel and casino revenues, EBITDAR and capital expenditures (allocated between maintenance and growth, in the case for the immediately preceding twelve (12) month period as of the last day of such quarter (it being acknowledged that Borrower's statement of EBITDAR pursuant to the above provisions of this sentence and the balance of this Section 5.1.11 shall not be binding on Lender and shall be subject to Lender's reasonable review). Borrower shall provide the statements and calculations required hereunder on both a "combined basis" for all Properties and on an Individual Property-by-Individual Property basis. In addition, such Officer's Certificate shall also state that the representations and warranties of Borrower set forth in Section 4.1.30 are true and correct as of the date of such certificate and that there are no trade payables outstanding for more than ninety (90) days. In addition, prior to a Securitization or Syndication, Borrower shall be obligated to provide the statements and calculations, as well as the Officer's Certificate, described in this subparagraph (c) to Lender on a monthly basis (such requirements to be modified as appropriate to reflect the fact that the information shall be required to be provided monthly (e.g., monthly rent rolls, monthly and year-to-date operating statements, a calculation reflecting the Debt Service Coverage Ratio for the immediately preceding twelve (12) month period as of the last day of such month), in each case within no more than thirty (30) days following the end of each calendar month.

(d) For the partial year period commencing on the date hereof, and for each Fiscal Year thereafter, Borrower shall submit to Lender for informational purposes only an Annual Budget not later than the commencement of such period or Fiscal Year in form reasonably satisfactory to Lender.

(e) Intentionally Omitted.

(f) If, at the time one or more Disclosure Documents are being prepared for a public Securitization, Lender expects that Borrower alone or Borrower and one or more Affiliates of Borrower collectively, or the Properties and Related Properties collectively, will be a "**Significant Obligor**", as that term is defined in Item 1101(k) of Regulation AB (as defined below), Borrower shall furnish to Lender upon request (i) the selected financial data or, if applicable, net operating income, required under Item 1112(b)(1) of Regulation AB, if Lender expects that the principal amount of the Loan together with any other loans made to an Affiliate of Borrower or secured by a Related Property, that is included in a Securitization with the Loan (each, a "**Related Loan**") as of the cut-off date for such Securitization may, or if the principal amount of the Loan together with any Related Loans as of the cut-off date for such Securitization and at any time during which the Loan and any Related Loans are included in a Securitization does, equal or exceed ten percent (10%) (but less than twenty percent (20%)) of the aggregate principal amount of all loans included or expected to be included, as applicable, in the Securitization or (ii) the financial statements required under Item 1112(b)(2) of Regulation AB, if Lender expects that the principal amount of the Loan together with any Related Loans as of the cut-off date for such Securitization may, or if the principal amount of the Loan together with any Related Loans as of the cut-off date for such Securitization and at any time during which the Loan and any Related Loans are included in a Securitization does, equal or exceed twenty percent (20%) of the aggregate principal amount of all loans included or expected to be included, as applicable, in the Securitization. Such financial data or financial statements shall be furnished to Lender (A) within ten (10) Business Days after written notice from Lender in connection with

the preparation of Disclosure Documents for the Securitization, (B) not later than thirty (30) days after the end of each fiscal quarter of Borrower and (C) not later than sixty (60) days after the end of each fiscal year of Borrower; provided, however, that Borrower shall not be obligated to furnish financial data or financial statements pursuant to clauses (B) or (C) of this sentence with respect to any period for which a filing pursuant to the Exchange Act in connection with or relating to the Securitization (an “**Exchange Act Filing**”) is not required. If requested by Lender, in writing, Borrower shall use commercially reasonable efforts to furnish to Lender financial data and/or financial statements for any tenant of any of the Properties (other than a tenant that is a reporting company under the Exchange Act) if, in connection with a Securitization, Lender expects there to be, with respect to such tenant or group of affiliated tenants, a concentration within all of the loans included or expected to be included, as applicable, in the Securitization such that such tenant or group of affiliated tenants would constitute a Significant Obligor. “**Related Property**” shall mean a parcel of real property, together with improvements thereon and personal property related thereto, that is “related”, within the meaning of the definition of Significant Obligor, to any of the Properties. “**Regulation AB**” shall mean Regulation AB under the Securities Act and the Exchange Act, as such Regulation may be amended from time to time.

(g) All financial data and financial statements provided by Borrower, Senior Mezzanine Borrower, Mortgage Borrower and Operating Company hereunder pursuant to Section 5.1.11(f) shall be prepared in accordance with GAAP, and all such financial statements shall meet the requirements of Regulation AB, Regulation S-X, Regulation S-K to the extent applicable and any other applicable legal requirements. All financial statements referred to in clause (ii) of Section 5.1.11(f) shall be audited by independent accountants of Borrower reasonably acceptable to Lender in accordance with Regulation AB, Regulation S-X, Regulation S-K to the extent applicable and all other applicable legal requirements, shall be accompanied by the manually executed report of the independent accountants thereon, which report shall meet the requirements of Regulation AB, Regulation S-X, Regulation S-K to the extent applicable and all other applicable legal requirements, and shall be further accompanied by a manually executed written consent of the independent accountants, in form and substance reasonably acceptable to Lender, to the inclusion of such financial statements in any Disclosure Document and any Exchange Act Filing and to the use of the name of such independent accountants and the reference to such independent accountants as “experts” in any Disclosure Document and Exchange Act Filing, all of which shall be provided at the same time as the related financial statements are required to be provided, in each case if applicable (*i.e.*, in the case of a public securitization). All financial data and financial statements (audited or unaudited) provided by Borrower under this Section 5.1.11(g) shall be accompanied by an Officer’s Certificate which shall state that such financial statements meet the requirements set forth in the first sentence of this Section 5.1.11(g) to the extent applicable.

(h) If requested by Lender, Borrower shall provide Lender, promptly upon request, with any other or additional financial statements, or financial, statistical or operating information, as Lender shall reasonably determine to be required pursuant to Regulation AB, Regulation S-X, Regulation S-K or any amendment, modification or replacement thereto or other legal requirements in connection with any Disclosure Document or any Exchange Act Filing or as shall otherwise be reasonably requested by the Lender.

(i) In the event Lender reasonably determines, in connection with a Securitization, that the financial data and financial statements required in order to comply with Regulation AB, Regulation S-X, Regulation S-K or any amendment, modification or replacement thereto or other legal requirements are other than as provided herein, then notwithstanding the provisions of Sections 5.1.11(f) and (g), Lender may request, and Borrower shall promptly provide, such other financial statements as Lender determines to be necessary or appropriate for such compliance.

(j) Any reports, statements or other information required to be delivered under this Agreement shall be delivered (i) in paper form, and (ii) if requested by Lender and within the capabilities of Borrower's data systems without change or modification thereto, in electronic form and prepared using a Microsoft Word for Windows or WordPerfect for Windows files (which files may be prepared using a spreadsheet program and saved as word processing files). Borrower agrees that Lender may disclose information regarding any of the Properties, the Collateral, the Senior Mezzanine Collateral, Mortgage Borrower, Senior Mezzanine Borrower, Borrower and Operating Company that is provided to Lender pursuant to this Section in connection with the Securitization to such parties reasonably requesting such information in connection with such Securitization.

**5.1.12 Business and Operations.** Borrower will, and will cause Mortgage Borrower and Operating Company to, continue to engage in the businesses presently conducted by it as and to the extent the same are necessary for the ownership, maintenance, management and operation of the Properties. Borrower will and will cause Senior Mezzanine Borrower, Mortgage Borrower and Operating Company to qualify to do business and will remain in good standing under the laws of each jurisdiction as and to the extent the same are required for the ownership, maintenance, management and operation of the Properties.

**5.1.13 Title to the Properties.** Borrower will cause Mortgage Borrower to warrant and defend (a) the title to each Individual Property and every part thereof, subject only to Liens permitted hereunder (including Permitted Encumbrances) and (b) the validity and priority of the Liens of the Mortgages and the Assignments of Leases, subject only to Liens permitted hereunder (including Permitted Encumbrances), in each case against the claims of all Persons whomsoever. Borrower shall reimburse Lender for any actual out-of-pocket losses, costs, damages or expenses (including reasonable attorneys' fees and court costs) incurred by Lender if an interest in any Individual Property, other than as permitted hereunder, is claimed by another Person. Borrower will warrant and defend (a) the title to the Collateral and every part thereof, subject only to Liens permitted hereunder and (b) the validity and priority of the Liens of the Pledge Agreement, in each case against the claims of all Persons whomsoever. Borrower shall reimburse Lender for any actual out-of-pocket losses, costs, damages or expenses (including reasonable attorneys' fees and court costs) incurred by Lender if an interest in any part of the Collateral, other than as permitted hereunder, is claimed by another Person.

**5.1.14 Costs of Enforcement.** In the event (a) that any Mortgage encumbering any Individual Property or the Lien of the Pledge Agreement is foreclosed in whole or in part or that any such Mortgage or Pledge Agreement is put into the hands of an attorney for collection, suit, action or foreclosure, (b) of the foreclosure of any mortgage prior to or subsequent to any Mortgage or any Lien prior to or subsequent to the Lien of the Pledge

Agreement in which proceeding Mortgage Lender or Lender is made a party or exercises any or all of its rights or remedies under such Mortgage or the Pledge Agreement or any other Loan Documents as and when permitted thereby, or (c) of the bankruptcy, insolvency, rehabilitation or other similar proceeding in respect of Borrower, Senior Mezzanine Borrower, Mortgage Borrower or Operating Company or an assignment by Borrower, Senior Mezzanine Borrower, Mortgage Borrower or Operating Company for the benefit of its creditors, Borrower, its successors or assigns, shall be chargeable with and agrees to pay all reasonable out-of-pocket costs of collection and defense, including reasonable out-of-pocket attorneys' fees and costs, incurred by Lender, Mortgage Borrower, Senior Mezzanine Borrower or Borrower in connection therewith and in connection with any appellate proceeding or post-judgment action involved therein, together with all required service or use taxes.

**5.1.15 Estoppel Statement.** (a) After request by Lender, Borrower shall within ten (10) Business Days (but, provided there exists no Default or Event of Default, no more often than twice during the course of each fiscal year of Borrower) furnish Lender with a statement, duly acknowledged and certified, (i) with respect to the Loan, setting forth (A) the original principal amount of the Note, (B) the unpaid principal amount of the Loan, (C) the Interest Rate of the Loan, (D) the date installments of interest and/or principal were last paid, (E) any offsets or defenses to the payment of the Debt, if any, and (F) that the Note, this Agreement, the Pledge Agreement and the other Loan Documents are valid, legal and binding obligations and have not been modified or if modified, giving particulars of such modification, (ii) with respect to any Senior Mezzanine Loan, setting forth (A) the original principal amount of the applicable Senior Mezzanine Loan, (B) the unpaid principal amount of the Senior Mezzanine Loan, (C) the interest rate of the Senior Mezzanine Loan, (D) the date installments of interest and/or principal were last paid, (E) any offsets or defenses to the payment of the debt, if any, and (F) that the Senior Mezzanine Note, the Senior Mezzanine Loan Agreement and the other Senior Mezzanine Loan Documents are valid, legal and binding obligations and have not been modified or if modified, giving particulars of such modification and (iii) with respect to the Mortgage Loan, setting forth (A) the original principal amount of the Mortgage Loan, (B) the unpaid principal amount of the Mortgage Loan, (C) the interest rate of the Mortgage Loan, (D) the date installments of interest and/or principal were last paid, (E) any offsets or defenses to the payment of the debt, if any, and (F) that the Mortgage Note, the Mortgage Loan Agreement, the Security Instruments and the other Mortgage Loan Documents are valid, legal and binding obligations and have not been modified or if modified, giving particulars of such modification.

(b) Borrower shall exercise reasonable best efforts to deliver to Lender upon request, tenant estoppel certificates from each space tenant leasing space at the Properties, and shall exercise reasonable best efforts to deliver an estoppel certificate from each Ground Lessor, each in form and substance reasonably satisfactory to Lender provided that Borrower shall not be required to deliver such certificates more frequently than two (2) times in any calendar year.

(c) After request by Borrower, but not more than twice during the course of each year, Lender shall furnish Borrower with a statement setting forth (i) the original principal amount of the Loan, (ii) the unpaid principal amount of the Loan, (iii) the Interest Rate of the Loan, (iv) the date installments of interest and/or principal were last paid, and (v) that the Loan Documents have not been modified or if modified, giving particulars of such modification.

**5.1.16 Loan Proceeds.** Borrower shall use the proceeds of the Loan received by it on the Closing Date only for the purposes set forth in Section 2.1.4.

**5.1.17 Performance by Borrower.** Borrower shall in a timely manner observe, perform and fulfill each and every covenant, term and provision of each Loan Document executed and delivered by, or applicable to, Borrower, and shall not enter into or otherwise suffer or permit any amendment, waiver, supplement, termination or other modification of any Loan Document executed and delivered by, or applicable to, Borrower without the prior consent of Lender. Borrower shall cause Mortgage Borrower and Senior Mezzanine Borrower, in a timely manner, to observe, perform and fulfill each and every covenant, term and provision of each Mortgage Loan Document and Senior Mezzanine Loan Documents executed and delivered by, or applicable to, Mortgage Borrower and Senior Mezzanine Borrower, and shall not cause or permit Mortgage Borrower or Senior Mezzanine Borrower to enter into or otherwise suffer or permit any amendment, waiver, supplement, termination or other modification of any Mortgage Loan Document or Senior Mezzanine Loan Document executed and delivered by, or applicable to, Mortgage Borrower or Senior Mezzanine Borrower without the prior written consent of Lender.

**5.1.18 Confirmation of Representations.** Borrower shall deliver, in connection with any Securitization, (a) one or more Officer's Certificates certifying as to the accuracy of all representations made by Borrower in the Loan Documents as of the date of the closing of such Securitization in all relevant jurisdictions, and (b) certificates of the relevant Governmental Authorities in all relevant jurisdictions indicating the good standing and qualification of Mortgage Borrower, Senior Mezzanine Borrower, Borrower and Holdings as of the date of the Securitization.

**5.1.19 No Joint Assessment.** Borrower shall not, and shall not permit Mortgage Borrower to, suffer, permit or initiate the joint assessment of any Individual Property (a) with any other real property constituting a tax lot separate from such Individual Property, and (b) which constitutes real property with any portion of such Individual Property which may be deemed to constitute personal property, or any other procedure whereby the lien of any taxes which may be levied against such personal property shall be assessed or levied or charged to such real property portion of the Individual Property, except as required by Legal Requirements.

**5.1.20 Leasing Matters.** (a) Borrower shall not (and shall cause Mortgage Borrower and Guarantor (Operating Lease) not to), without the prior written consent of Lender (and, if a Securitization shall have occurred, Borrower shall have obtained and delivered to Lender a Rating Agency Confirmation) restate, materially modify, materially amend or materially supplement (or permit the restatement, material modification, amendment or supplement of) any Operating Lease or Operating Lease Guaranty (provided, that any modification, amendment or supplement affecting any of the economic terms of any Operating Lease or any of the terms of the Operating Lease Guaranty shall be deemed to be material for purposes hereof), terminate or accept the surrender (or permit the termination or surrender) of any Operating Lease or Operating Lease Guaranty, or release or materially waive (or permit the release or material waiver of) the Operating Company or Guarantor (Operating Lease) from the performance or observance of any obligation or condition under the Operating Leases or Operating Lease Guaranty. In connection with a material modification, Lender may request,

and in such event, Borrower shall not effect such modification without, an Additional True Lease Opinion in form and substance reasonably satisfactory to Lender issued by Borrower's counsel (at Borrower's expense). Borrower shall not permit (or cause or permit Mortgage Borrower to permit) the prepayment of any rents under the Operating Leases for more than one (1) month prior to the due date thereof. Notwithstanding the foregoing, Lender's consent shall not be required in connection with any modification, amendment or waiver of any provision of the Operating Lease as may be reasonably necessary to comply with the requirements of this Agreement or any other Loan Document or that makes the provisions of the Operating Lease consistent with the provisions of this Agreement or any other Loan Document. Notwithstanding anything contained in this Section 5.1.20(a) to the contrary, (x) Lender's consent to any amendment, modification or supplement of the Operating Lease (or any new Operating Lease) or the Operating Lease Guaranty may also be conditioned on the delivery by Borrower, upon the reasonable request of Lender, of an Additional Insolvency Opinion and/or an Additional True Lease Opinion acceptable to Lender (and, if a Securitization shall have occurred, acceptable to the Rating Agencies), and (y) Lender's consent to any assignment of any Operating Lease or Operating Lease Guaranty (or of any interest therein) or any material amendment, material modification or material supplement of any Operating Lease shall also be conditioned on the delivery by Borrower, upon the reasonable request of Lender, of an Additional Insolvency Opinion and an Additional True Lease Opinion acceptable to Lender (and, if a Securitization shall have occurred, acceptable to the Rating Agencies).

(b) Borrower shall not permit (or consent to) an assignment by any Operating Company of any such Operating Company's interest(s) under any Operating Lease or an assignment by any Mortgage Borrower of any such Mortgage Borrower's interest(s) under any Operating Lease Guaranty without, in each case, Lender's prior written consent (and, if a Securitization shall have occurred, at Lender's request, without Borrower providing to Lender a Rating Agency Confirmation and an Additional True Lease Opinion).

(c) All space Leases and all renewals of space Leases executed after the date hereof entered into by Operating Company shall (i) provide for rental rates, rent credits and free rent periods comparable to existing local market rates for comparable properties, (ii) be on commercially reasonable terms, (iii) provide that such Lease is subordinate to the Mortgage encumbering the Individual Property in question and that the lessee will attorn to Mortgage Lender and any purchaser at a foreclosure sale; (iv) not contain any terms which would materially adversely affect Lender's rights under the Loan Documents; (v) not grant to the Tenants thereunder any option or right to purchase the applicable Individual Property (or any portion thereof); and (v) in the case of Major Leases, have initial terms less than twenty (20) consecutive years, in each case (unless otherwise consented to by Lender pursuant to clause (d) below).

(d) (i) Any Major Lease entered into by Operating Company with respect to an Individual Property executed after the date hereof (and any renewal of any Major Lease with respect to an Individual Property), and any space Lease or space Lease renewal proposed to be entered into by Operating Company after the date hereof and that does not meet the criteria set forth in Sections 5.1.20(a) and subparagraph (c) above, shall be subject to the prior written approval of Lender, which approval shall not be unreasonably withheld, conditioned or delayed. Borrower shall not terminate or accept the surrender of (and shall not permit Operating Company

or Mortgage Borrower to terminate or accept the surrender of) a Major Lease (unless by reason of a tenant default) without the consent of Lender.

(ii) Every submission to Lender of any proposed Major Lease (or Major Lease renewal, amendment, modification or termination) for Lender's approval shall be forwarded to Lender together with a notice from Borrower (in bold typeface) that states "YOUR FAILURE TO RESPOND TO THIS NOTICE AND REQUEST FOR APPROVAL WITHIN TEN (10) BUSINESS DAYS OF YOUR RECEIPT OF THIS NOTICE SHALL CONSTITUTE YOUR DEEMED CONSENT TO THE MATTERS DESCRIBED IN OR THAT ARE THE SUBJECT OF THIS NOTICE". If Lender responds to Borrower's request by identifying missing documents or materials that are incomplete or inaccurate (and that are the subject of the request for approval), then Borrower shall re-submit such documents or materials to Lender for its approval together with a second notice from Borrower that complies with this section.

(iii) If Lender fails to approve or disapprove any such proposed request or submission attached to a first notice or request sent by Borrower (or the matters that are the subject of the re-submitted notice or request for approval) within ten (10) Business Days of receipt of same, Borrower shall re-submit such instruments or materials to Lender for Lender's approval and give Lender a second notice (in bold typeface) that states "SECOND NOTICE — YOUR FAILURE TO RESPOND TO THIS NOTICE AND REQUEST FOR APPROVAL WITHIN FIVE (5) BUSINESS DAYS OF YOUR RECEIPT OF THIS NOTICE SHALL CONSTITUTE YOUR DEEMED CONSENT TO THE MATTERS DESCRIBED IN OR THAT ARE THE SUBJECT OF THIS NOTICE". If Lender fails to respond to such second notice within five (5) Business Days of receipt of same, then Lender's consent to the proposed request or submission that is the subject of such notice shall be deemed granted.

(e) Borrower shall and shall cause Mortgage Borrower and Operating Company to (i) observe and perform the obligations imposed upon the lessor under the Leases in a commercially reasonable manner; (ii) enforce the terms, covenants and conditions contained in the Leases upon the part of the lessee thereunder to be observed or performed in a commercially reasonable manner and in a manner not to impair the value of the Individual Property involved; (iii) not collect any of the rents more than one (1) month in advance (other than security deposits); (iv) not execute any other assignment of lessor's interest in the Leases or the Rents (except as contemplated by the Loan Documents); (v) not alter, modify or change the terms of the Leases in a manner inconsistent with the provisions of the Loan Documents; and (vi) execute and deliver at the request of Lender all such further assurances, confirmations and assignments in connection with the Leases as Lender shall from time to time reasonably require.

(f) Upon request, Borrower shall furnish Lender with executed copies of all new Leases or Lease renewals or amendments.

(g) Notwithstanding anything to the contrary contained herein, Borrower shall not enter into (or permit Operating Company or Mortgage Borrower to enter into) a lease of all or substantially all of any Individual Property without Lender's prior consent.

**5.1.21 Alterations.** (a) Borrower shall cause all Alterations with respect to any portion of any of the Properties to be conducted and performed with due diligence in a good

and workmanlike manner, and all materials used and work done shall be in accordance with all applicable Legal Requirements. In addition, with respect to the Convention Center Project and the Tower Project, to the extent such projects are pursued, Borrower agrees to cause Mortgage Borrower to (i) diligently pursue each such project to completion in a timely manner, subject to delays arising from Force Majeure events, (ii) cause the work to be performed in connection with each such project in substantial conformance with the plans and specifications for such project, and otherwise in conformity with the Mortgage Loan Agreement, each Senior Mezzanine Loan Agreement and this Agreement, (iii) provide Lender with reasonably detailed monthly progress reports (and such information as Lender shall reasonably request from time to time) regarding the status of the Convention Center Project and the Tower Project, (iv) upon the substantial completion of each such project, provide Lender with evidence of the substantial completion of each such project, copies of final unconditional lien waivers from the general contractors, construction managers or subcontractors for such project (if requested by Lender) and evidence of the final payment of all amounts due in connection with each such project, and a title search for the affected Individual Property indicating that such Individual Property is free from all liens, claims and other encumbrances not previously approved by Lender, and (v) upon final completion of each such project, provide Lender with a final survey acceptable to Lender showing the "as-built" location of the completed Improvements and all easements appurtenant thereto, and "as-built" plans and specifications for Lender's file and a certificate of occupancy to the extent issued by the relevant Governmental Authority.

(b) Borrower shall obtain Lender's prior consent to (i) any Material Alterations (unless collateral or a completion guaranty is provided as set forth in subparagraph (c) below) or (ii) any Alterations to any of the Improvements (even if otherwise described in clause (i) above) that is reasonably likely to have an Individual Material Adverse Effect. Lender's consent shall not be required for any Alterations other than the Alterations described in the preceding sentence. Notwithstanding any provision hereof to the contrary, without Lender's consent, not to be unreasonably withheld or delayed, in no event shall Borrower close or shutter, or undertake or permit any Tenant or other Person to undertake, an Alteration that, alone or together with other work then being undertaken, closes or shutters, more than ten percent (10%) of the income-generating space in any Individual Property at any one time. Prior to undertaking any Alteration with respect to an Individual Property in excess of five percent (5%) of the sum of the Allocated Loan Amount for such Individual Property and the "Allocated Loan Amounts" under (and as defined in each of) the Mortgage Loan Agreement and the Other Mezzanine Loan Agreements for such Individual Property, to afford Lender a prior and reasonable opportunity to determine whether or not the proposed Alteration would have an Individual Material Adverse Effect, Borrower will deliver such plans, specifications, project schedules, logistical plans, construction budgets (including a statement of sources and uses) and such other information as Lender may reasonably request in respect of such Alteration for review by Lender (and its consultants). All reasonable out-of-pocket costs and expenses incurred by Lender in connection with reviewing said Alterations proposal, including, without limitation, reasonable counsel fees and disbursements and Lender's consultants, shall be paid by Borrower. The above-referenced submission to Lender shall be delivered with a notice from Borrower (in bold typeface) that states "YOUR FAILURE TO RESPOND TO THIS NOTICE AND REQUEST FOR APPROVAL WITHIN TEN (10) BUSINESS DAYS OF YOUR RECEIPT OF THIS NOTICE SHALL CONSTITUTE YOUR DEEMED CONSENT TO THE MATTERS DESCRIBED IN OR THAT ARE THE SUBJECT OF THIS NOTICE". If Lender responds to

Borrower's request by identifying missing documents or materials that are incomplete or inaccurate (and that are the subject of the request for approval), then Borrower shall re-submit such documents or materials to Lender for its approval together with a second notice from Borrower that complies with this Section. If Lender fails to approve or disapprove any such proposed request or submission attached to a first notice or request sent by Borrower (or the matters that are the subject of the re-submitted notice or request for approval) within ten (10) Business Days of receipt of same, Borrower shall re-submit such instruments or materials to Lender for Lender's approval and give Lender a second notice (in bold typeface) that states "SECOND NOTICE — YOUR FAILURE TO RESPOND TO THIS NOTICE AND REQUEST FOR APPROVAL WITHIN TEN (10) BUSINESS DAYS OF YOUR RECEIPT OF THIS NOTICE SHALL CONSTITUTE YOUR DEEMED CONSENT TO THE MATTERS DESCRIBED IN OR THAT ARE THE SUBJECT OF THIS NOTICE". If Lender fails to respond to such second notice within ten (10) Business Days of receipt of same, then Lender's consent to the proposed request or submission that is the subject of such notice shall be deemed granted.

(c) With respect to any Material Alteration, unless otherwise consented to by Lender, Borrower shall promptly deliver to Mortgage Lender as security for the payment of such amounts and as additional security for Borrower's obligations under the Loan Documents any of the following: (A) cash, (B) U.S. Obligations, (C) other securities having a rating acceptable to Lender and that the applicable Rating Agencies have confirmed in writing will not, in and of itself, result in a downgrade, withdrawal or qualification of the initial, or, if higher, then current ratings assigned to any Securities or any class thereof in connection with any Securitization, (D) a completion and performance bond or an irrevocable letter of credit (payable on sight draft only) issued by an Eligible Institution, or (E) a completion guaranty from an Approved Guarantor in the form attached hereto as Exhibit A (with such changes as Lender shall approve), together with evidence reasonably satisfactory to Lender that the Approved Guarantor has reasonable liquidity taking into account the nature and amount of the guaranteed obligations under such completion guaranty (it being agreed that, if the Approved Guarantor in question is Holdings, then the amounts available for repayment of such obligations under any revolving credit facility in effect at such time in favor of Harrah's Operating Company, Inc. will be taken into account in determining whether Holdings has reasonable liquidity), and with, if required by applicable Rating Agency requirements, an Additional Insolvency Opinion. Such security, including the amount of the guaranteed obligations under any completion guaranty delivered as aforesaid, shall be in an amount equal to the sum of (i) the excess of the total unpaid amounts with respect to alterations to the Improvements on the applicable Individual Property (other than such amounts to be paid or reimbursed by tenants under the Leases) over the Threshold Amount and (ii) the costs of collection, and, upon the occurrence and during the continuance of an Event of Default, Lender may apply such security from time to time at the option of Lender to pay for such alterations.

**5.1.22 Operation of Properties.** (a) Borrower shall cause Mortgage Borrower to cause each of the Properties to be operated, in all material respects, in accordance with the Operating Leases and in accordance with all applicable Legal Requirements, including Gaming Laws, and all Gaming Licenses and other Operating Permits and in a manner consistent with their respective use as of the Closing Date. Borrower shall cause Operating Company to post all required bonds, if any, with any Gaming Authority as and in the amounts required under

all applicable Legal Requirements (and shall, if Lender makes a request therefor, promptly provide Lender with copies of all such bonds).

(b) Borrower shall not, without Lender's prior written consent, permit Operating Company to assign or transfer, and Operating Company shall not, without Lender's prior written consent, assign or transfer, or delegate any responsibilities with respect to, any Gaming License or Operating Permit.

(c) Borrower shall cause Operating Company to make all filings required under the Gaming Laws, or in connection with any Gaming Licenses or Operating Permits, including in connection with the origination of the Mortgage Loan and the Mezzanine Loans, and shall deliver copies of such filings as Lender shall reasonably request to Lender, promptly upon request. Borrower will timely pay all fees, investigative fees and costs required by the Gaming Authorities with respect to any such approvals and licenses. Borrower will and will cause Mortgage Borrower to diligently and comprehensively respond to any inquiries and requests from the Gaming Authorities and promptly file or cause to be filed any additional information required in connection with any required filings as soon as practicable after receipt of requests therefor.

(d) Upon request of Lender, Borrower shall deliver to Lender (or cause Operating Company to deliver to Lender) such evidence of compliance (by Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company and each Individual Property) with all Legal Requirements, including Gaming Laws as shall be reasonably requested by Lender. Borrower shall immediately deliver to Lender (and shall cause Operating Company and Mortgage Borrower to deliver to Lender) any notice of material non-compliance or material violation of any Legal Requirement, or of any material inquiry or investigation commenced by the Gaming Authorities in connection with any of the Properties. Borrower shall immediately notify Lender if it, Senior Mezzanine Borrower, Mortgage Borrower or Operating Company believe that any material license, including any Gaming License, is being or could be revoked or suspended, or that any action is pending, being considered or being, or could be, taken to revoke or suspend Borrower's, Senior Mezzanine Borrower's, Mortgage Borrower's or Operating Company's material licenses, including the Gaming Licenses, or to fine, penalize or impose remedies upon Borrower, Mortgage Borrower, Senior Mezzanine Borrower or Operating Company, or that any action is pending, being considered, or being, or could be, taken to discontinue, suspend, deny, decrease or recoup any payments due, made or coming due to Borrower, Senior Mezzanine Borrower, Mortgage Borrower or Operating Company, in each case if same might reasonably be expected to have an Individual Material Adverse Effect. Borrower shall immediately deliver to Lender any notice received by Borrower, Senior Mezzanine Borrower, Mortgage Borrower or Operating Company alleging or relating to the material non-compliance by Borrower, Senior Mezzanine Borrower, Mortgage Borrower or Operating Company with any Legal Requirements, including Gaming Laws.

(e) In the event that any of the Operating Leases expire or are terminated (without limiting any obligation of Borrower to obtain Lender's consent to any termination or modification of any of the Operating Leases in accordance with the terms and provisions of this Agreement), Borrower shall cause Mortgage Borrower to promptly enter into a replacement Operating Lease (in form and substance satisfactory to Lender) with Operating Company or

another operating company reasonably satisfactory to Lender, provided Borrower will obtain a Rating Agency Confirmation as a condition to the effectiveness of such replacement Operating Lease and that Borrower will cause Guarantor (Operating Lease) to execute and deliver an operating lease guaranty in the same form and substance as the Operating Lease Guaranty.

(f) Borrower shall cause Mortgage Borrower to: (i) promptly perform and/or observe, in all material respects, all of the covenants and agreements required to be performed and observed by it under the Operating Lease and do all things necessary to preserve and to keep unimpaired its material rights thereunder; (ii) promptly notify Lender of any material default under any Operating Lease or Operating Lease Guaranty of which it is aware; (iii) promptly deliver to Lender a copy of each financial statement, business plan, capital expenditures plan, notice, report and estimate received by it under each Operating Lease; and (iv) enforce the performance and observance of all of the material covenants and agreements required to be performed and/or observed by each Operating Company under each Operating Lease and by each Guarantor (Operating Lease) under each Operating Lease Guaranty, in a commercially reasonable manner.

(g) Borrower shall cause Mortgage Borrower to cause the Hotel Components to be at all times open for business as a hotel and the Casino Components to be open for business as a casino, except to the extent necessary to undertake any alterations or repairs (subject to the provisions of this Agreement with respect to the performance of any such alterations or repairs). Borrower shall cause each Individual Property to be at all times operated, managed and maintained, at all times and in the manner and accordance with the standards required pursuant to the Operating Leases and all applicable Legal Requirements in all material respects.

(h) If Mortgage Borrower shall be in material default under any Operating Lease, then, subject to the terms of such Operating Lease, Borrower shall cause Mortgage Borrower (subject to any applicable Legal Requirements) to grant Lender the right (but not the obligation), to cause the default or defaults under such Operating Lease to be remedied and otherwise exercise any and all rights of Mortgage Borrower under such Operating Lease, as may be necessary to prevent or cure any default provided such actions are necessary to protect Lender's interest under the Loan Documents, and Lender shall have the right to enter all or any portion of the affected Individual Property at such times and in such manner as Lender deems necessary, to prevent or to cure any such default. The actions or payments of Lender to cure any default by Mortgage Borrower under any Operating Lease shall not remove or waive, as between Borrower and Lender, any default that may occur or occurred under this Agreement by virtue of such default by Mortgage Borrower under such Operating Lease. All out-of-pocket sums reasonably expended by Lender to cure any such default shall be paid by Borrower to Lender, upon demand, with interest on such sum at the rate set forth in this Agreement from the date such sum is expended to and including the date the reimbursement payment is made to Lender. All such indebtedness shall be deemed to be secured by the Pledge Agreement and the Collateral.

(i) Borrower shall notify Lender promptly in writing of (i) the occurrence, to Borrower's knowledge, of any material default by any party to any Operating Lease or any Operating Lease Guaranty, (ii) the occurrence, to Borrower's knowledge, of any event that, with the passage of time or service of notice, or both, would constitute a material default by any party under any Operating Lease or any Operating Lease Guaranty, and (iii) the receipt by Borrower or

its Affiliate of any notice (written or otherwise) from any party under any Operating Lease or any Operating Lease Guaranty noting or claiming the occurrence of any material default by Borrower under such Operating Lease or such Operating Lease Guaranty.

(j) Borrower shall (subject to any applicable Legal Requirements) promptly cause Mortgage Borrower to execute, acknowledge and deliver to Lender such instruments as may reasonably be required to permit Lender to cure any material default under any Operating Lease or permit Lender to take such other action required to enable Lender to cure or remedy the matter in default and preserve the value of the security interest of Lender under the Loan Documents with respect to the Collateral. Upon the occurrence and during the continuance of an Event of Default, Borrower irrevocably appoints Lender as its true and lawful attorney-in-fact to do, in its name or otherwise, any and all acts and to execute any and all documents that are necessary to preserve any rights of Mortgage Borrower under or with respect to any Operating Lease, including, without limitation, the right to effectuate any extension or renewal of any Operating Lease, or to preserve any rights of Mortgage Borrower whatsoever in respect of any part of any Operating Lease (and the above powers granted to Lender are coupled with an interest and shall be irrevocable).

(k) With respect to any Operating Lease or any Operating Lease Guaranty, Borrower shall, from time to time, upon ten (10) Business Days' prior written request from Lender, execute, acknowledge and deliver to Lender, a statement containing the following: (A) a statement that such Operating Lease or such Operating Lease Guaranty is unmodified and in full force and effect or, if there have been modifications, that the Operating Lease or the Operating Lease Guaranty is in full force and effect as modified and setting forth such modifications, (B) a statement that Mortgage Borrower is not in default thereunder beyond any applicable grace, cure or notice period or, if any such default shall exist thereunder, a description of such default and the steps being taken to cure such default, (C) a statement that, to Borrower's knowledge, either the other party thereto is not in default thereunder beyond any applicable grace, cure or notice period or, if any such default shall exist thereunder, a description of such default and the steps being taken to cure such default and (D) such other information with respect to the Operating Lease or the Operating Lease Guaranty as Lender shall reasonably request.

(l) With respect to any Operating Lease, Borrower shall, from time to time, upon ten (10) Business Days of Lender's prior written request from Lender, provide Lender with a statement from each Operating Company containing the following: (A) a statement that such Operating Lease is unmodified and in full force and effect or, if there have been modifications, that the Operating Lease is in full force and effect as modified and setting forth such modifications, (B) a statement that Operating Company is not in default thereunder beyond any applicable grace, cure or notice period or, if any such default shall exist thereunder, a description of such default and the steps being taken to cure such default, (C) a statement that, to Operating Company's knowledge, the Mortgage Borrower is not in default thereunder beyond any applicable grace, cure or notice period or, if any such default shall exist thereunder, a description of such default and the steps being taken to cure such default and (D) such other information with respect to Operating Company, any Operating Lease and/or any Operating Lease Guaranty as Lender shall reasonably request.

(m) With respect to any Operating Lease Guaranty, Borrower shall, from time to time, upon ten (10) Business Days of Lender's prior written request from Lender, provide Lender with a statement from Guarantor (Operating Lease) containing the following: (A) a statement that such Operating Lease Guaranty is unmodified and in full force and effect or, if there have been modifications, that the Operating Lease Guaranty is in full force and effect as modified and setting forth such modifications; (B) a statement that Guarantor (Operating Lease) is not in default thereunder beyond any applicable grace, cure or notice period or, if any such default shall exist thereunder, a description of such default and the steps being taken to cure such default; and (C) such other information with respect to such Guarantor (Operating Lease) and/or Operating Lease Guaranty as Lender shall reasonably request.

**5.1.23 Ground Lease Estoppel.** Borrower shall, on or prior to May 28, 2008, either (i) effect the substitution of the Properties commonly known as "Paris Las Vegas" and "Harrah's Laughlin" for the Individual Properties referred to as "Harrah's Lake Tahoe", "Harvey's Lake Tahoe", "Bill's Lake Tahoe" and "Showboat Atlantic City" as described in Section 2.5.2 of this Agreement or (ii) (x) cause the occurrence of the events set forth in paragraph 1, clause (ii) of the Ground Lease Side Letter and (y) in connection therewith, deliver to Lender updates to its UCC Title Insurance Policy and any endorsements to the Mortgage Borrower's owner's policies delivered to Lender in connection with the closing of the Loan, together with such other documents, instruments and new or updated opinions (including as to enforceability, non-consolidation and true lease matters) as Lender may reasonably request. The failure by Borrower to cause the occurrence of the event described in clause (i) or of the events described in clause (ii) above, on or prior to May 28, 2008 shall constitute a "Ground Lease Estoppel Trigger Event" hereunder, but shall not constitute a Default or an Event of Default hereunder.

**5.1.24 Mortgage Loan Reserve Funds.** Borrower shall cause Mortgage Borrower and Senior Mezzanine Borrower to deposit and maintain each of the Mortgage Loan Reserve Funds and Senior Mezzanine Loan Reserve Funds (if any) as more particularly set forth in Article VII of the Mortgage Loan Agreement and Senior Mezzanine Loan Agreement and to perform and comply with all the terms and provisions relating thereto. Borrower grants to Lender a first-priority perfected security interest in Borrower's interest in each of the Mortgage Loan Reserve Funds and Senior Mezzanine Loan Reserve Funds, if any, subject to the prior rights of Mortgage Lender and Senior Mezzanine Lender, and any and all monies now or hereafter deposited in each Mortgage Loan Reserve Fund and Senior Mezzanine Loan Reserve Funds as additional security for payment of the Debt to the extent Borrower has an interest in same. Subject to the qualifications regarding Mortgage Lender's and Senior Mezzanine Lender's interest in the Mortgage Loan Reserve Funds and Senior Mezzanine Loan Reserve Funds (as applicable), if any, until expended or applied in accordance with the Mortgage Loan Documents, Senior Mezzanine Loan Documents or the Loan Documents, Borrower's interest in the Mortgage Loan Reserve Funds and Senior Mezzanine Loan Reserve Funds shall constitute additional security for the Debt and upon the occurrence of an Event of Default, Lender may, in addition to any and all other remedies available to Lender, apply any sums then present in any or all of the Mortgage Loan Reserve Funds and Senior Mezzanine Loan Reserve Funds to the payment of the Debt in any order in its sole discretion and/or hold the same as Collateral for the Loan.

**5.1.25 Notices.** Borrower shall give notice, or cause notice to be given to Lender promptly upon the occurrence and during the continuance of an Event of Default and upon any of the following:

(a) any Mortgage Loan Event of Default or Senior Mezzanine Loan Event of Default;

(b) any default or event of default under any contractual obligation of Borrower, or, to the knowledge of Borrower, Senior Mezzanine Borrower, Mortgage Borrower, Operating Company, Principal or Guarantor that could reasonably be expected to have an Individual Material Adverse Affect or an Aggregate Material Adverse Affect;

(c) any litigation or proceeding affecting Borrower, or, to the knowledge of Borrower, affecting any of Mortgage Borrower, Senior Mezzanine Borrower, Operating Company, Principal or Guarantor, which could or could reasonably be expected to have an Individual Material Adverse Effect or an Aggregate Material Adverse Effect; or

(d) a change in the business, operations, property or financial or other condition or prospects of Borrower, or, to the knowledge of Borrower, Senior Mezzanine Borrower, Mortgage Borrower, Operating Company, Principal or Guarantor which could reasonably be expected to have an Individual Material Adverse Affect or an Aggregate Material Adverse Affect.

**5.1.26 Special Distributions.** On each date on which amounts are required to be paid to Lender under any of the Loan Documents (or required be disbursed to the Mezzanine Collection Account, if applicable) Borrower shall exercise its rights under the First Mezzanine Borrower Company Agreement to cause Senior Mezzanine Borrower to make to Borrower a distribution in an aggregate amount such that Lender shall receive the amount required to be disbursed to the Mezzanine Collection Account or otherwise paid to Lender on such date.

**5.1.27 Curing.** Lender shall have the right, but shall not have the obligation, to exercise Borrower's rights under the First Mezzanine Borrower Company Agreement (a) to cure a Mortgage Loan Default, or Senior Mezzanine Loan Default, (b) to cure a Mortgage Loan Event of Default, or Senior Mezzanine Loan Event of Default, (c) to satisfy any Liens, claims or judgments against the Properties (except for Liens permitted by the Mortgage Loan Documents or Senior Mezzanine Loan Documents), (d) to satisfy any Liens, claims or judgments against the Senior Mezzanine Collateral, in the case of either (a), (b) or (c), unless Borrower, Senior Mezzanine Borrower or Mortgage Borrower shall be diligently pursuing remedies to cure the Mortgage Loan Default, the Senior Mezzanine Loan Default, the Senior Mezzanine Loan Event of Default or Mortgage Loan Event of Default or to satisfy any such Liens, claims or judgments, in either case to Lender's sole satisfaction. Borrower shall reimburse Lender on demand for any and all costs incurred by Lender in connection with curing any such Mortgage Loan Default, Senior Mezzanine Loan Default, Mortgage Loan Event of Default or Senior Mezzanine Loan Event of Default or satisfying any Liens, claims or judgments against any of the Properties or the Senior Mezzanine Collateral.

**5.1.28 Senior Borrower Covenants.** Borrower shall cause Mortgage Borrower and Senior Mezzanine Borrower to comply with all obligations with which Mortgage Borrower and/or Senior Mezzanine Borrower have covenanted to comply under the Mortgage Loan Agreement, Senior Mezzanine Loan Agreement, all Senior Mezzanine Loan Documents and all other Mortgage Loan Documents, as applicable (including, without limitation, those certain affirmative and negative covenants set forth in Article V of the Mortgage Loan Agreement and Senior Mezzanine Loan Agreement), unless otherwise consented to in writing by Lender.

**Section 5.2. Negative Covenants.** From the date hereof until payment and performance in full of all obligations of Borrower under the Loan Documents or the earlier release of the Liens of the Collateral in accordance with the terms of this Agreement and the other Loan Documents, Borrower covenants and agrees with Lender that it will not do, directly or indirectly, any of the following (without, in each case, the prior written consent of Lender):

**5.2.1 Operation of Properties.** (a) Borrower shall not cause or permit Mortgage Borrower to, without Lender's prior consent: (i) surrender, terminate or cancel (or permit to be surrendered, terminated or canceled) any of the Operating Leases or any Operating Lease Guaranty; (ii) reduce or consent to the reduction of (or permit the reduction or the consent to the reduction) of the term of any of the Operating Leases; (iii) decrease or consent to any decrease (or permit to be decreased or the consent to the decrease) of the amount of any rent or other charges payable under any of the Operating Leases; (iv) Transfer, convey, assign, sell, mortgage, encumber, pledge, hypothecate, grant a security interest in, grant an option or options with respect to, or otherwise dispose of (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, whether or not for consideration) the Properties or any collateral for the Mortgage Loan (or permit Operating Company to do so), in each case without the prior written consent of Lender or except as expressly permitted in Section 5.2.10, or (v) otherwise modify, change, supplement, alter or amend, or waive or release (or permit to be modified, changed, supplemented, altered, amended, waived or released) any of the rights and remedies of Borrower, Mortgage Borrower or any Operating Company under any of the Operating Leases in any material respect or any Operating Lease Guaranty (provided that Lender shall not unreasonably withhold its consent to any modification, change, supplement, alteration, amendment, waiver or release of the Operating Lease as may be reasonably necessary to comply with the requirements of this Agreement or any other Loan Document).

(b) During the continuance of an Event of Default, Borrower shall not exercise (and shall not cause or permit Mortgage Borrower to exercise) any rights, make any decisions, grant any approvals or otherwise take any action under any Operating Lease, Operating Lease Guaranty or any management agreement without, in each instance, the prior written consent of Lender, which consent may be withheld in Lender's sole discretion.

**5.2.2 Liens.** (a) Borrower shall not create, incur, assume or suffer to exist any Lien on any of the Collateral, except Liens created by or permitted pursuant to the Loan Documents. Borrower shall not, and shall not cause or permit Mortgage Borrower or Senior Mezzanine Borrower to create, incur, assume or suffer to exist any Lien on any portion of any Individual Property or Senior Mezzanine Collateral or permit any such action to be taken, except:

(i) Permitted Encumbrances;

(ii) Liens created by or permitted pursuant to the Loan Documents, Senior Mezzanine Loan Documents or Mortgage Loan Documents; and

(iii) Liens for Taxes or Other Charges not yet due.

(b) Borrower shall not incur any Indebtedness other than the Loan, shall not permit Mortgage Borrower to incur any Indebtedness other than the Mortgage Loan and Permitted Indebtedness (as defined in the Mortgage Loan Agreement), and shall not permit Senior Mezzanine Borrower to incur any Indebtedness other than the Senior Mezzanine Loans. Borrower shall not permit any Operating Company to incur Indebtedness in excess or other than Permitted Indebtedness (Operating Company).

**5.2.3 Dissolution.** Borrower shall not, and shall not permit Mortgage Borrower, Senior Mezzanine Borrower or Operating Company to, (a) engage in any dissolution, liquidation or consolidation or merger with or into any other business entity, (b) engage in any business activity not related to (i) in the case of Borrower, the ownership of the Collateral, (ii) in the case of Senior Mezzanine Borrower, ownership of the Senior Mezzanine Collateral, (iii) in the case of Mortgage Borrower, the ownership and operation of the Properties and (iv) in the case of Operating Company, the leasing and operation of the Properties, (c) transfer, lease or sell, in one transaction or any combination of transactions, the assets or all or substantially all of the properties or assets of Borrower, Senior Mezzanine Borrower or Mortgage Borrower except to the extent permitted by the Loan Documents, (d) modify (in any material respect), amend (in any material respect), waive or terminate its organizational documents or its qualification and good standing in any jurisdiction or (e) cause Holdings to (i) dissolve, wind up or liquidate or take any action, or omit to take an action, as a result of which Holdings, Senior Mezzanine Borrower or Mortgage Borrower would be dissolved, wound up or liquidated in whole or in part, or (ii) amend (in any material respect), modify (in any material respect), waive or terminate the certificate of incorporation or bylaws of Holdings, Senior Mezzanine Borrower or Mortgage Borrower, in each case, without obtaining the prior consent of Lender.

**5.2.4 Change in Business.** Borrower shall not cause Mortgage Borrower to enter into any line of business other than the ownership and operation of any of the Properties and other activities reasonably ancillary thereto, or make any material change in the scope or nature of its business objectives, purposes or operations, or undertake or participate in activities other than the continuance of its present business. In addition, Borrower shall not permit or cause Mortgage Borrower to cancel or otherwise forgive or release any material claim or debt (other than termination of Leases in accordance herewith) owed to Mortgage Borrower by any Person, except for adequate consideration and in the ordinary cause of Mortgage Borrower's business. Borrower shall not enter into any line of business other than the ownership of the Collateral, or make any material change in the scope or nature of its business objectives, purposes or operations, or undertake or participate in activities other than the continuance of its present business. Borrower shall not allow Senior Mezzanine Borrower to enter into any line of business other than the direct or indirect ownership of the applicable Senior Mezzanine Collateral or make any material change in the scope or nature of its business objectives, purposes

or operations, or undertake or participate in activities other than the continuance of its present business.

**5.2.5 Debt Cancellation.** Borrower shall not, and shall not permit Mortgage Borrower, Senior Mezzanine Borrower or Operating Company to, cancel or otherwise forgive or release any claim or debt (other than termination of Leases in accordance herewith) owed to Mortgage Borrower, Borrower or Senior Mezzanine Borrower by any Person, except for adequate consideration and in the ordinary course of Mortgage Borrower's, Borrower's or Senior Mezzanine Borrower's business. In addition, Borrower shall not permit or cause itself, Senior Mezzanine Borrower, or Mortgage Borrower to cancel or otherwise forgive or release any material claim or debt (other than termination of Leases in accordance herewith) owed to Senior Mezzanine Borrower, Borrower or Mortgage Borrower by any Person, except for adequate consideration and in the ordinary course of Mortgage Borrower's, Borrower's or Senior Mezzanine Borrower's business.

**5.2.6 Zoning.** Borrower shall not, and shall not permit Mortgage Borrower or Operating Company to, initiate or consent to any zoning reclassification of any portion of any Individual Property or seek any variance under any existing zoning ordinance or use or permit the use of any portion of any Individual Property in any manner that could result in such use becoming a non-conforming use under any zoning ordinance or any other applicable land use law, rule or regulation, without the prior consent of Lender.

**5.2.7 Ground Lease.** Borrower shall not (or shall not cause or permit Mortgage Borrower or Ground Lease Subsidiary, as applicable, to) (a) fail to pay any rent, additional rent or other charge mentioned in or made payable under any Ground Lease as and when such rent or other charge is due (unless waived in writing by the ground lessor under such Ground Lease), (b) permit to occur any event of default (beyond any applicable notice, grace or cure periods) by any Mortgage Borrower or Ground Lease Subsidiary, as applicable, as tenant under the related Ground Lease, in the observance or performance of any term, covenant or condition of such Ground Lease on the part of such Mortgage Borrower or Ground Lease Subsidiary, as applicable, to be observed or performed (unless waived in writing by the ground lessor under such Ground Lease), (c) permit any one or more of the events referred to in any Ground Lease to occur which would cause such Ground Lease to terminate without notice or action by the ground lessor under such Ground Lease or which would entitle such ground lessor to terminate such Ground Lease and the term thereof by giving notice to the related Mortgage Borrower or Ground Lease Subsidiary, as applicable, as tenant thereunder (unless waived in writing by the ground lessor under such Ground Lease), (d) permit the leasehold estate created by any Ground Lease to be surrendered or any Ground Lease to be terminated or canceled for any reason or under any circumstances whatsoever or (e) permit any of the terms, covenants or conditions of any Ground Lease to be materially modified, materially changed, materially supplemented, materially altered, or materially amended without the consent of Lender except as otherwise may be permitted by this Agreement.

**5.2.8 Principal Place of Business and Organization.** Borrower shall not, nor shall Borrower permit Mortgage Borrower, Senior Mezzanine Borrower or Operating Company to, change the place of its organization as set forth in Section 4.1.28 without the consent of Lender, which consent shall not be unreasonably withheld. Upon Lender's request,

Borrower shall (and shall cause Mortgage Borrower, Senior Mezzanine Borrower or Operating Company to) execute and deliver additional financing statements, security agreements and other instruments which may be necessary to effectively evidence or perfect Mortgage Lender's security interest in any of the Properties, any Senior Mezzanine Lender's Security Interest in the related Senior Mezzanine Collateral or Lender's security interest in the Collateral as a result of such change of place of organization.

**5.2.9 ERISA.** (a) Borrower shall not engage in any transaction which would cause any obligation, or action taken or to be taken, hereunder (or the exercise by Lender of any of its rights under the Note, this Agreement or the other Loan Documents) to be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under ERISA.

(b) Borrower further covenants and agrees to deliver to Lender such certifications or other evidence from time to time throughout the term of the Loan, as requested by Lender in its sole discretion, that (i) Borrower is not an "employee benefit plan" as defined in Section 3(3) of ERISA, which is subject to Title I of ERISA, or a "governmental plan" within the meaning of Section 3(32) of ERISA; (ii) Borrower is not subject to any state statute regulating investments of, or fiduciary obligations with respect to, governmental plans; and (iii) one or more of the following circumstances is true:

(A) Equity interests in Borrower are publicly offered securities, within the meaning of 29 C.F.R. § 2510.3-101(b)(2);

(B) Less than twenty-five percent (25%) of each outstanding class of equity interests in Borrower is held by "benefit plan investors" within the meaning of 29 C.F.R. § 2510.3-101(f)(2); or

(C) Borrower qualifies as an "operating company" or a "real estate operating company" within the meaning of 29 C.F.R. § 2510.3-101(c) or (e).

**5.2.10 Transfers.** (a) Without the prior consent of Lender and except to the extent otherwise set forth in this Section 5.2.10, Borrower shall not, and shall not permit any other Person holding any direct or indirect legal, economic, beneficial or other ownership interest in Borrower, the Collateral, the Senior Mezzanine Collateral or one or more of the Properties to, (1) Transfer all or any part of the Collateral, the Senior Mezzanine Collateral or one or more of the Properties, (2) permit any Transfer (directly or indirectly) of any direct or indirect interest in Borrower, or (3) permit any Transfer (directly or indirectly) of any direct or indirect interest in Operating Company or any transfer or assignment or subletting (of all or substantially of any Individual Property) by any Operating Company under any Operating Lease.

(b) A Transfer of (but not a mortgage, pledge, hypothecation, encumbrance or grant of a security interest in) an indirect beneficial interest in Borrower consisting of ownership interests in or at any level above the level of Ninth Mezzanine Borrower shall be permitted without Lender's consent (but subject to the last sentence of Section 5.2.10(d)), provided that (i) immediately prior to such Transfer, no Event of Default shall have occurred and be continuing, (ii) Borrower is at all times Controlled and at least fifty percent (50%) owned

(directly or indirectly) by Qualified Transferees, (iii) subsequent to such Transfer, Borrower will continue to be a Special Purpose Entity, (iv) if (1) such Transfer causes the Transferee to own, in the aggregate with the ownership interests of its Affiliates, more than a forty nine percent (49%) interest in Borrower (and the Transferee (together with the ownership interests of its Affiliates) did not, prior to such Transfer, own more than a forty-nine percent (49%) interest in Borrower), or (2) such Transfer, together with all other Transfers by Borrower, whether in a single Transfer or in a series of Transfers and whether or not effected simultaneously, results in a Transfer of more than forty-nine percent (49%) of the aggregate interests in Borrower, if required by applicable Rating Agency requirements, if required by applicable Rating Agency requirements, then an acceptable non-consolidation opinion is delivered to the holder of the Loan and to each of the Rating Agencies concerning, as applicable, Borrower, the new Transferee and/or their respective owners, and (v) subsequent to such Transfer, the beneficial ownership of Borrower and Operating Company will be substantially identical. For purposes hereof, Control shall not be deemed absent solely because other parties have veto rights with respect to major decisions. Further, a Change in Control shall be deemed a Transfer hereunder and, unless clauses (ii) through (v) of this Section 5.2.10(b) shall be satisfied, the same shall be an Event of Default hereunder (and for the sake of clarity, nothing else contained in this Section 5.2.10 or this Agreement shall be deemed to limit or qualify the above terms of this sentence).

(c) A Transfer of (but not a mortgage, pledge, hypothecation, encumbrance or grant of a security interest in) a direct or indirect beneficial interest in Operating Company shall be permitted without Lender's consent (but subject to the last sentence of Section 5.2.10(d)), provided that (i) immediately prior to such Transfer, no Event of Default shall have occurred and be continuing, (ii) Operating Company is at all times Controlled and at least fifty percent (50%) owned (directly or indirectly) by Qualified Transferees, and (iii) subsequent to such Transfer, the beneficial ownership of Borrower and Operating Company will be substantially identical. For purposes hereof, Control shall not be deemed absent solely because other parties have veto rights with respect to major decisions.

(d) In the event that a permitted Transfer of more than a forty nine percent (49%) interest in Borrower is made pursuant to this Section 5.2.10, at Borrower's request, Lender shall release Guarantor from (i) the obligations and liabilities under any Guaranty for obligations and liabilities that occurred subsequent to such Transfer, provided that a replacement guarantor(s) reasonably satisfactory to Lender shall have executed and delivered to Lender replacement guarantees in form and substance substantially similar to the applicable Guaranty, pursuant to which such replacement guarantor(s) expressly assumes all of Guarantor's obligations under the applicable Guaranty for obligations and liabilities arising from and after the date of such Transfer, and (ii) the obligations and liabilities under any Guaranty for obligations and liabilities that occurred either prior or subsequent to such Transfer, provided that a replacement guarantor(s) reasonably satisfactory to Lender shall have executed and delivered to Lender replacement guarantees in form and substance substantially similar to the applicable Guaranty, pursuant to which such replacement guarantor(s) expressly assumes all of Guarantor's obligations under the applicable Guaranty, including those which occurred prior to the Transfer. Notwithstanding the foregoing or anything else that may be construed to the contrary, in no event may Borrower effect a Transfer, or permit or suffer any Transfer, that would result in any loss or impairment of any Gaming License or in any similar event that would have an Individual Property Material Adverse Effect or Aggregate Property Material Adverse Effect.

(e) Notwithstanding the foregoing or anything herein to the contrary, but subject to the final sentence of Section 5.2.10(d), nothing contained in this Agreement or the other Loan Documents shall in any way restrict or prohibit, nor shall any notice to Lender or consent of Lender or Rating Agency Confirmation be required in connection with the Transfer or issuance in the ordinary course of any securities in any Person whose securities are publicly traded on a national exchange (except to the extent that the same would cause a Change of Control) or with an initial public offering of securities issued by Holdings or of subsidiary of Holdings (other than the Borrower and any Mezzanine Borrower (provided that, in the case of an issuance by a subsidiary, such issuance would not cause a Change of Control)).

(f) Assumptions of the Loan shall be permitted, provided that the following conditions are satisfied and/or occur to Lender's satisfaction:

(i) such sale has been approved or deemed approved under the Mortgage Loan Documents and Senior Mezzanine Loan Documents and all conditions set forth in the Mortgage Loan Documents and Senior Mezzanine Loan Documents relating thereto have been satisfied;

(ii) an assumption of this Agreement, the Note, the Pledge Agreement and the other Loan Documents as so modified by the proposed transferee, subject to the provisions of Section 9.3 hereof;

(iii) payment of all of reasonable out-of-pocket costs and expenses incurred in connection with such Transfer including, without limitation, the cost of any legal fees and expenses, Rating Agency fees and expenses or required legal opinions;

(iv) the payment of a non-refundable assumption fee equal to Lender's Share of One Million and No/100 Dollars (\$1,000,000) per transaction (effecting an assumption of the Loan) or series of related transactions (effected to implement an assumption of the Loan);

(v) the delivery of an Additional Insolvency Opinion reflecting the proposed transfer satisfactory in form and substance to Lender; and the delivery of an Additional True-Lease Opinion in form and substance satisfactory to Lender;

(vi) the proposed Transferee being Controlled and at least 50% owned, directly or indirectly, by one or more Qualified Transferees;

(vii) the Operating Company being Controlled and at least 50% owned, directly or indirectly, by one or more Qualified Transferees, having sufficient experience (or having a manager that has sufficient experience) in the management of properties similar to the Properties, and such Operating Company or its manager not having materially less than the same level of experience in the operation of properties similar to the Properties as the current Operating Company under the Operating Lease and, in each case, Lender shall be provided with reasonable evidence thereof (and Lender reserves the right to approve the Transferee(s) without approving the substitution of the Operating Company) and the operating tenant shall be either the Operating Company or, if permitted by applicable Legal Requirements, a manager acceptable to Lender under a management

agreement acceptable to Lender; provided that so long as the Operating Lease is in force and effect and the current Operating Company shall continue to be the tenant thereunder and owned and Controlled by the same Person(s) that currently own and Control the Operating Company, the condition with respect to the Operating Company set forth in this subclause (vi) shall be deemed to have been met in all respects;

(viii) the delivery of evidence reasonably satisfactory to Lender that the single purpose nature and bankruptcy remoteness of Borrower, its shareholders, partners or members, as the case may be, following such transfers are in accordance with the then current standards of Lender and the Rating Agencies; and the Transferee(s)' continued compliance with the representations and covenants set forth in Section 4.1.30 and Section 5.2.9 hereof;

(ix) Borrower's delivery to Lender of evidence reasonably satisfactory to Lender of any required approval or consent of any Governmental Authority, including the Gaming Authorities, that has direct or indirect authority or oversight over Borrower, Mortgage Borrower, Senior Mezzanine Borrower, the Properties, Operating Company or the operations conducted at the Properties to the change in ownership and/or operator of the Properties (or any part thereof);

(x) prior to any release of the Guarantor, a substitute guarantor reasonably acceptable to Lender shall have assumed all of the obligations of the Guarantor under the Guaranty (FF&E), the Guaranty (Recourse Carveouts), the Operating Lease Guaranty, the Guaranty (Ground Lease Estoppel), any completion guaranty provided under Section 5.1.21 and the Environmental Indemnity or executed replacement guaranties and an environmental indemnity reasonably satisfactory to Lender;

(xi) receipt of evidence satisfactory to Lender that all of the entities which own interests in the transferee similar to the interests in Borrower owned by the Ninth Mezzanine Borrower (1) shall assume the Ninth Mezzanine Loan (if still outstanding) and all the agreements of Ninth Mezzanine Borrower under the Ninth Mezzanine Loan Documents (and without limiting the foregoing, all of the ownership interests in Borrower, all payments thereon and all proceeds thereof shall be pledged to Lender on terms no less favorable than the pledge of the Collateral under the applicable Pledge Agreement), (2) shall each be a bankruptcy-remote single purpose entity, and (3) shall otherwise have a legal, financial and ownership structure that is (a) substantially the same as the Ninth Mezzanine Borrower or (b) at least as favorable to the Ninth Mezzanine Lender, as determined by the Ninth Mezzanine Lender in its reasonable discretion, as the legal, financial and ownership structure of Ninth Mezzanine Borrower;

(xii) a written consent to the transfer from the lender under each Mezzanine Loan (and, if any, a Permitted Mezzanine Loan) or receipt by Lender of other evidence satisfactory to Lender that all conditions imposed under the terms of each Mezzanine Loan and Permitted Mezzanine Loan shall have been complied with by the borrower thereunder or otherwise waived by the applicable lender;

- (xiii) subsequent to such assumption of the Loan, the beneficial ownership of Borrower and Operating Company will be substantially identical; and
- (xiv) the delivery of a new Owner's Title Policy, in an amount equal to the value of the Properties, together with an endorsement to Lender in form and substance reasonably satisfactory to Lender.

Lender agrees to provide a written consent to a transfer pursuant to this Section 5.2.10(f) upon satisfaction of all of the conditions set forth in this Section 5.2.10(f) other than the condition set forth in clause (xiii) of this Section 5.2.10(f).

(g) Restrictions on Transfers set forth herein or in the Pledge shall not apply to (i) the pledge of the Collateral to Lender pursuant to the Pledge Agreement, (ii) the pledge by First Mezzanine Borrower of the ownership interests in Mortgage Borrower as security for the First Mezzanine Loan pursuant to the First Mezzanine Loan Agreement, (iii) the pledge by Second Mezzanine Borrower of the ownership interests in First Mezzanine Borrower as security for the Second Mezzanine Loan pursuant to the Second Mezzanine Loan Agreement, (iv) the pledge by Third Mezzanine Borrower of the ownership interests in Second Mezzanine Borrower as security for the Third Mezzanine Loan pursuant to the Third Mezzanine Loan Agreement, (v) the pledge by Fourth Mezzanine Borrower of the ownership interests in Third Mezzanine Borrower as security for the Fourth Mezzanine Loan pursuant to the Fourth Mezzanine Loan Agreement, (vi) the pledge by Fifth Mezzanine Borrower of the ownership interests in Fourth Mezzanine Borrower as security for the Fifth Mezzanine Loan pursuant to the Fifth Mezzanine Loan Agreement, (vii) the pledge by Sixth Mezzanine Borrower of the ownership interests in Fifth Mezzanine Borrower as security for the Sixth Mezzanine Loan pursuant to the Sixth Mezzanine Loan Agreement, (viii) the pledge by Seventh Mezzanine Borrower of the ownership interests in Sixth Mezzanine Borrower as security for the Seventh Mezzanine Loan pursuant to the Seventh Mezzanine Loan Agreement, (ix) the pledge by Ninth Mezzanine Borrower of the ownership interests in Borrower as security for the Ninth Mezzanine Loan pursuant to the Ninth Mezzanine Loan Agreement, (x) any pledge pursuant to a New Mezzanine Loan or (xi) the Transfer or pledge of any direct or indirect interest in Holdings, provided that no Change in Control shall occur.

(h) Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Debt immediately due and payable upon a Transfer without Lender's consent. This provision shall apply to every Transfer regardless of whether voluntary or not, or whether or not Lender has consented to any previous Transfer.

**5.2.11 Operating Lease Subsidiary.** Borrower shall not cause or permit Mortgage Borrower to Transfer any of its interests in Ground Lease Subsidiary without the prior written consent of Lender; Borrower shall not permit Mortgage Borrower to cause or permit Ground Lease Subsidiary to own any assets other than its interests in the Ground Lease or to incur any liabilities other than liabilities under the Ground Lease; Borrower shall not permit Mortgage Borrower to cause or permit Ground Lease Subsidiary to engage in any business other than that related to its ownership of interests in the Ground Lease.

**5.2.12 Limitations on Distributions.** Following the occurrence and during the continuance of an Event of Default, Borrower shall not make any distributions to its members. If any Distributions shall be received by Borrower or any Affiliate of Borrower after the occurrence and during the continuance of an Event of Default, Borrower shall hold, or shall cause the same to be held, in trust for the benefit of Lender.

**5.2.13 Other Limitations.** Prior to the payment in full of the Debt, neither Borrower nor any of its Affiliates shall, without the prior written consent of Lender (which may be furnished or withheld at its sole and absolute discretion), give its consent or approval to any of the following actions or items: the distribution by Mortgage Borrower or Senior Mezzanine Borrower of property other than cash.

**5.2.14 Refinancing.** Borrower shall not consent to or permit a refinancing of the Mortgage Loan or Senior Mezzanine Loan unless it obtains the prior consent of Lender, unless the Loan shall be paid in full in connection with such refinancing in accordance with this Agreement. Borrower shall not consent to or permit a prepayment in full or in part of the Mortgage Loan or Senior Mezzanine Loan unless it obtains the prior consent of Lender, unless the Loan shall likewise be prepaid (in the same proportion, in the case of any partial prepayment) in accordance with this Agreement.

**Section 5.3. General.** For avoidance of doubt, all requirements contained in this Article V with respect to the Operating Company shall mean that it shall be a Default or Event of Default hereunder if Operating Company fails to perform in the specified manner, but Lender acknowledges that Operating Company is not a party to this Agreement and that Borrower does not control Operating Company.

## **VI. INSURANCE; CASUALTY; CONDEMNATION**

**Section 6.1. Insurance.** (a) Borrower shall cause Mortgage Borrower to maintain at all times during the term of the Loan the Policies required under Section 6.1 of the Mortgage Loan Agreement, including, without limitation, meeting all insurer requirements thereunder. In addition, Borrower shall cause Lender to be named “as their interest may appear”, under the Policies required under Sections 6.1(a)(i), (ii), (iii), (iv), (v), (vi), (vii), (viii), (ix), (x) and (xi) of the Mortgage Loan Agreement and as an “additional insured” with respect to liability coverages. Borrower shall also cause all insurance policies required under this Section 6.1 to provide for at least thirty (30) days’ prior notice to Lender in the event of policy cancellation or material changes. Borrower shall provide Lender with evidence of all such insurance required hereunder on or before the date on which Mortgage Borrower is required to provide such evidence to Mortgage Lender. For purposes of this Agreement, Lender shall have the same approval rights over the insurance referred to above and in the Mortgage Loan Agreement (including, without limitation, the insurers, deductibles and coverages thereunder, as well as the right to require other reasonable insurance pursuant to Section 6.1 of the Mortgage Loan Agreement) as are provided in favor of the Mortgage Lender in the Mortgage Loan Agreement.

(b) If at any time Lender is not in receipt of written evidence that all insurance required hereunder is in full force and effect, Lender shall have the right, without notice to Borrower, to take such action as Lender deems necessary to protect its interest in any of the

Properties or the Collateral, including, without limitation, the obtaining of such insurance coverage as Lender in its sole discretion deems appropriate (but limited to the coverages and amounts required under the Mortgage Loan Agreement) and all premiums incurred by Lender in connection with such action or in obtaining such insurance and keeping it in effect shall be paid by Borrower to Lender upon demand and shall bear interest at the Default Rate.

**Section 6.2. Casualty.** If the Individual Property shall be materially damaged or destroyed, in whole or in part, by fire or other casualty (a “Casualty”), Borrower shall give prompt notice of such damage to Lender and shall cause Mortgage Borrower to promptly commence and diligently prosecute the completion of the Restoration of the Individual Property as nearly as possible to the condition the Individual Property was in immediately prior to such Casualty, with such alterations as may be reasonably approved by Lender and otherwise in accordance with Section 6.4 of the Mortgage Loan Agreement. Borrower shall cause Mortgage Borrower to pay all costs of such Restoration whether or not such costs are covered by insurance. Lender may, but shall not be obligated to make proof of loss if not made promptly by Borrower or Mortgage Borrower. In addition, Lender may participate in any settlement discussions with any insurance companies with respect to any Casualty in which the Net Proceeds or the costs of completing the Restoration are equal to or greater than, in the case of each Casualty, an amount equal to five percent (5%) of the sum of the Allocated Loan Amount for the affected Individual Property and the “Allocated Loan Amounts” under (and as defined in each of) the Mortgage Loan Agreement and the Other Mezzanine Loan Agreements for the affected Individual Property, and Borrower shall deliver to Lender all instruments required by Lender to permit such participation.

**Section 6.3. Condemnation.** Borrower shall promptly give Lender notice of the actual or threatened commencement of any proceeding for the Condemnation of any Individual Property and shall cause Mortgage Borrower to deliver to Lender copies of any and all papers served in connection with such proceedings. Lender may participate in any such proceedings, and Borrower shall from time to time deliver to Lender all instruments requested by it to permit such participation. Borrower shall, at its expense, diligently prosecute any such proceedings, and shall consult with Lender, its attorneys and experts, and cooperate with them in the carrying on or defense of any such proceedings. Notwithstanding any taking by any public or quasi-public authority through Condemnation or otherwise (including, but not limited to, any transfer made in lieu of or in anticipation of the exercise of such taking), Borrower shall continue to pay the Debt at the time and in the manner provided for its payment in the Note and in this Agreement and the Debt shall not be reduced until any Award shall have been actually received and applied by Lender, after the deduction of expenses of collection, to the reduction or discharge of the Debt. Lender shall not be limited to the interest paid on the Award by the condemning authority but shall be entitled to receive out of the Award interest at the rate or rates provided herein or in the Note. If any Individual Property or any portion thereof is taken by a condemning authority, Borrower shall cause Mortgage Borrower to promptly commence and diligently prosecute the Restoration of the applicable Individual Property and otherwise comply with the provisions of Section 6.4 of the Mortgage Loan Agreement. If any Individual Property is sold, through foreclosure or otherwise, prior to the receipt by Lender of the Award, Lender shall have the right, whether or not a deficiency judgment on the Note shall have been sought, recovered or denied, to receive the Award, or a portion thereof sufficient to pay the Debt.

**Section 6.4. Restoration.** Borrower shall, or shall cause Mortgage Borrower to, deliver to Lender all reports, plans, specifications, documents and other materials that are delivered to Mortgage Lender under Section 6.4 of the Mortgage Loan Agreement in connection with the Restoration of any Individual Property after a Casualty or Condemnation.

## VII. RESERVE FUNDS

### Section 7.1. Intentionally Omitted.

**Section 7.2. Tax and Insurance Escrow Fund.** (a) If (and for so long as) a Trigger Event shall have occurred and shall not have been cured by a Trigger Event Cure, on each Payment Date during such period, Borrower shall pay to Lender (or Servicer, as directed by Lender) an amount equal to (i) one-twelfth of the Taxes that Lender estimates will be payable during the next ensuing twelve (12) months in order to accumulate with Lender sufficient funds to pay all such Taxes at least thirty (30) days prior to their respective due dates, and (ii) one-twelfth of the Insurance Premiums that Lender estimates will be payable for the renewal of the coverage afforded by the Policies upon the expiration thereof in order to accumulate with Lender sufficient funds to pay all such Insurance Premiums at least thirty (30) days prior to the expiration of the Policies (said amounts in (i) and (ii) above hereinafter called the “**Tax and Insurance Escrow Fund**”). Lender shall apply the Tax and Insurance Escrow Fund to payments of Taxes and Insurance Premiums required to be made by Borrower pursuant to Section 5.1.2 hereof and under the Mortgage Loan Agreement. In making any payment relating to the Tax and Insurance Escrow Fund, Lender may do so according to any bill, statement or estimate procured from the appropriate public office (with respect to Taxes) or insurer or agent (with respect to Insurance Premiums), without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof. If the amount of the Tax and Insurance Escrow Fund shall exceed the amounts due for Taxes and Insurance Premiums pursuant to Section 5.1.2 hereof, provided no Event of Default shall have occurred and be continuing, then Lender shall return any excess to Borrower (or to Operating Company, if so directed by Borrower). In allocating such excess, Lender may deal with the Person shown on the records of Lender to be the owner of the Properties. If at any time Lender reasonably determines that the Tax and Insurance Escrow Fund is not or will not be sufficient to pay Taxes and Insurance Premiums by the dates set forth in (i) and (ii) above, Lender shall notify Borrower of such determination and Borrower shall increase its monthly payments to Lender by the amount that Lender estimates is sufficient to make up the deficiency at least thirty (30) days prior to the due date of the Taxes and/or thirty (30) days prior to expiration of the Policies, as the case may be.

(b) Notwithstanding the foregoing, Borrower shall not be required to make any deposits into the Tax and Insurance Escrow Fund on account of Insurance Premiums if (and for so long as) Borrower shall maintain a blanket insurance policy in respect of the Properties that is in accordance with the provisions of Section 6.1(a) and otherwise satisfactory to Lender in all material respects.

(c) Any amount remaining in the Tax and Insurance Escrow Fund following the occurrence of a Trigger Event Cure shall be returned to Borrower (or Operating Company, as directed by Borrower).

**7.2.1 Waiver of Tax Escrow.** Borrower shall be relieved of its obligation to make deposits of Tax and Insurance Escrow Fund under Section 7.2 above, provided that (a) Mortgage Borrower or Senior Mezzanine Borrower is required to and does make monthly deposits to a tax escrow account under the Mortgage Loan or Senior Mezzanine Loan, and (b) Lender receives evidence acceptable to it of the making of such deposits and of the payment of all such Taxes.

**7.2.2 Tax and Insurance Escrow Funds After Debt Paid.** Any Tax and Insurance Escrow Funds remaining after the Debt has been paid in full shall be remitted (i) if the Ninth Mezzanine Loan is outstanding, then to the Ninth Mezzanine Lender or (ii) if the Ninth Mezzanine Loan is no longer outstanding then to Borrower or, at Borrower's election, shall be credited against the Debt simultaneously with the satisfaction of the balance of the Loan.

**Section 7.3. FF&E Reserve Account.**

**7.3.1 FF&E Reserve Fund.** (a) Unless Borrower shall have delivered to Lender a Guaranty (FF&E), Borrower shall pay to Lender (or Servicer, as directed by Lender) on each Payment Date an amount equal to (i) one-twelfth of three percent (3%) of the amount of all Revenues for the full calendar year prior to the first (1st) day of the month in which such Payment Date occurs, less (ii) any amount spent during the previous calendar month by Borrower or Operating Company on behalf of Borrower in accordance with the Operating Lease on account of FF&E (other than from the FF&E Reserve Fund, it being understood that amounts expended on account of FF&E from the FF&E Reserve Fund shall not be included in any deductions required pursuant to the preceding subclause (i) and that any FF&E that is purchased through disbursements from the FF&E Reserve Fund may not be subsequently financed by Borrower or Operating Company). Notwithstanding anything to the contrary contained herein, in no event shall Borrower be required to maintain in the FF&E Reserve Account an amount in excess of the aggregate amount of all FF&E deposits required to be made in the preceding calendar year (as determined, for purposes of this sentence, utilizing the monthly formula set forth in the preceding sentence). In addition, notwithstanding anything to the contrary contained herein, for purposes of determining the amount of any required FF&E Reserve Fund deposits (and for purposes of calculating such amount, monthly, based on the formula set forth in the first sentence of this Section 7.3.1), Revenues shall include Revenue from the Hotel Component and the Casino Component but shall not include non-Hotel or Casino related Revenues (e.g., Rents from retail tenants).

(b) Amounts deposited by Borrower as described in this Section 7.3.1 shall hereinafter be referred to as the "FF&E Reserve Fund" and the account in which such amounts are held shall hereinafter be referred to as the "FF&E Reserve Account".

**7.3.2 Disbursements from FF&E Reserve Account.** (a) All disbursements from the FF&E Reserve Account shall be made solely for the purpose of reimbursing Borrower (or Operating Company for FF&E bought on behalf and in the name of Borrower in accordance with the Operating Lease, as directed by Borrower) for its costs and expenses incurred, or for paying costs to be incurred, in connection with the repair, replacement and/or upgrade of FF&E at the Properties. Provided no Event of Default shall have occurred and be continuing, Lender shall, within ten (10) days following request by Borrower, make

disbursements from the FF&E Reserve Fund no more frequently than once in any thirty (30) day period, in amounts no less than \$10,000 per disbursement (or a lesser amount if the total amount in the FF&E Reserve Account is less than \$10,000, in which case only one disbursement of the amount remaining in the account shall be made), and upon delivery by Borrower (or Operating Company) of Lender's standard form of draw request accompanied by copies of invoices for the amounts requested and, if required by Lender for requests in excess of \$50,000 for a single item, receipts and releases from all parties furnishing materials and/or services in connection with the requested payment.

(b) Disbursements may be made from the FF&E Reserve Account, at Borrower's election, directly to third parties (as directed by Borrower).

(c) In no event shall funds in the FF&E Reserve Account be utilized to pay (or reimburse any Person) for any Capital Expenditures or non-recurring work being performed at the Properties.

**7.3.3 Balance in the FF&E Reserve Account.** (a) The insufficiency of any balance in the FF&E Reserve Account shall not relieve Borrower from its obligation to fulfill all preservation and maintenance covenants in the Loan Documents.

**7.3.4 Waiver of FF&E Reserve.** Borrower shall be relieved of its obligation to make deposits of FF&E Reserve Fund under Section 7.3 above, provided that either (a)(i) Mortgage Borrower or Senior Mezzanine Borrower is required to and does make monthly deposits to a FF&E reserve account under the Mortgage Loan or Senior Mezzanine Loan, and (ii) Lender receives evidence acceptable to it of the making of such deposits or (b) an FF&E Guaranty is provided to Mortgage Lender.

**7.3.5 FF&E Reserve Funds After Debt Paid.** Any FF&E Reserve Funds remaining after the Debt has been paid in full shall be remitted (i) if the Ninth Mezzanine Loan is outstanding, then to the Ninth Mezzanine Lender or (ii) if the Ninth Mezzanine Loan is no longer outstanding then to Borrower or, at Borrower's election, shall be credited against the Debt simultaneously with the satisfaction of the balance of the Loan.

#### **Section 7.4. Ground Rent Funds.**

**7.4.1 Deposits of Ground Rent Funds.** If (and for so long as) a Trigger Event shall have occurred and shall not have been cured by a Trigger Event Cure, Borrower shall deposit with Lender (or Servicer, as directed by Lender), at least ten (10) Business Days prior to each Payment Date during such period, an amount equal to the Ground Rent that will be payable under the Ground Lease for the month in which such Payment Date occurs. Amounts deposited by Borrower as described in this Section 7.4.1 shall hereinafter be referred to as the "**Ground Rent Reserve Fund**" and the account in which such amounts are held shall hereinafter be referred to as the "**Ground Rent Reserve Account**". Such deposit may be increased by Lender in the amount Lender deems is necessary in its reasonable discretion based on any increases in the Ground Rent.

**7.4.2 Release of Ground Rent Funds.** Provided no Event of Default has occurred and is continuing, Lender shall apply the Ground Rent Reserve Funds to payments of

Ground Rent. In making any payment relating to Ground Rent, Lender may do so according to any bill or statement given by the Ground Lessor without inquiry into the accuracy of such bill or statement or into the validity of any rent, additional rent or other charge thereof. If the amount of the Ground Rent Reserve Funds shall exceed the amounts due for Ground Rent, Lender shall return any excess to Borrower.

**7.4.3 Waiver of Ground Rent Reserve.** Borrower shall be relieved of its obligation to make deposits of Ground Rent Reserve Funds under Section 7.4 above, provided that (a) Mortgage Borrower or Senior Mezzanine Borrower is required to and does make monthly deposits to a ground rent reserve account under the Mortgage Loan or Senior Mezzanine Loan, and (b) Lender receives evidence acceptable to it of the making of such deposits and of the payment of all Ground Rent.

**7.4.4 Ground Rent Reserve Funds After Debt Paid.** Any Ground Rent Reserve Funds remaining after the Debt has been paid in full shall be remitted (i) if the Ninth Mezzanine Loan is outstanding, then to the Ninth Mezzanine Lender or (ii) if the Ninth Mezzanine Loan is no longer outstanding then to Borrower or, at Borrower's election, shall be credited against the Debt simultaneously with the satisfaction of the balance of the Loan.

**Section 7.5. Reserve Funds, Generally.** (a) Borrower grants to Lender a first-priority perfected security interest in each of the Reserve Funds and any and all monies now or hereafter deposited in each Reserve Fund as additional security for payment of the Debt. Until expended or applied in accordance herewith, the Reserve Funds shall constitute additional security for the Debt. Upon the occurrence and during the continuance of an Event of Default, Lender may, in addition to any and all other rights and remedies available to Lender, apply any sums then present in any or all of the Reserve Funds to the payment of the Debt in any order in its sole discretion. The Reserve Funds shall not constitute trust funds and may be commingled with other monies held by Lender.

(b) Borrower shall not, without obtaining the prior consent of Lender, further pledge, assign or grant any security interest in any Reserve Fund or the monies deposited therein or permit any lien or encumbrance to attach thereto, or any levy to be made thereon, or any UCC-1 Financing Statements, except those naming Lender as the secured party, to be filed with respect thereto.

(c) The Reserve Funds shall be held by Lender (or Servicer) and may be invested at Borrower's election and direction in Permitted Investments routinely offered by the Servicer of the Securitization for investment by Borrower. All interest or other earnings on a Reserve Fund shall be added to and become a part of such Reserve Fund for the benefit of Borrower and shall be disbursed in the same manner as other monies deposited in such Reserve Fund. Borrower shall have the right to direct Lender (or Servicer) to invest sums on deposit in the Eligible Account in Permitted Investments provided (a) such investments are permitted by applicable federal, state and local rules, regulations and laws, (b) the maturity date of the Permitted Investment is not later than the date on which the applicable Reserve Funds are required for payment of an obligation for which such Reserve Fund was created, and (c) no Event of Default shall have occurred and be continuing. Borrower shall be responsible for payment of any federal, state or local income or other tax applicable to the interest or income

earned on the Reserve Funds. No other investments of the sums on deposit in the Reserve Funds shall be permitted except as set forth in this Section 7.5. Borrower shall bear all reasonable costs associated with the investment of the sums in the account in Permitted Investments. Such costs shall be deducted from the income or earnings on such investment, if any, and to the extent such income or earnings shall not be sufficient to pay such costs, such costs shall be paid by Borrower promptly on demand by Lender. Lender shall have no liability for the rate of return earned or losses incurred on the investment of the sums in Permitted Investments.

(d) Borrower shall indemnify Lender and hold Lender harmless from and against any and all actions, suits, claims, demands, liabilities, losses, damages, obligations and costs and expenses (including litigation costs and reasonable attorneys fees and expenses) arising from or in any way connected with the Reserve Funds or the performance of the obligations for which the Reserve Funds were established. Borrower shall assign to Lender all rights and claims Borrower may have against all Persons supplying labor, materials or other services which are to be paid from or secured by the Reserve Funds; provided, however, that Lender may not pursue any such right or claim unless an Event of Default has occurred and remains uncured.

**Section 7.6. Transfer of Reserve Funds Under Mortgage Loan and Senior Mezzanine Loan.** If Mortgage Lender or Senior Mezzanine Lender waives any reserves or escrow accounts required in accordance with the terms of the Mortgage Loan Agreement or Senior Mezzanine Loan Agreement which reserves or escrow accounts are also required in accordance with the terms of this Article VII, or if the Mortgage Loan or Senior Mezzanine Loan is refinanced or paid off in full (without a prepayment of the Loan) and Reserve Funds that are required hereunder are not required under the new mortgage loan, if any, then Borrower shall cause any amounts that would have been deposited into any reserves or escrow accounts in accordance with the terms of the Mortgage Loan Agreement or Senior Mezzanine Loan Agreement to be paid to and deposited with Lender in accordance with the terms of this Article VII (and Borrower shall enter into lockbox and cash management agreements for the benefit of Lender in form and substance acceptable to Lender).

## VIII. DEFAULTS

**Section 8.1. Event of Default.** (a) Each of the following events shall constitute an event of default hereunder (an “**Event of Default**”):

(i) if (A) any portion of the Debt is not paid in full on the Maturity Date, (B) the Debt Service is not paid in full on or before the related Payment Date, or (C) any other portion of the Debt is not paid within five (5) days of when due;

(ii) if any of the Taxes or Other Charges are not paid (with respect to each Individual Property) prior to Delinquency;

(iii) if the Policies (with respect to each Individual Property) are not kept in full force and effect, or if certified copies of the Policies (for each Individual Property) are not delivered to Lender upon request (or certificates thereof, if a Policy shall be renewed and certified copies of the Policy are not immediately available upon such

renewal (Borrower agreeing in such instance to provide copies of the Policies to Lender promptly thereafter));

(iv) if Borrower Transfers or otherwise encumbers any portion of the Properties or the Collateral or Senior Mezzanine Collateral, or there shall otherwise occur a Transfer, without Lender's prior consent in violation of the provisions of this Agreement, the Pledge Agreement or any other Loan Document or any Transfer is made in violation of the provisions of Section 5.2.10;

(v) if any representation or warranty made by Borrower or any other Loan Party herein or in any other Loan Document, or in any report, certificate, financial statement or other instrument, agreement or document furnished to Lender shall have been false or misleading in any material respect as of the date the representation or warranty was made (and, with respect to any such breach which is not the subject of any other subsection of this Section 8.1 and which is capable of being cured, Borrower fails to remedy such condition within ten (10) days following notice to Borrower from Lender, in the case of any such breach which can be cured by the payment of a sum of money, or within thirty (30) days following notice from Lender in the case of any other such breach);

(vi) if Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Principal, Holdings, Operating Company or any Guarantor shall make an assignment for the benefit of creditors;

(vii) if a receiver, liquidator or trustee shall be appointed for Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Principal, Holdings, Operating Company or Guarantor, or if Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Principal, Holdings, Operating Company or Guarantor shall be adjudicated a bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to federal bankruptcy law, or any similar federal or state law, shall be filed by or against, consented to, or acquiesced in by, Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Principal, Holdings, Operating Company or Guarantor, or if any proceeding for the dissolution or liquidation of Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Principal, Holdings, Operating Company or Guarantor shall be instituted; provided, however, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Principal, Holdings, Operating Company or Guarantor, upon the same not being discharged, stayed or dismissed within ninety (90) days;

(viii) if Borrower attempts to assign its rights under this Agreement or any of the other Loan Documents or any interest herein or therein in contravention of the Loan Documents;

(ix) if Borrower breaches any of its respective negative covenants contained in Section 5.2 or any covenant contained in Section 4.1.30 or Section 5.1.11 hereof (and, with respect to any such breach of any covenant set forth in Section 5.1.11 which is not the subject of any other subsection of this Section 8.1, Borrower fails to remedy such

condition within ten (10) days after notice to Borrower from Lender, in the case of any such Default under Section 5.1.11 which can be cured by the payment of a sum of money, or for thirty (30) days after notice from Lender in the case of any other such Default under Section 5.1.11);

(x) with respect to any term, covenant or provision set forth herein which specifically contains a notice requirement or grace period, if Borrower shall be in default under such term, covenant or condition after the giving of such notice or the expiration of such grace period;

(xi) if any of the assumptions contained in the Insolvency Opinion delivered to Lender in connection with the Loan, or in the Additional Insolvency Opinion delivered subsequent to the closing of the Loan, is or shall become untrue in any material respect; or if any of the assumptions contained in the True Lease Opinion delivered to Lender in connection with the Loan, or in the Additional True Lease Opinion delivered subsequent to the closing of the Loan, is or shall become untrue in any material respect;

(xii) if Mortgage Borrower, Operating Company or Guarantor (Operating Lease) is in default of any of its material obligations under the Operating Lease (or under another lease and/or management agreement in substitution for the Operating Lease in accordance herewith) or under the Operating Lease Guaranty (or under another operating lease guaranty in substitution for the Operating Lease Guaranty in accordance herewith) beyond any applicable notice and cure periods contained therein; or if any Operating Lease (or such other lease and/or management agreement) or any Operating Lease Guaranty (or such other operating lease guaranty) shall be surrendered or any Operating Lease or any Operating Lease Guaranty shall be terminated or canceled for any reason or under any circumstances whatsoever, except with the consent of Lender; or if any of the terms, covenants or conditions of the Operating Lease (or such other lease and/or management agreement) or the Operating Lease Guaranty (or such other operating lease guaranty) shall in any manner be modified, changed, supplemented, altered, restated or amended without the consent of Lender except as may otherwise expressly permitted in this Agreement;

(xiii) if any Affiliate of Borrower that is or becomes a party to the Windstorm Insurance Intercreditor Agreement is in default of any of its material obligations under the Windstorm Insurance Intercreditor Agreement beyond any applicable notice and cure periods contained therein; or if the Windstorm Insurance Intercreditor Agreement shall be surrendered, terminated or canceled for any reason or under any circumstances whatsoever, except with the consent of Lender; or if any of the terms, covenants or conditions of the Windstorm Insurance Intercreditor Agreement shall in any manner be modified, changed, supplemented, altered, restated or amended without the consent of Lender;

(xiv) if Borrower, Senior Mezzanine Borrower or Mortgage Borrower fails to comply with the covenants as to Prescribed Laws set forth in Section 5.1.1 hereof;

(xv) if (A) subject to any notice and cure periods contained in the applicable Ground Lease, Mortgage Borrower or Ground Lease Subsidiary, as applicable, shall fail in the payment of any rent, additional rent or other charge mentioned in or made payable by such Ground Lease as and when such rent or other charge is payable (unless waived by the landlord under such Ground Lease), (B) subject to any notice and cure periods contained in the applicable Ground Lease, there shall occur any default by Mortgage Borrower or Ground Lease Subsidiary, as applicable, as tenant under such Ground Lease, in the observance or performance of any term, covenant or condition of the Ground Lease on the part of Mortgage Borrower or Ground Lease Subsidiary, as applicable, to be observed or performed (unless waived by the landlord under the Ground Lease) (other than any such default being contested by Borrower in good faith by appropriate proceedings, provided that (i) no Event of Default has occurred and remains uncured, (ii) such proceeding shall be conducted in accordance with all applicable statutes, laws and ordinances, (iii) in Lender's reasonable determination, the Ground Lease is not in imminent danger of being forfeited, terminated, cancelled or lost and the Operating Company's use and operation of the ground leased premises in connection with the operation of Harrah's Lake Tahoe", "Harvey's Lake Tahoe" or "Bill's Lake Tahoe" is not in imminent danger of being denied, forfeited, terminated, cancelled or lost and (iv) Borrower shall furnish such security as may be reasonably requested by Lender), (C) any one or more of the events referred to in any Ground Lease shall occur which would cause the Ground Lease to terminate without notice or action by the landlord under the Ground Lease or which would entitle the landlord to terminate the Ground Lease and the term thereof by giving notice to Mortgage Borrower or Ground Lease Subsidiary, as applicable, as tenant thereunder (unless waived by the landlord under the Ground Lease), (D) the leasehold estate created by any Ground Lease shall be surrendered or the Ground Lease shall be terminated or canceled for any reason or under any circumstances whatsoever unless Mortgage Borrower or Ground Lease Subsidiary, as applicable, acquires the fee interest and mortgages same to Lender (unless Mortgage Borrower or Ground Lease Subsidiary, as applicable, acquires the fee interest, with Lender's prior reasonable approval, and mortgages same to Mortgage Lender) or (E) if any of the terms, covenants or conditions of any Ground Lease shall in any manner be modified, changed, supplemented, altered, or amended without the consent of Lender except as otherwise permitted by this Agreement;

(xvi) any Gaming License shall be refused, suspended, revoked, modified in a materially adverse manner or canceled or allowed to lapse or any proceeding is commenced by any Governmental Authority for the purpose of suspending, revoking or canceling any Gaming License in any materially adverse respect, or any Governmental Authority shall have appointed a conservator, supervisor or trustee to or for any of the Casino Components and, in each case of the foregoing, such action could reasonably be expected to (A) have an Individual Material Adverse Effect, (B) materially and adversely effect the continued operation of the Casino Components in the usual course of business and in substantially the same manner and to at least the same standard as was maintained prior to such action, or (C) result in any material decrease in the then expected cash flow and revenues to be derived from the Casino Components;

(xvii) if Borrower shall continue to be in Default under any of the other terms, covenants or conditions of this Agreement not specified in subsections (i) to (xv) above, for ten (10) days after notice to Borrower from Lender, in the case of any Default which can be cured by the payment of a sum of money, or for thirty (30) days after notice from Lender in the case of any other Default; provided, however, that if such non-monetary Default is susceptible of cure but cannot reasonably be cured within such thirty (30) day period and provided further that Borrower shall have commenced to cure such Default within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for such time as is reasonably necessary for Borrower in the exercise of due diligence to cure such Default, such additional period not to exceed one hundred twenty (120) days;

(xviii) if there shall be a default under any of the other Loan Documents beyond any applicable cure periods contained in such documents, whether as to Borrower, Mortgage Borrower, Senior Mezzanine Borrower, the Collateral or any Individual Property, or if any other such event shall occur or condition shall exist, if the effect of such event or condition is to accelerate the maturity of any portion of the Debt or to permit Lender to accelerate the maturity of all or any portion of the Debt;

(xix) if the Liens created pursuant to any Loan Document shall cease to be a fully protected enforceable first priority security interest in the Collateral, or any portion of the Collateral is Transferred without Lender's prior written consent except as permitted hereunder; or

(xx) if a Mortgage Loan Event of Default or Senior Mezzanine Loan Event of Default shall occur.

(b) Upon the occurrence of an Event of Default (other than an Event of Default described in clauses (vi) or (vii) above) and at any time thereafter, in addition to any other rights or remedies available to it pursuant to this Agreement and the other Loan Documents or at law or in equity, Lender may take such action, without notice or demand, that Lender deems advisable to protect and enforce its rights against Borrower and in and to all or any of the Collateral, including, without limitation, declaring the Debt to be immediately due and payable, and Lender may enforce or avail itself of any or all rights or remedies provided in the Loan Documents and may exercise all the rights and remedies of a secured party under the Uniform Commercial Code, as adopted and enacted by the State or States where any of the Collateral is located against Borrower and any or all of the Collateral, including, without limitation, all rights or remedies available at law or in equity; and upon any Event of Default described in clauses (vi) or (vii) above, the Debt and all other obligations of Borrower hereunder and under the other Loan Documents shall immediately and automatically become due and payable, without notice or demand, and Borrower hereby expressly waives any such notice or demand, anything contained herein or in any other Loan Document to the contrary notwithstanding.

**Section 8.2. Remedies.** (a) Upon the occurrence of an Event of Default, but in compliance with applicable Gaming Laws, all or any one or more of the rights, powers, privileges and other remedies available to Lender against Borrower under this Agreement or any of the other Loan Documents executed and delivered by, or applicable to, Borrower or at law or

in equity may be exercised by Lender at any time and from time to time, whether or not all or any of the Debt shall be declared due and payable, and whether or not Lender shall have commenced any foreclosure proceeding or other action for the enforcement of its rights and remedies under any of the Loan Documents with respect to all or any of the Collateral. Any such actions taken by Lender shall be cumulative and concurrent and may be pursued independently, singularly, successively, together or otherwise, at such time and in such order as Lender may determine in its sole discretion, to the fullest extent permitted by law, without impairing or otherwise affecting the other rights and remedies of Lender permitted by law, equity or contract or as set forth herein or in the other Loan Documents. Without limiting the generality of the foregoing, Borrower agrees that if an Event of Default is continuing (i) Lender is not subject to any “one action” or “election of remedies” law or rule, and (ii) all liens and other rights, remedies or privileges provided to Lender shall remain in full force and effect until Lender has exhausted all of its remedies against the Collateral and the Collateral has been foreclosed upon, sold and/or otherwise realized upon in satisfaction of the Debt or the Debt has been paid in full.

(b) With respect to Borrower and the Collateral, nothing contained herein or in any other Loan Document shall be construed as requiring Lender to resort to any portion of the Collateral for the satisfaction of any of the Debt in preference or priority to any other portion of the Collateral, and Lender may seek satisfaction out of all of the Collateral or any part thereof, in its absolute discretion in respect of the Debt. In addition, Lender shall have the right from time to time to partially foreclose upon the Collateral in any manner and for any amounts secured by the Pledge Agreement then due and payable as determined by Lender in its sole discretion including, without limitation, the following circumstances: (i) in the event Borrower defaults beyond any applicable grace period in the payment of one or more scheduled payments of principal and interest, Lender may foreclose upon the Collateral to recover such delinquent payments, or (ii) in the event Lender elects to accelerate less than the entire outstanding principal balance of the Loan, Lender may foreclose upon the Collateral to recover so much of the principal balance of the Loan as Lender may accelerate and such other sums secured by the Collateral as Lender may elect. Notwithstanding one or more partial foreclosures, the Collateral shall remain subject to the Pledge Agreement and the other Loan Documents to secure payment of sums secured by the Pledge Agreement and other Loan Documents and not previously recovered.

(c) Upon the occurrence and during the continuance of an Event of Default, Lender shall have the right from time to time to sever the Note and the other Loan Documents into one or more separate notes, pledges and other security documents (the “**Severed Loan Documents**”) in such denominations as Lender shall determine in its sole discretion for purposes of evidencing and enforcing its rights and remedies provided hereunder. Borrower shall execute and deliver to Lender from time to time, promptly after the request of Lender, a severance agreement and such other documents as Lender shall request in order to effect the severance described in the preceding sentence, all in form and substance reasonably satisfactory to Lender. Borrower hereby absolutely and irrevocably appoints Lender as its true and lawful attorney, coupled with an interest, in its name and stead to make and execute all documents necessary or desirable to effect the aforesaid severance, Borrower ratifying all that its said attorney shall do by virtue thereof; provided, however, Lender shall not make or execute any such documents under such power until three (3) days after notice has been given to Borrower by Lender of Lender’s intent to exercise its rights under such power. Borrower shall be obligated to pay any costs or

expenses incurred in connection with the preparation, execution, recording or filing of the Severed Loan Documents. The Severed Loan Documents shall not contain any representations, warranties or covenants not contained in the Loan Documents and any such representations and warranties contained in the Severed Loan Documents will be given by Borrower only as of the Closing Date. The Severed Loan Documents shall (a) not increase the aggregate stated principal amount of the Loan, (b) provide that the weighted average spread of the Loan on the date of such severance shall equal the weighted average spread which was applicable to the Loan immediately prior to such severance (Borrower acknowledging that such Severed Loan Document may, in connection with the application of principal to the amounts evidenced by such Severed Loan Documents, subsequently cause the weighted average spread of such new notes or modified notes to change), (c) not adversely affect the overall economics to Borrower of the Loan, taken as a whole, or (d) expose Borrower to any additional costs or increased risk of any liability (beyond that or greater than that existing in the Loan Documents in effect on the date hereof).

(d) The rights, powers and remedies of Lender under this Agreement shall be cumulative and not exclusive of any other right, power or remedy which Lender may have against Borrower pursuant to this Agreement or the other Loan Documents, or existing at law or in equity or otherwise. Lender's rights, powers and remedies may be pursued singularly, concurrently or otherwise, at such time and in such order as Lender may determine in Lender's sole discretion. No delay or omission to exercise any remedy, right or power accruing upon an Event of Default shall impair any such remedy, right or power or shall be construed as a waiver thereof, but any such remedy, right or power may be exercised from time to time and as often as may be deemed expedient. A waiver of one Default or Event of Default with respect to Borrower shall not be construed to be a waiver of any subsequent Default or Event of Default by Borrower or to impair any remedy, right or power consequent thereon.

(e) Any amounts recovered from the Collateral after an Event of Default may be applied by Lender toward the payment of any interest and/or principal of the Loan and/or any other amounts due under the Loan Documents in such order, priority and proportions as Lender in its sole discretion shall determine.

(f) Upon the occurrence and during the continuance of an Event of Default, Lender may, but without any obligation to do so and without notice to or demand on Borrower and without releasing Borrower from any obligation hereunder or being deemed to have cured any Event of Default hereunder, make, do or perform any obligation of Borrower hereunder in such manner and to such extent as Lender may deem necessary. Borrower shall cause Mortgage Borrower to permit Lender to enter upon any Individual Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in any Individual Property for such purposes, and the cost and expense thereof (including reasonable attorneys' fees to the extent permitted by law), with interest as provided in this Section 8.2, shall constitute a portion of the Debt and shall be due and payable to Lender upon demand. All such costs and expenses incurred by Lender in remedying such Event of Default or such failed payment or act or in appearing in, defending, or bringing any action or proceeding shall bear interest at the Default Rate, for the period after such cost or expense was incurred into the date of payment to Lender. All such costs and expenses incurred by Lender together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and be secured by the liens,

claims and security interests provided to Lender under the Loan Documents and shall be immediately due and payable upon demand by Lender therefore. Upon the occurrence and during the continuance of a Senior Mezzanine Loan Event of Default, Lender may, but without any obligation to do so and without notice to or demand on Borrower or Senior Mezzanine Borrower and without releasing Senior Mezzanine Borrower from any obligation under the Senior Mezzanine Loan Documents or being deemed to have cured any Senior Mezzanine Loan Event of Default, make, do or perform any obligation of Senior Mezzanine Borrower under Senior Mezzanine Loan Documents in such manner and to such extent as Lender may deem necessary. All such costs and expenses incurred by Lender in remedying such Senior Mezzanine Loan Event of Default or such failed payment or act shall bear interest at the Default Rate, for the period after such cost or expense was incurred into the date of payment to Lender. All such costs and expenses incurred by Lender together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and be secured by the liens, claims and security interests provided to Lender under the Loan Documents and shall be immediately due and payable upon demand by Lender therefor. Upon the occurrence and during the continuance of a Mortgage Loan Event of Default, Lender may, but without any obligation to do so and without notice to or demand on Borrower or Mortgage Borrower and without releasing Mortgage Borrower from any obligation under the Mortgage Loan Documents or being deemed to have cured any Mortgage Loan Event of Default, make, do or perform any obligation of Mortgage Borrower under Mortgage Loan Documents in such manner and to such extent as Lender may deem necessary. All such costs and expenses incurred by Lender in remedying such Mortgage Loan Event of Default or such failed payment or act shall bear interest at the Default Rate, for the period after such cost or expense was incurred into the date of payment to Lender. All such costs and expenses incurred by Lender together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and be secured by the liens, claims and security interests provided to Lender under the Loan Documents and shall be immediately due and payable upon demand by Lender therefor.

(g) For the purpose of carrying out the provisions and exercising the rights, powers and privileges granted in this Section 8.2, Borrower hereby irrevocably constitutes and appoints the Lender its true and lawful attorney-in-fact to execute, acknowledge and deliver any instruments and do and perform any acts such as are referred to in this subsection in the name and on behalf of Borrower upon the occurrence and during the continuance of an Event of Default. This power of attorney is a power coupled with an interest and cannot be revoked.

**Section 8.3. Intentionally Omitted.**

**Section 8.4. Costs of Collection.** In the event that after an Event of Default and during the continuance thereof: (a) the Note or any of the Loan Documents is placed in the hands of an attorney for collection or enforcement or is collected or enforced through any legal proceeding; (b) an attorney is retained to represent Lender in any bankruptcy, reorganization, receivership, or other proceedings affecting creditors' rights and involving a claim under the Note or any of the Loan Documents or (c) an attorney is retained to protect or enforce the lien or any of the terms of this Agreement, the Pledge Agreement or any of the Loan Documents, then, in any such instance, Borrower shall pay to Lender all reasonable attorneys' fees, costs and expenses actually incurred in connection therewith, including costs of appeal, together with interest on any judgment obtained by Lender at the Default Rate.

## IX. SPECIAL PROVISIONS

**Section 9.1. Sale of Notes and Securitization.** Borrower acknowledges and agrees that the Lender may sell all or any portion of the Loan and the Loan Documents, or issue one or more participations therein, or consummate one or more private or public securitizations of rated single- or multi-class securities (the “**Securities**”) secured by or evidencing ownership interests in all or any portion of the Loan and the Loan Documents or a pool of assets that include the Loan and the Loan Documents (such sales, participations and/or securitizations, collectively, a “**Securitization**”). At the request of Lender, and to the extent not already required to be provided by Borrower under this Agreement, Borrower shall use reasonable efforts to provide information not in the possession of Lender or which may be reasonably required by Lender in order to satisfy the market standards to which Lender customarily adheres or which may be reasonably required by prospective investors and/or the Rating Agencies in connection with any such Securitization including, without limitation, to:

(a) provide or cause Mortgage Borrower and Senior Mezzanine Borrower to provide additional and/or updated Provided Information, together with appropriate verification and/or consents related to the Provided Information through letters of auditors or opinions of counsel of independent attorneys reasonably acceptable to Lender and the Rating Agencies;

(b) cooperate in good faith in the preparation of descriptive materials for presentations to any or all of the Rating Agencies, and work with, and if requested, supervise, third-party service providers engaged by Borrower, Holdings and their respective affiliates to obtain, collect, and deliver information requested or required by Lender or the Rating Agencies;

(c) deliver, if required or requested by any Rating Agency, (i) updated opinions of counsel as to non-consolidation, due execution and enforceability with respect to the Properties, Borrower, Mortgage Borrower, Senior Mezzanine Borrower, the Collateral, the Senior Mezzanine Collateral, Principal, Holdings and their respective Affiliates and the Loan Documents, and (ii) revised organizational documents for Borrower, which counsel opinions and organizational documents shall be reasonably satisfactory to Lender and the Rating Agencies;

(d) if required by any Rating Agency, use commercially reasonable efforts to deliver such additional tenant estoppel letters, subordination agreements or other agreements from parties to agreements that affect any of the Properties, which estoppel letters, subordination agreements or other agreements shall be reasonably satisfactory to Lender and the Rating Agencies;

(e) execute such amendments to the Loan Documents as may be requested by Lender or the Rating Agencies to effect the Securitization and/or deliver one or more new component notes to replace the original note or modify the original note to reflect multiple components of the Loan such that the pricing and marketability of the Securities and the size of each class of Securities and the rating assigned to each such class by the Rating Agencies shall provide the most favorable rating levels and achieve the optimum rating levels for the Loan, provided that, (i) the aggregate stated principal amount of the notes, following such amendments or deliver of new or component notes, shall equal the aggregate stated principal amount of the Loan immediately prior thereto, (ii) the weighted average spread of the Loan on the date of such

amendment or delivery of new or component notes shall equal the weighted average spread which was applicable to the Loan immediately prior to such adjustment (Borrower acknowledging that such new notes or modified notes may, in connection with the application of principal to such new notes or modified note following the occurrence of an Event of Default, but not otherwise, subsequently cause the weighted average spread of such new notes or modified notes to change and (iii) the provisions of Section 2.1.5 otherwise shall apply to any such amendments and delivery of new or component notes (such provisions being incorporated herein by this reference);

(f) if requested by Lender, review any information regarding any of the Properties, Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Principal, the Collateral, the Senior Mezzanine Collateral, Holdings, the Operating Company and the Loan which is contained in a preliminary or final private placement memorandum, prospectus, prospectus supplement (including any amendment or supplement to either thereof), or other disclosure document to be used by Lender or any affiliate thereof; and

(g) supply to Lender such documentation, financial statements and reports in form and substance required in order to comply with any applicable securities laws (to the extent in Borrower's possession, or in the possession of Borrower's advisors, agents or employees), including, without limitation, if applicable, information necessary to comply with any applicable reporting or information requirements under Regulation D under the Securities Act of 1933 or Regulation S under the Securities Act of 1933.

Lender and Borrower each shall pay their respective costs and expenses incurred in connection with the foregoing, including, without limitation, legal fees in connection with any of the foregoing matters; except that all costs and expenses of Lender and Borrower associated with any restructuring of the Loan requested by Lender, including under Sections 2.1.5, 2.1.6 and 2.1.7, shall be paid solely by Lender.

**Section 9.2. Securitization Indemnification.** (a) Borrower understands that certain of the Provided Information may be included in Disclosure Documents in connection with the Securitization and may also be included in filings with the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended (the "**Securities Act**"), or the Securities and Exchange Act of 1934, as amended (the "**Exchange Act**"), or provided or made available to investors or prospective investors in the Securities, the Rating Agencies, and service providers relating to the Securitization. In the event that the Disclosure Document is required to be revised prior to the sale of all Securities, Borrower will cooperate with the holder of the Note in updating the Disclosure Document by providing all current information necessary to keep the Disclosure Document accurate and complete in all material respects to the extent in Borrower's possession.

(b) Borrower agrees to provide, in connection with the Securitization, an indemnification agreement (i) certifying that (A) Borrower has carefully examined the Disclosure Documents, including, without limitation, the sections entitled "Risk Factors," "Special Considerations," "Description of the Collateral," "Description of the Mezzanine Loans," "The Operating Company," "The Borrower" and "Certain Legal Aspects of the Mezzanine Loans," and (B) such sections and such other information in the Disclosure

Documents (to the extent such information relates to or includes any Provided Information or any information regarding the Properties, Borrower, Mortgage Borrower, the Collateral, the Senior Mezzanine Collateral and/or Operating Company) (collectively with the Provided Information, the “**Covered Disclosure Information**”) do not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, (ii) indemnifying Lender, each Noteholder, JPM (whether or not it is the Lender), any Affiliate of JPM or a Noteholder that has filed any registration statement relating to the Securitization or has acted as the sponsor or depositor in connection with the Securitization, any Affiliate of JPM or a Noteholder that acts as an underwriter, placement agent or initial purchaser of Securities issued in the Securitization, any other co-underwriters, co-placement agents or co-initial purchasers of Securities issued in the Securitization, and each of their respective officers, directors, partners, employees, representatives, agents and Affiliates and each Person or entity who controls any such Person within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act (collectively, the “**Indemnified Persons**”), for any losses, claims, damages, liabilities, costs or expenses (including, without limitation, legal fees and expenses for enforcement of these obligations (collectively, the “**Liabilities**”)) to which any such Indemnified Person may become subject insofar as the Liabilities arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in the Covered Disclosure Information or arise out of or are based upon the omission or alleged omission to state in the Covered Disclosure Information a material fact required to be stated therein or necessary in order to make the statements in the Covered Disclosure Information, in light of the circumstances under which they were made, not misleading and (iii) agreeing to reimburse each Indemnified Person for any legal or other expenses incurred by such Indemnified Person, as they are incurred, in connection with investigating or defending the Liabilities provided, however, that Borrower shall have liability with respect to Liabilities arising out of or based upon the Covered Disclosure Information only to the extent that such Liabilities arise out of or are based upon any such untrue statement or omission made in the Covered Disclosure Information in reliance upon and in conformity with information furnished to Lender or such Noteholder by or on behalf of Borrower in connection with the preparation of the Disclosure Documents or in connection with the underwriting or the closing of the Loan (including without limitation financial statements of Borrower and operating statements and rent rolls with respect to the Properties), and in no event shall Borrower be liable for Liabilities arising from information contained in a Disclosure Document that was not provided to Borrower for comment at least five (5) Business Days prior to its dissemination or on which Borrower provided comments to Lender in writing and Lender failed to incorporate such comments (assuming such comments were accurate). This indemnity agreement will be in addition to any liability which Borrower may otherwise have. Moreover, the indemnification provided for in clauses (ii) and (iii) above shall be effective whether or not an indemnification agreement described in clause (i) above is provided.

(c) In connection with filings under the Exchange Act (if any), Borrower agrees to indemnify (i) the Indemnified Persons for Liabilities to which any such Indemnified Person may become subject insofar as the Liabilities arise out of or are based upon any untrue statement or alleged untrue statement of any material fact in the Covered Disclosure Information, or the omission or alleged omission to state in the Covered Disclosure Information a material fact required to be stated therein or necessary in order to make the statements in the Covered Disclosure Information, in light of the circumstances under which they were made, not

misleading and (ii) reimburse each Indemnified Person for any legal or other expenses incurred by such Indemnified Persons, as they are incurred, in connection with defending or investigating the Liabilities.

(d) Promptly after receipt by an Indemnified Person of notice of any claim or the commencement of any action, the Indemnified Person shall, if a claim in respect thereof is to be made against Borrower, notify Borrower in writing of the claim or the commencement of that action; provided, however, that the failure to notify Borrower shall not relieve it from any liability which it may have under the indemnification provisions of this Section 9.2 except to the extent that it has been materially prejudiced by such failure and, provided, further, that the failure to notify Borrower shall not relieve it from any liability which it may have to an Indemnified Person otherwise than under the provisions of this Section 9.2. If any such claim or action shall be brought against an Indemnified Person, and it shall notify Borrower thereof, Borrower shall be entitled to participate therein and, to the extent that it wishes, assume the defense thereof with counsel reasonably satisfactory to the Indemnified Person. After notice from any Borrower to an Indemnified Person of its election to assume the defense of such claim or action, Borrower shall not be liable to the Indemnified Person for any legal or other expenses subsequently incurred by the Indemnified Person in connection with the defense thereof except as provided in the following sentence; provided, however, if the defendants in any such action include both Borrower, on the one hand, and one or more Indemnified Persons on the other hand, and an Indemnified Person shall have reasonably concluded that there are any legal defenses available to it and/or other Indemnified Persons that are different or in addition to those available to Borrower, the Indemnified Person or Persons shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on behalf of such Indemnified Person or Persons. The Indemnified Person shall instruct its counsel to maintain reasonably detailed billing records for fees and disbursements for which such Indemnified Person is seeking reimbursement hereunder and shall submit copies of such detailed billing records to substantiate that such counsel's fees and disbursements are solely related to the defense of a claim for which Borrower is required hereunder to indemnify such Indemnified Person. Borrower shall not be liable for the expenses of more than one (1) such separate counsel unless such Indemnified Person shall have reasonably concluded that there may be legal defenses available to it that are different from or additional to those available to another Indemnified Person.

(e) Without the prior consent of the Indemnified Person in question (which consent shall not be unreasonably withheld), Borrower shall not settle or compromise or consent to the entry of any judgment in any pending or threatened claim, action, suit or proceeding in respect of which indemnification may be sought hereunder (whether or not any Indemnified Person is an actual or potential party to such claim, action, suit or proceeding) unless Borrower shall have given such Indemnified Person reasonable prior notice thereof and shall have obtained an unconditional release of each Indemnified Person hereunder from all liability arising out of such claim, action, suit or proceedings. As long as Borrower has complied with its obligations to defend and indemnify hereunder, Borrower shall not be liable for any settlement made by any Indemnified Person without the consent of Borrower (which consent shall not be unreasonably withheld).

(f) Borrower agrees that if any indemnification or reimbursement sought pursuant to this Section 9.2 is finally judicially determined to be unavailable for any reason or is insufficient to hold any Indemnified Person harmless (with respect only to the Liabilities that are the subject of this Section 9.2), then Borrower, on the one hand, and such Indemnified Person, on the other hand, shall contribute to the Liabilities for which such indemnification or reimbursement is held unavailable or is insufficient: (x) in such proportion as is appropriate to reflect the relative benefits to Borrower, on the one hand, and such Indemnified Person, on the other hand, from the transactions to which such indemnification or reimbursement relates; or (y) if the allocation provided by clause (x) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (x) but also the relative faults of Borrower, on the one hand, and all Indemnified Persons, on the other hand, as well as any other equitable considerations. Notwithstanding the provisions of this Section 9.2, (A) no party found liable for a fraudulent misrepresentation shall be entitled to contribution from any other party who is not also found liable for such fraudulent misrepresentation, and (B) Borrower agrees that in no event shall the amount to be contributed by the Indemnified Persons collectively pursuant to this paragraph exceed the amount of the fees (by underwriting discount or otherwise) actually received by the Indemnified Persons in connection with the closing of the Loan or the Securitization.

(g) Borrower agrees that the indemnification, contribution and reimbursement obligations set forth in this Section 9.2 shall apply whether or not any Indemnified Person is a formal party to any lawsuits, claims or other proceedings. Borrower further agrees that the Indemnified Persons are intended third party beneficiaries under this Section 9.2.

(h) The liabilities and obligations of the Indemnified Persons and Borrower under this Section 9.2 shall survive the termination of this Agreement and the satisfaction and discharge of the Debt.

(i) Notwithstanding anything to the contrary contained herein, Borrower shall have no obligation to act as depositor with respect to the Loan or an issuer or registrant with respect to the Securities issued in any Securitization.

**Section 9.3. Exculpation.** (a) Subject to the qualifications below, Lender shall not enforce the liability and obligation of Borrower to perform and observe the obligations contained in the Note, this Agreement, the Pledge Agreement or the other Loan Documents by any action or proceeding wherein a money judgment shall be sought against Borrower, except that Lender may bring a foreclosure action, an action for specific performance or any other appropriate action or proceeding to enable Lender and each Noteholder to enforce and realize upon its interest under the Note, this Agreement, the Pledge Agreement and the other Loan Documents, or in the Collateral, or any other collateral given to Lender pursuant to the Loan Documents; provided, however, that, except as specifically provided herein, any judgment in any such action or proceeding shall be enforceable against Borrower only to the extent of Borrower's interest in the Collateral and in any other collateral given to Lender, and Lender, by accepting the Note, this Agreement, the Pledge Agreement and the other Loan Documents, agrees that it shall not sue for, seek or demand any deficiency judgment against Borrower in any such action or proceeding under, or by reason of, or in connection with, the Note, this Agreement, the Pledge Agreement or the other Loan Documents. The provisions of this Section shall not, however,

(a) constitute a waiver, release or impairment of any obligation evidenced or secured by any of the Loan Documents; (b) impair the right of Lender to name Borrower as a party defendant in any action or suit for foreclosure and sale under the Pledge Agreement; (c) affect the validity or enforceability of or any Guaranty made in connection with the Loan or any of the rights and remedies of Lender thereunder; (d) impair the right of Lender to obtain the appointment of a receiver; (e) intentionally omitted; (f) constitute a prohibition against Lender to seek a deficiency judgment against Borrower in order to fully realize the security granted by the Pledge Agreement or to commence any other appropriate action or proceeding in order for Lender to exercise its remedies against all of the Collateral; or (g) constitute a waiver of the right of Lender to enforce the liability and obligation of Borrower, by money judgment or otherwise, to the extent of any actual loss, damage, cost, expense, liability, claim or other obligation incurred by Lender (including attorneys' fees and costs reasonably incurred) arising out of or in connection with the following:

(i) fraud or intentional misrepresentation by Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor in connection with the execution and delivery of the Loan Documents and/or the Loan;

(ii) the misappropriation, conversion or misapplication in contravention of the Loan Documents by Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor of any funds of Borrower, Senior Mezzanine Borrower, Mortgage Borrower or Operating Company, including, without limitation, (A) any Revenues, (B) any Net Liquidation Proceeds or Insurance Proceeds, (C) any Awards received in connection with a Condemnation, (D) any Rents or security deposits (or any item of Revenue, from whatever source) following an Event of Default, or (E) any distribution or other payments made in connection with any part of the Collateral or Senior Mezzanine Collateral;

(iii) the misappropriation, conversion or misapplication by Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor of any security deposits or Rents paid more than one (1) month in advance;

(iv) any act of actual intentional physical waste by Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor;

(v) the breach of any representation, warranty, covenant or indemnification provision in the Environmental Indemnity Agreement concerning environmental laws, hazardous substances and asbestos and any indemnification of Lender with respect thereto in either document;

(vi) if Borrower, Mortgage Borrower, Senior Mezzanine Borrower or Operating Company fails to obtain Lender's prior consent to any voluntary intentional Transfer as required by this Agreement, the Mortgage Loan Agreement or the Mortgages, as applicable;

(vii) any security deposits, advance deposits or any other deposits collected with respect to any of the Properties which are not delivered to Mortgage Lender upon a

foreclosure of any of the Properties or action in lieu thereof, except to the extent any such security deposits were applied in accordance with the terms and conditions of any of the Leases prior to the occurrence of the Event of Default that gave rise to such foreclosure or action in lieu thereof;

(viii) in the event of: (A) Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor filing a voluntary petition under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (B) the filing of an involuntary petition against Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law by any Person in which Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor or any of their respective Affiliates, agents or employees colludes with or such other Person, or Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor soliciting or causing to be solicited petitioning creditors for any involuntary petition against Borrower, Operating Company or any Guarantor from any Person; (C) Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor filing an answer consenting to or otherwise acquiescing in or joining in any involuntary petition filed against it by any other Person, other than Lender, under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (D) Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor consenting to or acquiescing in or joining in an application for the appointment of a custodian, receiver, trustee, or examiner for Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor or any of the Properties, the Collateral, the Senior Mezzanine Collateral or any portion thereof, other than at the request of Lender; or (E) Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor making an assignment for the benefit of creditors (other than Lender), or admitting, in writing or in any legal proceeding, its insolvency or inability to pay its debts as they become due;

(ix) if Borrower, Senior Mezzanine Borrower or Mortgage Borrower fails to maintain its status as a Special Purpose Entity or breaches any material representation or warranty set forth in Section 4.1.30 of this Agreement; and

(x) if Borrower, Mortgage Borrower, Senior Mezzanine Borrower or Operating Company fails to obtain Lender's prior consent to any voluntary Indebtedness (other than (x) with respect to Mortgage Borrower, Permitted Indebtedness and (y) with respect to Operating Company, Permitted Indebtedness (Operating Company), as applicable) or voluntary Lien (other than Permitted Encumbrances) encumbering any of the Properties, Senior Mezzanine Collateral or Collateral as required by this Agreement, the Senior Mezzanine Loan Agreement, the Mortgage Loan Agreement, the Pledge Agreement or the Mortgages.

Notwithstanding anything to the contrary under this Agreement, neither any present or future Affiliate of Borrower (other than Guarantor, to the extent provided under the Guaranty) nor any present or future shareholder, officer, director, employee, trustee, beneficiary, advisor, partner, member, principal, participant or agent of or in any Borrower or of or in any person or entity that

is or becomes an Affiliate of any Borrower shall have any personal liability, directly or indirectly, under or in connection with the Loan Documents. Neither the negative capital account of any Affiliate of Borrower in Borrower, or in any other Affiliate of Borrower in any other Affiliate of Borrower, nor any obligation of any Affiliate of Borrower in any Borrower to restore a negative capital account or to contribute or loan capital to any Borrower or to any other Affiliate of Borrower shall at any time be deemed to be the property or an asset of any Borrower (or any other Affiliate of Borrower) and neither Lender nor its successors or assigns shall have any right to collect, enforce or proceed against any such negative capital account or obligation to restore, contribute or loan capital.

(b) Notwithstanding anything to the contrary in this Agreement, the Note or any of the Loan Documents, Lender shall not be deemed to have waived any right which Lender may have under Section 506(a), 506(b), 1111(b) or any other provisions of the Bankruptcy Code to file a claim for the full amount of the Indebtedness or to require that all collateral shall continue to secure all of the Indebtedness owing to Lender in accordance with the Loan Documents.

**Section 9.4. Servicer.** (a) At the option of Lender, the Loan may be serviced by a servicer/trustee (the “**Servicer**”) selected by Lender and Lender may delegate all or any portion of its responsibilities under this Agreement and the other Loan Documents to the Servicer pursuant to a servicing agreement (the “**Servicing Agreement**”) between Lender and Servicer. Lender shall be responsible for any set-up fees or any other initial costs relating to or arising under the Servicing Agreement (arising in connection with the Securitization) and the payment of the monthly servicing fee due to Servicer under the Servicing Agreement, and, unless otherwise specifically set forth herein, Borrower shall be responsible for the payment of all fees and other reasonable out-of-pocket expenses incurred by Servicer resulting from any Borrower requests (for approvals or otherwise) to Servicer.

(b) In the event of a Securitization or syndication, the grant of participations in the Loan or any secondary marketing by Lender, Mortgage Borrower and the Mezzanine Borrowers, collectively may rely upon approvals or consents given by one (1) agent or representative in respect of the Mortgage Lender and the Mezzanine Lenders for the matter in question (which such parties shall designate, and pending further notice from Lender, such agent shall be JPM). Borrower shall only pay legal fees for the outside counsel of one Servicer.

**Section 9.5. Assignments and Participations.** (a) In addition to the rights Lender has under Section 9.1, Lender shall have the right, subject to this Section 9.5, to assign, sell, negotiate, pledge or hypothecate all or any portion of their rights and obligations hereunder (a “**Syndication**”). Except in connection with a Securitization, no Lender shall assign, sell, negotiate, pledge, hypothecate or otherwise transfer all or any portion of its rights in and to the Loan to any other Person (an “**Assignee**”) (a) other than in compliance with Section 9.9 hereof; and (b) unless such transaction shall be an assignment of a constant (and not varying), ratable percentage of such Lender’s interest in the Loan; provided, however, any Lender shall have the right at any time without the consent of or notice to any other Lender or other Person to grant a security interest in all or any portion of such Lender’s interest in the Loan to any Federal Reserve Bank or the central reserve bank or similar authority of any other country to secure any obligation of such Lender to such bank or similar authority (a “**Central Bank Pledge**”).

Effective on any such assignment and assumption by the assignee and on compliance with Section 9.9 hereof, the assigning Lender shall have no further liability hereunder with respect to the interest of such Lender that was the subject of such transfer and such Assignee shall be a Lender with respect to such interest, and Borrower shall have the same rights as to such Assignee with respect to such interest from and after the date of such assignment as if such Lender were an original Lender hereunder. Except for a Central Bank Pledge or financing transaction under a repurchase agreement, a Lender making any such assignment shall notify Borrower of same, specifying the Assignee thereof and the amount of the assignment and shall provide such other detail as Borrower may reasonably request to substantiate compliance with the foregoing.

**Section 9.6. Participation.** Lender may, without the consent of the Borrower, in compliance with applicable law, sell participations to one or more banks or other entities (a "**Participant**"), in all or a portion of Lender's rights and obligations under this Agreement (including all or a portion of the Loan owing to it); provided that (A) Lender's obligations under this Agreement shall remain unchanged, (B) Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) the Borrower shall continue to deal solely and directly with Lender in connection with Lender's rights and obligations under this Agreement. The Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.2.3 and 2.2.4 (subject to requirements and limitations therein) to the same extent as if it were a Noteholder and had acquired its interest by assignment pursuant to Section 9.5. Each Lender that sells a participation shall, acting solely for this purpose as an agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each participant's interest in the Loans or other obligations under this Agreement (the "**Participant Register**"). The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each person whose name is recorded in the Participant Register as the owner of such Loan or other obligation hereunder as the owner thereof for all purposes of this Agreement notwithstanding any notice to the contrary.

**Section 9.7. Borrower's Facilitation of Transfer.** In order to facilitate permitted assignments and other transfers to Assignees and sales to Participants, Borrower shall execute and deliver to Lender and shall cause Guarantor to execute and deliver to Lender such further documents, instruments or agreements as Lender may reasonably require, including, if required by Lender, supplemental notes in the principal amount of such Lender's *pro rata* share of the Loan substantially in the form of such Lender's Note against surrender of the prior notes, and such supplemental note shall (i) be payable to order of such Lender, (ii) be dated as of the date hereof, and (iii) mature on the Maturity Date. Such supplemental note shall provide that it evidences a portion of the existing indebtedness hereunder and under the Notes and not any new or additional indebtedness of Borrower. The term "Note" as used in this Agreement and in all the other Loan Documents shall include all such supplemental notes but exclude any Note it replaces. Notwithstanding the foregoing, such documents, instruments or agreements shall not (a) increase the obligations or liabilities of any such Person hereunder or under the other Loan Documents in excess of the obligations or liabilities intended to be provided herein or in the other Loan Documents or (b) decrease such Person's rights hereunder or under the other Loan Documents to less than what they were prior to the execution of such documents, instruments or agreements. In addition, Borrower agrees to reasonably cooperate with Lender, including providing such information and documentation regarding Borrower, Senior Mezzanine Borrower, Mortgage Borrower, Holdings, the Operating Company and any other Person as

Lender or any potential Assignee or Participant may reasonably request and to meet with potential Assignees and Participants upon reasonable notice. Lender and Borrower each shall pay their respective costs and expenses incurred in connection with the foregoing, including, without limitation, legal fees in connection with any of the foregoing matters, except that all costs and expenses of Lender and Borrower associated with any restructuring of the Loan requested by Lender, including under Section 2.1.5, 2.1.6 and 2.1.7, shall be paid solely by Lender.

**Section 9.8. Notice; Registration Requirement.** No Syndication of any part of Lender's interest in and to the Loan shall be effective or permitted under Section 9.5 until (a) an assignment and acceptance agreement in a form reasonably acceptable to Lender (an "**Assignment and Acceptance**") with respect to such Syndication shall have been delivered to Lender, (b) Lender shall have registered such Assignee's name and address in the Register which Lender maintains for the recordation of the names, addresses and interests of Noteholders, and (c) if such Assignee is not already a Lender hereunder, such Assignee shall deliver any tax forms required hereunder. The entries in the Register shall be conclusive, absent manifest error. This Section 9.8 shall not apply to any Central Bank Pledge.

**Section 9.9. Registry.** Borrower hereby designates Lender to serve as Borrower's agent, solely for purposes of this Section 9.9, to maintain at one of its offices a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the names and addresses of each Assignee, and the principal amount of the Loan (or portions thereof) owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). Failure to make any such recordation, or any error in such recordation shall not affect Borrower's obligations in respect of the Loan. With respect to any Lender, the transfer of the rights to the principal of, and interest on, its interest in the Loan shall not be effective until such transfer is recorded on the Register maintained by Lender with respect to ownership of such Loan and prior to such recordation all amounts owing to the transferor with respect to such Note shall remain owing to the transferor. The registration of a transfer of all or part of the Loan shall be recorded by Lender on the Register only upon the acceptance by Lender of a properly executed and delivered Assignment and Acceptance by the assignor and assignee. At the assigning Lender's option, concurrently with the delivery of an Assignment and Acceptance pursuant to which an interest of such Lender in the Loan was assigned to such Assignee, the assigning Lender shall surrender to Borrower its Note, if any, evidencing the portion of the Loan corresponding to the interest so transferred and Borrower shall deliver to Lender one or more new promissory notes in the same aggregate principal amount issued to the assigning Lender and/or the Assignee.

**Section 9.10. Cooperation in Syndication.** Borrower agrees to assist the Lender in completing a Syndication satisfactory to the Lender. Such assistance shall include (i) direct contact between senior management and advisors of Borrower and the proposed Assignees and/or Participants, (ii) assistance in the preparation of a confidential information memorandum and other marketing materials to be used in connection with the Syndication, (iii) the hosting, with the Lender, of one or more meetings of prospective Assignees and/or Participants, (iv) the delivery of appraisals satisfactory to the Lender if required. To assist the Lender in its Syndication efforts, Borrower agrees promptly to prepare and provide to the Lender all information with respect to Borrower, Senior Mezzanine Borrower, Mortgage Borrower, Holdings, the Operating Company, Guarantor, the Collateral, the Senior Mezzanine Collateral and the Properties contemplated hereby, including all financial information and projections (the

“**Projections**”), as the Lender may reasonably request in connection with the Syndication of the Loan. If required in connection with the Syndication, Borrower hereby agrees to:

(a) deliver updated financial and operating statements and other information reasonably required by the Lender to facilitate the Syndication;

(b) use reasonable efforts to deliver reliance letters reasonably satisfactory to the Lender with respect to the environmental assessments and reports delivered to the Lender prior to the Closing Date, which will run to the Lender and its successors and assigns;

(c) execute modifications to the Loan Documents required by the Lender, provided that such modification will not (except as set forth in (d)) change any material or economic terms of the Loan Documents, or otherwise increase the obligations or decrease the rights of Borrower pursuant to the Loan Documents (except to a de minimis extent); and

(d) if the Lender elects, in its sole discretion, prior to or upon a Syndication, to exercise its rights under Section 2.1.5, Borrower agrees to cooperate with the Lender in connection with the foregoing and to execute the required modifications and amendments to the Notes, this Agreement and the Loan Documents and to use reasonable efforts to provide opinions necessary to effectuate the same. Such Notes or components may be assigned different interest rates, so long as the weighted average of such interest rates does not exceed the Applicable Interest Rate, except in connection with the application of principal to such Notes or components following the occurrence of an Event of Default.

Lender and Borrower each shall pay their respective costs and expenses incurred in connection with the foregoing, including, without limitation, legal fees in connection with any of the foregoing matters, except that all costs and expenses of Lender and Borrower associated with any restructuring of the Loan requested by Lender, including under Sections 2.1.5, 2.1.6 and 2.1.7, shall be paid solely by Lender.

## **X. MISCELLANEOUS**

**Section 10.1. Survival.** This Agreement and all covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the making by Lender of the Loan and the execution and delivery to Lender of the Note, and shall continue in full force and effect so long as all or any of the Debt is outstanding and unpaid unless a longer period is expressly set forth herein or in the other Loan Documents. Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the legal representatives, successors and assigns of such party. All covenants, promises and agreements in this Agreement, by or on behalf of Borrower, shall inure to the benefit of the legal representatives, successors and assigns of Lender.

**Section 10.2. Lender's Discretion.** Whenever pursuant to this Agreement, Lender exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Lender, the decision of Lender to approve or disapprove or to decide whether arrangements or terms are satisfactory or not satisfactory shall (except as is otherwise specifically herein provided) be in the sole discretion of Lender and shall be final and conclusive.

Whenever this Agreement expressly provides that Lender may not withhold or shall be reasonable in granting its consent or its approval of an arrangement or term, such provisions shall also be deemed to prohibit Lender from delaying or conditioning such consent or approval.

**Section 10.3. Governing Law.** (a) THIS AGREEMENT WAS NEGOTIATED IN THE STATE OF NEW YORK, THE LOAN WAS MADE BY LENDER AND ACCEPTED BY BORROWER IN THE STATE OF NEW YORK, AND THE PROCEEDS OF THE LOAN DELIVERED PURSUANT HERETO WERE DISBURSED FROM THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS AND THE OBLIGATIONS ARISING HEREUNDER AND THEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA. TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER AND LENDER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVE ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS, AND THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER OR BORROWER ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS MAY AT LENDER'S OPTION BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW AND BORROWER WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND BORROWER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. BORROWER DOES HEREBY DESIGNATE AND APPOINT:

Corporation Service Company  
2711 Centerville Road, Suite 400  
Wilmington, DE 19808

AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON ITS BEHALF SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY FEDERAL OR STATE

COURT IN NEW YORK, NEW YORK, AND AGREES THAT SERVICE OF PROCESS UPON SAID AGENT AT SAID ADDRESS AND NOTICE OF SAID SERVICE MAILED OR DELIVERED TO BORROWER IN THE MANNER PROVIDED HEREIN SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON BORROWER IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE STATE OF NEW YORK. BORROWER (I) SHALL GIVE PROMPT NOTICE TO LENDER OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER, (II) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN NEW YORK, NEW YORK (WHICH SUBSTITUTE AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS), AND (III) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE IF ITS AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN NEW YORK, NEW YORK OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR.

**Section 10.4. Modification, Waiver in Writing.** No modification, amendment, extension, discharge, termination or waiver of any provision of this Agreement, or of the Note, or of any other Loan Document, nor consent to any departure by Borrower therefrom, shall in any event be effective unless the same shall be in a writing signed by the party against whom enforcement is sought, and then such waiver or consent shall be effective only in the specific instance, and for the purpose, for which given. Except as otherwise expressly provided herein, no notice to, or demand on Borrower, shall entitle Borrower to any other or future notice or demand in the same, similar or other circumstances. To the extent required by any Gaming Law, Borrower shall notify all relevant Gaming Authorities of any amendment to this Agreement or any Loan Document.

**Section 10.5. Delay Not a Waiver.** Except as expressly set forth herein, neither any failure nor any delay on the part of Lender in insisting upon strict performance of any term, condition, covenant or agreement, or exercising any right, power, remedy or privilege hereunder, or under the Note or under any other Loan Document, or any other instrument given as security therefor, shall operate as or constitute a waiver thereof, nor shall a single or partial exercise thereof preclude any other future exercise, or the exercise of any other right, power, remedy or privilege. In particular, and not by way of limitation, by accepting payment after the due date of any amount payable under this Agreement, the Note or any other Loan Document, Lender shall not be deemed to have waived any right either to require prompt payment when due of all other amounts due under this Agreement, the Note or the other Loan Documents, or to declare a default for failure to effect prompt payment of any such other amount.

**Section 10.6. Notices.** All notices, consents, approvals and requests required or permitted hereunder or under any other Loan Document shall be given in writing and shall be effective for all purposes if hand delivered or sent by (a) certified or registered United States mail, postage prepaid, return receipt requested or (b) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery, and by telecopier (with answer back acknowledged), addressed as follows (or at such other address and Person as shall be designated from time to time by any party hereto, as the case may be, in a notice to the other parties hereto in the manner provided for in this [Section 10.6](#)):

If to Lender: JPMorgan Chase Bank, N.A.  
270 Park Avenue, 10th Floor  
New York, New York 10017  
Attention: Michael Mesard  
Facsimile No.: (212) 834-6592

with a copy to: Sullivan & Cromwell LLP  
125 Broad Street  
New York, New York 10004  
Attention: Arthur S. Adler  
Facsimile No.: 212-558-3588

and

Cadwalader, Wickersham & Taft LLP  
One World Financial Center  
New York, New York 10281  
Attention: Fredric L. Altschuler  
Facsimile No.: (212) 504-6666

Facsimile No.: (212) 504-6666

If to Borrower: One Caesars Palace Drive  
Las Vegas, Nevada 89109  
Attention: Chief Financial Officer  
Facsimile No.: (702) 407-6081

With a copy to: One Caesars Palace Drive  
Las Vegas, Nevada 89109  
Attention: General Counsel  
Facsimile No.: (702) 407-6418

and

Cleary Gottlieb Steen & Hamilton LLP  
One Liberty Plaza  
New York, New York 10006  
Attention: Michael Weinberger  
Facsimile No.: (212) 225-3999

and

Pircher, Nichols & Meeks  
1925 Century Park East, Seventeenth Floor  
Los Angeles, California 90067  
Attention: David Packer  
Facsimile No.: (310) 201-8922

A notice shall be deemed to have been given: in the case of hand delivery, at the time of delivery; in the case of registered or certified mail, when delivered or the first attempted delivery on a Business Day; or in the case of expedited prepaid delivery and telecopy, upon the first attempted delivery on a Business Day; or in the case of telecopy, upon sender's receipt of a machine-generated confirmation of successful transmission after advice by telephone to recipient that a telecopy notice is forthcoming. Each Borrower hereby designates Tahoe Mezz 8, LLC, a Delaware limited liability company ("**Borrower Agent**"), as the party to give and receive notices on behalf of Borrower hereunder, and any notice received by Lender by a Borrower other than Borrower Agent shall not constitute effective notice to, or be binding upon Lender hereunder. Notwithstanding the foregoing, any notice by Lender to one or more Borrowers other than Borrower Agent shall be deemed to constitute effective notice to all of the Borrowers.

**Section 10.7. Trial by Jury. BORROWER AND LENDER HEREBY AGREE NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVE ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY BORROWER AND LENDER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. BORROWER AND LENDER ARE HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER.**

**Section 10.8. Headings.** The Article and/or Section headings and the Table of Contents in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

**Section 10.9. Severability.** Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

**Section 10.10. Preferences.** Lender shall have the continuing and exclusive right to apply or reverse and reapply any and all payments by Borrower to any portion of the obligations of Borrower hereunder (except that, unless there exists an Event of Default, payments of principal shall be applied to components of the Note on a pro-rata basis). To the extent Borrower makes a payment or payments to Lender, which payment or proceeds or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable cause, then, to the extent of such payment or proceeds received, the obligations hereunder or part thereof intended to be satisfied shall be revived and continue in full force and effect, as if such payment or proceeds had not been received by Lender.

**Section 10.11. Waiver of Notice.** Borrower hereby expressly waives, and shall not be entitled to, any notices of any nature whatsoever from Lender except with respect to matters for which this Agreement or the other Loan Documents specifically and expressly provide for the giving of notice by Lender to Borrower and except with respect to matters for which Borrower is not, pursuant to applicable Legal Requirements, permitted to waive the giving of notice.

**Section 10.12. Remedies of Borrower.** In the event that a claim or adjudication is made that Lender or its agents have acted unreasonably or unreasonably delayed acting in any case where by law or under this Agreement or the other Loan Documents, Lender or such agent, as the case may be, has an obligation to act reasonably or promptly, Borrower agrees that neither Lender nor its agents shall be liable for any monetary damages, and Borrower's sole remedies shall be limited to commencing an action seeking injunctive relief or declaratory judgment (except in cases of bad faith, gross negligence or willful misconduct). The parties hereto agree that any action or proceeding to determine whether Lender has acted reasonably shall be determined by an action seeking declaratory judgment.

**Section 10.13. Expenses; Indemnity.** (a) Borrower covenants and agrees to pay or, if Borrower fails to pay, to reimburse, Lender and each Noteholder upon receipt of notice from such Person for all reasonable out-of-pocket costs and expenses (including reasonable attorneys' fees and disbursements) incurred by such Person in connection with (i) the preparation, negotiation, execution and delivery of this Agreement and the other Loan Documents and the consummation of the transactions contemplated hereby and thereby and all the costs of furnishing all opinions by counsel for Borrower (including, without limitation, any opinions requested by such Person as to any legal matters arising under this Agreement or the other Loan Documents with respect to the Properties); (ii) Borrower's ongoing performance of and compliance with Borrower's respective agreements and covenants contained in this Agreement and the other Loan Documents on its part to be performed or complied with after the Closing Date, including, without limitation, confirming compliance with environmental, gaming and insurance requirements if necessary or advisable due to reasonably suspected non-compliance; (iii) the negotiation, preparation, execution, delivery and administration of any consents, amendments, waivers or other modifications to this Agreement and the other Loan Documents and any other documents or matters requested by Borrower; (iv) securing Borrower's compliance with any requests made pursuant to the provisions of this Agreement, if Borrower defaults in its obligations hereunder; (v) the filing and recording fees and expenses, title insurance and reasonable fees and expenses of counsel for providing to Lender or any Noteholder all required legal opinions, and other similar expenses incurred in creating and perfecting the Liens in favor of Lender (or, as applicable, any Noteholder) pursuant to this Agreement and the other Loan Documents; (vi) enforcing or preserving any rights, either in response to third party claims or in prosecuting or defending any action or proceeding or other litigation, in each case against, under or affecting Borrower, Senior Mezzanine Borrower, Mortgage Borrower, Operating Company, this Agreement, the other Loan Documents, the Properties, the Collateral or any other security given for the Loan; and (vii) enforcing any obligations of or collecting any payments due from Borrower under this Agreement, the other Loan Documents or with respect to the Properties, Operating Company or in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a "work-out" or of any insolvency or bankruptcy proceedings; provided, however, that

Borrower shall not be liable for the payment of any such costs and expenses to any Person to the extent the same arise by reason of the gross negligence, illegal acts, fraud or willful misconduct of such Person. Any cost and expenses due and payable to Lender or any Noteholder may be paid from any amounts in the Mezzanine Collection Account upon the occurrence and during the continuance of an Event of Default.

(b) Borrower shall indemnify, defend and hold harmless Lender from and against any and all other actual liabilities, obligations, losses, damages (excluding, however, any punitive and consequential damages), penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel for Lender in connection with any investigative, administrative or judicial proceeding commenced or threatened, whether or not Lender shall be designated a party thereto), that may be imposed on, incurred by, or asserted against Lender in any manner relating to or arising out of (i) any breach by Borrower of its obligations under, or any material misrepresentation by Borrower contained in, this Agreement or the other Loan Documents, (ii) the use or intended use of the proceeds of the Loan, (iii) the Leases or any of the duties, responsibilities or obligations of Borrower or any Operating Company thereunder, (iv) the transactions contemplated in the Collection Account Agreements or (v) any third-party claims alleging that the Loan, the Senior Mezzanine Loan or the Mortgage Loan, the Operating Lease, the Operating Lease Guaranty or any of the Loan Documents violates any agreements or Legal Requirements binding on the Borrower or its Affiliates or their respective properties (collectively, the “**Indemnified Liabilities**”); provided, however, that Borrower shall not have any obligation to Lender hereunder to the extent that such Indemnified Liabilities arise from the gross negligence, illegal acts, fraud or willful misconduct of Lender. To the extent that the undertaking to indemnify, defend and hold harmless set forth in the preceding sentence may be unenforceable because it violates any law or public policy, Borrower shall pay the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by Lender.

(c) Borrower covenants and agrees to pay for or, if Borrower fails to pay, to reimburse Lender for, any fees and expenses incurred by any Rating Agency in connection with any request by Borrower that required Rating Agency Confirmation pursuant to the terms hereof.

**Section 10.14. Schedules Incorporated.** The Schedules annexed hereto are hereby incorporated herein as a part of this Agreement with the same effect as if set forth in the body hereof.

**Section 10.15. Offsets, Counterclaims and Defenses.** Any assignee of Lender’s interest in and to this Agreement, the Note and the other Loan Documents shall take the same free and clear of all offsets, counterclaims or defenses which are unrelated to such documents which Borrower may otherwise have against any assignor of such documents, and no such unrelated counterclaim or defense shall be interposed or asserted by Borrower in any action or proceeding brought by any such assignee upon such documents and any such right to interpose or assert any such unrelated offset, counterclaim or defense in any such action or proceeding is hereby expressly waived by Borrower.

**Section 10.16. No Joint Venture or Partnership; No Third Party Beneficiaries.** (a) Borrower and Lender intend that the relationships created hereunder and under the other Loan Documents be solely that of borrower and lender. Nothing herein or therein is intended to create a joint venture, partnership, tenancy-in-common, or joint tenancy relationship between Borrower and Lender nor to grant Lender any interest in the Properties other than that of mortgagee, beneficiary or lender.

(b) Except as expressly provided herein, this Agreement and the other Loan Documents are solely for the benefit of Lender and Borrower and nothing contained in this Agreement or the other Loan Documents shall be deemed to confer upon anyone other than Lender and Borrower any right to insist upon or to enforce the performance or observance of any of the obligations contained herein or therein. Lender and Borrower acknowledge and agree that the Noteholders are intended third party beneficiaries of all rights and remedies of the Lender hereunder. All conditions to the obligations of Lender to make the Loan hereunder are imposed solely and exclusively for the benefit of Lender and no other Person shall have standing to require satisfaction of such conditions in accordance with their terms or be entitled to assume that Lender will refuse to make the Loan in the absence of strict compliance with any or all thereof and no other Person shall under any circumstances be deemed to be a beneficiary of such conditions, any or all of which may be freely waived in whole or in part by Lender if, in Lender's sole discretion, Lender deems it advisable or desirable to do so.

**Section 10.17. Intentionally Omitted.**

**Section 10.18. Waiver of Marshalling of Assets.** To the fullest extent permitted by law, Borrower, for itself and its successors and assigns, waives all rights to a marshalling of the assets of Borrower, Borrower's partners and others with interests in Borrower, and of the Properties, or to a sale in inverse order of alienation in the event of foreclosure of all or any of the Mortgages, and agrees not to assert any right under any laws pertaining to the marshalling of assets, the sale in inverse order of alienation, homestead exemption, the administration of estates of decedents, or any other matters whatsoever to defeat, reduce or affect the right of Lender under the Loan Documents to a sale of the Properties for the collection of the Debt without any prior or different resort for collection or of the right of Lender to the payment of the Debt out of the net proceeds of the Properties in preference to every other claimant whatsoever. In addition, Borrower, for itself and its successors and assigns, waives in the event of foreclosure of any or all of the Collateral, any equitable right otherwise available to Borrower which would require the separate sale of the Collateral with respect to each Mortgage Borrower or require Lender to exhaust its remedies against any Collateral with respect to each Mortgage Borrower or any combination of such Collateral before proceeding against any other Collateral with respect to one or more Mortgage Borrowers; and further in the event of such foreclosure Borrower does hereby expressly consent to and authorize, at the option of Lender, the foreclosure and sale either separately or together of any combination of the Collateral.

**Section 10.19. Waiver of Counterclaim.** Borrower hereby waives the right to assert a counterclaim, other than a compulsory counterclaim, in any action or proceeding brought against it by Lender or its agents.

**Section 10.20. Conflict; Construction of Documents; Reliance.** In the event of any conflict between the provisions of this Loan Agreement and any of the other Loan Documents, the provisions of this Loan Agreement shall control. The parties hereto acknowledge that they were represented by competent counsel in connection with the negotiation, drafting and execution of the Loan Documents and that such Loan Documents shall not be subject to the principle of construing their meaning against the party which drafted same. Borrower acknowledges that, with respect to the Loan, Borrower shall rely solely on its own judgment and advisors in entering into the Loan without relying in any manner on any statements, representations or recommendations of Lender or any parent, subsidiary or Affiliate of Lender. Lender shall not be subject to any limitation whatsoever in the exercise of any rights or remedies available to it under any of the Loan Documents or any other agreements or instruments which govern the Loan by virtue of the ownership by it or any parent, subsidiary or Affiliate of Lender of any equity interest any of them may acquire in Borrower, and Borrower hereby irrevocably waives the right to raise any defense or take any action on the basis of the foregoing with respect to Lender's exercise of any such rights or remedies. Borrower acknowledges that Lender engages in the business of real estate financings and other real estate transactions and investments which may be viewed as adverse to or competitive with the business of Borrower or its Affiliates.

**Section 10.21. Brokers and Financial Advisors.** Borrower hereby represents that it has dealt with no financial advisors, brokers, underwriters, placement agents, agents or finders in connection with the transactions contemplated by this Agreement (other than those the fees and other claims of which shall be paid by Borrower). Borrower hereby agrees to indemnify, defend and hold Lender and each Noteholder harmless from and against any and all claims, liabilities, costs and expenses of any kind (including Lender's attorneys' fees and expenses) in any way relating to or arising from a claim by any Person that such Person acted on behalf of Borrower or Lender in connection with the transactions contemplated herein. Each of Lender and (by its acceptance of its respective Note) the Noteholders hereby represents that it has dealt with no financial advisors, brokers, underwriters, placement agents, agents or finders in connection with the transactions contemplated by this Agreement. The provisions of this Section 10.21 shall survive the expiration and termination of this Agreement and the payment of the Debt.

**Section 10.22. Prior Agreements.** This Agreement and the other Loan Documents contain the entire agreement of the parties hereto and thereto in respect of the transactions contemplated hereby and thereby, and all prior agreements among or between such parties, whether oral or written, including, without limitation, the Commitment Letter dated December 19, 2006 between Affiliates of Borrower and Lender are superseded by the terms of this Agreement and the other Loan Documents.

**Section 10.23. Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which counterparts together shall constitute one agreement with the same effect as if the parties had signed the same signature page.

**Section 10.24. Intentionally Omitted.**

**Section 10.25. Gaming Laws.** All rights, remedies and powers in or under this Agreement may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of the Gaming Laws.

**Section 10.26. Certain Additional Rights of Lender (VCOC).** Notwithstanding anything to the contrary contained in this Agreement, Lender shall have:

(a) the right to routinely consult with and advise Borrower's management regarding the significant business activities and business and financial developments of Borrower, Senior Mezzanine Borrower and Mortgage Borrower, provided that any such advice or consultation shall be completely nonbinding on Borrower, and; provided, however, that such consultations shall not include discussions of environmental compliance programs or disposal of hazardous substances;

(b) the right, in accordance with the terms of this Agreement, to examine the books and records of Borrower, Senior Mezzanine Borrower and Mortgage Borrower at any reasonable times upon reasonable notice;

(c) the right, in accordance with the terms of this Agreement, including, without limitation, Section 5.1.11 hereof, to receive monthly, quarterly and year end financial reports, including balance sheets, statements of income, shareholder's equity and cash flow, a management report and schedules of outstanding indebtedness, in each case to the extent explicitly set forth herein; and

(d) the right, without restricting any other rights of Lender under this Agreement (including any similar right), to reasonably approve any acquisition by Borrower, Senior Mezzanine Borrower or Mortgage Borrower of any other significant real property.

The rights described above in this Section 10.26 may be exercised by any entity which owns and controls, directly or indirectly, substantially all of the interests in Lender.

## **XI. JOINT AND SEVERAL LIABILITY; WAIVERS**

**Section 11.1. Joint and Several Liability; Primary Obligors.** Each entity comprising Borrower (each, a "**Borrower Entity**") shall be a primary obligor with respect to payment of the Debt and performance of Borrower's obligations under the Loan Documents and all such Borrower Entities shall be jointly and severally liable for payment of the Debt and performance of such other obligations. As used in this Article, references to "**Other Borrowers**" shall mean all Borrower Entities other than the particular Borrower Entity referred to.

**Section 11.2. Waivers.** Without limiting the primary liability of each Borrower Entity as set forth above, to the extent any such Borrower Entity is determined to be secondarily liable with respect to any portion of the Debt or any other obligation hereunder, the following shall apply:

### **11.2.1 No Duty to Pursue Others.**

It shall not be necessary for Lender (and each Borrower Entity hereby waives any rights which such Borrower Entity may have to require Lender), in order to enforce the obligations of such Borrower Entity hereunder, first to (a) institute suit or exhaust its remedies against any Other Borrower or others liable on the Debt or any other person, (b) enforce Lender's rights against any collateral mortgaged, pledged or granted by any Other Borrower which shall ever have been given to secure the Debt ("**Other Borrower Collateral**"), (c) enforce Lender's rights against any other guarantors of the Debt, (d) join Borrower or any others liable on the Debt in any action against any Other Borrower seeking to enforce the Loan Documents, (e) exhaust any remedies available to Lender against any collateral which shall ever have been given to secure the Debt, or (f) resort to any other means of obtaining payment of the Loan by any Other Borrower. Lender shall not be required to mitigate damages or take any other action pertaining to any Other Borrower or any Other Borrower Collateral to reduce, collect or enforce the Debt from any Other Borrower.

#### **11.2.2 Waivers.**

Such Borrower Entity agrees to the provisions of the Loan Documents, and hereby waives notice of (a) any loans or advances made by Lender to any Other Borrower, (b) acceptance of the Loan Documents, (c) any amendment or extension of the Note, the Loan Agreement or of any other Loan Documents entered into by any Other Borrower, (d) the execution and delivery by any Other Borrower and Lender of any other loan or credit agreement or of any Other Borrower's execution and delivery of any promissory notes or other documents arising under the Loan Documents or in connection with the Other Borrower Collateral, (e) the occurrence of any breach by any Other Borrower or an Event of Default with respect to any Other Borrower or Other Borrower Collateral, (f) Lender's transfer or disposition of the Debt, or any part thereof, (g) sale or foreclosure (or posting or advertising for sale or foreclosure) of any Other Borrower Collateral, (h) protest, proof of non-payment or default by any Other Borrower and (i) any other action at any time taken or omitted by Lender, and, generally, all demands and notices to any Other Borrower of every kind in connection with the Loan Documents, any documents or agreements evidencing, securing or relating to any of the Debt.

**11.2.3 Waiver of Subrogation, Reimbursement and Contribution.** Notwithstanding anything to the contrary contained in the Loan Documents, each Borrower hereby unconditionally and irrevocably waives, releases and abrogates, prior to the payment in full of the Loan and for a period of ninety-one (91) days thereafter any and all rights it may now or hereafter have under any agreement, at law or in equity (including any law subrogating such Borrower Entity to the rights of Lender), to assert any claim against or seek contribution, indemnification or any other form of reimbursement (other than pursuant to the express provisions of the Contribution Agreement) from any Other Borrower or any other party liable for payment of any or all of the Debt for any payment made by such Borrower Entity under or in connection with the Loan Documents or otherwise.

**11.2.4 Events and Circumstances Not Reducing or Discharging Guarantor's Obligations.** Each Borrower Entity hereby consents and agrees to each of the following, and agrees that such Borrower Entity's obligations under the Loan Documents shall not be released, diminished, impaired, reduced or adversely affected by any of the following, and waives any common law, equitable, statutory or other rights (including rights to notice) which

such Borrower Entity might otherwise have as a result of or in connection with any of the following:

(a) Modifications. Any renewal, extension, increase, modification, alteration, restatement or rearrangement entered into by any Other Borrower of all or any part of the Debt, the Note, the Loan Agreement, the other Loan Documents, or any other document, instrument, contract or understanding between any Other Borrower and Lender, or any other parties, pertaining to the Debt or any failure of Lender to notify Borrower Entity of any such action.

(b) Adjustment. Any adjustment, indulgence, forbearance or compromise that might be granted or given by Lender to any Other Borrower.

(c) Condition of Borrower or Borrower Entity. The insolvency, bankruptcy, arrangement, adjustment, composition, liquidation, disability, dissolution or lack of power of any Other Borrower or any other party at any time liable for the payment of all or part of the Debt; or any dissolution of any Other Borrower, or any sale, lease or transfer of any or all of the assets of Borrower or of any Other Borrower, or any changes in the shareholders, partners or members of any Other Borrower; or any reorganization of any Other Borrower.

(d) Invalidity of Debt. The invalidity, illegality or unenforceability of all or any part of the Debt, or any document or agreement executed in connection with the Debt, for any reason whatsoever, including the fact that (a) the Debt, or any part thereof, exceeds the amount permitted by law, (b) the act of creating the Debt or any part thereof is ultra vires, (c) the officers or representatives executing the Note, the Loan Agreement or the other Loan Documents or otherwise creating the Debt acted in excess of their authority, (d) the Debt violate applicable usury laws, (e) any Other Borrower has valid defenses, claims or offsets (whether at law, in equity or by agreement) which render the Debt wholly or partially uncollectible from such Other Borrower, (f) the creation, performance or repayment of the Debt (or the execution, delivery and performance of any document or instrument by any Other Borrower representing part of the Debt or executed in connection with the Debt, or given to secure the repayment of the Debt) is illegal, uncollectible or unenforceable, or (g) the Note, the Loan Agreement or any of the other Loan Documents have been forged or otherwise are irregular or not genuine or authentic, it being agreed that such Borrower Entity shall remain liable hereon regardless of whether any Other Borrower or any other Person be found not liable on the Debt or any part thereof for any reason.

(e) Release of Obligors. Any full or partial release of the liability of any Other Borrower on the Debt, or any part thereof, or of any guarantor(s) thereof, or any other person or entity now or hereafter liable, whether directly or indirectly, jointly, severally, or jointly and severally, to pay, perform, guarantee or assure the payment of the Debt, or any part thereof, it being recognized, acknowledged and agreed by such Borrower Entity that such Borrower Entity may be required to pay the Debt in full without assistance or support of any other party, and such Borrower Entity has not been induced to enter into the Loan Documents on the basis of a contemplation, belief, understanding or agreement that other Persons will be liable to pay or perform the Debt, or that Lender will look to other Persons to pay or perform the Debt.

(f) Other Collateral. The taking or accepting of any other security, collateral or guaranty, or other assurance of payment, for all or any part of the Debt.

(g) Release of Collateral. Any release, surrender, exchange, subordination, deterioration, waste, loss or impairment (including negligent, willful, unreasonable or unjustifiable impairment) of any collateral, property or security at any time existing in connection with, or assuring or securing payment of, all or any part of the Debt.

(h) Care and Diligence. The failure of Lender or any other party to exercise diligence or reasonable care in the preservation, protection, enforcement, sale or other handling or treatment of Other Borrower Collateral, all or any part of such collateral, property or security, including any neglect, delay, omission, failure or refusal of Lender (a) to take or prosecute any action for the collection of any of the Debt or (b) to foreclose, or initiate any action to foreclose, or, once commenced, prosecute to completion any action to foreclose upon Other Borrower Collateral, or (c) to take or prosecute any action in connection with any instrument or agreement evidencing or securing all or any part of the Debt.

(i) Unenforceability. The fact that any collateral, security, security interest or lien contemplated or intended to be given, created or granted as security for the repayment of the Debt, or any part thereof, shall not be properly perfected or created, or shall prove to be unenforceable or subordinate to any other security interest or lien, it being recognized and agreed by such Borrower Entity that such Borrower Entity is not entering into the Loan Documents in reliance on, or in contemplation of the benefits of, the validity, enforceability, collectibility or value of any of the collateral for the Debt.

(j) Offset. Any existing or future right of offset, claim or defense of Borrower against Lender, or any other Person, or against payment of the Debt by any Other Borrower, whether such right of offset, claim or defense arises in connection with the Debt (or the transactions creating the Debt) or otherwise.

(k) Merger. The reorganization, merger or consolidation of any Other Borrower into or with any other corporation or entity.

(l) Preference. Any payment by Borrower to Lender is held to constitute a preference under bankruptcy laws, or for any reason Lender is required to refund such payment or pay such amount to Borrower or someone else.

**Section 11.3. Other Actions Taken or Omitted.** Any other action taken or omitted to be taken with respect to the Loan Documents, the Debt, or Other Borrower Collateral, whether or not such action or omission prejudices such Borrower Entity or increases the likelihood that such Borrower Entity will be required to pay the Debt pursuant to the terms hereof, it is the unambiguous and unequivocal intention of such Borrower Entity that such Borrower Entity shall be obligated to pay the Debt when due, notwithstanding any occurrence, circumstance, event, action, or omission whatsoever pertaining to any Other Borrower or any Other Borrower Collateral, whether contemplated or not, and whether or not otherwise or particularly described herein, which obligation shall be deemed satisfied only upon the full and final payment and satisfaction of the Debt.

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**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed by their duly authorized representatives, all as of the day and year first above written.

**BORROWER:**

**HARRAH'S LAS VEGAS MEZZ 8, LLC,**  
a Delaware limited liability company

By: /s/ Jonathan S. Halkyard

Name: Jonathan S. Halkyard

Title: President and Treasurer

**HARRAH'S ATLANTIC CITY MEZZ 8, LLC,**  
a Delaware limited liability company

By: /s/ Jonathan S. Halkyard

Name: Jonathan S. Halkyard

Title: President and Treasurer

**TAHOE MEZZ 8, LLC,**  
a Delaware limited liability company

By: /s/ Jonathan S. Halkyard

Name: Jonathan S. Halkyard

Title: President and Treasurer

**RIO MEZZ 8, LLC,**  
a Delaware limited liability company

By: /s/ Jonathan S. Halkyard

Name: Jonathan S. Halkyard

Title: President and Treasurer

**FLAMINGO LAS VEGAS MEZZ 8, LLC,**  
a Delaware limited liability company

By: /s/ Jonathan S. Halkyard

Name: Jonathan S. Halkyard

Title: President and Treasurer

**SHOWBOAT ATLANTIC CITY MEZZ 8, LLC,**  
a Delaware limited liability company

By: /s/ Jonathan S. Halkyard

Name: Jonathan S. Halkyard

Title: President and Treasurer

**LENDER:**

**JPMORGAN CHASE BANK, N.A.**

By: /s/ Jennifer A. Loughrey

Name: Jennifer A. Loughrey

Title: Vice President

**NINTH MEZZANINE LOAN AGREEMENT**

Dated as of January 28, 2008

Between

**THE ENTITIES IDENTIFIED ON THE SIGNATURE PAGES  
HEREOF AS BORROWER,**  
collectively, as Borrower

and

**JPMORGAN CHASE BANK N.A.,**  
as Lender

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Exhibit A	– Form of Completion Guaranty

**NINTH MEZZANINE LOAN AGREEMENT**

**THIS NINTH MEZZANINE LOAN AGREEMENT**, dated as of January 28, 2008 (as amended, restated, replaced, supplemented or otherwise modified from time to time, this “**Agreement**”), between **JPMORGAN CHASE BANK, N.A.**, a banking association chartered under the laws of the United States of America, having an address at 270 Park Avenue, New York, New York 10017 (“**Lender**”), and **THE ENTITIES IDENTIFIED ON THE SIGNATURE PAGES HEREOF AS BORROWER**, each a Delaware limited liability company having its principal place of business at the addresses set forth on Schedule I attached hereto (collectively, “**Borrower**”).

**WITNESSETH:**

**WHEREAS**, JPMorgan Chase Bank, N.A., having an address at 270 Park Avenue, New York, New York 10017, as mortgage lender (“**Mortgage Lender**”), is making a loan in the principal amount of Four Billion and No/100 Dollars (\$4,000,000,000) (the “**Mortgage Loan**”) to Mortgage Borrower (as hereinafter defined) pursuant to that certain Loan Agreement, dated as of the date hereof (as the same may be amended, supplemented, replaced or otherwise modified from time to time, the “**Mortgage Loan Agreement**”), which Mortgage Loan is evidenced by the Mortgage Note (as hereinafter defined) made by Mortgage Borrower to Mortgage Lender and secured by, among other things, the Mortgage (as hereinafter defined) given by Mortgage Borrower in favor of Mortgage Lender pursuant to which Mortgage Borrower has granted Mortgage Lender a first priority mortgage on, among other things, the Properties and other collateral as more fully described in the Mortgage;

**WHEREAS**, JPMorgan Chase Bank, N.A., having an address at 270 Park Avenue, New York, New York 10017, as first mezzanine lender (“**First Mezzanine Lender**”), is making a loan in the principal amount of \$300,000,000 (the “**First Mezzanine Loan**”) to First Mezzanine Borrower (as hereinafter defined) pursuant to that certain First Mezzanine Loan Agreement, dated as of the date hereof (as the same may be amended, supplemented, replaced or otherwise modified from time to time, the “**First Mezzanine Loan Agreement**”), which First Mezzanine Loan is evidenced by the First Mezzanine Note (as hereinafter defined) made by First Mezzanine Borrower to First Mezzanine Lender and secured by, among other things, the First Mezzanine Pledge Agreement (as hereinafter defined) given by First Mezzanine Borrower in favor of First Mezzanine Lender pursuant to which First Mezzanine Borrower has granted First Mezzanine Lender a first priority security interest on, among other things, the Collateral (as defined in the First Mezzanine Pledge Agreement);

**WHEREAS**, JPMorgan Chase Bank, N.A., having an address at 270 Park Avenue, New York, New York 10017, as second mezzanine lender (“**Second Mezzanine Lender**”), is making a loan in the principal amount of \$275,000,000 (the “**Second Mezzanine Loan**”) to Second Mezzanine Borrower (as hereinafter defined) pursuant to that certain Second Mezzanine Loan Agreement, dated as of the date hereof (as the same may be amended, supplemented, replaced or otherwise modified from time to time, the “**Second Mezzanine Loan Agreement**”), which Second Mezzanine Loan is evidenced by the Second Mezzanine Note (as

hereinafter defined) made by Second Mezzanine Borrower to Second Mezzanine Lender and secured by, among other things, the Second Mezzanine Pledge Agreement (as hereinafter defined) given by Second Mezzanine Borrower in favor of Second Mezzanine Lender pursuant to which Second Mezzanine Borrower has granted Second Mezzanine Lender a first priority security interest on, among other things, the Collateral (as defined in the Second Mezzanine Pledge Agreement);

**WHEREAS**, JPMorgan Chase Bank, N.A., having an address at 270 Park Avenue, New York, New York 10017, as third mezzanine lender (“**Third Mezzanine Lender**”), is making a loan in the principal amount of \$275,000,000 (the “**Third Mezzanine Loan**”) to Third Mezzanine Borrower (as hereinafter defined) pursuant to that certain Third Mezzanine Loan Agreement, dated as of the date hereof (as the same may be amended, supplemented, replaced or otherwise modified from time to time, the “**Third Mezzanine Loan Agreement**”), which Third Mezzanine Loan is evidenced by the Third Mezzanine Note (as hereinafter defined) made by Third Mezzanine Borrower to Third Mezzanine Lender and secured by, among other things, the Third Mezzanine Pledge Agreement (as hereinafter defined) given by Third Mezzanine Borrower in favor of Third Mezzanine Lender pursuant to which Third Mezzanine Borrower has granted Third Mezzanine Lender a first priority security interest on, among other things, the Collateral (as defined in the Third Mezzanine Pledge Agreement);

**WHEREAS**, JPMorgan Chase Bank, N.A., having an address at 270 Park Avenue, New York, New York 10017, as fourth mezzanine lender (“**Fourth Mezzanine Lender**”), is making a loan in the principal amount of \$275,000,000 (the “**Fourth Mezzanine Loan**”) to Fourth Mezzanine Borrower (as hereinafter defined) pursuant to that certain Fourth Mezzanine Loan Agreement, dated as of the date hereof (as the same may be amended, supplemented, replaced or otherwise modified from time to time, the “**Fourth Mezzanine Loan Agreement**”), which Fourth Mezzanine Loan is evidenced by the Fourth Mezzanine Note (as hereinafter defined) made by Fourth Mezzanine Borrower to Fourth Mezzanine Lender and secured by, among other things, the Fourth Mezzanine Pledge Agreement (as hereinafter defined) given by Fourth Mezzanine Borrower in favor of Fourth Mezzanine Lender pursuant to which Fourth Mezzanine Borrower has granted Fourth Mezzanine Lender a first priority security interest on, among other things, the Collateral (as defined in the Fourth Mezzanine Pledge Agreement);

**WHEREAS**, JPMorgan Chase Bank, N.A., having an address at 270 Park Avenue, New York, New York 10017, as fifth mezzanine lender (“**Fifth Mezzanine Lender**”), is making a loan in the principal amount of \$275,000,000 (the “**Fifth Mezzanine Loan**”) to Fifth Mezzanine Borrower (as hereinafter defined) pursuant to that certain Fifth Mezzanine Loan Agreement, dated as of the date hereof (as the same may be amended, supplemented, replaced or otherwise modified from time to time, the “**Fifth Mezzanine Loan Agreement**”), which Fifth Mezzanine Loan is evidenced by the Fifth Mezzanine Note (as hereinafter defined) made by Fifth Mezzanine Borrower to Fifth Mezzanine Lender and secured by, among other things, the Fifth Mezzanine Pledge Agreement (as hereinafter defined) given by Fifth Mezzanine Borrower in favor of Fifth Mezzanine Lender pursuant to which Fifth Mezzanine Borrower has granted Fifth Mezzanine Lender a first priority security interest on, among other things, the Collateral (as defined in the Fifth Mezzanine Pledge Agreement);

**WHEREAS**, JPMorgan Chase Bank, N.A., having an address at 270 Park Avenue, New York, New York 10017, as sixth mezzanine lender (“**Sixth Mezzanine Lender**”), is making a loan in the principal amount of \$275,000,000 (the “**Sixth Mezzanine Loan**”) to Sixth Mezzanine Borrower (as hereinafter defined) pursuant to that certain Sixth Mezzanine Loan Agreement, dated as of the date hereof (as the same may be amended, supplemented, replaced or otherwise modified from time to time, the “**Sixth Mezzanine Loan Agreement**”), which Sixth Mezzanine Loan is evidenced by the Sixth Mezzanine Note (as hereinafter defined) made by Sixth Mezzanine Borrower to Sixth Mezzanine Lender and secured by, among other things, the Sixth Mezzanine Pledge Agreement (as hereinafter defined) given by Sixth Mezzanine Borrower in favor of Sixth Mezzanine Lender pursuant to which Sixth Mezzanine Borrower has granted Sixth Mezzanine Lender a first priority security interest on, among other things, the Collateral (as defined in the Sixth Mezzanine Pledge Agreement);

**WHEREAS**, JPMorgan Chase Bank, N.A., having an address at 270 Park Avenue, New York, New York 10017, as seventh mezzanine lender (“**Seventh Mezzanine Lender**”), is making a loan in the principal amount of \$275,000,000 (the “**Seventh Mezzanine Loan**”) to Seventh Mezzanine Borrower (as hereinafter defined) pursuant to that certain Seventh Mezzanine Loan Agreement, dated as of the date hereof (as the same may be amended, supplemented, replaced or otherwise modified from time to time, the “**Seventh Mezzanine Loan Agreement**”), which Seventh Mezzanine Loan is evidenced by the Seventh Mezzanine Note (as hereinafter defined) made by Seventh Mezzanine Borrower to Seventh Mezzanine Lender and secured by, among other things, the Seventh Mezzanine Pledge Agreement (as hereinafter defined) given by Seventh Mezzanine Borrower in favor of Seventh Mezzanine Lender pursuant to which Seventh Mezzanine Borrower has granted Seventh Mezzanine Lender a first priority security interest on, among other things, the Collateral (as defined in the Seventh Mezzanine Pledge Agreement);

**WHEREAS**, JPMorgan Chase Bank, N.A., having an address at 270 Park Avenue, New York, New York 10017, as eighth mezzanine lender (“**Eighth Mezzanine Lender**”), is making a loan in the principal amount of \$275,000,000 (the “**Eighth Mezzanine Loan**”) to Eighth Mezzanine Borrower (as hereinafter defined) pursuant to that certain Eighth Mezzanine Loan Agreement, dated as of the date hereof (as the same may be amended, supplemented, replaced or otherwise modified from time to time, the “**Eighth Mezzanine Loan Agreement**”), which Eighth Mezzanine Loan is evidenced by the Eighth Mezzanine Note (as hereinafter defined) made by Eighth Mezzanine Borrower to Eighth Mezzanine Lender and secured by, among other things, the Eighth Mezzanine Pledge Agreement (as hereinafter defined) given by Eighth Mezzanine Borrower in favor of Eighth Mezzanine Lender pursuant to which Eighth Mezzanine Borrower has granted Eighth Mezzanine Lender a first priority security interest on, among other things, the Collateral (as defined in the Eighth Mezzanine Pledge Agreement);

**WHEREAS**, First Mezzanine Borrower is the legal and beneficial owner of all of the interests in Mortgage Borrower;

**WHEREAS**, Second Mezzanine Borrower is the legal and beneficial owner of all of the interests in First Mezzanine Borrower;

**WHEREAS**, Third Mezzanine Borrower is the legal and beneficial owner of all of the interests in Second Mezzanine Borrower;

**WHEREAS**, Fourth Mezzanine Borrower is the legal and beneficial owner of all of the interests in Third Mezzanine Borrower;

**WHEREAS**, Fifth Mezzanine Borrower is the legal and beneficial owner of all of the interests in Fourth Mezzanine Borrower;

**WHEREAS**, Sixth Mezzanine Borrower is the legal and beneficial owner of all of the interests in Fifth Mezzanine Borrower;

**WHEREAS**, Seventh Mezzanine Borrower is the legal and beneficial owner of all of the interests in Sixth Mezzanine Borrower;

**WHEREAS**, Eighth Mezzanine Borrower is the legal and beneficial owner of all of the interests in Seventh Mezzanine Borrower;

**WHEREAS**, Borrower is the legal and beneficial owner of all of the interests in Eighth Mezzanine Borrower;

**WHEREAS**, Borrower desires to obtain the Loan (as hereinafter defined) from Lender;

**WHEREAS**, as a condition precedent to the obligation of Lender to make the Loan to Borrower, Borrower has entered into that certain Pledge and Security Agreement (Ninth Mezzanine Loan), dated as of the date hereof, in favor of Lender (as amended, supplemented or otherwise modified from time to time, the "**Pledge Agreement**"), pursuant to which Borrower has granted to Lender a first priority security interest in the Collateral (as defined in the Pledge Agreement) as collateral security for the Debt (as hereinafter defined); and

**WHEREAS**, Lender is willing to make the Loan to Borrower, subject to and in accordance with the terms of this Agreement and the other Loan Documents (as hereinafter defined).

**NOW THEREFORE**, in consideration of the making of the Loan by Lender and the covenants, agreements, representations and warranties set forth in this Agreement, the parties hereto hereby covenant, agree, represent and warrant as follows:

#### **I. DEFINITIONS; PRINCIPLES OF CONSTRUCTION**

**Section 1.1. Definitions.** For all purposes of this Agreement, except as otherwise expressly required or unless the context clearly indicates a contrary intent:

"**Acceptable Counterparty**" shall mean any counterparty to the Interest Rate Cap Agreement that has and shall maintain, until the expiration of the applicable Interest Rate Cap

Agreement, a long-term unsecured debt rating of at least “A+” by S&P and “Aa3” from Moody’s, which rating shall not include a “t” or otherwise reflect a termination risk and is otherwise reasonably acceptable to Lender.

“**Additional Insolvency Opinion**” shall have the meaning set forth in Section 4.1.30(c) hereof.

“**Additional True Lease Opinion**” shall have the meaning set forth in Section 4.1.30(d) hereof.

“**Affiliate**” shall mean, as to any Person, any other Person that, directly or indirectly, is in Control of, is Controlled by or is under common Control with such Person or is a director or officer of such Person or of an Affiliate of such Person.

“**Aggregate Debt Service**” shall mean, with respect to any particular period of time, the sum of (a) the Debt Service, (b) the Mortgage Debt Service and (c) the Other Mezzanine Debt Service.

“**Aggregate Material Adverse Effect**” shall mean any event or condition that, either singly or in the aggregate, could reasonably be expected to have or result in a material adverse effect upon (a) the business, operations, economic performance, prospects, assets or condition (financial or otherwise) of (i) Mortgage Borrower, Senior Mezzanine Borrower or Borrower (taken as a whole), (ii) Guarantor, (iii) Operating Company (taken as a whole), (iv) the Operating Lease or the Operating Lease Guaranty (taken as a whole) or (v) the Properties (taken as a whole), the Collateral, the Senior Mezzanine Collateral, the Hotel Components (taken as a whole) or the Casino Components (taken as a whole); (b) the ability of Mortgage Borrower (taken as a whole), Senior Mezzanine Borrower (taken as a whole), Borrower (taken as a whole) or Guarantor to perform, in all material respects, its obligations under the Loan Documents, Senior Mezzanine Loan Documents or Mortgage Loan Documents (taken as a whole) to which such entity is a party; (c) the ability of Operating Company (taken as a whole) to perform, in all material respects, the obligations under the Operating Leases (taken as a whole); or the ability of Guarantor (Operating Lease) (taken as a whole) to perform, in all material respects, the obligations under the Operating Lease Guaranty (taken as a whole); (d) the enforceability or validity of (i) the Operating Lease (taken as a whole) or the Operating Lease Guaranty (taken as a whole), (ii) the Loan Documents, Senior Mezzanine Loan Documents or Mortgage Loan Documents (taken as a whole) or the perfection or priority of the Liens created under the Loan Documents, Senior Mezzanine Loan Documents or Mortgage Loan Documents (taken as a whole); (e) the value of, or cash flow from, the Properties or the operations thereof (taken as a whole) or the Collateral; or (f) the material rights, interests and remedies of Lender under the Loan Documents (taken as a whole).

“**Allocated Loan Amount**” shall mean, for an Individual Property, the amount set forth on Schedule II attached hereto.

“**ALTA**” shall mean American Land Title Association, or any successor thereto.

“**Alteration**” shall mean, with respect to any Individual Property, any alteration, improvement, demolition, construction or removal of all or any portion of the Improvements at such Individual Property.

“**Annual Budget**” shall mean, individually and collectively as the context requires, (a) the Borrower Annual Budget and (b) the Operating Company Annual Budget.

“**Applicable Interest Rate**” shall mean the rate or rates at which the outstanding principal amount of the Loan bears interest from time to time in accordance with the provisions of Section 2.2.3 hereof.

“**Approved Guarantor**” means (x) Holdings, for so long Holdings meets the Minimum Value Test, or (y) any other guarantor that meets the Minimum Value Test and is otherwise reasonably satisfactory to Lender.

“**Assignee**” shall have the meaning set forth in Section 9.5 hereof.

“**Assignment and Acceptance**” shall have the meaning set forth in Section 9.8 hereof.

“**Award**” shall mean any compensation paid by any Governmental Authority in connection with a Condemnation with respect to all or any part of any Individual Property.

“**Bankruptcy Action**” shall mean with respect to any Person (a) such Person filing a voluntary petition under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (b) the filing of an involuntary petition against such Person under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law, or soliciting or causing to be solicited petitioning creditors for any involuntary petition against such Person; (c) such Person filing an answer consenting to or otherwise acquiescing in or joining in any involuntary petition filed against it, by any other Person under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law, or soliciting or causing to be solicited petitioning creditors for any involuntary petition from any Person; (d) such Person consenting to or acquiescing in or joining in an application for the appointment of a custodian, receiver, trustee, or examiner for such Person or any portion of its property; or (e) such Person making an assignment for the benefit of creditors, or admitting, in writing or in any legal proceeding, its insolvency or inability to pay its debts as they become due.

“**Bankruptcy Code**” shall mean Title 11 of the United States Code, 11 U.S.C. §101, et seq., as the same may be amended from time to time, and any successor statute or statutes and all rules and regulations from time to time promulgated thereunder, and any comparable foreign laws relating to bankruptcy, insolvency or creditors’ rights or any other Federal or state bankruptcy or insolvency law.

“**Basic Carrying Costs**” shall mean, for any period, with respect to each Individual Property, the sum of the following costs associated with such Individual Property for such period: (a) Taxes, (b) Insurance Premiums and (c) Ground Rent.

**“Bill’s Lake Tahoe Casino”** shall mean that certain property identified on Schedule II as “Bill’s Lake Tahoe” having a street address of 15 Highway 50, Stateline, Nevada.

**“Borrower”** shall have the meaning set forth in the introductory paragraph hereto, together with its successors and permitted assigns. As used herein, the term “Borrower” shall mean one of the Borrowers individually, or the Borrowers collectively, as the context shall require.

**“Borrower Agent”** shall have the meaning set forth in Section 10.6 hereof.

**“Borrower Annual Budget”** shall mean the operating budget of Mortgage Borrower, prepared by Mortgage Borrower for the applicable Fiscal Year or other period.

**“Borrower Entity”** shall have the meaning set forth in Section 11.1 hereof.

**“Business Day”** shall mean any day other than a Saturday, Sunday or any other day on which national banks in New York, New York are not open for business.

**“Capital Expenditures”** shall mean, for any period, the amount expended for items capitalized under GAAP (including expenditures for building improvements or major repairs, leasing commissions, tenant improvements and Fixtures).

**“Capitalized Software Expenditures”** shall mean, for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities) by a Person during such period in respect of licensed or purchased software or internally developed software and software enhancements that, in accordance with GAAP, are or are required to be reflected as capitalized costs on the consolidated balance sheet of such Person.

**“Cash Management Account”** shall have the meaning set forth in the Mortgage Loan Agreement.

**“Casino Components”** shall mean, collectively, those portions of each Individual Property devoted to the operation of casino gaming operations, including (without limitation) those areas devoted to the conduct of games of chance, facilities associated directly with gaming operations including, without limitation, casino support areas such as surveillance and security areas, cash cages, counting and accounting areas and gaming back-of-the-house areas in each case, to the extent the operation thereof requires a Gaming License under applicable Gaming Laws. The Casino Components are more particularly described and set forth in each Operating Lease, as appropriate.

**“Casualty”** shall have the meaning set forth in Section 6.2 hereof.

**“Change in Control”** shall mean (1) a “Change in Control” as defined in the Credit Agreement, dated the date hereof, among Hamlet Merger Inc., a Delaware corporation, Harrah’s Operating Company, Inc., a Delaware corporation, the Lenders party thereto from time to time, Bank of America, N.A., as administrative agent and collateral agent for the Lenders, and certain other parties thereto, or (2) a Change in Control as defined in clause (b) of said definition except that references therein to Borrower shall be deemed to refer to Holdings.

“**Closing Date**” shall mean the date of the funding of the Loan.

“**Code**” shall mean the Internal Revenue Code of 1986, as amended, as it may be further amended from time to time, and any successor statutes thereto, and applicable U.S. Department of Treasury regulations issued pursuant thereto in temporary or final form.

“**Collateral**” shall have the meaning set forth in the Pledge Agreement.

“**Collateral Assignment of Interest Rate Cap Agreement**” shall mean that certain Collateral Assignment of Interest Rate Cap Agreement, dated as of the date hereof, executed by Borrower in connection with the Loan for the benefit of the Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Collection Account**” shall have the meaning set forth in the Mortgage Loan Agreement.

“**Collection Banks**” shall mean (a) any Eligible Institution(s) designated by Mortgage Borrower as Collection Bank and reasonably approved by Lender from time to time in accordance with the terms hereof, or (b) any other financial institution otherwise reasonably approved by Lender and, if a Securitization has occurred, with respect to which a Rating Agency Confirmation has been obtained.

“**Condemnation**” shall mean a temporary or permanent taking by any Governmental Authority as the result or in lieu or in anticipation of the exercise of the right of condemnation or eminent domain, of all or any part of any Individual Property, or any interest therein or right accruing thereto, including any right of access thereto or any change of grade affecting such Individual Property or any part thereof.

“**Consolidated Net Income**” shall mean, with respect to any Person for any period, the aggregate of the Net Income of such Person for such period, on a consolidated basis; provided, however, that, without duplication,

(i) any net after-tax extraordinary, nonrecurring or unusual gains or losses or income or expense or charge (less all fees and expenses relating thereto), including, without limitation, any severance, relocation or other restructuring expenses, any expenses related to any reconstruction, decommissioning, recommissioning or reconfiguration of fixed assets for alternative uses, fees, expenses or charges relating to new product lines, curtailments or modifications to pension and post-retirement employee benefit plans, excess pension charges, acquisition integration costs, facilities opening costs, project start-up costs, business optimization costs, signing, retention or completion bonuses, shall be excluded,

(ii) any net after tax income or loss from disposed, abandoned, transferred, closed or discontinued operations and any net after tax gain or loss on disposal of disposed, abandoned, transferred, closed or discontinued operations shall be excluded,

(iii) any net after tax gain or loss (less all fees and expenses or charges relating thereto) attributable to business dispositions or asset dispositions other than in the

ordinary course of business (as determined in good faith by the management of the Borrower) shall be excluded,

(iv) Consolidated Net Income for such period shall not include the cumulative effect of a change in accounting principles during such period,

(v) effects of purchase accounting adjustments (including the effects of such adjustments pushed down to such Person) in component amounts required or permitted by GAAP, resulting from the application of purchase accounting in relation to any consummated acquisition or the amortization or write-off of any amounts thereof, net of taxes, shall be excluded,

(vi) any impairment charges or asset write-offs, in each case pursuant to GAAP, and the amortization of intangibles arising pursuant to GAAP, shall be excluded,

(vii) any non cash compensation charge or expenses realized or resulting from stock option plans, employee benefit plans or post-employment benefit plans, or grants or sales of stock, stock appreciation or similar rights, stock options, restricted stock, preferred stock or other rights shall be excluded,

(viii) accruals and reserves that are established or adjusted within twelve months after the Closing Date and that are so required to be established or adjusted in accordance with GAAP or as a result of adoption or modification of accounting policies shall be excluded,

(ix) non-cash gains, losses, income and expenses resulting from fair value accounting required by the applicable standard under GAAP and related interpretations shall be excluded,

(x) (i) the non-cash portion of "straight-line" rent expense shall be excluded and (ii) the cash portion of "straight-line" rent expense which exceeds the amount expensed in respect of such rent expense shall be included,

(xi) to the extent covered by insurance and actually reimbursed, or, so long as such Person has made a determination that there exists reasonable evidence that such amount will in fact be reimbursed by the insurer and only to the extent that such amount is (i) not denied by the applicable carrier in writing within 180 days and (ii) in fact reimbursed within 365 days of the date of such evidence (with a deduction for any amount so added back to the extent not so reimbursed within 365 days), expenses with respect to liability or casualty events or business interruption shall be excluded, and

(xii) non-cash charges for deferred tax asset valuation allowances shall be excluded.

**"Contribution Agreement"** shall mean that certain Contribution Agreement, dated as of the date hereof, between Borrower and Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Control**” shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management, policies or activities of a Person, whether through ownership of voting securities, by contract or otherwise. “**Controlled**” and “**Controlling**” shall have correlative meanings.

“**Convention Center Parcel**” shall mean the parcel shown on Schedule XXII and comprising a part of the Harrah’s Atlantic City Property.

“**Convention Center Project**” shall mean that certain conference center currently contemplated to be constructed on the Convention Center Parcel by the Mortgage Borrower and/or the Operating Company owning the Harrah’s Atlantic City Property, and more fully described in the schematic designs for the Convention Center Project provided by Mortgage Borrower to Mortgage Lender. The Convention Center Project will not be funded with the proceeds of the Loan (but will be funded by Mortgage Borrower, including with capital contributions).

“**Counterparty**” shall mean, with respect to the Interest Rate Cap Agreement and any Replacement Interest Rate Cap Agreement, any Acceptable Counterparty.

“**Covered Disclosure Information**” shall have the meaning set forth in Section 9.2(b) hereof.

“**Debt**” shall mean the outstanding principal amount set forth in, and evidenced by, this Agreement and the Notes together with all interest accrued and unpaid thereon (including any interest that would accrue on the outstanding principal amount of the Loan through and including the end of any applicable Interest Period, even if such Interest Period extends beyond any applicable Payment Date, prepayment date or the Maturity Date) and all other sums due to Lender in respect of the Loan under the Notes, this Agreement, the Pledge Agreement and the other Loan Documents.

“**Debt Service**” shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under this Agreement and the Note.

“**Debt Service Coverage Ratio**” shall mean a ratio for the applicable period in which:

(a) the numerator is EBITDAR of the Operating Company for the four (4) quarter period preceding the date of determination, as set forth in the financial statements required hereunder; and

(b) the denominator is the sum of (i) the aggregate amount of Mortgage Debt Service which was due and payable for such preceding four (4) quarter period calculated, for these purposes, assuming that (A) the spread on the Mortgage Loan is the Spread (as defined in the Mortgage Loan Agreement) and (B) LIBOR is equal to the lesser of (y) LIBOR on the date of determination, or (z) the applicable Strike Price, (ii) the aggregate amount of Mezzanine Debt Service (including the Debt Service) which was due and payable for such preceding four (4) quarter period calculated, for these purposes, assuming that (A) the spread on the Mezzanine Loans is the “Spread” as defined in each

Mezzanine Loan Agreement and (B) LIBOR is equal to the lesser of (y) LIBOR on the date of determination, or (z) the applicable Strike Price (as defined in the Mortgage Loan Agreement), and (iii) the aggregate amount of the Permitted Mezzanine Debt Service which was due and payable for such preceding four (4) quarter period (or the annualized amount, if the Permitted Mezzanine Loan were outstanding for less than 12 calendar months) calculated, for these purposes, assuming that (A) the spread on the Permitted Mezzanine Loan is the "Spread" (as defined in the documents evidencing the Permitted Mezzanine Loan Documents and (B) LIBOR is equal to the lesser of (y) LIBOR on the date of determination, or (z) the strike price under the related interest rate cap purchased in connection with the Permitted Mezzanine Loan);

provided, however, that, solely for the purpose of Section 2.5, the Debt Service Coverage Ratio shall be determined as described in Section 2.5.1(c).

**"Default"** shall mean the occurrence of any event hereunder or under any other Loan Document which, but for the giving of notice or passage of time, or both, would be an Event of Default.

**"Default Rate"** shall mean a rate per annum equal to the lesser of (a) the Maximum Legal Rate and (b) two percent (2%) above the Applicable Interest Rate.

**"Delinquency"** shall mean, with respect to each Individual Property, the latest date on which Taxes or Other Charges may be paid (with respect to such Individual Property) without the payment of a premium, penalty or interest.

**"Determination Date"** shall mean, with respect to any Interest Period, the date that is two (2) London Business Days prior to the fifteenth (15<sup>th</sup>) day of the calendar month in which such Interest Period commences.

**"Disclosure Document"** shall mean a prospectus, prospectus supplement, private placement memorandum, offering memorandum, offering circular, term sheet, road show presentation materials or other offering documents or marketing materials, in each case in preliminary or final form, used to offer Securities in connection with a Securitization.

**"EBITDAR"** shall mean, with respect to any Person for any period, the Consolidated Net Income of such Person plus the sum of (in each case without duplication and to the extent the respective amounts described in subclauses (i) through (vi) below reduced such Consolidated Net Income (and were not excluded therefrom) for the respective period for which EBITDAR is being determined):

- (i) provision for Taxes based on income, profits or capital for such period, including, without limitation, state, franchise and similar taxes and foreign withholding taxes (including penalties and interest related to taxes or arising from tax examinations);
- (ii) Interest Expense for such period (net of interest income for such period);
- (iii) depreciation and amortization expenses for such period including, but not exclusively, the amortization of intangible assets, deferred financing fees and Capitalized

Software Expenditures and amortization of unrecognized prior service costs and actuarial gains and losses related to pensions and other post-employment benefits;

(iv) any expenses or charges (other than depreciation or amortization expense as described in the preceding clause (iii)) related to any acquisition, disposition, recapitalization or the incurrence, modification or repayment of Indebtedness permitted to be incurred by this Agreement (including a refinancing thereof) (whether or not successful), including (y) any amendment or other modification of such Indebtedness, and (z) commissions, discounts, yield and other fees and charges (including any interest expense) related to any such Indebtedness;

(v) restructuring charges or reserves (which, for the avoidance of doubt, shall include, without limitation, the effect of inventory optimization programs, retention, severance, systems establishment costs, contract termination costs, future lease commitments and excess pension charges), to the extent that such expenses, charges or reserves are considered to be extraordinary expenses under GAAP;

(vi) any costs or expense incurred pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement or any stock subscription or shareholder agreement, to the extent that such cost or expenses are funded with cash proceeds contributed to the capital of such Person;

(vii) with respect to the Operating Company, the Fixed Rent payable under the Operating Lease; and

(viii) if the Captive Insurance Company shall be utilized to provide terrorism coverage hereunder, the amount of the premiums expended by Mortgage Borrower to obtain such terrorism coverage to the extent such amount exceeds the Terrorism Premium Limit and such excess is retained by the Captive Insurance Company;

provided that EBITDAR shall be reduced by the sum of the following for the respective period for which EBITDAR is being determined:

(A) management fees equal to the greater of (x) 3 percent per annum of gross revenues at the Properties and (y) the actual management fees payable under any management agreement (provided the foregoing shall not be construed as Lender's approval of any management agreement except in accordance with the terms hereof), without double counting actual amounts incurred and otherwise reflected in the calculation of EBITDAR, and

(B) FF&E reserves equal to 3 percent per annum of gross hotel and casino revenues at the Properties without double counting actual amounts incurred and otherwise reflected in the calculation of EBITDAR.

**"EBITDAR (Closing Date)"** shall mean EBITDAR for calendar year 2007, as agreed upon between Borrower and Lender.

**“Eighth Mezzanine Borrower”** shall mean, collectively, the entities set forth on Schedule XX hereto, each a Delaware limited liability company, together with their respective successors and permitted assigns. As used herein, the term “Eighth Mezzanine Borrower” shall mean one of the Eighth Mezzanine Borrowers individually, or the Eighth Mezzanine Borrowers collectively, as the context shall require.

**“Eighth Mezzanine Debt Service”** shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Eighth Mezzanine Notes.

**“Eighth Mezzanine Lender”** shall mean JPMorgan Chase Bank, N.A., in its capacity as the holder of the Eighth Mezzanine Loan, together with its successors and assigns.

**“Eighth Mezzanine Loan”** shall mean that certain loan in the original principal amount of Two Hundred Seventy Five Million and No/100 Dollars (\$275,000,000) of even date herewith made by Eighth Mezzanine Lender to Eighth Mezzanine Borrower.

**“Eighth Mezzanine Loan Agreement”** shall mean that certain Eighth Mezzanine Loan Agreement, dated as of the date hereof, between Eighth Mezzanine Borrower and Eighth Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**“Eighth Mezzanine Loan Documents”** shall mean the Eighth Mezzanine Loan Agreement, the Eighth Mezzanine Notes and all other documents and instruments executed and delivered in connection with the Eighth Mezzanine Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

**“Eighth Mezzanine Notes”** shall mean the “Notes” as defined in the Eighth Mezzanine Loan Agreement.

**“Eighth Mezzanine Pledge Agreement”** shall mean that certain Pledge and Security Agreement (Eighth Mezzanine Loan), dated as of the date hereof, between Eighth Mezzanine Borrower and Eighth Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**“Eligibility Requirements”** means, with respect to any Person, that such Person (a) has total assets (in name or under management) in excess of \$4,000,000,000 and (except with respect to a pension advisory firm or similar fiduciary) capital/statutory surplus or shareholder’s equity of \$1,000,000,000, (b) is regularly engaged in the business of owning and operating commercial real estate properties, (c) is not currently, and its principals are not currently, subject to a Bankruptcy Action and for the immediately preceding 10 years, neither it nor any material subsidiary has been subject to a Bankruptcy Action, and (d) has not been, and its principals have not been, convicted and is not under current indictment for a felony or crime involving moral turpitude, has not been found by a court of competent jurisdiction to have violated federal or state securities laws, and is not an organized crime figure.

**“Eligible Account”** shall mean a separate and identifiable account from all other funds held by the holding institution that is either (a) an account or accounts maintained with a

federal or state-chartered depository institution or trust company which complies with the definition of Eligible Institution or (b) a segregated trust account or accounts maintained with a federal or state chartered depository institution or trust company acting in its fiduciary capacity which, in the case of a state chartered depository institution or trust company, is subject to regulations substantially similar to 12 C.F.R. § 9.10(b), having in either case a combined capital and surplus of at least \$50,000,000 and subject to supervision or examination by federal and state authority. An Eligible Account will not be evidenced by a certificate of deposit, passbook or other instrument.

**“Eligible Institution”** shall mean a depository institution or trust company, the short term unsecured debt obligations or commercial paper of which are rated at least “A-1” by S&P, “P-1” by Moody’s and “F-1” by Fitch in the case of accounts in which funds are held for thirty (30) days or less (or, in the case of accounts in which funds are held for more than thirty (30) days, the long term unsecured debt obligations of which are rated at least “A” by Fitch and S&P and “A2” by Moody’s). After a Securitization of all or any portion of the Loan, only the ratings of those Rating Agencies rating the Securities shall be taken into account in determining whether institutions or trust companies constitute Eligible Institutions.

**“Embargoed Person”** shall have the meaning set forth in Section 4.1.35 hereof.

**“Environmental Indemnity”** shall mean that certain Environmental Indemnity Agreement, dated as of the date hereof, executed by Borrower and Guarantor in connection with the Loan for the benefit of Lender and the Noteholders, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

**“Equipment”** shall mean, with respect to each Individual Property, any equipment now owned or hereafter acquired by Mortgage Borrower or Operating Company, which is used at or in connection with the Improvements or such Individual Property or is located thereon or therein, including (without limitation) all Gaming Equipment, all machinery, equipment, furnishings, and electronic data-processing and other office equipment now owned or hereafter acquired by or on behalf of Mortgage Borrower or Operating Company and any and all additions, substitutions and replacements of any of the foregoing), together with all attachments, components, parts, equipment and accessories installed thereon or affixed thereto.

**“ERISA”** shall mean the Employee Retirement Income Security Act of 1974, as amended.

**“Event of Default”** shall have the meaning set forth in Section 8.1(a) hereof.

**“Exchange Act”** shall have the meaning set forth in Section 9.2(a) hereof.

**“Exchange Act Filing”** shall have the meaning set forth in Section 5.1.11(f) hereof.

**“FF&E”** shall mean, with respect to each Individual Property, collectively, furnishings, fixtures (other than Fixtures) and Equipment located in the guest rooms, hallways, lobbies, restaurants, lounges, meeting and banquet rooms, parking facilities, public areas or otherwise in any portion of such Individual Property, including (without limitation) all fixed

asset supplies (including, but not limited to, linen, china, glassware, tableware, uniforms, other hotel inventory and similar items, whether used in connection with public space or guest rooms), beds, chairs, bookcases, tables, carpeting, drapes, couches, luggage carts, luggage racks, bars, bar fixtures, radios, television sets, intercom and paging equipment, electric and electronic equipment, heating, lighting and plumbing fixtures, fire prevention and extinguishing apparatus, cooling and air-conditioning systems, elevators, escalators, stoves, ranges, refrigerators, laundry machines, tools, machinery, boilers, incinerators, switchboards, conduits, compressors, vacuum cleaning systems, floor cleaning, waxing and polishing equipment, cabinets, lockers, shelving, dishwashers, garbage disposals, washer and dryers, gaming equipment and other casino equipment and all other customary hotel and casino resort equipment and other tangible property owned by Mortgage Borrower or Operating Company, or in which Mortgage Borrower or Operating Company has or shall have an interest, now or hereafter located at such Individual Property and useable in connection with the present or future operation and occupancy of such Individual Property; provided, however, that FF&E shall not include items owned by tenants under space Leases (other than the Operating Lease) or by third party operators (other than Operating Company).

“**FF&E Reserve Account**” shall have the meaning set forth in Section 7.3 hereof.

“**FF&E Reserve Fund**” shall have the meaning set forth in Section 7.3 hereof.

“**Fifth Mezzanine Borrower**” shall mean, collectively, the entities set forth on Schedule XVII hereto, each a Delaware limited liability company, together with their respective successors and permitted assigns. As used herein, the term “Fifth Mezzanine Borrower” shall mean one of the Fifth Mezzanine Borrowers individually, or the Fifth Mezzanine Borrowers collectively, as the context shall require.

“**Fifth Mezzanine Debt Service**” shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Fifth Mezzanine Notes.

“**Fifth Mezzanine Lender**” shall mean JPMorgan Chase Bank, N.A., in its capacity as the holder of the Fifth Mezzanine Loan, together with its successors and assigns.

“**Fifth Mezzanine Loan**” shall mean that certain loan in the original principal amount of Two Hundred Seventy Five Million and No/100 Dollars (\$275,000,000) of even date herewith made by Fifth Mezzanine Lender to Fifth Mezzanine Borrower.

“**Fifth Mezzanine Loan Agreement**” shall mean that certain Fifth Mezzanine Loan Agreement, dated as of the date hereof, between Fifth Mezzanine Borrower and Fifth Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Fifth Mezzanine Loan Documents**” shall mean the Fifth Mezzanine Loan Agreement, the Fifth Mezzanine Notes and all other documents and instruments executed and delivered in connection with the Fifth Mezzanine Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

“**Fifth Mezzanine Notes**” shall mean the “Notes” as defined in the Fifth Mezzanine Loan Agreement.

“**Fifth Mezzanine Pledge Agreement**” shall mean that certain Pledge and Security Agreement (Fifth Mezzanine Loan), dated as of the date hereof, between Fifth Mezzanine Borrower and Fifth Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**First Mezzanine Borrower**” shall mean, collectively, the entities set forth on Schedule XIV hereto, each a Delaware limited liability company, together with their respective successors and permitted assigns. As used herein, the term “First Mezzanine Borrower” shall mean one of the First Mezzanine Borrowers individually, or the First Mezzanine Borrowers collectively, as the context shall require.

“**First Mezzanine Borrower Company Agreements**” shall mean, collectively, the Limited Liability Company Agreements of First Mezzanine Borrower, by each Borrower, as sole member, dated as of the date hereof.

“**First Mezzanine Debt Service**” shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the First Mezzanine Note.

“**First Mezzanine Lender**” shall have the meaning set forth in the Recitals.

“**First Mezzanine Loan**” shall have the meaning set forth in the Recitals.

“**First Mezzanine Loan Agreement**” shall have the meaning set forth in the Recitals.

“**First Mezzanine Loan Documents**” shall mean the First Mezzanine Loan Agreement, the First Mezzanine Notes, and all other documents and instruments executed and delivered in connection with the First Mezzanine Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

“**First Mezzanine Notes**” shall mean the “Notes” as defined in the First Mezzanine Loan Agreement.

“**First Mezzanine Pledge Agreement**” shall mean that certain Pledge and Security Agreement (First Mezzanine Loan), dated as of the date hereof, between First Mezzanine Borrower and First Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Fiscal Year**” shall mean each twelve (12) month period commencing on January 1 and ending on December 31 during each year of the term of the Loan.

“**Fitch**” shall mean Fitch, Inc.

“**Fixed Rent**” shall mean the Base Rent (as defined in the Operating Lease) payable under the Operating Lease.

**“Fixtures”** shall mean, with respect to each Individual Property, all Equipment now owned, or the ownership of which is hereafter acquired, by Mortgage Borrower which is so related to the Land and the Improvements forming part of the Individual Property in question that it is deemed fixtures or real property under applicable Legal Requirements, including, without limitation, all building or construction materials intended for construction, reconstruction, alteration, decoration or repair of or installation on the applicable Individual Property, construction equipment, appliances, machinery, plant equipment, fittings, apparatuses, fixtures and other items now or hereafter attached to, installed in or used in connection with (temporarily or permanently) any of the Improvements or the Land, including, but not limited to, engines, devices for the operation of pumps, pipes, plumbing, call and sprinkler systems, fire extinguishing apparatuses and equipment, heating, ventilating, incinerating, electrical, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances and equipment, pollution control equipment, security systems, disposals, dishwashers, refrigerators and ranges, recreational equipment and facilities of all kinds, and water, electrical, storm and sanitary sewer facilities, utility lines and equipment (whether owned individually or jointly with others, and, if owned jointly, to the extent of Mortgage Borrower’s interest therein) and all other utilities whether or not situated in easements, all water tanks, water supply, water power sites, fuel stations, fuel tanks, fuel supply, and all other structures, together with all accessions, appurtenances, additions, replacements, betterments and substitutions or any of the foregoing and the proceeds thereof.

**“Flamingo Las Vegas”** shall mean that certain Individual Property identified on Schedule II as the “Flamingo Las Vegas” and having a street address of 3555 Las Vegas Boulevard South, Las Vegas, Nevada.

**“Force Majeure”** shall mean any delay caused by reason of strike, lock-out or other labor trouble, casualty, governmental preemption of priorities or other controls in connection with a national or other public emergency or shortages of fuel, supplies or labor resulting therefrom or other causes beyond Borrower’s reasonable control.

**“Foreign Taxes”** shall have the meaning set forth in Section 2.2.3(e) hereof.

**“Fourth Mezzanine Borrower”** shall mean, collectively, the entities set forth on Schedule XVI hereto, each a Delaware limited liability company, together with their respective successors and permitted assigns. As used herein, the term “Fourth Mezzanine Borrower” shall mean one of the Fourth Mezzanine Borrowers individually, or the Fourth Mezzanine Borrowers collectively, as the context shall require.

**“Fourth Mezzanine Debt Service”** shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Fourth Mezzanine Notes.

**“Fourth Mezzanine Lender”** shall mean JPMorgan Chase Bank, N.A., in its capacity as the holder of the Fourth Mezzanine Loan, together with its successors and assigns.

**“Fourth Mezzanine Loan”** shall mean that certain loan in the original principal amount of Two Hundred Seventy Five Million and No/100 Dollars (\$275,000,000) of even date herewith made by Fourth Mezzanine Lender to Fourth Mezzanine Borrower.

**“Fourth Mezzanine Loan Agreement”** shall mean that certain Fourth Mezzanine Loan Agreement, dated as of the date hereof, between Fourth Mezzanine Borrower and Fourth Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**“Fourth Mezzanine Loan Documents”** shall mean the Fourth Mezzanine Loan Agreement, the Fourth Mezzanine Notes and all other documents and instruments executed and delivered in connection with the Fourth Mezzanine Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

**“Fourth Mezzanine Notes”** shall mean the “Notes” as defined in the Fourth Mezzanine Loan Agreement.

**“Fourth Mezzanine Pledge Agreement”** shall mean that certain Pledge and Security Agreement (Fourth Mezzanine Loan), dated as of the date hereof, between Fourth Mezzanine Borrower and Fourth Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**“GAAP”** shall mean generally accepted accounting principles in the United States of America as of the date of the applicable financial report.

**“Gaming Authorities”** shall mean, in any jurisdiction in which Borrower, Senior Mezzanine Borrower, Mortgage Borrower, Operating Company or any of their respective subsidiaries manages or conducts any casino, gaming business or activities, the applicable gaming board, commission, or other governmental gaming regulatory authority, body or agency which (a) has, or may at any time after the Closing Date have, jurisdiction over the gaming activities at any of the Properties or any successor to such authority or (b) is, or may at any time after the Closing Date be, responsible for interpreting, administering and enforcing the Gaming Laws.

**“Gaming Equipment”** shall mean any and all gaming devices, gaming device parts inventory and other related gaming equipment and supplies used in connection with the operation of a casino, including (without limitation), slot machines, gaming tables, cards, dice, chips, tokens, player tracking systems, cashless wagering systems, electronic betting systems, mobile gaming systems and associated equipment which are located at the Casino Components, owned or leased by Operating Company or Mortgage Borrower and used or useable exclusively in the present or future operation of slot machines and live games at the Casino Component, together with all improvements and/or additions thereto.

**“Gaming Laws”** or **“Gaming Regulations”** shall mean all applicable constitutions, treaties, laws, statutes and municipal ordinances pursuant to which any Gaming Authority possesses regulatory, licensing or permitting authority over gaming, gambling or casino or casino-related activities and all rules, rulings, orders, ordinances and regulations of any Gaming Authority applicable to the gambling, casino, gaming businesses or casino or casino-

related activities of Borrower, Senior Mezzanine Borrower, Mortgage Borrower or the Operating Companies or any of their respective subsidiaries in any jurisdiction, as in effect from time to time, including the policies, interpretations and administration thereof by the Gaming Authorities.

“**Gaming License**” shall mean, in any jurisdiction in which Borrower, Senior Mezzanine Borrower, Mortgage Borrower, Operating Company or any of their respective subsidiaries conducts any casino and gaming business or activities, any license, qualification, franchise, accreditation, approval, registration, permit, finding of suitability or other authorization relating to gaming, the gaming business or the operation of a casino under the Gaming Laws or required by the Gaming Authorities or otherwise necessary for the operation of gaming, the gaming business or a resort casino.

“**Gaming Liquidity Requirement**” shall mean the minimum bankroll requirements for cash and cash equivalents required to be maintained by each Operating Company pursuant to Gaming Laws in an amount no greater than is mandated by applicable law, which requirements may be subject to (a) adjustment in an amount equal to any incremental increase or decrease in the amount of the Gaming Liquidity Requirement that is required to be maintained by Operating Company under applicable Gaming Laws as a result of any increase or decrease in gaming business at the applicable Casino Component, or (b) subject to increase or decrease due to any change in the applicable requirements under Gaming Laws generally.

“**Gaming Operating Reserve**” shall mean, with respect to the Casino Component, such cash funds and reserves that are held and maintained on-site at each Individual Property by Operating Company, in its capacity as the duly licensed operator of the Casino Component, including (without limitation) casino chips, tokens, checks and markers; provided, however, that all such Gaming Operating Reserves (a) are established and maintained in compliance with all applicable Gaming Liquidity Requirements, (b) are solely for use in the day-to-day operation and management of each Casino Component in the ordinary course of business, and (c) in the case of each Individual Property, are in amounts customary and generally comparable for casinos comparable to the Individual Property in question.

“**Governmental Authority**” shall mean any court, board, agency, commission, office or other authority of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence, including, without limitation, all Gaming Authorities having jurisdiction over the Properties (and any operations conducted thereat), Mortgage Borrower, Borrower and Operating Company. For the avoidance of doubt, the term “Governmental Authority” shall include, and be deemed to include, all Gaming Authorities.

“**Ground Lease**” shall mean, individually and collectively, as the context requires, those certain ground leases listed in Schedule IV, as the same may be amended, supplemented, replaced or otherwise modified from time to time in accordance with the provisions hereof.

“**Ground Lease Estoppel Reserve Amount**” shall have the meaning set forth in the Ground Lease Side Letter.

“**Ground Lease Estoppel Trigger Event**” shall have the meaning set forth in Section 5.1.23 hereof.

“**Ground Lease Estoppel Trigger Spread**” shall have the meaning set forth in the Ground Lease Side Letter.

“**Ground Lease Side Letter**” shall have the meaning assigned to such term in the Mortgage Loan Agreement.

“**Ground Lease Subsidiary**” shall have the meaning assigned to such term in the Mortgage Loan Agreement.

“**Ground Rent**” shall mean any rent, additional rent or other charge payable by the tenant under the Ground Lease.

“**Ground Rent Reserve Account**” shall have the meaning set forth in Section 7.4 hereof.

“**Ground Rent Reserve Funds**” shall have the meaning set forth in Section 7.4.

“**Guarantor**” shall mean, collectively, Guarantor (FF&E), Guarantor (Recourse Carveouts), Guarantor (Operating Lease), Guarantor (Ground Lease Estoppel) and any guarantor under any completion guaranty provided under Section 5.1.21.

“**Guarantor (FF&E)**” shall mean any Approved Guarantor. Initially, Guarantor (FF&E) shall mean Holdings, and its successors. If Holdings fails to meet the Minimum Value Test, then Borrower shall replace Holdings, as the guarantor under the Guaranty (FF&E), with an Approved Guarantor.

“**Guarantor (Ground Lease Estoppel)**” shall mean Holdings, and its successors.

“**Guarantor (Operating Lease)**” shall mean Holdings, and its successors.

“**Guarantor (Recourse Carveouts)**” shall mean Holdings, and its successors.

“**Guaranty**” shall mean, collectively, the Guaranty (FF&E), the Guaranty (Recourse Carveouts), the Guaranty (Ground Lease Estoppel), the Operating Lease Guaranty and any completion guaranty provided under Section 5.1.21.

“**Guaranty (FF&E)**” shall mean that certain Guaranty (FF&E) (Ninth Mezzanine Loan), dated as of the date hereof, from Guarantor (FF&E) to Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Guaranty (Ground Lease Estoppel)**” shall mean that certain Guaranty (Harvey’s - Payment) (Ninth Mezzanine), dated as of the date hereof, from Guarantor (Ground Lease Estoppel) to Lender, as the same may be amended, restated, supplemented or modified from time to time.

**“Guaranty (Recourse Carveouts)”** shall mean that certain Guaranty (Recourse Carveouts) (Ninth Mezzanine Loan), dated as of the date hereof, from Guarantor (Recourse Carveouts) to Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

**“Harrah’s Atlantic City Property”** shall mean that certain Individual Property identified on Schedule II as “Harrah’s Atlantic City” and having a street address of 777 Harrah’s Boulevard, Atlantic City, New Jersey.

**“Holdings”** shall mean Harrah’s Entertainment, Inc., and its successors.

**“Hotel Components”** shall mean, collectively, those portions of each Individual Property devoted to the operation of a hotel and related facilities, excluding the Casino Component, but including (without limitation) (a) all guest rooms and suites, hotel amenities, restaurants, conference centers, meeting, banquet and other public rooms, spa, parking spaces and other facilities of the hotel portion of such Individual Property, and (b) any theaters or performing arts spaces in the Individual Property in question. The Hotel Components are more particularly described and set forth in each Operating Lease, as applicable.

**“Improvements”** shall have the meaning set forth in the granting clause of the related Mortgage with respect to each Individual Property.

**“Indebtedness”** of a Person, at a particular date, means the sum (without duplication) at such date of (a) all indebtedness of such Person (including, without limitation, amounts for borrowed money and indebtedness in the form of mezzanine debt and preferred equity); (b) obligations evidenced by bonds, debentures, notes, or other similar instruments; (c) obligations for the deferred purchase price of property or services (including trade obligations); (d) obligations under letters of credit; (e) obligations under acceptance facilities; (f) all guaranties, endorsements (other than for collection or deposit in the ordinary course of business) and other contingent obligations to purchase, to provide funds for payment, to supply funds, to invest in any Person or entity, or otherwise to assure a creditor against loss; and (g) obligations secured by any Liens, whether or not the obligations have been assumed.

**“Indemnified Liabilities”** shall have the meaning set forth in Section 10.13 hereof.

**“Indemnified Person”** shall have the meaning set forth in Section 9.2(b) hereof.

**“Independent Director”** or **“Independent Manager”** shall mean a natural person who is not and will not be while serving and has not been during the five years preceding his or her initial appointment to such position any of the following: (a) a stockholder (other than a stockholder who owns a *de minimis* amount of shares and receive *de minimis* income therefrom, or who indirectly owns stock through its interest in one or more mutual funds), member (other than as a Special Member or Springing Member of Borrower), director, manager (except in his or her capacity as an Independent Manager on the Board of Managers of Borrower), officer, employee, partner, attorney, trustee or counsel of Borrower or any Affiliate of Borrower or any direct or indirect parent of either of them, including Holdings, (b) a creditor, customer (other than a retail customer of an Individual Property), supplier or other Person who

derives any of its purchases or revenues from its activities with Borrower or any Affiliate of Borrower, including Holdings, (c) a Person or other entity controlling or under common control with any such stockholder, partner, member, director, manager or officer, customer, supplier or other Person excluded from serving as Independent Director or Independent Manager described in the foregoing subclause (a) or subclause (b), or (d) a member of the immediate family by blood or marriage of any such stockholder, member, manager, director, officer, employee, partner, attorney, customer, supplier or other Person excluded from serving as Independent Director or Independent Manager in subclause (a) or subclause (b). A natural person who satisfies the foregoing definition other than subclause (b) above shall not be disqualified from serving as an Independent Manager, if such individual is an independent director provided by a nationally recognized company that provides professional independent directors and managers, it being hereby acknowledged and agreed that Corporation Service Company satisfies such criteria. Further, a natural person who otherwise satisfies the foregoing definition except for subclause (a) by reason of being the independent director of a "special purpose entity" affiliated with the Borrower shall not be disqualified from serving as an Independent Director of the Borrower if such individual is either (i) a Professional Independent Director or (ii) the fees and other income that such individual earns from serving as independent director of affiliates of the Borrower in any given year constitute in the aggregate less than five percent (5%) of such individual's annual income for that year. Notwithstanding the immediately preceding sentence, an Independent Director may not simultaneously serve as Independent Director of the Borrower and independent director of a special purpose entity that owns a direct or indirect equity interest in the Borrower or a direct or indirect interest in any co-borrower with the Borrower. For purposes of this paragraph, a "special purpose entity" is an entity, whose organizational documents contain restrictions on its activities and impose requirements intended to preserve such entity's separateness that are substantially similar to the "special purpose entity" provisions of this Agreement. Notwithstanding anything herein to the contrary, an Independent Director may not simultaneously serve as Independent Director of a Borrower and an independent director of a special purpose entity that owns a direct or indirect equity interest in any Borrower; provided, however, that one Independent Director of Borrower (but not both Independent Directors simultaneously) may serve as an independent director of each Other Mezzanine Borrower.

**"Individual Material Adverse Effect"** shall mean any event or condition that, either singly or in the aggregate, could reasonably be expected to have or result in a material adverse effect upon (a) the business, operations, economic performance, prospects, assets or condition (financial or otherwise) of (i) any Borrower, any Senior Mezzanine Borrower or any Mortgage Borrower, (ii) Guarantor, (iii) any Operating Company, (iv) any Operating Lease or Operating Lease Guaranty or (v) the Collateral, the Senior Mezzanine Collateral or any Individual Property or any Hotel Component or Casino Component thereon; (b) the ability of any Borrower, any Senior Mezzanine Borrower, any Mortgage Borrower or Guarantor to perform, in all material respects, its obligations under each of the Loan Documents, Senior Mezzanine Loan Documents or Mortgage Loan Documents to which it is a party; (c) the ability of any Operating Company to perform, in all material respects, its obligations under its Lease; (d) the enforceability or validity of (i) any Operating Lease or Operating Lease Guaranty, or (ii) any Loan Document, Senior Mezzanine Loan Document, Mortgage Loan Document or the perfection or priority of any Lien created under any Loan Document, Senior Mezzanine Loan Document or Mortgage Loan Document; (e) the value of, or cash flow from, any Individual Property, the

Collateral, the Senior Mezzanine Collateral or the operations thereof; or (f) the material rights, interests and remedies of Lender under any of the Loan Documents.

**“Individual Property”** shall mean, individually, any one of the properties identified on Schedule II (it being the Improvements thereon and all Fixtures and all Equipment, FF&E and personal property owned by Mortgage Borrower and encumbered by a Mortgage, together with all rights pertaining to such property and Improvements, as more particularly described in the Granting Clauses of each Mortgage and referred to therein as the “Property”). For all purposes herein and in the other Loan Documents and to the extent not prohibited by the Ground Lease, the premises leased by Ground Lease Subsidiary or Borrower, as applicable, under the Ground Lease shall constitute a part of the Individual Property known as “Harvey’s Lake Tahoe”, “Harrah’s Lake Tahoe” and “Bill’s Lake Tahoe”, except that such ground leased premises shall not be subject to a lien of a Mortgage or an Operating Lease unless and until required pursuant hereto, the Mortgage Loan Agreement or pursuant to the Ground Lease Side Letter.

**“Insolvency Opinion”** shall mean that certain non-consolidation opinion letter dated the date hereof delivered by Cleary Gottlieb Steen & Hamilton LLP in connection with the Loan.

**“Institutional Lender”** shall mean any Person reasonably acceptable to Lender in all respects that is either (a) a real estate investment trust, bank, savings and loan association, investment bank, insurance company, trust company, commercial credit corporation, pension plan, pension fund or pension advisory firm, mutual fund, government entity or plan, provided that any such Person referred to in this clause (a) satisfies the Eligibility Requirements; (b) an investment company, money management firm or “qualified institutional buyer” within the meaning of Rule 144A under the Securities Act of 1933, as amended, or an institutional “accredited investor” within the meaning of Regulation D under the Securities Act of 1933, as amended, provided that any such Person referred to in this clause (b) satisfies the Eligibility Requirements; (c) an institution substantially similar to any of the foregoing entities described in clauses (a) or (b) that satisfies the Eligibility Requirements; (d) any entity controlled by any of the entities described in clauses (a) or (c) above; or (e) an investment fund, limited liability company, limited partnership or general partnership where a Permitted Fund Manager or an entity that is otherwise an Institutional Lender under clauses (a), (b), (c) or (d) of this definition acts as the general partner, managing member or fund manager and at least fifty percent (50%) of the equity interests in such investment fund are owned, directly or indirectly, by one or more entities that are otherwise Institutional Lenders under clauses (a), (b), (c) or (d) of this definition.

**“Insurance Premiums”** shall have the meaning set forth in the Mortgage Loan Agreement.

**“Insurance Proceeds”** shall have the meaning set forth in the Mortgage Loan Agreement.

**“Interest Expense”** shall mean, with respect to any Person for any period, the sum of (a) gross interest expense of such Person for such period on a consolidated basis, including (i) the amortization of debt discounts, (ii) the amortization of all fees payable in

connection with the incurrence of Indebtedness to the extent included in interest expense and (iii) the portion of any payments or accruals with respect to equipment financing and equipment leases allocable to interest expense, (b) capitalized interest of such Person, and (c) commissions, discounts, yield and other fees and charges incurred in connection with any indebtedness which are payable to any Person other than Borrower. For purposes of the foregoing, interest on equipment financing or equipment leases shall be deemed to accrue at an interest rate reasonably determined by the Borrower to be the rate of interest implicit in such equipment financing or equipment lease in accordance with GAAP.

**“Interest Period”** shall mean (a) for the first interest period hereunder, (i) if the Closing Date occurs on or before the fourteenth (14<sup>th</sup>) day of a calendar month, the period commencing on the Closing Date and ending on (and including) the fourteenth (14<sup>th</sup>) day of the calendar month in which the Closing Date occurs, and (ii) if the Closing Date occurs on or after the fifteenth (15<sup>th</sup>) day of a calendar month, the period commencing on the Closing Date and ending on (and including) the fourteenth (14<sup>th</sup>) day of the following calendar month and (b) for each interest period thereafter commencing February 15, 2008, the period commencing on the fifteenth (15<sup>th</sup>) day of each calendar month and ending on (and including) the fourteenth (14<sup>th</sup>) day of the following calendar month. Each Interest Period as set forth in clause (b) above shall be a full month and shall not be shortened by reason of any payment of the Loan prior to the expiration of such Interest Period. Notwithstanding the foregoing, Lender shall have the right, in connection with a Securitization, to change the Interest Period and Payment Date, provided that in doing so, Lender shall not increase Borrower’s costs hereunder (other than the direct costs of implementing such change, such as legal fees, which Borrower hereby agrees to pay).

**“Interest Rate Cap Agreement”** shall mean, as applicable, an Interest Rate Cap Agreement (together with the confirmation and schedules relating thereto) in form and substance reasonably satisfactory to Lender between Borrower and an Acceptable Counterparty or a Replacement Interest Rate Cap Agreement.

**“JPM”** shall mean JPMorgan Chase Bank, N.A. and its successors in interest.

**“Lease”** shall mean any lease (including the Operating Lease), sublease or subsublease, letting, license, concession or other agreement (whether written or oral and whether now or hereafter in effect) pursuant to which any Person is granted a possessory interest in, or right to use or occupy all or any portion of any space in any Individual Property (other than short term arrangements with transient hotel guests entered into in the usual course of business), and (a) every modification, amendment or other agreement relating to such lease, sublease, subsublease, or other agreement entered into in connection with such lease, sublease, subsublease, or other agreement and (b) every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto (including the Operating Lease Guaranty).

**“Legal Requirements”** shall mean, with respect to each Individual Property and the Collateral, all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions of Governmental Authorities affecting such Individual Property, the Senior Mezzanine Collateral, the Collateral or any part thereof (including, without limitation, all Gaming Laws), or affecting the construction, use,

alteration or operation thereof, or any part thereof, whether now or hereafter enacted and in force, and all permits, licenses and authorizations and regulations relating thereto (including, without limitation, all Gaming Licenses and Operating Permits), and all covenants, agreements, restrictions and encumbrances contained in any instruments, either of record or known to Borrower, Mortgage Borrower or Operating Company, at any time in force affecting such Individual Property or any part thereof, including, without limitation, any which may (a) require repairs, modifications or alterations in or to such Individual Property or any part thereof, or (b) in any way limit the use and enjoyment thereof. Legal Requirements shall include any (x) judicial, administrative or other governmental or quasi governmental order, injunction, writ, judgment, decree, ruling, interpretation, finding or other directive, whether domestic or foreign; (y) arbitrator's, mediator's or referee's decision, finding, award or recommendation; or (z) charter, rule, regulation or other organizational or governance document of any self-regulatory or governing body or organization. For the avoidance of doubt, the term "Legal Requirements" shall include, and be deemed to include, all applicable Gaming Laws and Gaming Regulations.

"**Lender**" shall have the meaning set forth in the introductory paragraph hereto, together with its successors and assigns.

"**Lender's Share**" shall mean a fraction, the numerator of which is the outstanding principal amount of the Loan and the denominator of which is the sum of the outstanding principal amounts of the Mortgage Loan, the Loan and the Other Mezzanine Loans (in each case, as of the date of determination).

"**Liabilities**" shall have the meaning set forth in Section 9.2(b) hereof.

"**LIBOR**" shall mean, with respect to each Interest Period, the rate (expressed as a percentage per annum and rounded to the next nearest 1/100 of 1%) for deposits in U.S. dollars, for a one-month period, that appears on Reuters Screen LIBOR01 Page (or the successor thereto) as of 11:00 a.m., London time, on the related Determination Date. If such rate does not appear on Reuters Screen LIBOR01 Page as of 11:00 a.m., London time, on such Determination Date, LIBOR shall be the arithmetic mean of the offered rates (expressed as a percentage per annum) for deposits in U.S. dollars for a one-month period that appear on the Reuters Screen Libor Page as of 11:00 a.m., London time, on such Determination Date, if at least two such offered rates so appear. If fewer than two such offered rates appear on the Reuters Screen Libor Page as of 11:00 a.m., London time, on such Determination Date, Lender shall request the principal London office of any four major reference banks in the London interbank market selected by Lender to provide such bank's offered quotation (expressed as a percentage per annum) to prime banks in the London interbank market for deposits in U.S. dollars for a one-month period as of 11:00 a.m., London time, on such Determination Date for the amounts of not less than U.S. \$1,000,000. If at least two such offered quotations are so provided, LIBOR shall be the arithmetic mean of such quotations. If fewer than two such quotations are so provided, Lender shall request any three major banks in New York City selected by Lender to provide such bank's rate (expressed as a percentage per annum) for loans in U.S. dollars to leading European banks for a one-month period as of approximately 11:00 a.m., New York City time on the applicable Determination Date for amounts of not less than U.S. \$1,000,000. If at least two such rates are so provided, LIBOR shall be the arithmetic mean of such rates. LIBOR shall be

determined conclusively by Lender or its agent. Notwithstanding the foregoing, for the Interest Period ending February 14, 2008, LIBOR is 3.31%.

“**LIBOR Loan**” shall mean the Loan at such time as interest thereon accrues at a rate of interest based upon LIBOR.

“**Lien**” shall mean, with respect to each Individual Property, the Senior Mezzanine Collateral and the Collateral, any mortgage, deed of trust, lien, pledge, hypothecation, assignment, security interest, or any other encumbrance, charge or restriction on transfer of, on or affecting Borrower, Senior Mezzanine Borrower, Mortgage Borrower, any Individual Property, the Senior Mezzanine Collateral or the Collateral, any portion of either or any interest therein, including, without limitation, any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, the filing of any financing statement, and mechanic’s, materialmen’s and other similar liens and encumbrances, in each case whether arising by contract, operation of law, or otherwise.

“**Liquidation Event**” shall have the meaning set forth in Section 2.4.2 hereof.

“**Loan**” shall mean the loan made by Lender to Borrower pursuant to this Agreement.

“**Loan Adjustment**” shall have the meaning set forth in Section 2.1.6 hereof.

“**Loan Amount**” shall mean, as determined from time to time, the outstanding principal amount of the Loan.

“**Loan Documents**” shall mean, collectively, this Agreement, the Note, the Pledge Agreement, the Environmental Indemnity, the O&M Agreement, the Guaranty (Recourse Carveouts), the Guaranty (FF&E), the Guaranty (Ground Lease Estoppel), the Collateral Assignment of Interest Rate Cap Agreement, the Contribution Agreement and all other documents executed and/or delivered in connection with the Loan.

“**Loan Party**” shall mean, collectively, Mortgage Borrower, Borrower, Senior Mezzanine Borrower, Principal and Guarantor.

“**London Business Day**” shall mean any day other than a Saturday, Sunday or any other day on which commercial banks in London, England are not open for business.

“**Major Lease**” shall mean any of the following: (a) with respect to any Individual Property, any Lease (i) covering in excess of forty thousand (40,000) net rentable square feet at such Individual Property or (ii) made with a Tenant that is a Tenant under another Lease at such Individual Property (or with a Tenant that is an Affiliate of a Tenant under another Lease at such Individual Property) if any such Leases, together, cover in excess of forty thousand (40,000) net rentable square feet or more at such Individual Property, (b) any Lease of space at any Individual Property with an Affiliate of Mortgage Borrower, or (c) any Lease that is not the result of arm’s length negotiations; provided, however, that the Operating Lease shall not constitute a Major Lease for purposes of this Agreement.

**“Material Alteration”** shall mean any Alteration with respect to all or a portion of any Individual Property that (i) when aggregated with all other Alterations at such Individual Property then being conducted involve an estimated total cost in excess of an amount equal to ten percent (10%) of the sum of the Allocated Loan Amount for such Individual Property and the “Allocated Loan Amounts” under (and as defined in each of) the Mortgage Loan Agreement and the Other Mezzanine Loan Agreements for such Individual Property or (ii) when aggregated with all other Alterations at the Properties, including such Individual Property, then being conducted, involve an estimated total cost in excess of an amount equal to five percent (5%) of the sum of the Loan Amount, the Mortgage Loan Amount and the Other Mezzanine Loan Amount (and, as used herein, **“Threshold Amount”** shall mean whichever of said 5% or 10% amount shall have been exceeded, provided that if both shall have been exceeded, then the lower of such two amounts shall be the “Threshold Amount”); provided, that, in determining whether one or more Alterations comprise a Material Alteration, there shall not be included (a) merely decorative work such as painting, wall papering, carpeting and replacement of FF&E to the extent the same are of a routine and recurring nature, performed in the ordinary course of business; (b) tenant improvement work performed by a tenant pursuant to the terms of any Lease (other than the Operating Lease) entered into in accordance with the terms hereof, so long as such work does not adversely affect any structural component of any Improvements, any utility or HVAC system contained in any Improvements or the exterior of any building constituting a part of any Improvements, (c) any Alterations which are performed in connection with the Restoration of any portion of any Individual Property after the occurrence of a Casualty or Condemnation in accordance with the terms and provisions of this Agreement, or (d) the Tower Project or the Convention Center Project.

**“Maturity Date”** shall mean the Scheduled Maturity Date or such other date on which the final payment of principal of the Notes becomes due and payable as therein or herein provided, whether at such Scheduled Maturity, by declaration of acceleration, or otherwise.

**“Maximum Legal Rate”** shall mean the maximum nonusurious interest rate, if any, that at any time or from time to time may be contracted for, taken, reserved, charged or received on the indebtedness evidenced by the Note and as provided for herein or the other Loan Documents, under the laws of such state or states whose laws are held by any court of competent jurisdiction to govern the interest rate provisions of the Loan.

**“Mezzanine Borrowers”** shall mean, collectively, Borrower, First Mezzanine Borrower, Second Mezzanine Borrower, Third Mezzanine Borrower, Fourth Mezzanine Borrower, Fifth Mezzanine Borrower, Sixth Mezzanine Borrower, Seventh Mezzanine Borrower, Eighth Mezzanine Borrower and any New Mezzanine Borrower.

**“Mezzanine Collection Account”** shall have the meaning set forth in [Section 2.6.4](#) hereof.

**“Mezzanine Debt Service”** shall mean, with respect to any particular period of time, the sum of (a) the Debt Service, (b) the First Mezzanine Debt Service, (c) the Second Mezzanine Debt Service, (d) the Third Mezzanine Debt Service, (e) the Fourth Mezzanine Debt Service, (f) the Fifth Mezzanine Debt Service, (g) the Sixth Mezzanine Debt Service, (h) the

Seventh Mezzanine Debt Service, (i) the Eighth Mezzanine Debt Service, and (j) debt service on any New Mezzanine Loan.

“**Mezzanine Lenders**” shall mean, collectively, Lender, First Mezzanine Lender, Second Mezzanine Lender, Third Mezzanine Lender, Fourth Mezzanine Lender, Fifth Mezzanine Lender, Sixth Mezzanine Lender, Seventh Mezzanine Lender, Eighth Mezzanine Lender and Lender, as lender under any New Mezzanine Loan.

“**Mezzanine Loan Agreements**” shall mean, collectively, this Agreement, the First Mezzanine Loan Agreement, the Second Mezzanine Loan Agreement, the Third Mezzanine Loan Agreement, the Fourth Mezzanine Loan Agreement, the Fifth Mezzanine Loan Agreement, the Sixth Mezzanine Loan Agreement, the Seventh Mezzanine Loan Agreement, the Eighth Mezzanine Loan Agreement and any New Mezzanine Loan Agreement.

“**Mezzanine Loan Amount**” shall mean, as determined from time to time, the outstanding principal amount of the Mezzanine Loans.

“**Mezzanine Loan Documents**” shall mean, collectively, the Loan Documents, the First Mezzanine Loan Documents, the Second Mezzanine Loan Documents, the Third Mezzanine Loan Documents, the Fourth Mezzanine Loan Documents, the Fifth Mezzanine Loan Documents, the Sixth Mezzanine Loan Documents, the Seventh Mezzanine Loan Documents, the Eighth Mezzanine Loan Documents and any loan documents entered into in connection with any New Mezzanine Loan.

“**Mezzanine Loans**” shall mean, collectively, this Loan, the First Mezzanine Loan, the Second Mezzanine Loan, the Third Mezzanine Loan, the Fourth Mezzanine Loan, the Fifth Mezzanine Loan, the Sixth Mezzanine Loan, the Seventh Mezzanine Loan, the Eighth Mezzanine Loan and any New Mezzanine Loan.

“**Minimum Value Test**” shall mean, with respect to any Person, that the greater of the book value or the fair market value of the assets of such Person (excluding, for purposes of making such determination, the value of the Properties) exceeds Five Billion and no/100 Dollars (\$5,000,000,000.00) in the aggregate, as certified to Lender in an Officer’s Certificate prepared in good faith based on the most recent financial statements of such Person.

“**Monthly Disbursements**” shall have the meaning provided in Section 2.6.2.

“**Monthly FF&E Reserve Amount**” means the monthly deposit for FF&E required pursuant to Section 7.3 of this Agreement.

“**Monthly Ground Rent Reserve Amount**” means the monthly deposit for Ground Rent required pursuant to Section 7.4 of this Agreement.

“**Monthly Tax and Insurance Amount**” means the monthly deposit for Taxes and Insurance required pursuant to Section 7.2 of this Agreement.

“**Moody’s**” shall mean Moody’s Investors Service, Inc.

**“Mortgage”** shall mean, with respect to each Individual Property, that certain first priority Mortgage (or Deed of Trust or Deed to Secure Debt) and Security Agreement, dated the date hereof, executed and delivered by Mortgage Borrower as security for the Mortgage Loan and encumbering such Individual Property and any first priority Mortgage (Deed of Trust or Deed to Secure Debt) and Security Agreement delivered pursuant to the Ground Lease Side Letter, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

**“Mortgage Borrower”** shall mean, collectively, the entities set forth on Schedule XIII hereto, each a Delaware limited liability company, together with their respective successors and permitted assigns. As used herein the term “Mortgage Borrower” shall mean one of the Mortgage Borrowers individually or the Mortgage Borrowers collectively, as the context shall require.

**“Mortgage Debt Service”** shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Mortgage Note and the Mortgage Loan Agreement.

**“Mortgage Lender”** shall have the meaning set forth in the Recitals.

**“Mortgage Loan”** shall have the meaning set forth in the Recitals.

**“Mortgage Loan Agreement”** shall have the meaning set forth in the Recitals.

**“Mortgage Loan Amount”** shall mean, as determined from time to time, the outstanding principal amount of the Mortgage Loan.

**“Mortgage Loan Default”** shall mean a “Default” as defined in the Mortgage Loan Agreement.

**“Mortgage Loan Documents”** shall mean the Mortgage Loan Agreement, the Mortgage Note, the Mortgage and all other documents and instruments executed and delivered in connection with the Mortgage Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

**“Mortgage Loan Event of Default”** shall mean an “Event of Default” as defined in the Mortgage Loan Agreement.

**“Mortgage Loan Reserve Funds”** shall mean the “Reserve Funds” as defined in the Mortgage Loan Agreement.

**“Mortgage Note”** shall mean the “Note” as defined in the Mortgage Loan Agreement.

**“Net Income”** shall mean, with respect to any Person, the net income (loss) of such Person, determined in accordance with GAAP and before any reduction in respect of preferred stock dividends.

**“Net Liquidation Proceeds After Debt Service”** shall mean, with respect to any Liquidation Event, all amounts paid to or received by or on behalf of Borrower, Senior Mezzanine Borrower or Mortgage Borrower in connection with such Liquidation Event, including, without limitation, proceeds of any sale, refinancing or other disposition or liquidation, less (a) Lender’s, Senior Mezzanine Lender’s and/or Mortgage Lender’s reasonable costs incurred in connection with the recovery thereof, (b) amounts required or permitted to be deducted therefrom and amounts paid pursuant to the Mortgage Loan Documents and Senior Mezzanine Loan Documents to Mortgage Lender and/or Senior Mezzanine Lender (as applicable), (c) in the case of a foreclosure sale, disposition or Transfer of any Individual Property in connection with realization thereon following a Mortgage Loan Event of Default, such reasonable and customary costs and expenses of sale or other disposition (including attorneys’ fees and brokerage commissions), (d) in the case of a foreclosure sale, disposition or Transfer of any Senior Mezzanine Collateral in connection with realization thereon following a Senior Mezzanine Loan Default under any Senior Mezzanine Loan Documents, such reasonable and customary costs and expenses of sale or other disposition (including attorneys’ fees and brokerage commissions), (e) in the case of a foreclosure sale, such costs and expenses incurred by Mortgage Lender under the Mortgage Loan Documents as Mortgage Lender shall be entitled to receive reimbursement for under the terms of the Mortgage Loan Documents, (f) in the case of a foreclosure sale, such costs and expenses incurred by Senior Mezzanine Lender under the Senior Mezzanine Loan Documents as Senior Mezzanine Lender shall be entitled to receive reimbursement for under the terms of the Senior Mezzanine Loan Documents, (g) in the case of a refinancing of the Mortgage Loan and/or Senior Mezzanine Loan, such costs and expenses (including attorneys’ fees) of such refinancing as shall be reasonably approved by Mortgage Lender and/or Senior Mezzanine Lender, as the case may be, and (h) the amount of any prepayments required pursuant to the Mortgage Loan Documents, Senior Mezzanine Loan Documents, and/or the Loan Documents, in connection with any such Liquidation Event.

**“Net Proceeds”** shall have the meaning set forth in Section 6.4 hereof.

**“New Mezzanine Borrower”** shall have the meaning set forth in Section 2.1.7.

**“New Mezzanine Loan”** shall have the meaning set forth in Section 2.1.7.

**“Note”** or **“Notes”** shall mean, collectively, Note A-1, Note A-2, Note A-3, Note A-4, Note A-5, Note A-6, Note A-7, Note A-8 and Note A-9.

**“Note A-1”** shall mean that certain Promissory Note A-1 (Ninth Mezzanine Loan), dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of Forty One Million Two Hundred Fifty Four Thousand Five Hundred Eighty Three and 33/100 Dollars (\$41,254,583.33), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**“Note A-2”** shall mean that certain Promissory Note A-2 (Ninth Mezzanine Loan), dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of Forty One Million Two Hundred Fifty Four Thousand Five Hundred Eighty Three and 33/100 Dollars (\$41,254,583.33), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**“Note A-3”** shall mean that certain Promissory Note A-3 (Ninth Mezzanine Loan), dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of Forty One Million Two Hundred Fifty Four Thousand Five Hundred Eighty Three and 33/100 Dollars (\$41,254,583.33), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**“Note A-4”** shall mean that certain Promissory Note A-4 (Ninth Mezzanine Loan), dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of Forty One Million Two Hundred Fifty Four Thousand Five Hundred Eighty Three and 33/100 Dollars (\$41,254,583.33), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**“Note A-5”** shall mean that certain Promissory Note A-5 (Ninth Mezzanine Loan), dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of Forty One Million Two Hundred Fifty Four Thousand Five Hundred Eighty Three and 34/100 Dollars (\$41,254,583.34), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**“Note A-6”** shall mean that certain Promissory Note A-6 (Ninth Mezzanine Loan), dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of Forty One Million Two Hundred Fifty Four Thousand Five Hundred Eighty Three and 34/100 Dollars (\$41,254,583.34), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**“Note A-7”** shall mean that certain Promissory Note A-7 (Ninth Mezzanine Loan), dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of Nine Million One Hundred Fifty Seven Thousand Five Hundred and No/100 Dollars (\$9,157,500.00), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**“Note A-8”** shall mean that certain Promissory Note A-8 (Ninth Mezzanine Loan), dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of Nine Million One Hundred Fifty Seven Thousand Five Hundred and No/100 Dollars (\$9,157,500.00), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**“Note A-9”** shall mean that certain Promissory Note A-9 (Ninth Mezzanine Loan), dated the date hereof, executed by Borrower and payable to the order of Lender in the amount of Nine Million One Hundred Fifty Seven Thousand Five Hundred and No/100 Dollars (\$9,157,500.00), as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Noteholders**” shall mean, collectively, the holders of the Notes from time to time and a “**Noteholder**” shall mean any holder of a Note from time to time (provided that the transfer of a Note shall not result in any prior Noteholder’s loss of any indemnification provided for hereunder to a Noteholder).

“**OC Accounts**” shall have the meaning set forth in Section 2.6.1(c).

“**O&M Agreement**” shall mean, with respect to each Individual Property (to the extent required by the environmental reports referenced in Section 3.1.3(e) hereof, that certain Operations and Maintenance Agreement (Ninth Mezzanine Loan), dated as of the date hereof, between Borrower and Lender given in connection with the Loan, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Officer’s Certificate**” shall mean a certificate delivered to Lender by Borrower which is signed by an authorized senior officer of Borrower or the general partner or managing member of Borrower, as applicable.

“**Off-Shore Accounts**” shall mean the accounts more particularly described on Schedule V.

“**Operating Company**” shall mean, collectively, the tenants under the Operating Leases, and their successors and permitted assigns.

“**Operating Company Annual Budget**” shall mean, individually and collectively as the context requires, with respect to each Operating Company, the operating budget of such Operating Company, including all planned Capital Expenditures, prepared by such Operating Company for the applicable Fiscal Year or other period.

“**Operating Lease**” shall mean, collectively, those certain Lease Agreements listed on Schedule VI, dated as of the date hereof, having a term of fifteen (15) years commencing on the Closing Date, and any similar Lease Agreement executed and delivered pursuant to the Ground Lease Side Letter, as the same may be amended, supplemented, replaced or otherwise modified from time to time in accordance with the provisions hereof.

“**Operating Lease Guaranty**” shall mean, collectively, those certain Lease Guaranty Agreements listed on Schedule VIA, executed and delivered by Guarantor (Operating Lease), dated as of the date hereof, unconditionally guaranteeing the payment and performance by the Operating Company of all of its obligations under the Operating Lease, and any similar Lease Guaranty Agreement executed and delivered pursuant to the Ground Lease Side Letter, as such Lease Guaranty Agreements may be amended, supplemented, replaced or otherwise modified from time to time in accordance with the provisions hereof.

“**Operating Permits**” shall have the meaning set forth in Section 4.1.22 hereof.

“**O’Shea’s**” shall have the meaning ascribed to such term in the Mortgage Loan Agreement.

**“Other Borrower Collateral”** shall have the meaning set forth in Section 11.2.1 hereof.

**“Other Borrowers”** shall have the meaning set forth in Section 11.1 hereof.

**“Other Charges”** shall mean all ground rents, maintenance charges, impositions other than Taxes, and any other charges, including, without limitation, vault charges and license fees for the use of vaults, chutes and similar areas adjoining any Individual Property, now or hereafter levied or assessed or imposed against such Individual Property or any part thereof.

**“Other Mezzanine Borrowers”** shall mean, individually or collectively as the context may require, all of the Mezzanine Borrowers other than Borrower.

**“Other Mezzanine Debt Service”** shall mean, individually or collectively as the context may require, all of the Mezzanine Debt Service other than the Debt Service.

**“Other Mezzanine Lenders”** shall mean, individually or collectively as the context may require, all of the Mezzanine Lenders other than Lender.

**“Other Mezzanine Loans”** shall mean, individually or collectively as the context may require, all of the Mezzanine Loans other than the Loan.

**“Other Mezzanine Loan Agreements”** shall mean, individually or collectively as the context may require, all of the Mezzanine Loan Agreements other than this Agreement.

**“Other Mezzanine Loan Amounts”** shall mean, as determined from time to time, the outstanding principal amounts of all of the Mezzanine Loans other than the Loan.

**“Owner’s Title Policy”** shall mean those certain ALTA extended coverage owner’s policies of title insurance issued in connection with the closing of the Mortgage Loan insuring the Mortgage Borrower as the owner of the Property.

**“Participant”** shall have the meaning set forth in Section 9.6 hereof.

**“Participant Register”** shall have the meaning set forth in Section 9.6 hereof.

**“Payment Date”** shall mean the ninth (9<sup>th</sup>) calendar day of each calendar month during the term of the Loan, and if such day is not a Business Day, then the Business Day immediately preceding such day, commencing on March 9, 2008 and continuing to and including the Maturity Date. Notwithstanding the foregoing, the Payment Date in the final Interest Period shall be the Maturity Date (*i.e.*, the second to last Business Day in such Interest Period rather than the ninth calendar day of such month).

**“Permitted Encumbrances”** shall mean, with respect to an Individual Property, collectively (a) the Liens and security interests created by the Mortgage Loan Documents; (b) all Liens, encumbrances and other matters disclosed in the Title Insurance Policies relating to such Individual Property or any part thereof; (c) Liens, if any, for Taxes and Other Charges imposed by any Governmental Authority not yet due or delinquent; (d) the Operating Lease; (e) such

other title and survey exceptions as Lender has approved or may approve in writing in Lender's reasonable discretion; (f) any Lien being contested by Borrower in good faith by appropriate proceedings, provided that (i) no Default or Event of Default has occurred and remains uncured, (ii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any applicable material instrument to which Mortgage Borrower is subject and shall not constitute a default thereunder and such proceeding shall be conducted in accordance with all applicable statutes, laws and ordinances, (iii) no Individual Property nor any part thereof or interest therein will be in imminent danger of being sold, forfeited, terminated, cancelled or lost, (iv) such proceeding shall suspend the enforcement of the contested Lien against Mortgage Borrower and any Individual Property, and (v) Borrower shall furnish such security as may be required by GAAP or as may be reasonably requested by Lender; (g) statutory Liens for amounts not yet due and payable, provided that no Individual Property nor any part thereof or interest therein will be in imminent danger of being sold, forfeited, terminated, cancelled or lost; (h) Liens incurred in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security; (i) any Lien securing the financing of FF&E (including equipment leases) entered into by Mortgage Borrower or Operating Company in the ordinary course of business, subject to the limitations specified in the definitions of "Permitted Indebtedness" and "Permitted Indebtedness (Operating Company)", as applicable; (j) rights of tenants under Leases, as tenants only; (k) rights of hotel guests at the Hotel Components of the Properties; (l) zoning restrictions, easements, rights-of-way, restrictions on use of real property and other similar encumbrances incurred or entered into in the ordinary course of business which do not, in each case, have an Individual Material Adverse Effect; and (m) liens granted by Operating Company securing equipment financing leases and/or equipment acquisition financings permitted hereunder as "Permitted Indebtedness (Operating Company)," subject to the final sentence of said definition, or as "Permitted Indebtedness".

**"Permitted Fund Manager"** means any Person that on the date of determination (a) is one of the entities listed on Schedule VII or any other nationally-recognized manager of investment funds investing in debt or equity interests relating to commercial real estate, (b) is investing through a fund with committed capital of at least \$1,000,000,000, (c) is not subject to a Bankruptcy Action, (d) has not been, and none of its material subsidiaries has been, subject to a Bankruptcy Action for the preceding 5 years, (e) has not been convicted and is not under current indictment for a felony or crime involving moral turpitude, (f) has not been found by a court of competent jurisdiction to have violated federal or state securities laws, and (g) is not an organized crime figure (as determined by Lender in its reasonable discretion).

**"Permitted Indebtedness"** shall have the meaning assigned to such term in the Mortgage Loan Agreement.

**"Permitted Indebtedness (Operating Company)"** shall mean, collectively, (a) trade and operational debt (including equipment financing leases, such as leases with providers of Gaming Equipment) relating to the operation of the Properties and the routine administration of Operating Company incurred in the ordinary course of business with trade creditors and in amounts as are normal and reasonable under the circumstances, are not evidenced by a note, are required to be paid within ninety (90) days after same are incurred (except in the case of operating leases) and are paid when due, (b) accrued and unpaid payroll, benefits and payroll taxes with respect to employees of Operating Company or its Affiliates

engaged with respect to the Properties incurred in the ordinary course of business and paid when due, (c) debt owed to affiliates, provided such debt is made subject to an intercreditor and standstill agreement in favor of Lender in form and substance reasonably satisfactory to Lender, and (d) such other Indebtedness specifically permitted pursuant to the Operating Lease (including the Gaming Equipment Facility Agreements (as defined in the Mortgage Loan Agreement)). In no event shall the Permitted Indebtedness (Operating Company) and Permitted Indebtedness of each Operating Company and Mortgage Borrower on an aggregate basis, excluding for purposes of this sentence the Indebtedness described in subclause (b) of the preceding sentence, exceed five percent (5%) of the sum of the Loan Amount, the Mortgage Loan Amount and the Other Mezzanine Loan Amounts in the aggregate (each as determined from time to time).

**“Permitted Investments”** shall have the meaning set forth in the Mortgage Loan Agreement.

**“Permitted Mezzanine Debt Loan-to-Value Ratio”** shall mean the ratio, as of a particular date, in which (a) the numerator is equal to the sum of (i) the outstanding principal amount of the Mortgage Loan, (ii) the outstanding principal amount of the Mezzanine Loans, and any New Mezzanine Loan, plus (iii) the amount of the Permitted Mezzanine Loan, and (b) the denominator is equal to the appraised value of the Properties subject to the Lien of the Mortgage as determined by Lender based on Appraisals obtained by Lender (at Borrower’s sole cost and expense) and satisfactory to Lender and dated no earlier than ninety (90) days prior to the date of determination or such other Appraisals as are approved by Lender in its sole discretion.

**“Permitted Mezzanine Debt Service”** shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Permitted Mezzanine Loan Documents.

**“Permitted Mezzanine DSCR”** shall mean, for the applicable period, the ratio of (a) EBITDAR for such period from the Properties to (b) the sum of (i) the Mortgage Debt Service and Mezzanine Debt Service for such period, plus (ii) principal and/or interest due and payable (or, for purposes of the calculation to be made pursuant to Section 2.8(d), that would have been due and payable had the Permitted Mezzanine Loan then been in place) for such period on the Permitted Mezzanine Loan at the interest rate set forth in the Permitted Mezzanine Loan Documents or, if the Permitted Mezzanine Loan is a floating rate loan, assuming that (A) the spread on the Permitted Mezzanine Loan is the “Spread” as defined in the documents evidencing the Permitted Mezzanine Loan and (B) LIBOR is equal to the lesser of (y) LIBOR on the date of determination, or (z) the strike price under the related interest rate cap purchased in connection with the Permitted Mezzanine Loan.

**“Permitted Mezzanine Loan”** shall have the meaning set forth in Section 2.8 hereof.

**“Permitted Mezzanine Loan Documents”** shall have the meaning set forth in Section 2.8(g) hereof.

“**Permitted Mezzanine Loan Election**” shall have the meaning set forth in Section 2.8 hereof.

“**Permitted Mezzanine Loan Lender**” shall have the meaning set forth in Section 2.8 hereof.

“**Person**” shall mean any individual, corporation, partnership, joint venture, limited liability company, estate, trust, unincorporated association, any federal, state, county or municipal government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

“**Physical Conditions Report**” shall mean, with respect to each Individual Property, a report prepared by a company satisfactory to Lender regarding the physical condition of such Individual Property, satisfactory in form and substance to Lender in its sole discretion.

“**Pledge Agreement**” shall mean that certain Pledge and Security Agreement (Loan), dated as of the date hereof, between Borrower and Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Pledged Company Interests**” shall have the meaning set forth in the Pledge Agreement.

“**Policies**” shall have the meaning specified in Section 6.1(b) hereof.

“**Prepayment Date**” shall have the meaning specified in Section 2.4.1 hereof.

“**Prescribed Laws**” shall mean, collectively, (a) the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56) (The USA PATRIOT Act), as amended, (b) Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, and relating to Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, (c) the International Emergency Economic Power Act, 50 U.S.C. § 1701 *et seq.* and (d) all other Legal Requirements relating to money laundering or terrorism.

“**Prime Rate**” shall mean the annual rate of interest publicly announced by Citibank, N.A. in New York, New York, as its base rate, as such rate shall change from time to time. If Citibank, N.A. ceases to announce a base rate, Prime Rate shall mean the rate of interest published in The Wall Street Journal from time to time as the “Prime Rate.” If more than one “Prime Rate” is published in The Wall Street Journal for a day, the average of such “Prime Rates” shall be used, and such average shall be rounded up to the nearest one-eighth of one percent (0.125%). If The Wall Street Journal ceases to publish the “Prime Rate,” Lender shall select an equivalent publication that publishes such “Prime Rate,” and if such “Prime Rates” are no longer generally published or are limited, regulated or administered by a governmental or quasi-governmental body, then Lender shall select a comparable interest rate index.

“**Prime Rate Loan**” shall mean the Loan at such time as interest thereon accrues at a rate of interest based upon the Prime Rate.

**“Prime Rate Spread”** shall mean the difference (expressed as the number of basis points) between (a) LIBOR plus the Spread on the date LIBOR was last applicable to the Loan and (b) the Prime Rate on the date that LIBOR was last applicable to the Loan; provided, however, in no event shall such difference be a negative number.

**“Principal”** shall mean, with respect to Harrah’s Las Vegas Mezz 9, LLC: Harrah’s Las Vegas, Inc., a Nevada corporation; with respect to Harrah’s Atlantic City Mezz 9, LLC: Harrah’s Atlantic City Holding, Inc., a New Jersey corporation; with respect to Tahoe Mezz 9, LLC: Harveys Tahoe Management Company, Inc., a Nevada corporation; with respect to Rio Mezz 9, LLC: Rio Properties, Inc., a Nevada corporation; with respect to Flamingo Las Vegas Mezz 9, LLC: Flamingo Las Vegas Holding, Inc., a Nevada corporation; and with respect to Showboat Atlantic City Mezz 9, LLC: Ocean Showboat, Inc., a New Jersey corporation.

**“Projections”** shall have the meaning set forth in Section 9.10 hereof.

**“Properties”** shall mean, collectively, each and every Individual Property which is subject to the terms of this Agreement.

**“Provided Information”** shall mean any and all financial and other information provided at any time by, or on behalf of, Borrower, Senior Mezzanine Borrower, or Mortgage Borrower with respect to the Properties, Borrower, any Affiliates of Borrower, including Holdings, Guarantor and/or Operating Company.

**“Qualified Transferee”** means (a) any of the Mezzanine Lenders, (b) Apollo Management, L.P., TPG Capital, L.P. f/k/a Texas Pacific Group, their respective Affiliates and senior or executive principals of Apollo Management, L.P. or TPG Capital, L.P. who are the holders from time to time of voting interests in Holdings, and investment funds Controlled by either of them (but excluding for purposes of this clause (b) “portfolio companies” of the foregoing), or (c) one or more of the following:

- (i) a real estate investment trust, bank, saving and loan association, investment bank, insurance company, trust company, commercial credit corporation, pension plan, pension fund or pension advisory firm, mutual fund, government entity or plan, provided that any such Person referred to in this clause (i) satisfies the Eligibility Requirements;
- (ii) an investment company, money management firm or “qualified institutional buyer” within the meaning of Rule 144A under the Securities Act of 1933, as amended, or an institutional “accredited investor” within the meaning of Regulation D under the Securities Act of 1933, as amended, provided that any such Person referred to in this clause (ii) satisfies the Eligibility Requirements;
- (iii) an institution substantially similar to any of the foregoing entities described in clauses (c)(i) or (c)(ii) that satisfies the Eligibility Requirements;

(iv) any entity Controlled by any of the entities described in clause (a) or clauses (c)(i) or (c)(iii) above, or Holdings or any entity Controlled by Holdings (provided in each case there shall have occurred no Change in Control);

(v) a Qualified Trustee in connection with a securitization of, the creation of collateralized debt obligations (“**CDO**”) secured by or financing through an “owner trust” of, any Mezzanine Loan (collectively, “**Securitization Vehicles**”), so long as (A) the special servicer or manager of such Securitization Vehicle has the Required Special Servicer Rating and (B) the entire “controlling class” of such Securitization Vehicle, other than with respect to a CDO Securitization Vehicle, is held by one or more entities that are otherwise Qualified Transferees under clauses (c)(i), (ii), (iii) or (iv) of this definition; provided that the operative documents of the related Securitization Vehicle require that (1) in the case of a CDO Securitization Vehicle, the “equity interest” in such Securitization Vehicle is owned by one or more entities that are Qualified Transferees under clauses (c)(i), (ii), (iii) or (iv) of this definition and (2) if any of the relevant trustee, special servicer, manager fails to meet the requirements of this clause (v), such Person must be replaced by a Person meeting the requirements of this clause (v) within thirty (30) days; or

(vi) an investment fund, limited liability company, limited partnership or general partnership where a Permitted Fund Manager or an entity that is otherwise a Qualified Transferee under clauses (c)(i), (ii), (iii) or (iv) of this definition acts as the general partner, managing member or fund manager and at least 50% of the equity interests in such investment vehicle are owned, directly or indirectly, by one or more entities that are otherwise Qualified Transferees under clauses (c)(i), (ii), (iii) or (iv) of this definition;

provided, however, that no Transferee shall be a Qualified Transferee if (and for so long as) such Transferee is, or is Controlled by, an Embargoed Person or a Person has been found “unsuitable,” for any reason, by a Gaming Authority.

“**Qualified Trustee**” means (a) a corporation, national bank, national banking association or a trust company, organized and doing business under the laws of any state or the United States of America, authorized under such laws to exercise corporate trust powers and to accept the trust conferred, having a combined capital and surplus of at least \$100,000,000 and subject to supervision or examination by federal or state authority, (b) an institution insured by the Federal Deposit Insurance Corporation or (c) an institution whose long-term senior unsecured debt is rated either of the then in effect top two rating categories of each of the Rating Agencies.

“**Rating Agencies**” shall mean each of S&P, Moody’s and Fitch, or any other nationally recognized statistical rating agency which has been approved by Lender and that rates a Securitization of the Loan (or any component thereof).

“**Rating Agency Confirmation**” means, collectively, a written affirmation from each of the Rating Agencies that the credit rating of the Securities given by such Rating Agency of such Securities immediately prior to the occurrence of the event with respect to which such Rating Agency Confirmation is sought will not be qualified, downgraded or withdrawn as a

result of the occurrence of such event, which affirmation may be granted or withheld in such Rating Agency's sole and absolute discretion. In the event that, at any given time, no such Securities shall have been issued and are then outstanding, then the term Rating Agency Confirmation shall be deemed instead to require the written approval of Lender based on its good faith determination of whether the Rating Agencies would issue a Rating Agency Confirmation if any such Securities were outstanding.

**"Regulation AB"** shall have the meaning set forth in Section 5.1.11(f) hereof.

**"Regulation S-K"** shall mean Regulation S-K under the Securities Act of 1933 and the Securities Exchange Act of 1934, as amended.

**"Regulation S-X"** shall mean Regulation S-X under the Securities Act of 1933 and the Securities Exchange Act of 1934, as amended.

**"Related Loan"** shall have the meaning set forth in Section 5.1.11(f) hereof.

**"Related Property"** shall have the meaning set forth in Section 5.1.11(f) hereof.

**"Release"** shall have the meaning set forth in Section 2.5.1 hereof.

**"Release Borrower"** shall have the meaning set forth in Section 2.5.1 hereof.

**"Release Price"** shall mean, in connection with a release of an Individual Property from the Lien of a Mortgage as provided in Section 2.5, an amount equal to one hundred ten percent (110%) of the applicable Allocated Loan Amount for the first and second Individual Properties released, 115% of the applicable Allocated Loan Amount for the third and fourth Individual Properties released and (110%) of the applicable Allocated Loan Amount for any Individual Property thereafter released; provided if the Paris Las Vegas property becomes an Individual Property as contemplated by the last paragraph of Section 2.5.2, then such Individual Property shall have a Release Price of 120% of its Allocated Loan Amount and each other Individual Property shall have a Release Price of 110% of its Allocated Loan Amount.

**"Rents"** shall mean, with respect to each Individual Property, and without duplication, all rents, rent equivalents, moneys payable as damages or in lieu of rent or rent equivalents, royalties (including, without limitation, all oil and gas-or other mineral royalties and bonuses), income, receivables, receipts, revenues, deposits (including, without limitation, security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, and other consideration of whatever form or nature received by or paid to or for the account of or benefit of Mortgage Borrower or the Operating Company (or employees of Mortgage Borrower or the Operating Company) from any and all sources arising from or attributable to such Individual Property, and proceeds, if any, from business interruption or other loss of income or insurance, including, without limitation, all hotel receipts, revenues and credit card receipts collected from guest rooms, restaurants, bars, meeting rooms, banquet rooms and recreational facilities, all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of property or rendering of services by Mortgage Borrower or any operator or manager of the Hotel Components or the

commercial spaces located in the Improvements or acquired from others (including, without limitation, from the rental of any office space, retail space, guest rooms or other space, halls, stores and offices, and deposits securing reservations of such space), license, lease, sublease and concession fees and rentals, health club membership fees, food and beverage wholesale and retail sales, service charges, vending machine sales and proceeds, if any, from business interruption or other loss of income insurance.

“**Replacement Interest Rate Cap Agreement**” means an interest rate cap agreement from an Acceptable Counterparty with terms identical to the Interest Rate Cap Agreement except that the same shall be effective in connection with replacement of the Interest Rate Cap Agreement following a downgrade, withdrawal or qualification of the long-term unsecured debt rating of the Counterparty; provided that to the extent any such interest rate cap agreement does not meet the foregoing requirements, a “Replacement Interest Rate Cap Agreement” shall be such interest rate cap agreement approved in writing by each of the Rating Agencies and Lender with respect thereto.

“**Reserve Account**” shall mean any one of the Tax and Insurance Escrow Account, the FF&E Reserve Account, the Ground Rent Reserve Account and any other escrow fund or reserve account established pursuant to the Loan Documents.

“**Reserve Funds**” shall mean, collectively, the Tax and Insurance Escrow Fund, the FF&E Reserve Fund, the Ground Rent Reserve Fund, the Ground Lease Estoppel Reserve Amount and any other escrow fund established pursuant to the Loan Documents.

“**Restoration**” shall mean the repair and restoration of an Individual Property after a Casualty or Condemnation as nearly as possible to the condition the Individual Property was in immediately prior to such Casualty or Condemnation, with such alterations as may be reasonably approved by Lender.

“**Revenue**” shall mean all Rents and items of income or revenue (of any kind) collected by Mortgage Borrower or Operating Company.

“**S&P**” shall mean Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc.

“**Sale or Pledge**” shall mean a voluntary or involuntary sale, conveyance, assignment, transfer, encumbrance or pledge of a legal or beneficial interest.

“**Scheduled Maturity Date**” shall mean February 13, 2013.

“**Second Mezzanine Borrower**” shall mean, collectively, the entities set forth on Schedule XIV hereto, each a Delaware limited liability company, together with their respective successors and permitted assigns. As used herein, the term “Second Mezzanine Borrower” shall mean one of the Second Mezzanine Borrowers individually, or the Second Mezzanine Borrowers collectively, as the context shall require.

“**Second Mezzanine Debt Service**” shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Second Mezzanine Notes.

“**Second Mezzanine Lender**” shall mean JPMorgan Chase Bank, N.A., in its capacity as the holder of the Second Mezzanine Loan, together with its successors and assigns.

“**Second Mezzanine Loan**” shall mean that certain loan in the original principal amount of Two Hundred Seventy Five Million and No/100 Dollars (\$275,000,000) of even date herewith made by Second Mezzanine Lender to Second Mezzanine Borrower.

“**Second Mezzanine Loan Agreement**” shall mean that certain Second Mezzanine Loan Agreement, dated as of the date hereof, between Second Mezzanine Borrower and Second Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Second Mezzanine Loan Documents**” shall mean the Second Mezzanine Loan Agreement, the Second Mezzanine Notes and all other documents and instruments executed and delivered in connection with the Second Mezzanine Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

“**Second Mezzanine Notes**” shall mean the “Notes” as defined in the Second Mezzanine Loan Agreement.

“**Second Mezzanine Pledge Agreement**” shall mean that certain Pledge and Security Agreement (Second Mezzanine Loan), dated as of the date hereof, between Second Mezzanine Borrower and Second Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Securities**” shall have the meaning set forth in Section 9.1 hereof.

“**Securities Act**” shall have the meaning set forth in Section 9.2(a) hereof.

“**Securitization**” shall have the meaning set forth in Section 9.1 hereof.

“**Senior Mezzanine Borrower**” shall mean, collectively, First Mezzanine Borrower, Second Mezzanine Borrower, Third Mezzanine Borrower, Fourth Mezzanine Borrower, Fifth Mezzanine Borrower, Sixth Mezzanine Borrower, Seventh Mezzanine Borrower and Eighth Mezzanine Borrower.

“**Senior Mezzanine Collateral**” shall mean, collectively, the “Collateral” as defined in each Senior Mezzanine Loan Agreement.

“**Senior Mezzanine Lender**” shall mean, collectively, First Mezzanine Lender, Second Mezzanine Lender, Third Mezzanine Lender, Fourth Mezzanine Lender, Fifth Mezzanine Lender, Sixth Mezzanine Lender, Seventh Mezzanine Lender and Eighth Mezzanine Lender.

“**Senior Mezzanine Loan**” shall mean the First Mezzanine Loan, the Second Mezzanine Loan, the Third Mezzanine Loan, the Fourth Mezzanine Loan, the Fifth Mezzanine Loan, the Sixth Mezzanine Loan, the Seventh Mezzanine Loan and the Eighth Mezzanine Loan.

“**Senior Mezzanine Loan Agreement**” shall mean the First Mezzanine Loan Agreement, the Second Mezzanine Loan Agreement, the Third Mezzanine Loan Agreement, the Fourth Mezzanine Loan Agreement, the Fifth Mezzanine Loan Agreement, the Sixth Mezzanine Loan Agreement, the Seventh Mezzanine Loan Agreement and the Eighth Mezzanine Loan Agreement.

“**Senior Mezzanine Loan Default**” shall mean, collectively, a “Default” under any of the Senior Mezzanine Loan Documents.

“**Senior Mezzanine Loan Documents**” shall mean, collectively, the First Mezzanine Loan Documents, the Second Mezzanine Loan Documents, the Third Mezzanine Loan Documents, the Fourth Mezzanine Loan Documents, the Fifth Mezzanine Loan Documents, the Sixth Mezzanine Loan Documents, the Seventh Mezzanine Loan Documents and the Eighth Mezzanine Loan Documents.

“**Senior Mezzanine Loan Event of Default**” shall mean, collectively, an “Event of Default” under any of the Senior Mezzanine Loan Documents.

“**Senior Mezzanine Loan Reserve Funds**” shall mean, collectively, the “Reserve Funds” as defined in the Senior Mezzanine Loan Agreement.

“**Servicer**” shall have the meaning set forth in Section 9.4 hereof.

“**Servicing Agreement**” shall have the meaning set forth in Section 9.4 hereof.

“**Seventh Mezzanine Borrower**” shall mean, collectively, the entities set forth on Schedule XIX hereto, each a Delaware limited liability company, together with their respective successors and permitted assigns. As used herein, the term “Seventh Mezzanine Borrower” shall mean one of the Seventh Mezzanine Borrowers individually, or the Seventh Mezzanine Borrowers collectively, as the context shall require.

“**Seventh Mezzanine Debt Service**” shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Seventh Mezzanine Notes.

“**Seventh Mezzanine Lender**” shall mean JPMorgan Chase Bank, N.A., in its capacity as the holder of the Seventh Mezzanine Loan, together with its successors and assigns.

“**Seventh Mezzanine Loan**” shall mean that certain loan in the original principal amount of Two Hundred Seventy Five Million and No/100 Dollars (\$275,000,000) of even date herewith made by Seventh Mezzanine Lender to Seventh Mezzanine Borrower.

“**Seventh Mezzanine Loan Agreement**” shall mean that certain Seventh Mezzanine Loan Agreement, dated as of the date hereof, between Seventh Mezzanine Borrower

and Seventh Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Seventh Mezzanine Loan Documents**” shall mean the Seventh Mezzanine Loan Agreement, the Seventh Mezzanine Notes and all other documents and instruments executed and delivered in connection with the Seventh Mezzanine Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

“**Seventh Mezzanine Notes**” shall mean the “Notes” as defined in the Seventh Mezzanine Loan Agreement.

“**Seventh Mezzanine Pledge Agreement**” shall mean that certain Pledge and Security Agreement (Seventh Mezzanine Loan), dated as of the date hereof, between Seventh Mezzanine Borrower and Seventh Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Severed Loan Documents**” shall have the meaning set forth in Section 8.2(c) hereof.

“**Significant Obligor**” shall have the meaning set forth in Section 5.1.11(f) hereof.

“**Sixth Mezzanine Borrower**” shall mean, collectively, the entities set forth on Schedule XVIII hereto, each a Delaware limited liability company, together with their respective successors and permitted assigns. As used herein, the term “Sixth Mezzanine Borrower” shall mean one of the Sixth Mezzanine Borrowers individually, or the Sixth Mezzanine Borrowers collectively, as the context shall require.

“**Sixth Mezzanine Debt Service**” shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Sixth Mezzanine Notes.

“**Sixth Mezzanine Lender**” shall mean JPMorgan Chase Bank, N.A., in its capacity as the holder of the Sixth Mezzanine Loan, together with its successors and assigns.

“**Sixth Mezzanine Loan**” shall mean that certain loan in the original principal amount of Two Hundred Seventy Five Million and No/100 Dollars (\$275,000,000) of even date herewith made by Sixth Mezzanine Lender to Sixth Mezzanine Borrower.

“**Sixth Mezzanine Loan Agreement**” shall mean that certain Sixth Mezzanine Loan Agreement, dated as of the date hereof, between Sixth Mezzanine Borrower and Sixth Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Sixth Mezzanine Loan Documents**” shall mean the Sixth Mezzanine Loan Agreement, the Sixth Mezzanine Notes and all other documents and instruments executed and delivered in connection with the Sixth Mezzanine Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

“**Sixth Mezzanine Notes**” shall mean the “Notes” as defined in the Sixth Mezzanine Loan Agreement.

“**Sixth Mezzanine Pledge Agreement**” shall mean that certain Pledge and Security Agreement (Sixth Mezzanine Loan), dated as of the date hereof, between Sixth Mezzanine Borrower and Sixth Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Special Member**” shall mean a Springing Member in a given Delaware limited liability company who has become a member in such limited liability company to the extent so provided in such limited liability company’s operating agreement.

“**Special Purpose Entity**” shall mean a corporation, limited partnership or limited liability company which at all times on and after the date hereof:

(a) is organized solely for the purpose of (i) owning, holding, selling, transferring, exchanging, managing and operating the Collateral, entering into this Agreement with the Lender, refinancing the Collateral in connection with a permitted repayment of the Loan, and transacting lawful business that is incident, necessary and appropriate to accomplish the foregoing; or (ii) acting as a general partner of the limited partnership that owns the Collateral or member of the limited liability company that owns the Collateral;

(b) is not engaged and will not engage in any business unrelated to (i) the ownership of the Collateral, (ii) acting as general partner of the limited partnership that owns the Collateral or (iii) acting as a member of the limited liability company that owns the Collateral, as applicable;

(c) does not have and will not have any assets other than those related to the Collateral or its partnership interest in the limited partnership or the member interest in the limited liability company that owns the Collateral or acts as the general partner or managing member thereof, as applicable;

(d) has not engaged, sought or consented to and will not engage in, seek or consent to any dissolution, winding up, liquidation, consolidation, merger, sale of all or substantially all of its assets, transfer of partnership or membership interests (if such entity is a general partner in a limited partnership or a member in a limited liability company) or amendment of its limited partnership agreement, articles of incorporation, articles of organization, certificate of formation or operating agreement (as applicable) with respect to the matters set forth in this definition;

(e) if such entity is a limited partnership, has, as its only general partners, Special Purpose Entities that are corporations, limited partnerships or limited liability companies;

(f) if such entity is a corporation, has at least two (2) Independent Directors, and has not caused or allowed and will not cause or allow the board of directors of such entity to take any action requiring the unanimous affirmative vote of one hundred percent

(100%) of the members of its board of directors unless two (2) Independent Directors shall have participated in such vote;

(g) if such entity is a limited liability company with more than one member, has at least one member that is a Special Purpose Entity that is a Delaware corporation or limited liability company that has at least two (2) Independent Directors;

(h) if such entity is a limited liability company with only one member, is a limited liability company organized in the State of Delaware that has (i) as its only member a non-managing member, (ii) at least two (2) Independent Managers and has not caused or allowed and will not cause or allow the board of managers of such entity to take any action requiring the unanimous affirmative vote of one hundred percent (100%) of the managers unless two (2) Independent Managers shall have participated in such vote and (iii) at least one springing member that will become the non-managing member of such entity upon the dissolution of the existing non-managing member;

(i) if such entity is (i) a limited liability company, has articles of organization, a certificate of formation and/or an operating agreement, as applicable, (ii) a limited partnership, has a limited partnership agreement, or (iii) a corporation, has a certificate of incorporation or articles that, in each case, provide that such entity will not, while any obligations remain outstanding under the Loan Documents: (A) dissolve, merge, liquidate, consolidate; (B) sell all or substantially all of its assets or the assets of the Borrower (as applicable), except as permitted in connection with the release of an Individual Property as provided in Section 2.5.1; (C) engage in any other business activity, or amend its organizational documents with respect to the matters set forth in this definition without the consent of the Lender; or (D) without the affirmative vote of two (2) Independent Directors and of all other directors of the corporation (that is such entity or the general partner or managing or co-managing member of such entity), file a bankruptcy or insolvency petition or otherwise institute insolvency proceedings with respect to itself or to any other entity in which it has a direct or indirect legal or beneficial ownership interest;

(j) is and will remain solvent and pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from and to the extent of its assets as the same shall become due, and is maintaining and will maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations; provided, however, that the foregoing shall not require the Member to make additional capital contributions to the company;

(k) has not failed and will not fail to correct any known misunderstanding regarding the separate identity of such entity;

(l) has maintained and will maintain its bank accounts, books and records separate from any other Person and will file its own tax returns separate from those of any other Person, except to the extent the company is treated as a "disregarded entity" for tax purposes and is not required to file tax returns under applicable law;

- (m) has maintained and will maintain its own records, books, resolutions and agreements;
- (n) has not commingled and will not commingle its funds or assets with assets of any other Person;
- (o) has held and will hold its assets in its own name;
- (p) has conducted and will conduct its business in its own name;
- (q) has maintained and will maintain its financial statements, accounting records and other entity documents separate and apart from any other Person and will have its assets listed on the financial statement of any other Person; provided, however, that the company's assets may be included in a consolidated financial statement of its Affiliate, provided, that, (i) appropriate notation shall be made on such consolidated financial statements to indicate the separateness of the company from such Affiliate and to indicate the company's assets and credit are not available to satisfy the debts and other obligations of such Affiliate or any other Person and (ii) such assets shall also be listed on the company's own separate balance sheet;
- (r) has paid and will pay its own liabilities and expenses, including the salaries of its own employees (if any), out of its own funds and assets, and has maintained and will maintain a sufficient number of employees (if any) in light of its contemplated business operations;
- (s) has observed and will observe all partnership, corporate or limited liability company formalities necessary to maintain its separate existence;
- (t) has and will not incur, create, or assume any Indebtedness other than (i) the Loan and (ii) certain Indebtedness to Affiliates that was incurred in connection with the formation of Borrower and Operating Company and the transfer of the Properties to Mortgage Borrower and was satisfied and/or released in full prior to the funding of the Loan hereunder;
- (u) has not and will not assume or guarantee or become obligated for the debts of any other Person or hold out its credit as being available to satisfy the obligations of any other Person except as co-borrowers of the Loan;
- (v) has not and will not acquire obligations or securities of its partners, members or shareholders or any Affiliate (other than Mortgage Borrower);
- (w) has allocated and will allocate fairly and reasonably any overhead expenses that are shared with any Affiliate, including, but not limited to, paying for shared office space and services performed by any employee of an Affiliate;
- (x) maintains and uses and will maintain and use separate stationery, invoices and checks, if any, bearing its name. The stationery, invoices, and checks, if any, utilized by the Special Purpose Entity or utilized to collect its funds or pay its expenses shall bear

its own name and shall not bear the name of any other entity unless such entity is clearly designated as being the Special Purpose Entity's agent;

(y) has not pledged and will not pledge its assets for the benefit of any Person except as co-borrowers of the Loan;

(z) has held itself out and identified itself and will hold itself out to the public and all other Persons and identify itself as a separate and distinct entity under its own name or in a name franchised or licensed to it by an entity other than an Affiliate of Borrower and not as a division or part of any other Person;

(aa) has maintained and will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;

(bb) has not made and will not make loans to any Person or hold evidence of indebtedness issued by any other Person or entity (other than cash and investment-grade securities issued by an entity that is not an Affiliate of or subject to common ownership with such entity);

(cc) correct any known misunderstanding regarding its separate identity and has not identified and will not identify its partners, members or shareholders, or any Affiliate of any of them, as a division or part of it, and has not identified itself and shall not identify itself as a division of any other Person;

(dd) except for capital contributions or capital distributions permitted under the terms and conditions of this Agreement and properly reflected on the books and records of this company, has not entered into or been a party to, and will not enter into or be a party to, any transaction with its partners, members, shareholders or Affiliates except in the ordinary course of its business and on terms which are commercially reasonable and are no less favorable to it than would be obtained in a comparable arm's-length transaction with an unrelated third party (including an appropriate shared services agreement with Affiliates);

(ee) has not and will not have any obligation to, and will not, indemnify its partners, officers, directors or members, as the case may be, unless such an obligation is fully subordinated to the Debt and will not constitute a claim against it in the event that cash flow in excess of the amount required to pay the Debt is insufficient to pay such obligation;

(ff) if such entity is a corporation, it shall consider the interests of its creditors in connection with all corporate actions;

(gg) does not and will not have any of its obligations guaranteed by any Affiliate (except each Borrower as a co-borrower under the Loan);

(hh) has complied and will comply with all of the terms and provisions contained in its organizational documents. The statement of facts contained in its organizational documents are true and correct and will remain true and correct; and

(ii) form, acquire, or hold any subsidiary (whether corporate, partnership, limited liability company, or other) or own any equity interest in any other entity (other than, with respect to Borrower, its interest in Ninth Mezzanine Borrower, and with respect to Principal, its interest in Borrower).

“**SPE Party**” shall mean Borrower and any other Person that is required to be a “Special Purpose Entity” under applicable Rating Agency criteria so as to make Borrower a Special Purpose Entity.

“**Spread**” shall mean (i) unless and until a Ground Lease Estoppel Trigger Event exists, 3.00% and (ii) upon the occurrence of a Ground Lease Estoppel Trigger Event, the Ground Lease Estoppel Trigger Spread.

“**Spread Maintenance Outside Date**” shall mean February 10, 2009.

“**Spread Maintenance Premium**” shall mean, in connection with any repayment of any of the outstanding principal amount of the Loan prior to and including the Spread Maintenance Outside Date (whether a voluntary or mandatory prepayment), an amount equal to the product of (a) the principal amount of such prepayment, (b) the Spread and (c) a fraction, the numerator of which shall be the actual number of days from (but excluding) the date of such prepayment (or, if later, the last date of the Interest Period during which interest on the amount of such payment shall have been paid by Borrower, as required in this Agreement) through (and including) the Spread Maintenance Outside Date and the denominator of which is three hundred sixty (360).

“**Springing Member**” shall mean a Person who has signed the limited liability company agreement of a given Delaware limited liability company, which agreement provides that, upon the withdrawal, dissolution or disassociation of the last remaining member of such limited liability company (subject to applicable Gaming Laws), such Person shall become a member of such limited liability company having no economic interest therein.

“**State**” shall mean, with respect to an Individual Property, the State or Commonwealth in which such Individual Property or any part thereof is located.

“**Strike Price**” shall mean four and one-half percent (4.5%).

“**Survey**” shall mean a survey of the Individual Property in question prepared pursuant to the requirements contained in Section 3.1.3(c) hereof.

“**Syndication**” shall have the meaning set forth in Section 9.5 hereof.

“**Tax and Insurance Escrow Fund**” shall have the meaning set forth in Section 7.2 hereof.

“**Taxes**” shall mean all real estate and personal property taxes, assessments, water rates or sewer rents, now or hereafter levied or assessed or imposed against any Individual Property or part thereof.

“**Third Mezzanine Borrower**” shall mean, collectively, the entities set forth on Schedule XV hereto, each a Delaware limited liability company, together with their respective successors and permitted assigns. As used herein, the term “Third Mezzanine Borrower” shall mean one of the Third Mezzanine Borrowers individually, or the Third Mezzanine Borrowers collectively, as the context shall require.

“**Third Mezzanine Debt Service**” shall mean, with respect to any particular period of time, scheduled principal and/or interest payments due under the Third Mezzanine Notes.

“**Third Mezzanine Lender**” shall mean JPMorgan Chase Bank, N.A., in its capacity as the holder of the Third Mezzanine Loan, together with its successors and assigns.

“**Third Mezzanine Loan**” shall mean that certain loan in the original principal amount of Two Hundred Seventy Five Million and No/100 Dollars (\$275,000,000) of even date herewith made by Third Mezzanine Lender to Third Mezzanine Borrower.

“**Third Mezzanine Loan Agreement**” shall mean that certain Third Mezzanine Loan Agreement, dated as of the date hereof, between Third Mezzanine Borrower and Third Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Third Mezzanine Loan Documents**” shall mean the Third Mezzanine Loan Agreement, the Third Mezzanine Notes and all other documents and instruments executed and delivered in connection with the Third Mezzanine Loan, as such documents may be amended, modified and restated in accordance with their respective terms.

“**Third Mezzanine Notes**” shall mean the “Notes” as defined in the Third Mezzanine Loan Agreement.

“**Third Mezzanine Pledge Agreement**” shall mean that certain Pledge and Security Agreement (Third Mezzanine Loan), dated as of the date hereof, between Third Mezzanine Borrower and Third Mezzanine Lender, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

“**Threshold Amount**” shall have the meaning set forth in the definition of Material Alteration.

“**Title Insurance Policies**” shall mean, with respect to each Individual Property, an ALTA mortgagee title insurance policy in a form acceptable to Lender (or, if an Individual Property is in a State which does not permit the issuance of such ALTA policy, such form as shall be permitted in such State and acceptable to Lender) issued with respect to such Individual Property and insuring the lien of the Mortgage encumbering such Individual Property.

**“Tower Project”** shall mean that certain “New Atlantic City Tower Project” more fully described in (a) the Site, Design and Floor Plans, dated October 5, 2005, and prepared by Paul Steelman Design Group, and (b) Harrah’s Hotel/Podium/Garage Expansion: Summary of Project Costs, each delivered to Lender. The Tower Project will include a podium (of approximately 175,000 square feet) connecting the current Bayview Tower to a new approximately nine hundred (900) room tower to be built. The Tower Project will not be funded with the proceeds of the Loan (but will be funded by Mortgage Borrower or Operating Company, including with capital contributions).

**“Transfer”** shall mean to, directly or indirectly, sell, assign, convey, mortgage, transfer, pledge, hypothecate, encumber, grant a security interest in, exchange or otherwise dispose of any beneficial interest or grant any option or warrant with respect to, or where used as a noun, a direct or indirect sale, assignment, conveyance, transfer, pledge or other disposition of any beneficial interest by any means whatsoever whether voluntary, involuntary, by operation of law or otherwise. A Transfer shall include, but not be limited to, (a) an installment sales agreement wherein Mortgage Borrower agrees to sell an Individual Property or any part thereof or Borrower agrees to sell the Collateral, in each case, for a price to be paid in installments; (b) an agreement by Mortgage Borrower leasing all or a substantial part of an Individual Property for other than actual occupancy by a space tenant thereunder or a sale, assignment or other transfer of, or the grant of a security interest in, Mortgage Borrower’s right, title and interest in and to any Leases or any Rents; (c) if a Person restricted or affected by the provisions of this Agreement is a corporation, any merger, consolidation or sale or pledge of such corporation’s stock or the creation or issuance of new stock; (d) if a Person restricted or affected by the provisions of this Agreement is a limited or general partnership or joint venture, any merger or consolidation or the change, removal, resignation or addition of a general partner or the sale or pledge of the partnership interest of any general partner or any profits or proceeds relating to such partnership interest, or the sale or pledge of limited partnership interests or any profits or proceeds relating to such limited partnership interest or the creation or issuance of new limited partnership interests; (e) if a Person restricted or affected by the provisions of this Agreement is a limited liability company, any merger or consolidation or the change, removal, resignation or addition of a managing member or non-member manager (or if no managing member, any member) or the sale or pledge of the membership interest of a managing member (or if no managing member, any member) or any profits or proceeds relating to such membership interest, or the sale or pledge of non-managing membership interests or the creation or issuance of new non-managing membership interests; (f) if a Person restricted or affected by the provisions of this Agreement is a trust or nominee trust, any merger, consolidation or the sale or pledge of the legal or beneficial interest in such Person or the creation or issuance of new legal or beneficial interests; or (g) any direct or indirect sale, assignment, conveyance, transfer, pledge or other disposition (by any means whatsoever whether voluntary, involuntary, by operation of law or otherwise) of the Collateral, the Senior Mezzanine Collateral or any part thereof or any legal or beneficial interest therein.

**“Transferee”** shall mean the Person to whom a Transfer is being effected.

**“Trigger Event”** shall mean, as of the end of any calendar quarter, any period of time during which EBITDAR from the Properties, calculated for the trailing twelve (12) month

period immediately prior to the applicable calculation date, is less than eighty-five percent (85%) of the EBITDAR (Closing Date), as determined by Lender.

“**Trigger Event Cure**” shall mean that EBITDAR (excluding, in making such calculation, any capital contributions made to or for the benefit of Borrower, Mortgage Borrower or Operating Company, or payments made on the account of Borrower, Mortgage Borrower or Operating Company by any Affiliate of Borrower, Mortgage Borrower or Operating Company) from the Properties, calculated for the trailing twelve (12) month period immediately prior to the applicable calculation date, is equal to or greater than eighty-five percent (85%) of the EBITDAR (Closing Date) for two (2) consecutive calendar quarters.

“**True-Lease Opinion**” shall mean that certain true lease opinion letter dated the date hereof delivered by Cleary Gottlieb Steen & Hamilton LLP in connection with the Loan.

“**UCC**” or “**Uniform Commercial Code**” shall mean the Uniform Commercial Code as in effect in the applicable State in which an Individual Property is located.

“**UCC Title Insurance Policy**” shall have the meaning set forth in Section 3.13(b) hereof.

“**U.S. Obligations**” shall mean non-redeemable securities evidencing an obligation to timely pay principal and/or interest in a full and timely manner that are direct obligations of the United States of America for the payment of which its full faith and credit is pledged or other “government securities” within the meaning of Section 2(a)(16) of the Investment Company Act of 1940, as amended.

“**Windstorm Insurance Intercreditor Agreement**” means that certain Windstorm Insurance Intercreditor Agreement, dated as of the date hereof, by and among Lender, the Mortgage Lender, the Other Mezzanine Lenders, each of the “Other Owners” named therein and made a party thereto, Holdings, Bank of America, N.A., and the “Other Secured Parties named therein and made a party thereto, as the same may hereafter be amended, supplemented, or otherwise modified from time to time.

**Section 1.2. Principles of Construction.** All references to sections and schedules are to sections and schedules in or to this Agreement unless otherwise specified. All uses of the word “including” shall mean “including, without limitation” unless the context shall indicate otherwise. Unless otherwise specified, the words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. Unless otherwise specified, all meanings attributed to defined terms herein shall be equally applicable to both the singular and plural forms of the terms so defined. With respect to cross-references contained herein to the Mortgage Loan Documents or to the Other Mezzanine Loan Documents (including with respect to any cross-references to defined terms therein), unless otherwise specifically provided herein, such cross-references shall be with respect to the Mortgage Loan Documents or the Other Mezzanine Loan Documents as the case may be, in existence as of the date hereof, and no modification or amendment to such cross-referenced sections of the Mortgage Loan Documents or the Other Mezzanine Loan Documents shall be binding upon Lender unless Lender shall have

expressly agreed in writing to be bound by such modification or amendment. Terms used herein and not otherwise defined herein (but defined in the Mortgage Loan Agreement) shall have the meaning set forth in the Mortgage Loan Agreement as of the Closing Date, notwithstanding any subsequent amendment of the Mortgage Loan Agreement to such defined terms unless Lender shall have consented to such amendment. The words “Borrower shall cause Mortgage Borrower to”, “Borrower shall not permit Mortgage Borrower to”, “Borrower shall cause Senior Mezzanine Borrower to”, “Borrower shall not permit Senior Mezzanine Borrower to”, “Borrower shall cause Operating Company to” or “Borrower shall not permit Operating Company to” (or words of similar meaning) shall mean Borrower shall cause Mortgage Borrower, Senior Mezzanine Borrower or Operating Company (subject to the provisions of Section 5.3), as applicable, to so act or not to so act, as applicable.

**Section 1.3. Direction of Mortgage Borrower or with Respect to the Properties.** Borrower and Lender hereby acknowledge and agree that, as to any clauses or provisions contained in this Agreement or any of the other Loan Documents to the effect that (i) Borrower shall cause Mortgage Borrower and/or Senior Mezzanine Borrower to act or to refrain from acting in any manner or (ii) Borrower shall cause to occur or not to occur, or otherwise be obligated in any manner with respect to, any matters pertaining to Mortgage Borrower, Senior Mezzanine Borrower or any of the Properties, such clause or provision, in each case, is intended to mean, and shall be construed as meaning, that Borrower has undertaken to act and is obligated to act only in Borrower’s capacity as the sole member of Senior Mezzanine Borrower but not directly with respect to Senior Mezzanine Borrower, Mortgage Borrower or any of the Properties or in any other manner which would violate any of the covenants contained in Section 4.1.30 (Special Purpose Entity) hereof or other similar covenants contained in Borrower’s organizational documents.

## **II. GENERAL TERMS**

### **Section 2.1. Loan Commitment; Disbursement to Borrower.**

**2.1.1 Agreement to Lend and Borrow.** Subject to and upon the terms and conditions set forth herein, Lender hereby agrees to make and Borrower hereby agrees to accept the Loan on the Closing Date.

**2.1.2 Single Disbursement to Borrower.** Borrower may request and receive only one borrowing hereunder in respect of the Loan and any amount borrowed and repaid hereunder in respect of the Loan may not be reborrowed.

**2.1.3 The Note, the Pledge Agreement and Loan Documents.** The Loan shall be evidenced by the Note (in the aggregate principal amount of Two Hundred Seventy Five Million and No/100 Dollars (\$275,000,000) and secured by the Pledge Agreement and the other Loan Documents.

**2.1.4 Use of Proceeds.** Borrower shall use the proceeds of the Loan solely to (a) make an equity contribution to Mortgage Borrower (through each Senior Mezzanine Borrower) in order to cause Mortgage Borrower to use such amounts for any use permitted pursuant to Section 2.1.4 of the Mortgage Loan Agreement, (b) pay costs and expenses incurred

in connection with the closing of the Loan, as approved by Lender, and (c) distribute the balance, if any, to Borrower.

**2.1.5 Component Notes.** Lender shall have the right at any time to modify the Loan in order to create an additional note or additional notes, adjust the interest rate spread on the Notes or notes, reduce the number of notes, reallocate the principal balances of the Notes or notes or eliminate the component note structure of the Loan provided that (a) the aggregate stated principal amount of the Loan on the date of each such adjustment shall equal the aggregate stated principal amount of the Loan immediately prior to such adjustment, and (b) the weighted average spread of the Loan on the date of such adjustment shall equal the weighted average spread which was applicable to the Loan immediately prior to such adjustment (Borrower acknowledging that such new notes or modified notes may, in connection with the application of principal to such new notes or modified note following the occurrence of an Event of Default, but not otherwise, subsequently cause the weighted average spread of such new notes or modified notes to change). In connection with any such modification of the Note and notes, or the creation of additional note(s), (i) Borrower shall cooperate with all reasonable requests of Lender and shall execute and deliver such documents as shall reasonably be requested by Lender in connection therewith, all in form and substance reasonably satisfactory to Lender and, to the extent applicable, the Rating Agencies, including, without limitation, (y) revised title insurance policies and Interest Rate Protection Agreements, and (z) such amendments to the Loan Documents as are reasonably requested; (ii) Lender shall have received opinions of legal counsel with respect to due execution, authority and enforceability of the amended Loan Documents, and additional or updated nonconsolidation opinions for the Loan, each in form reasonably acceptable to Lender and prospective investors and in form acceptable to the Rating Agencies; and (iii) Lender shall pay the actual, reasonable out-of-pocket costs and expenses incurred by Borrower in connection with the foregoing, including, without limitation, the actual, reasonable out-of-pocket legal fees incurred by Borrower in connection with any of the foregoing matters. For the avoidance of doubt, and notwithstanding anything to the contrary contained herein, such modifications and any modifications under Sections 2.1.6 and 2.1.7 below shall not, absent an Event of Default, adversely affect the overall economics to Borrower of the Loan, taken as a whole, or expose Borrower to any additional costs (other than as set forth above) or increased risk of any liability (beyond that or greater than that existing in the Loan Documents in effect on the date hereof), and Borrower shall not be required to execute any document or agreement which would materially decrease its rights or materially increase its obligations relative to those set forth herein and in the other Loan Documents.

**2.1.6 Adjustment of Mortgage Loan and Mezzanine Loans.** Lender shall have the right at any time to adjust the respective principal amounts of the Mortgage Loan and the Mezzanine Loans (or either one of them) and/or to adjust the interest rate spread on the Mortgage Loan and the Mezzanine Loans (or either one of them) (such adjustment, a “**Loan Adjustment**”), provided that (a) the aggregate stated principal amount of the Mortgage Loan and the Mezzanine Loans on the date of each such Loan Adjustment shall equal the aggregate stated principal amount of the Mortgage Loan and the Mezzanine Loans immediately prior to such Loan Adjustment, and (b) Lender shall have the right to adjust the interest rate spread on the Mortgage Loan and the Mezzanine Loans, provided that the weighted average spread of the Mortgage Loan and the Mezzanine Loans on the date of each such Loan Adjustment shall equal the weighted average spread which was applicable to the Mortgage Loan and the Mezzanine

Loans immediately prior to such Loan Adjustment (it being acknowledged that the weighted average spread will remain constant except in connection with the application of principal to such new notes or modified notes following the occurrence of an Event of Default). In connection with any Loan Adjustment, (i) Mortgage Borrower and Mezzanine Borrowers shall cooperate with all reasonable requests of Lender and shall execute and deliver such documents as shall reasonably be requested by Lender in connection therewith, all in form and substance reasonably satisfactory to Lender and, to the extent applicable, the Rating Agencies, including, without limitation, (y) revised title insurance policies, mezzanine endorsements, UCC policies and Interest Rate Protection Agreements, and (z) such amendments to the Mortgage Loan Documents and the Mezzanine Loan Documents as are reasonably requested in connection with the Loan Adjustment (provided that such amendments do not or would not (i) materially decrease the rights of the Mortgage Borrower or Mezzanine Borrowers, or, absent an Event of Default, materially increase the obligations of the Mortgage Borrower or the Mezzanine Borrowers, as the case may be, under the Mortgage Loan Documents or the Mezzanine Loan Documents (as applicable) or (ii) absent an Event of Default, expose the Mortgage Borrower or any of the Mezzanine Borrowers to additional costs or increased risk of any liability under the Mortgage Loan Documents or the Mezzanine Loan Documents (as applicable) (beyond that or greater than that existing in the Mortgage Loan Documents, or the Mezzanine Loan Documents, as applicable, on the date hereof); (ii) Lender shall have received opinions of legal counsel with respect to due execution, authority and enforceability of the amended Mortgage Loan Documents or Mezzanine Loan Documents, as appropriate, and additional or updated nonconsolidation opinions for the Mortgage Loan and the Mezzanine Loans, each in form reasonably acceptable to Lender and prospective investors and in form acceptable to the Rating Agencies; and (iii) Lender shall pay the actual, reasonable out-of-pocket costs and expenses incurred by Borrower in connection with the foregoing, including, without limitation, the actual, reasonable out-of-pocket legal fees incurred by Borrower in connection with any of the foregoing matters.

**2.1.7 Creation of New Mezzanine Loans.** Lender shall at all times have the right to create one or more additional mezzanine loans (each, a “**New Mezzanine Loan**”), adjust the respective principal amounts of the Mortgage Loan and the Mezzanine Loans (or any one of them) upon the creation of the New Mezzanine Loan and/or to adjust the interest rate spread on the Mortgage Loan and the Mezzanine Loans (or any one of them) upon the creation of the New Mezzanine Loan, and to reallocate the principal balance and the interest rate spreads of the Mortgage Loan, the Mezzanine Loans and any New Mezzanine Loan amongst each other (or any one of them), provided that (a) the aggregate stated principal amount of the Mortgage Loan, the Mezzanine Loans and the New Mezzanine Loans on the date of such adjustment (and the creation of the New Mezzanine Loan) shall equal the aggregate stated principal amount of the Mortgage Loan, the Mezzanine Loans and the New Mezzanine Loan(s) immediately prior to such adjustment, (b) Lender shall have the right to adjust the interest rate spread on the Mortgage Loan, the Mezzanine Loans and the New Mezzanine Loan(s), provided that the weighted average spread of the Mortgage Loan, the Mezzanine Loans and the New Mezzanine Loan(s) on the date of such adjustment shall equal the weighted average spread which was applicable to the Mortgage Loan and the Mezzanine Loans (and the New Mezzanine Loans, if applicable) immediately prior to such adjustment (it being acknowledged that the weighted average spread will remain constant except in connection with the application of principal to such new notes or modified notes following the occurrence of an Event of Default), and (c) the terms and provisions of each of the Mortgage Loan and the Mezzanine Loans (and the New Mezzanine

Loans, if applicable) shall otherwise remain unchanged. In connection with any New Mezzanine Loan, (i) Borrower shall cause the formation of one or more special purpose, bankruptcy remote entities as required by Lender in order to serve as the borrower under any New Mezzanine Loan (each, a “**New Mezzanine Borrower**”) and the applicable organizational documents of Mortgage Borrower and each Mezzanine Borrower (and of each previously created New Mezzanine Borrower, if applicable) shall be amended and modified as necessary or required in the formation of any New Mezzanine Borrower; (ii) Mortgage Borrower and Mezzanine Borrowers (and each previously created New Mezzanine Borrower, if applicable) shall cooperate with all reasonable requests of Lender and shall execute and deliver such documents as shall reasonably be requested by Lender in connection therewith, all in form and substance reasonably satisfactory to Lender and, to the extent applicable, the Rating Agencies, including, without limitation, (x) revised title insurance policies, mezzanine endorsements, UCC policies and Interest Rate Protection Agreements, (y) in connection with the creation of any New Mezzanine Loan, a promissory note and loan documents necessary to evidence such New Mezzanine Loan, and (z) such amendments to the Mortgage Loan Documents and the Mezzanine Loan Documents (and the loan documents of any previously created New Mezzanine Borrower, if applicable) as are reasonably necessary in connection with the creation of such New Mezzanine Loan (provided that such amendments do not or would not (i) materially decrease the rights of the Mortgage Borrower or Mezzanine Borrowers (and any previously created New Mezzanine Borrowers, if applicable), or, absent an Event of Default, materially increase the obligations of the Mortgage Borrower or the Mezzanine Borrowers (and any previously created New Mezzanine Borrowers, if applicable), as the case may be, under such borrower’s applicable loan documents, or (ii) absent an Event of Default, expose the Mortgage Borrower or any of the Mezzanine Borrowers (or any previously created New Mezzanine Borrowers, if applicable) to additional costs or increased risk of any liability under such borrower’s applicable loan documents (beyond that or greater than that existing in the existing loan documents on the date hereof)); (iii) Lender shall have received opinions of legal counsel with respect to due execution, authority and enforceability of the amended Mortgage Loan Documents, the amended Mezzanine Loan Documents and the loan documents for the New Mezzanine Loan, as appropriate, and additional or updated nonconsolidation opinions for the Mortgage Loan, the Mezzanine Loans and each such New Mezzanine Loan, as appropriate, each in form reasonably acceptable to Lender and prospective investors and in form acceptable to the Rating Agencies; and (iv) Lender shall pay the actual, reasonable out-of-pocket costs and expenses incurred by Borrower in connection with the foregoing, including, without limitation, the actual, reasonable out-of-pocket legal fees incurred by Borrower in connection with any of the foregoing matters.

## **Section 2.2. Interest Rate.**

**2.2.1 Interest Generally.** Except as herein provided with respect to interest accruing at the Default Rate, interest on the principal balance of the Loan outstanding from time to time shall accrue from the Closing Date up to and including the Maturity Date (including, without limitation, all interest that would accrue on the outstanding principal balance of the Loan through the end of the Interest Period during which the Maturity Date occurs (even if such period extends beyond the Maturity Date)) at the Applicable Interest Rate. Interest on the outstanding principal balance of the Loan existing on the commencement of an Interest Period shall accrue for the entire Interest Period and shall be owed by Borrower for the entire Interest Period

regardless of whether any principal portion of the Loan is repaid prior to the expiration of such Interest Period.

**2.2.2 Interest Calculation.** Interest on the outstanding principal balance of the Loan shall be calculated by multiplying (a) the actual number of days elapsed in the period for which the calculation is being made by (b) a daily rate based on a three hundred sixty (360) day year (that is, the Applicable Interest Rate or the Default Rate, as then applicable, expressed as an annual rate divided by 360) by (c) the outstanding principal balance.

**2.2.3 Determination of Interest Rate.** (a) The Applicable Interest Rate with respect to the Loan shall be: (i) LIBOR plus the Spread with respect to the applicable Interest Period for a LIBOR Loan or (ii) the Prime Rate plus the Prime Rate Spread for a Prime Rate Loan if the Loan is converted to a Prime Rate Loan pursuant to the provisions of Section 2.2.3(c) or Section 2.2.3(f).

(b) Subject to the terms and conditions of this Section 2.2.3, the Loan shall be a LIBOR Loan and Borrower shall pay interest on the outstanding principal amount of the Loan at LIBOR plus the Spread for the applicable Interest Period. Any change in the rate of interest hereunder due to a change in the Applicable Interest Rate shall become effective as of the opening of business on the first day on which such change in the Applicable Interest Rate shall become effective. Each determination by Lender of the Applicable Interest Rate shall be conclusive and binding for all purposes, absent manifest error.

(c) In the event that Lender shall have determined (which determination shall be conclusive and binding upon Borrower absent manifest error) that by reason of circumstances affecting the interbank eurodollar market, adequate and reasonable means do not exist for ascertaining LIBOR, then Lender shall forthwith give notice by telephone of such determination, confirmed in writing, to Borrower at least one (1) Business Day prior to the last day of the related Interest Period. If such notice is given, the related outstanding LIBOR Loan shall be converted, on the last day of the then current Interest Period, to a Prime Rate Loan.

(d) If, pursuant to the terms of this Agreement, any portion of the Loan has been converted to a Prime Rate Loan and Lender shall determine (which determination shall be conclusive and binding upon Borrower absent manifest error) that the event(s) or circumstance(s) which resulted in such conversion shall no longer be applicable, Lender shall give notice by telephone of such determination, confirmed in writing, to Borrower at least one (1) Business Day prior to the last day of the related Interest Period. If such notice is given, the related outstanding Prime Rate Loan shall be converted to a LIBOR Loan on the last day of the then current Interest Period.

(e) With respect to a LIBOR Loan, all payments made by Borrower hereunder shall be made free and clear of, and without reduction for or on account of, income, stamp or other taxes, levies, imposts, duties, charges, fees, deductions, reserves or withholdings imposed, levied, collected, withheld or assessed by any Governmental Authority and imposed on any non-U.S. Lender due to a change in U.S. law after the date such non-U.S. Lender acquired its interest in the Loan (such non-excluded taxes, levies, imports, duties, charges, fees, deductions, reserves or withholdings being referred to collectively as "**Foreign Taxes**"), excluding (i) income and

franchise taxes, (ii) any Taxes imposed by reason of any connection between the non-U.S. Lender and the taxing jurisdiction other than entering into this Agreement and receiving payments hereunder, and (iii) any Taxes imposed by reason of the non-U.S. Lender's failure to complete and deliver to the Borrower, prior to the date on which the first payment to such Lender is due hereunder and (so long as it remains eligible to do so) from time to time thereafter, (x) (i) an Internal Revenue Service Form W-9 (or successor form) establishing that the Lender is not subject to U.S. backup withholding tax, (ii) an Internal Revenue Service Form W-8BEN (or successor form) certifying that such Lender is entitled to benefits under an income tax treaty to which the United States is a party that reduces the rate of withholding tax on payments of interest to zero, or (iii) an Internal Revenue Service Form W-8ECI certifying that the income receivable pursuant to this Agreement is effectively connected with the conduct of a trade or business in the United States, as appropriate; and (y) any successor or additional form required by the Internal Revenue Service or any taxing authority reasonably requested by the Borrower in order to secure an exemption from, or reduction in the rate of, Foreign Taxes. If any Foreign Taxes are required to be withheld from any amounts payable to Lender hereunder, the amounts so payable to Lender shall be increased to the extent necessary to yield to Lender (after payment of all Foreign Taxes) interest or any such other amounts payable hereunder at the rate or in the amounts specified hereunder. Whenever any Foreign Tax is payable pursuant to applicable law by Borrower, as promptly as possible thereafter, Borrower shall send to Lender an original official receipt, if available, or certified copy thereof showing payment of such Foreign Tax. Borrower hereby indemnifies Lender for any incremental Foreign Taxes, interest or penalties that may become payable by Lender which may result from any failure by Borrower to pay any such Foreign Tax when due to the appropriate taxing authority or any failure by Borrower to remit to Lender the required receipts or other required documentary evidence thereof (provided such documents are reasonably available to the Borrower).

(f) If any requirement of law or any change therein or in the interpretation or application thereof, shall hereafter make it unlawful for Lender to make or maintain a LIBOR Loan as contemplated hereunder and the events giving rise thereto affect similarly situated banks or financial institutions generally, (i) the obligation of Lender hereunder to make a LIBOR Loan or to convert a Prime Rate Loan to a LIBOR Loan shall be canceled forthwith and (ii) any outstanding LIBOR Loan shall be converted automatically to a Prime Rate Loan on the next succeeding Payment Date or within such earlier period as required by law.

(g) In the event that any change in any requirement of law or in the interpretation or application thereof, or compliance by Lender with any request or directive (whether or not having the force of law) hereafter issued from any central bank or other Governmental Authority and the events giving rise thereto affect similarly situated banks or financial institutions generally:

(i) shall hereafter impose, modify or hold applicable any reserve, special deposit, compulsory loan or similar requirement against assets held by, or deposits or other liabilities in or for the account of, advances or loans by, or other credit extended by, or any other acquisition of funds by, the office of Lender that holds the Loan which is not otherwise included in the determination of LIBOR hereunder;

(ii) shall hereafter require the Lender to hold additional capital against the Loan in excess of that currently required by Governmental Authorities to be held against loans similar in nature to the Loan; or

(iii) shall hereafter impose on Lender any other condition affecting loans to borrowers subject to LIBOR-based interest rates and Lender determines that, by reason thereof, the cost to Lender of making or maintaining the Loan to Borrower is increased, or any amount received by Lender hereunder in respect of any portion of the Loan is reduced, in each case by an amount deemed by Lender in good faith to be material;

then, in any such case, Borrower shall promptly pay Lender, upon demand, any additional amounts necessary to compensate Lender for such additional cost or reduced amount receivable which Lender deems to be material as determined in good faith by Lender. If Lender becomes entitled to claim any additional amounts pursuant to this Section 2.2.3(g), Lender shall provide Borrower with not less than ninety (90) days notice specifying in reasonable detail the event by reason of which it has become so entitled and the additional amount required to fully compensate Lender for such additional cost or reduced amount. A certificate as to any additional costs or amounts payable pursuant to the foregoing sentence submitted by Lender to Borrower shall be conclusive in the absence of manifest error. This provision shall survive payment of the Note and the satisfaction of all other obligations of Borrower under this Agreement and the Loan Documents.

(h) Lender shall not be entitled to claim compensation pursuant to this Section 2.2.3 for any Foreign Taxes or other amounts incurred or which accrued more than ninety (90) days before the date Lender notified Borrower of the change in law or other circumstance on which such claim of compensation is based and delivered to Borrower a written statement setting forth in reasonable detail the basis for calculating the additional amounts owed to Lender under this Section 2.2.3, which statement shall be conclusive and binding upon all parties hereto absent manifest error.

(i) For purposes of this Section 2.2.3, the term "Lender" shall be deemed to include each Noteholder and Lender's (as well as each Noteholder's) present and future participants in the Loan to the extent of Foreign Taxes imposed by reason of such Noteholder or participant's interest in the Loan and each such Noteholder's or participant's increased costs or reduction in amount received or receivable hereunder or any reduced rate of return, in each case payable by Borrower under this Section 2.2.3.

**2.2.4 Additional Costs.** Lender will use reasonable efforts (consistent with legal and regulatory restrictions) to maintain the availability of the LIBOR Loan and to avoid or reduce any increased or additional costs payable by Borrower under Section 2.2.3, including, if requested by Borrower, a transfer or assignment of the Loan to a branch, office or Affiliate of Lender in another jurisdiction, or a redesignation of its lending office with respect to the Loan, in order to maintain the availability of the LIBOR Loan or to avoid or reduce such increased or additional costs, provided that the transfer or assignment or redesignation (a) would not result in any material additional costs, expenses or risk to Lender that are not reimbursed by Borrower and (b) would not be disadvantageous in any other material respect to Lender as determined by Lender in its sole, but reasonable discretion.

**2.2.5 Default Rate.** In the event that, and for so long as, any Event of Default shall have occurred and be continuing, the outstanding principal balance of the Loan and, to the extent permitted by law, all accrued and unpaid interest in respect of the Loan and any other amounts due pursuant to the Loan Documents, shall accrue interest at the Default Rate, calculated from the date such payment was due without regard to any grace or cure periods contained herein.

**2.2.6 Usury Savings.** This Agreement, the Note and the other Loan Documents are subject to the express condition that at no time shall Borrower be obligated or required to pay interest on the principal balance of the Loan at a rate which could subject Lender to either civil or criminal liability as a result of being in excess of the Maximum Legal Rate. If, by the terms of this Agreement or the other Loan Documents, Borrower is at any time required or obligated to pay interest on the principal balance due hereunder at a rate in excess of the Maximum Legal Rate, the Applicable Interest Rate or the Default Rate, as the case may be, shall be deemed to be immediately reduced to the Maximum Legal Rate and all previous payments in excess of the Maximum Legal Rate shall be deemed to have been payments in reduction of principal and not on account of the interest due hereunder. All sums paid or agreed to be paid to Lender for the use, forbearance, or detention of the sums due under the Loan, shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Loan until payment in full so that the rate or amount of interest on account of the Loan does not exceed the Maximum Legal Rate of interest from time to time in effect and applicable to the Loan for so long as the Loan is outstanding.

**2.2.7 Interest Rate Cap Agreement.** (a) On or prior to 5:00 p.m. (New York time) on the Closing Date, Borrower shall enter into an Interest Rate Cap Agreement with a LIBOR strike price equal to the required Strike Price. The Interest Rate Cap Agreement (i) shall be in a form and substance reasonably acceptable to Lender, (ii) shall be with an Acceptable Counterparty, (iii) shall direct such Acceptable Counterparty to deposit directly with Lender (or into an account or otherwise as directed by Lender) any amounts due Borrower under such Interest Rate Cap Agreement unless and until otherwise instructed by Lender (it being agreed as between Lender and Borrower that Lender will so instruct the Counterparty at such time as the Debt shall no longer exist, provided that the Debt shall be deemed to exist if the Collateral is transferred by secured party sale or otherwise), (iv) shall be for a period equal to the initial term of the Loan and (v) shall have an initial notional amount equal to the principal balance of the Loan. Borrower shall collaterally assign to Lender, pursuant to the Collateral Assignment of Interest Rate Cap Agreement, all of its right, title and interest to receive any and all payments under the Interest Rate Cap Agreement, and shall deliver to Lender an executed counterpart of such Interest Rate Cap Agreement (which shall, by its terms, authorize the assignment to Lender and require that payments be paid directly into an account pledged to Lender as provided above in this Section 2.2.7). Provided no Event of Default has occurred and is continuing, amounts contained in the foregoing pledged account shall be released to Borrower on a monthly basis to the extent not applied toward debt service on the Loan.

(b) Borrower shall comply with all of its obligations under the terms and provisions of the Interest Rate Cap Agreement. All amounts paid by the Counterparty under the Interest Rate Cap Agreement to Borrower or Lender shall be paid to Lender (or into an account or otherwise as directed by Lender). Borrower shall take all actions reasonably requested by

Lender to enforce Lender's rights under the Interest Rate Cap Agreement in the event of a default by the Counterparty and shall not waive, amend or otherwise modify any of its rights thereunder.

(c) In the event of any downgrade, withdrawal or qualification of the rating of the Counterparty by S&P or Moody's to below the ratings set forth in the definition of "Acceptable Counterparty", Borrower (i) shall replace the Interest Rate Cap Agreement with a Replacement Interest Rate Cap Agreement (or cause the Counterparty or an Affiliate thereof to post collateral acceptable to Lender and the Rating Agencies) not more than fifteen (15) Business Days following receipt of notice of such downgrade, withdrawal or qualification (and meeting the requirements set forth in this [Section 2.2.7](#)) from an Acceptable Counterparty, (ii) if a new cap is provided to Lender, then if requested by Lender shall provide to Lender an opinion of counsel to such Acceptable Counterparty in the form and containing the substance of the form of opinion set forth in [Exhibit A](#) to the Mortgage Loan Agreement (which such changes as shall be reasonably approved by Lender), and (iii) shall collaterally assign to Lender, pursuant to an assignment in the form of the Collateral Assignment of Interest Rate Cap Agreement, all of its right, title and interest to receive any and all payments under the Replacement Interest Rate Cap Agreement.

(d) In the event that Borrower fails to purchase and deliver to Lender the Interest Rate Cap Agreement or fails to maintain the Interest Rate Cap Agreement in accordance with the terms and provisions of this Agreement, Lender may purchase the Interest Rate Cap Agreement and the cost incurred by Lender in purchasing such Interest Rate Cap Agreement shall be paid by Borrower to Lender with interest thereon at the Default Rate from the date such cost was incurred by Lender until such cost is reimbursed by Borrower to Lender.

(e) In connection with any Interest Rate Cap Agreement provided to Lender as herein required, if requested by Lender, Borrower shall obtain and deliver to Lender an opinion from counsel (which counsel may be in-house counsel for the Counterparty) for the Counterparty (upon which Lender and its successors and assigns may rely) in the form and containing the substance of the form of opinion set forth in [Exhibit A](#) of the Mortgage Loan Agreement (which such changes as shall be reasonably approved by Lender).

(f) In connection with any prepayment of the Loan, provided no Event of Default shall have occurred and be continuing, Borrower may reduce the amount of any Interest Rate Cap Agreement (so that the same shall be in an initial notional amount equal to the principal balance of the Loan following such prepayment), provided that such reduction shall not affect any of the other terms of the Interest Rate Cap Agreement or the Collateral Assignment of Interest Rate Cap Agreement (or Lender's rights in respect thereof).

### **Section 2.3. Loan Payment.**

**2.3.1 Payments Generally.** Borrower shall make a payment to Lender of interest only on the Closing Date for the initial Interest Period. On the date hereof, Borrower shall make a payment to Lender of interest accruing hereunder during the period from the Closing Date up to and including the initial Interest Period, calculated in the manner set forth herein, and on the Payment Date occurring in March 2008 and on each Payment Date thereafter

to and including the Maturity Date, Borrower shall make a payment to Lender of interest accruing hereunder during the entire Interest Period in which such Payment Date occurs, calculated in the manner set forth herein. All amounts due pursuant to this Agreement and the other Loan Documents shall be payable without setoff, counterclaim, defense or any other deduction whatsoever. Each payment shall be applied *pro rata* and *pari passu* (a) first to accrued and unpaid interest on all of the Notes and (b) the balance shall be applied to principal of all the Notes.

**2.3.2 Payment on Maturity Date.** Borrower shall pay to Lender on the Maturity Date the outstanding principal balance of the Loan, all accrued and unpaid interest and all other amounts due hereunder and under the Note, the Pledge Agreement and the other Loan Documents, including, without limitation, all interest that would accrue on the outstanding principal balance of the Loan through and including the end of the Interest Period in which the Maturity Date occurs (even if such Interest Period extends beyond the Maturity Date).

**2.3.3 Late Payment Charge.** If any principal, interest or any other sums due under the Loan Documents, other than the payment of principal due on the Maturity Date, is not paid by Borrower by the date on which it is due, Borrower shall pay to Lender upon demand an amount equal to the lesser of one percent (1%) of such unpaid sum or the maximum amount permitted by applicable law in order to defray the expense incurred by Lender in handling and processing such delinquent payment and to compensate Lender for the loss of the use of such delinquent payment; provided, however that, except with respect to the payment of any monthly Debt Service payments with respect to which no notice or demand shall be required, no such late payment charge shall be due unless such payment of principal, interest or other sum shall be delinquent for more than five (5) Business Days following the date of demand therefor. Any such amount shall be secured by the Pledge Agreement and the other Loan Documents to the extent permitted by applicable law.

**2.3.4 Method and Place of Payment.** Except as otherwise specifically provided herein, all payments and prepayments under this Agreement and the Note shall be made to Lender not later than 3:00 P.M., New York City time, on the date when due and shall be made in lawful money of the United States of America in immediately available funds at Lender's office or as otherwise directed by Lender, and any funds received by Lender after such time shall, for all purposes hereof, be deemed to have been paid on the next succeeding Business Day.

#### **Section 2.4. Prepayments.**

**2.4.1 Voluntary Prepayments.** Borrower may, at its option, prepay the Debt in whole or in part, provided, the following conditions are satisfied:

(a) No Event of Default shall have occurred and be continuing (unless, in the case of a prepayment upon the release of an Individual Property, the Event of Default relates solely to such Individual Property and therefore would be fully cured by the release of such Individual Property);

(b) Borrower shall provide prior written notice to Lender specifying the date upon which the prepayment is to be made (the "**Prepayment Date**"), which notice shall be

delivered to Lender not less than ten (10) days prior to such Prepayment Date, and which notice shall be irrevocable (or such shorter period of time as may be permitted by Lender in its sole discretion) (Lender hereby agreeing that Borrower may revoke any notice of prepayment up until the date that is one (1) Business Day prior to the proposed Prepayment Date (provided that Borrower shall be required to pay Lender, promptly upon demand, any actual, out-of-pocket expenses incurred by Lender resulting from any such revocation));

(c) each such prepayment, in the case of partial prepayments, shall be in an amount not less than Five Million and no/100 Dollars (\$5,000,000.00), unless the outstanding principal balance of the Loan (prior to such prepayment) shall be less than Five Million and no/100 Dollars (\$5,000,000.00), in which event the amount of the prepayment shall be in such amount as shall prepay the Debt and all other amounts due in connection therewith in full, as more fully provided herein;

(d) if such prepayment is made on or prior to the Payment Date occurring in the Interest Period in which such prepayment was made, then, in connection with such prepayment Borrower shall pay to Lender, simultaneously with such prepayment, all interest on the principal balance of the Note then being prepaid which would have accrued through the end of the Interest Period then in effect notwithstanding that such Interest Period extends beyond the Prepayment Date;

(e) if such prepayment is made after a Payment Date occurring in the Interest Period in which such prepayment was made, but prior to the last two (2) Business Days in such Interest Period, Borrower shall make such prepayment without paying any interest thereon (Borrower having already paid interest on such amount on the Payment Date occurring in such Interest Period);

(f) if such prepayment is made on either of the last two (2) Business Days in an Interest Period, Borrower will pay to Lender, simultaneously with such prepayment, interest on the principal amount of the Loan prepaid through the last day of the Interest Period immediately following the Interest Period in which such prepayment occurs, calculated at the Applicable Interest Rate;

(g) if such prepayment is a prepayment of the Loan in full, Lender shall have received a written consent to the repayment from the lender under each Other Mezzanine Loan (and, if any, a Permitted Mezzanine Loan) or receipt by Lender of other evidence satisfactory to Lender that all conditions imposed under the terms of each Other Mezzanine Loan and Permitted Mezzanine Loan shall have been complied with by the borrower thereunder or otherwise waived by the applicable lender, including the simultaneous pro rata prepayment of each Other Mezzanine Loan and Permitted Mezzanine Loan if required thereunder; and

(h) if such prepayment is made on or prior to the Spread Maintenance Outside Date, then in connection with any such prepayment, Borrower shall pay to Lender, simultaneously with such prepayment, the Spread Maintenance Premium in respect of such prepayment.

Any prepayment received by Lender on other than a Payment Date (but not any amount received between a Payment Date and the second to last Business Day in an Interest Period) shall be held by Lender in an interest-bearing account as collateral security for the Loan and shall be applied to the Debt on the next occurring Payment Date (with all interest and other income earned on such amount being for the account of Borrower and being remitted by Lender to Borrower promptly following such next Payment Date). Any prepayment made pursuant to this Section 2.4.1 shall be applied *pro rata* and *pari passu* (a) first to accrued and unpaid interest on all of the Notes and (b) the balance shall be applied to principal of all the Notes. Lender agrees that it shall provide a written consent to the repayment of the Loan upon satisfaction of the conditions set forth in clauses (a) through (f) and clause (h) of this Section 2.4.1.

**2.4.2 Mandatory Prepayments from Net Proceeds.** (a) On the next occurring Payment Date following the date on which Lender actually receives any Net Proceeds, if Lender is not obligated to make such Net Proceeds available to Borrower for the Restoration of any Individual Property, Borrower shall prepay, or authorize Lender to apply Net Proceeds as a prepayment of, the outstanding principal balance of the Note in an amount equal to, (x) if no Event of Default shall have occurred and be continuing, the product of (i) a fraction, the numerator of which is outstanding principal amount of the Loan and the denominator is the outstanding principal amount of the Mortgage Loan, the Loan and the Other Mezzanine Loans times (ii) the Net Proceeds, together with interest accruing on such amount calculated through and including the end of the Interest Period in which such Payment Date occurs (with the balance of the Net Proceeds to be paid over to Borrower, and (y) if an Event of Default shall have occurred and be continuing, 100% of the Net Proceeds. No Spread Maintenance Premium shall be due in connection with any prepayment made pursuant to this Section 2.4.2(a). Any prepayment received by Lender pursuant to this Section 2.4.2(a) on a date other than a Payment Date shall be held by Lender as collateral security for the Loan in an interest bearing account, with such interest accruing to the benefit of Borrower, and shall be applied by Lender on the next Payment Date. Following the prepayment made as described in this Section 2.4.2(a), the Allocated Loan Amount for the affected Individual Property, as set forth in this Agreement, shall be reduced in an amount equal to such prepayment. Any prepayment of the Notes made pursuant to this Section 2.4.2(a) shall be applied *pro rata* and *pari passu* (a) first to accrued and unpaid interest on all of the Notes and (b) the balance shall be applied to principal of all the Notes.

(b) In the event of (i) a Transfer of any Individual Property or any Senior Mezzanine Collateral in connection with the realization thereon following a Mortgage Loan Default or a Senior Mezzanine Loan Default, as applicable, (ii) any refinancing of any Individual Property, any Senior Mezzanine Collateral, any Senior Mezzanine Loan or the Mortgage Loan, or (iii) the receipt by Mortgage Borrower of any excess proceeds realized under its owner's title insurance policy after application of such proceeds by Mortgage Borrower to cure any title defect (each, a "**Liquidation Event**"), Borrower shall cause the related Net Liquidation Proceeds After Debt Service to be remitted directly to Lender (or as directed by Lender). On each date on which Lender actually receives a distribution of Net Liquidation Proceeds After Debt Service, Borrower shall prepay the outstanding principal balance of the Note in an amount equal to one hundred percent (100%) of such Net Liquidation Proceeds After Debt Service, together with interest accruing on such amount calculated through and including the end of the Interest Period in which such payment occurs. Any amounts of Net Liquidation Proceeds After Debt Service in

excess of the Debt shall be paid to Borrower. Any prepayment received by Lender pursuant to this Section 2.4.2(b) on a date other than a Payment Date shall be held by Lender as collateral security for the Loan in an interest bearing account, with such interest accruing to the benefit of Borrower, and shall be applied by Lender on the next Payment Date. A Spread Maintenance Premium or fee may be due in connection with any prepayment made pursuant to this Section 2.4.2(b) if made prior to the Spread Maintenance Outside Date. Following the prepayment made as described in this Section 2.4.2(b), the Allocated Loan Amount for the affected Individual Property, as set forth in this Agreement, shall be reduced in an amount equal to such prepayment. Any prepayment of the Notes made pursuant to this Section 2.4.2(b) shall be applied *pro rata* and *pari passu* (a) first to accrued and unpaid interest on all of the Notes and (b) the balance shall be applied to principal of all the Notes.

(c) Borrower shall immediately notify Lender of any Liquidation Event once Borrower has knowledge of such event. Borrower shall be deemed to have knowledge of (i) a sale (other than a foreclosure sale) of any Individual Property on the date on which a contract of sale for such sale is entered into, and a foreclosure sale, on the date notice of such foreclosure sale is given, and (ii) a refinancing of any Individual Property, on the date on which a commitment for such refinancing has been entered into. The provisions of this Section 2.4.2(c) shall not be construed to contravene in any manner the restrictions and other provisions regarding refinancing of the Mortgage Loan or Transfer of any Individual Property set forth in this Agreement, the other Loan Documents and the Mortgage Loan Documents.

**2.4.3 Prepayments After Default.** If, following the occurrence and during the continuance of an Event of Default, payment of all or any part of the Debt is tendered by Borrower or any other Person and accepted by Lender or otherwise recovered by Lender (including through application of any Reserve Funds), Borrower shall pay to Lender, in addition to the outstanding principal balance, (a) all accrued and unpaid interest at the Default Rate (including, without limitation, (i) in the event that such prepayment is received on a Payment Date or on any date in any Interest Period prior to a Payment Date, interest accruing (at the Default Rate) on such amount calculated through and including the end of the Interest Period in which such payment occurs, or (ii) in the event that such prepayment is received on a date after a Payment Date up to (and including) the last day of the Interest Period in which such Payment Date occurs, interest accruing (at the Default Rate) on such amount calculated through and including the end of the Interest Period in which the next Payment Date occurs, (b) the Spread Maintenance Premium, if such prepayment is made prior to the Spread Maintenance Outside Date, and (c) any and all other amounts payable under the Loan Documents. Any payment under this Section 2.4.3 shall be applied in such order, priority and proportions as Lender may direct in its sole and absolute discretion.

**Section 2.5. Release of Collateral.** Except as set forth in this Section 2.5, no repayment or prepayment of all or any portion of the Note shall cause, give rise to a right to require, or otherwise result in, the release or assignment of any Lien of the Pledge Agreement on the Collateral.

**2.5.1 Release of Individual Property.** Concurrently with the release of an Individual Property from the Lien of the Mortgage (and related Mortgage Loan Documents) pursuant to Section 2.5.1 of the Mortgage Loan Agreement (a “**Release**” and such Individual

Property, a “**Release Property**”), Borrower may obtain the release of the related Individual Borrower with an indirect ownership interest in such Individual Property (a “**Release Borrower**”) and such Release Borrower’s obligations under the Loan Documents with respect to the Release Property (other than those expressly stated to survive), upon the satisfaction of each of the following conditions:

(a) No Event of Default shall have occurred and be continuing (unless, in the case of a prepayment upon the release of an Individual Property, the Event of Default relates solely to such Individual Property and therefore would be fully cured by the release of such Individual Property);

(b) Borrower shall submit to Lender, not less than ten (10) Business Days prior to the date of such release, a release of Lien of the Pledge Agreement (and related Loan Documents), only with respect to such Release Borrower, for execution by Lender. Such release shall contain standard provisions, if any, protecting the rights of the releasing lender;

(c) After giving effect to such release, the Debt Service Coverage Ratio for the Properties then remaining subject to the Liens of the Mortgages (including giving pro forma effect to the payment of the Release Price and any additional prepayment(s) made by Borrower in connection with such release) shall be equal to or greater than the greatest of (i) the Debt Service Coverage Ratio for the twelve (12) full calendar months immediately preceding the release of the Individual Property (assuming the contemplated release had not occurred, i.e., for all Properties subject to the Liens of the Mortgage prior to the proposed release), (ii) 90% of the Debt Service Coverage Ratio as of the Closing Date, and (iii) 1.0;

(d) (i) The Individual Property to be released shall be conveyed to a Person other than a Mortgage Borrower or Mezzanine Borrower, and other than to an Affiliate of Mortgage Borrower unless, in the latter case, such Affiliate is refinancing the Loan with a construction or development loan (or repaying the Loan with equity contributions to such Affiliate) and (ii) it is such Affiliate’s immediate intention to materially redevelop such Individual Property, which loan (or equity contribution) and intention shall be described in reasonable detail and represented to in an Officer’s Certificate submitted to Lender concurrently with (or prior to) the materials described in clause (b) of this Section 2.5.1;

(e) Lender shall have received a wire transfer of immediately available federal funds in an amount equal to the Release Price for the applicable Individual Property, together with (i) all accrued and unpaid interest calculated at the Applicable Interest Rate on the amount of principal being prepaid as provided in Sections 2.4.1(d) or (e), as applicable, (ii) the Spread Maintenance Premium, if applicable and (iii) all other sums due under this Agreement, the Note or the other Loan Documents in connection with a partial prepayment;

(f) Lender shall have received a written consent to the transfer from the lender under the Mortgage Loan and each of the Other Mezzanine Loans (and, if any, a Permitted Mezzanine Loan) or receipt by Lender of other evidence satisfactory to Lender that all conditions imposed under the terms of the Mortgage Loan, each of the Other Mezzanine Loans and Permitted Mezzanine Loan shall have been complied with by the borrower thereunder or otherwise waived by the applicable lender, including the simultaneous pro rata prepayment of

each Mortgage Loan, the Other Mezzanine Loans and Permitted Mezzanine Loan if required thereunder; and

(g) Lender shall have received payment of all Lender's reasonable out-of-pocket costs and expenses, including reasonable counsel fees and disbursements incurred in connection with the release of the Individual Property and or Release Borrower from the lien of the Pledge Agreement and the review and approval of the documents and information required to be delivered in connection therewith. Lender acknowledges that it shall not charge any fee (other than costs and expenses, as provided in the preceding sentence) in connection with the release of an Individual Property or Release Borrower.

Lender agrees that it shall provide a written consent to the transfer upon satisfaction of the conditions set forth in clauses (a) through (e) and clause (g) of this Section 2.5.1.

**2.5.2 Release of Convention Center Parcel; Property Swap.** At any time after the date hereof, Mortgage Borrower may obtain the release of the Convention Center Parcel pursuant to the Mortgage Loan Agreement, without the payment of a Release Price and upon the satisfaction by Borrower of each of the following conditions:

(a) No Event of Default shall have occurred and be continuing (unless, in the case of a release of the Convention Center Parcel, the Event of Default relates solely to such parcel and therefore would be fully cured by the release of the Convention Center Parcel);

(b) The Convention Center Parcel shall be conveyed to a Person other than a Mortgage Borrower or any Mezzanine Borrower;

(c) Mortgage Borrower will enter into a restrictive covenant agreement, restricting the use of the Convention Center Parcel to the development of a Convention Center and ancillary uses which agreement shall be in form and substance reasonably satisfactory to Lender;

(d) Prior to the transfer and release of the Convention Center Parcel, each applicable municipal authority exercising jurisdiction over the Convention Center Parcel shall have approved, a lot-split ordinance or other applicable action under local law dividing the Convention Center Parcel from the remainder of the Harrah's Atlantic City Property, and a separate tax identification number has been issued for the Convention Center Parcel (with the result that, upon the transfer and release of the Convention Center Parcel, no part of the remaining Harrah's Atlantic City Property shall be part of a tax lot which includes any portion of the Convention Center Parcel);

(e) All requirements under all laws, statutes, rules and regulations (including, without limitation, all zoning and subdivision laws, setback requirements, sideline requirements, parking ratio requirements, use requirements, building and fire code requirements, environmental requirements and wetlands requirements) applicable to the Harrah's Atlantic City Property necessary to accomplish the lot split shall have been fulfilled, and all necessary variances, if any, shall have been obtained, and Borrower shall have delivered to Lender either (1) letters or other evidence from the appropriate municipal authorities confirming such compliance with laws, or

(2) a zoning report or legal opinion confirming such compliance with laws, in each case in substance reasonably satisfactory to Lender;

(f) As a result of the lot split, the remaining Harrah's Atlantic City Property with all easements appurtenant and other Permitted Encumbrances thereto will not be in violation of any then applicable law, statute, rule or regulation (including, without limitation, all zoning and subdivision laws, setback requirements, sideline requirements, parking ratio requirements, use requirements, building and fire code requirements, environmental requirements and wetland requirements) and all necessary variances, if any, shall have been obtained and evidence thereof has been delivered to Lender which in form and substance is appropriate for the jurisdiction in which the Harrah's Atlantic City Property is located;

(g) If reasonably necessary, appropriate reciprocal easement agreements for the benefit and burden of the remaining Harrah's Atlantic City Property and the Convention Center Parcel requiring no cost or expense to Mortgage Borrower regarding the use of common facilities of such parcels, including, but not limited to, roadways, parking areas, utilities and community facilities, in a form and substance that would be reasonably acceptable to an ordinary prudent lender and which easements will not materially adversely affect the remaining Harrah's Atlantic City Property, shall be declared and recorded, and the remaining Harrah's Atlantic City Property and the Convention Center Parcel shall be in compliance with all applicable covenants under all easements and property agreements contained in the Permitted Encumbrances for the Harrah's Atlantic City Property;

(h) Borrower has delivered an Officer's Certificate to the effect that, to such officer's knowledge after diligent inquiry, the conditions in subsection (a)-(g) hereof have occurred or shall occur concurrently with the transfer and release of the Convention Center Parcel;

(i) Borrower shall execute such documents and instruments and obtain such opinions of counsel as are typical for similar transactions;

(j) Lender shall have received payment of all Lender's reasonable out-of-pocket costs and expenses, including reasonable counsel fees and disbursements incurred in connection with the review and approval of the documents and information required to be delivered in connection with the release of the Convention Center Parcel from the Lien of the related Mortgage. Lender acknowledges that it shall not charge any fee (other than costs and expenses, as provided in the preceding sentence) in connection with the release of the Convention Center Parcel;

(k) Lender shall have received evidence reasonably satisfactory to it that Mortgage Borrower and each Other Mezzanine Borrower shall have satisfied all of the conditions to the proposed Release set forth in the Mortgage Loan Agreement and each Other Mezzanine Loan Agreement, as applicable; and

(l) There shall be no release of any portion of the Lien of the Pledge Agreement in connection with this Section 2.5.2.

Borrower agrees that it shall promptly use all reasonable best efforts to substitute, and Lender agrees (subject to the terms set forth below in this paragraph) that it shall accept the substitution of, the properties commonly known as “Paris Las Vegas” and “Harrah’s Laughlin” for the Individual Properties referred to as “Harrah’s Lake Tahoe”, “Harvey’s Lake Tahoe”, “Bill’s Lake Tahoe”, and “Showboat Atlantic City” and the portion of the Flaming Las Vegas Property known as O’Shea’s in a reasonably satisfactory manner, provided that Lender’s obligation to accept such substitution shall be conditioned on the following:

(i) that no Event of Default shall exist, either before or after giving effect to such substitution (unless such Event of Default would be fully cured by the substitution);

(ii) the satisfaction, with respect to both “Paris Las Vegas” and “Harrah’s Laughlin”, of the closing conditions set forth in Article III hereof and of the Mortgage Loan Agreement, except that references therein to the Closing Date shall be to the date of such substitution;

(iii) delivery of such agreements, instruments, title insurance policies, surveys, resolutions, certificates and opinions (including, without limitation, substitute notes, amendments to the Loan Documents (including amendments to adjust the Allocated Loan Amounts, the EBITDAR (Closing Date) and any other items that need to be adjusted to reflect the substitution), the Operating Lease, the Operating Lease Guaranty and the Windstorm Insurance Intercreditor Agreement, an appropriate subdivision and a reciprocal easement agreement in respect of “O’Shea’s”, written assurances that the substitution will have no negative effects on the existing Title Policies, updated “tie-in” endorsements for the Title Policies, an Additional True Lease Opinion and an Additional Insolvency Opinion), in each case as are reasonably required by Lender in connection with such substitution;

(iv) with respect to the release of O’Shea’s, delivery of evidence reasonably satisfactory to Lender that such release will not have either an Individual Material Adverse Effect on the remainder of the Flamingo Las Vegas Property or an Aggregate Material Adverse Effect (it being understood that, for purposes of such determinations, O’Shea’s shall be deemed to have closed as of the Closing Date and to have no value) and that the remainder of the Flamingo Las Vegas Property satisfies the conditions set forth in Sections 3.1.3(b), (c) and (f) of the Mortgage Loan Agreement and the representations and warranties set forth in Sections 4.1.4, 4.1.16, 4.1.22, 4.1.39 and 4.1.40 of the Mortgage Loan Agreement shall continue to be true and complete with respect to the remainder of the Flamingo Las Vegas Property, and satisfaction of conditions similar to those set forth in clauses (c), (d), (e), (f), (g) and (h) of Section 3.1.3 hereof, as applicable, with respect to O’Shea’s;

(v) the satisfaction, with respect to “Harrah’s Lake Tahoe”, “Harvey’s Lake Tahoe”, “Bill’s Lake Tahoe”, “Showboat Atlantic City” and O’Shea’s, of the conditions set forth above in Section 2.5.1(b) and (f) with respect to released Individual Properties to the extent applicable;

(vi) the conveyance of “Harrah’s Lake Tahoe”, “Harvey’s Lake Tahoe”, “Bill’s Lake Tahoe”, “Showboat Atlantic City” and O’Shea’s to a Person other than a Mortgage Borrower or Mezzanine Borrower;

(vii) unless otherwise extended by Lender, the substitution shall be completed on or prior to May 28, 2008;

(viii) the payment by Borrower of all Lender’s reasonable out-of-pocket costs and expenses in connection with the substitution contemplated by this paragraph, including reasonable counsel fees and disbursements, up to an aggregate amount of \$300,000, it being acknowledged that costs incurred to obtain title insurance and surveys in respect of the substituted properties shall be paid by Borrower directly and shall not be taken into account for purposes of the foregoing limitation on the reimbursement of Lender’s expenses.

Lender acknowledges that it shall not charge any fee (other than costs and expenses, as provided in the preceding sentence) in connection with the release of an Individual Property in accordance with this paragraph. In addition, if all of “Harrah’s Lake Tahoe”, “Harvey’s Lake Tahoe”, “Bill’s Lake Tahoe” and “Showboat Atlantic City” can be transferred from Mortgage Borrower as contemplated above, but O’Shea’s cannot (including by reason of an inability to get a separate gaming license for O’Shea’s independent of the “Flamingo Las Vegas”), then Borrower shall cause Mortgage Borrower to nevertheless proceed to consummate the swap without transferring O’Shea’s (subject to Borrower’s ongoing right to obtain the release of O’Shea’s from the Lien of the Mortgage in accordance with the following sentence). Upon the satisfaction of such conditions set forth above in this paragraph (including clauses (i) through (viii) hereof), Borrower will have the right to choose between an immediate release of O’Shea’s from the Lien of the Mortgage on the date of the swap or a free release subsequent to the date of the swap without conditions (in either case, subject to the conditions set forth above in this Section 2.5.2), except that the limitation on Borrower’s payment of Lender’s costs and expenses set forth in clause (viii) above shall not apply to any such costs and expenses incurred by Lender in connection with such release), and, pending such release, EBITDAR shall be computed without regard to O’Shea’s; provided further, the Operating Company in respect of the “Flamingo Las Vegas” Individual Property, both before and after such release, shall be permitted to provide management and other similar services for O’Shea’s and shall be reimbursed for the allocable share of expenses attributable to O’Shea’s.

**2.5.3 Release on Payment in Full.** Lender shall, upon the written request and at the expense of Borrower, upon payment in full of all principal and interest due on the Loan and all other amounts due and payable under the Loan Documents in accordance with the terms and provisions of the Note and this Agreement, release the Lien of the Pledge Agreement on the Collateral.

## **Section 2.6. Cash Management.**

### **2.6.1 Establishment of Collection Accounts.**

(a) In accordance with the provisions of the Operating Lease, (i) Operating Company will establish within thirty (30) days after the Closing Date) and will maintain for the benefit of Mortgage Borrower, as lessor under the Operating Lease, the Collection Accounts with Collection Banks throughout the term of the Mortgage Loan and (ii) the rights of Mortgage Borrower (as landlord) under the Operating Lease will be collaterally assigned to Mortgage Lender within such 30-day period. All Revenues, other than amounts retained on-site by each Operating Company as a Gaming Operating Reserve and amounts collected and maintained in Off-Shore Accounts, will be deposited in the Collection Accounts.

(b) Borrower hereby represents and warrants as follows: when established, the Collection Accounts will be the only accounts maintained by Operating Company in any jurisdiction that include funds arising out of, or are otherwise attributable to, the Properties or relate to the operation and management of any of the Properties other than accounts (collectively, the "OC Accounts") that contain amounts theretofore released from Collection Accounts in accordance herewith, and other than Off-Shore Accounts, which shall not be subject to this Agreement; and neither Borrower nor Mortgage Borrower maintains any accounts that include funds arising out of, or are otherwise attributable to, any of the Properties or relate to the operation and management of any of the Properties or otherwise (except for accounts containing funds released from the Collection Accounts as herein provided and the Off-Shore Accounts). None of Mortgage Borrower, Senior Mezzanine Borrower, Borrower or Operating Company may (and Borrower shall not permit Mortgage Borrower, Senior Mezzanine Borrower or Operating Company to), without the prior consent of Lender (not to be unreasonably withheld, conditioned or delayed), open any accounts or new accounts or in any way alter the flow of funds and payment into such Collection Accounts, including, without limitation, changing the source, type or currency of any payments currently deposited and maintained in any such account (it being understood that the foregoing restriction shall not preclude Operating Company, Mortgage Borrower, Senior Mezzanine Borrower or Borrower from accepting and depositing in any Collection Accounts any capital contributions, or any disbursements from any Collection Accounts in accordance with the provisions of the Mortgage Loan Agreement, this Agreement and the Senior Mezzanine Loan Agreements. None of Mortgage Borrower, Senior Mezzanine Borrower, Borrower or Operating Company may (and Borrower shall not permit Mortgage Borrower, Senior Mezzanine Borrower, or Operating Company to), without the prior consent of Lender (not to be unreasonably withheld, conditioned or delayed), establish and maintain any accounts with financial institutions outside of the United States of America, other than the Off-Shore Accounts.

(c) Borrower shall cause Mortgage Borrower, Senior Mezzanine Borrower and Operating Company to comply with Section 2.6.1 of the Mortgage Loan Agreement and Senior Mezzanine Loan Agreement (as applicable) in all respects.

(d) Borrower hereby agrees that in the event that (i) the Mortgage Loan Documents require Mortgage Borrower and/or Operating Company to maintain the Collection Accounts, but (due to repayment of the Mortgage Loan, waiver of the requirement by Mortgage Lender, or otherwise) the Collection Accounts are not being maintained and (ii) the Collection Accounts are not being maintained under Section 2.6.1(d) of the Senior Mezzanine Loan Agreement, Borrower shall establish or cause the Operating Company to Borrower shall establish or cause the Operating Company to establish collection accounts substantially the same

as that required under the Mortgage Loan Documents (and shall otherwise comply with the provisions of Section 2.6.1 of the Mortgage Loan Documents, and grant to Lender security interests in such accounts for the benefit of Lender, as if such provisions were incorporated herein for the benefit of Lender). In addition, if Borrower is required to deposit amounts with Lender pursuant to Article VII hereof but (due to repayment of the Mortgage Loan, waiver of the requirement by Mortgage Lender, or otherwise) the Collection Accounts and Cash Management Account are not being maintained, Borrower shall establish collection accounts and a cash management account and system with Lender substantially the same as that required under the Mortgage Loan Documents (and shall otherwise comply with the provisions of Sections 2.6.1 and 2.6.2 of the Mortgage Loan Documents, and grant to Lender security interests in such accounts for the benefit of Lender, as if such provisions were incorporated herein for the benefit of Lender). In addition, if Mortgage Borrower is required to provide security or other collateral to the Mortgage Lender pursuant to the terms of the Mortgage Loan Agreement (excluding any mortgage lien on the Properties or assignment of leases and rents with respect to the Properties) but (due to repayment of the Mortgage Loan, waiver of the requirement by Mortgage Lender, or otherwise) such security or other collateral was not provided to Mortgage Lender, Borrower shall provide such security or other collateral to Lender in substantially the same form and amount as that required under the Mortgage Loan Documents.

**2.6.2 Disbursements from, Security Interest in, Collection Accounts.** The Operating Lease provides, among other things, that all Revenues shall be collaterally assigned by Operating Company to Mortgage Borrower as additional security for Operating Company's obligations under the Operating Lease and that Mortgage Borrower shall have the right to collaterally assign and pledge such Revenues to Lender as additional security for the Loan. In furtherance thereof, Lender and Borrower agree as follows:

(a) Except as otherwise provided in subparagraphs (b) and (c) hereof, all amounts collected in the Collection Accounts shall be transferred on each Business Day to (or as directed by) Operating Company for use or distribution by the Operating Company in its discretion free of any rights or encumbrances of Lender.

(b) Upon the occurrence and during the continuance of an Event of Default hereunder, under the Mortgage Loan Documents or under any of the Other Mezzanine Loan Documents, and provided no Event of Default (as such term is defined in the Operating Lease) shall have occurred and be continuing under any Operating Lease, Borrower shall cause Mortgage Borrower to direct and cause Collection Bank to deposit directly into the Cash Management Account, all Rent payable under the Operating Lease for the next thirty (30) days (it being the intent and agreement that, during the continuance of an Event of Default, the Cash Management Account shall at all times contain such amounts sufficient to cover the ensuing 30-day period), including the Monthly Tax and Insurance Amount, the Monthly Ground Rent Amount and Monthly FF&E Reserve Amount (the amounts described in the preceding sentence, collectively, the "**Monthly Disbursements**"); provided that, notwithstanding the foregoing, Lender may not apply such Monthly Disbursements to the payment of amounts due hereunder in an amount in excess of the amounts owed by the Operating Company under the Operating Lease. In the event Borrower shall have failed to cause Mortgage Borrower to so instruct Collection Bank, Lender shall have the right to so direct the Collection Bank on behalf of Mortgage Borrower. Any amounts not required to be so deposited into the Cash Management Account

shall be transferred on each Business Day thereafter to (or as directed by) Operating Company for use or distribution by the Operating Company in its discretion free of any rights or encumbrances of Lender. If no Event of Default has occurred and is continuing hereunder, to the extent Monthly Disbursements are not applied to the payment of amounts due hereunder, such excess shall be remitted to Borrower (or to an account designated by Borrower); provided that, notwithstanding the foregoing, Lender shall not remit any such amounts in excess of the amounts owed by the Operating Company under the Operating Lease. If an Event of Default has occurred and is continuing hereunder, to the extent Monthly Disbursements are not applied to the payment of amounts due hereunder, Lender shall have the right to retain the amount so remitted to the Collection Account as collateral for the Loan and/or apply such amount to the payment of the Debt.

(c) Upon the occurrence and during the continuance of an Event of Default (as such term is defined in the Operating Lease) under any Operating Lease, Borrower shall cause Mortgage Borrower to notify Collection Bank to transfer to the Cash Management Account on each Business Day in immediately available funds by federal wire transfer all amounts on deposit in each Collection Account and, in the event Mortgage Borrower shall have failed to do so, Mortgage Lender (or Lender in the event of Mortgage Lender's failure to so instruct) shall have the right to so direct the Collection Bank on behalf of Mortgage Borrower. Lender shall have the right to retain all amounts to be paid into the Cash Management Account in accordance with the first sentence of this Section 2.6.2(c) as collateral for the Loan and/or apply such excess to the payment of the Debt.

(d) Borrower and its Affiliates shall (and Borrower shall cause Operating Company to) execute and deliver such documents, instruments, certificates, assignments and other writings, and do such other acts necessary or desirable, to evidence, preserve and/or protect, maintain and perfect Lender's security interest in the Collection Accounts, if any.

**2.6.3 Cash Management Account.** (a) During the term of the Loan, Borrower shall cause Mortgage Borrower and Senior Mezzanine Borrower to comply with Section 2.6.3 of the Mortgage Loan Agreement and Senior Mezzanine Loan Agreement (as applicable) which may require the establishment of the Cash Management Account to be held by and in trust for the benefit of Mortgage Lender. All costs and expenses for establishing and maintaining the Cash Management Account shall be paid by Mortgage Borrower.

(b) Borrower shall not cause or permit Mortgage Borrower or Operating Company to further pledge, assign or grant any security interest in the Cash Management Account or the monies deposited therein or permit any lien or encumbrance to attach thereto, or any levy to be made thereon, or any UCC-1 Financing Statements, except those naming Mortgage Lender as the secured party, to be filed with respect thereto.

(c) Borrower hereby agrees that in the event that (i) the Mortgage Loan Documents require Mortgage Borrower and/or Operating Company to maintain the Cash Management Account, but (due to repayment of the Mortgage Loan, waiver of the requirement by Mortgage Lender, or otherwise) the Cash Management Account is not being maintained and (ii) the Cash Management Account is not being maintained under Section 2.6.3 of the Senior Mezzanine Loan Agreement, Borrower shall establish a cash management account and system

with Lender substantially the same as that required under the Mortgage Loan Documents. If Borrower is required to deposit amounts with Lender pursuant to Article VII hereof, Borrower shall establish a cash management account and system with Lender substantially the same as that required under the Mortgage Loan Documents (and shall otherwise comply with the provisions of Section 2.6.2 of the Mortgage Loan Documents, and grant to Lender security interests in such accounts for the benefit of Lender, as if such provisions were incorporated herein for the benefit of Lender).

**2.6.4 Mezzanine Collection Account.** (a) Lender or Servicer may establish and maintain, to collect all amounts distributed to Lender under Section 2.6.3 of the Mortgage Loan Agreement, a segregated Eligible Account (the “**Mezzanine Collection Account**”) to be held by Servicer in trust for the benefit of Lender, which Mezzanine Collection Account shall be under the sole dominion and control of Lender (which may be exercised through Servicer). Lender (and its agents, including Servicer) shall have the sole right to make withdrawals from the Mezzanine Collection Account in accordance with the terms and conditions of this Agreement and the other Loan Documents, except as otherwise expressly provided in this Agreement or the other Loan Documents. Borrower shall cause Senior Mezzanine Borrower to comply with Section 2.6.4 of the Senior Mezzanine Loan Agreements.

(b) Borrower hereby grants to Lender a first priority security interest in the Mezzanine Collection Account and all deposits at any time contained therein and the proceeds thereof and will take all actions necessary to maintain in favor of Lender a perfected first priority security interest in the Mezzanine Collection Account, including, without limitation, executing and filing UCC 1 Financing Statements and continuations thereof upon Lender’s request therefor. All costs and expenses for establishing and maintaining the Mezzanine Collection Account (and any sub account thereof) shall be at Borrower’s sole cost and expense.

(c) Borrower shall be responsible for payment of any federal, state or local income or other tax applicable to the interest or income earned on the Mezzanine Collection Account and any sub-account thereof. The Mezzanine Collection Account and any sub-account thereof shall be assigned the federal tax identification numbers of each Borrower set forth on Schedule I attached hereto. Borrower shall provide Lender, at any time upon request of Lender, with a Form W-8 or W-9 to evidence that Borrower is not subject to any back-up withholding under the Code.

(d) Upon the occurrence and during the continuance of an Event of Default, all funds on deposit in the Mezzanine Collection Account shall be applied by Lender in such order and priority as Lender shall determine.

(e) The insufficiency of funds on deposit in the Mezzanine Collection Account shall not relieve Borrower from the obligation to make any payments, as and when due pursuant to this Agreement and the other Loan Documents, and such obligations shall be separate and independent, and not conditioned on any event or circumstance whatsoever.

**Section 2.7. Intentionally Omitted.**

**Section 2.8. Permitted Mezzanine Loan.** Borrower shall have the one-time right, upon thirty (30) days prior written notice to Lender (the “**Permitted Mezzanine Loan Election**”), to obtain a loan (“**Permitted Mezzanine Loan**”) secured by a pledge of the ownership interests in the indirect owners of Borrower (above the level of the Ninth Mezzanine Borrower) provided that the following conditions precedent are satisfied:

(a) no Default or Event of Default shall have occurred and remains uncured;

(b) as of the date the Permitted Mezzanine Loan is advanced, the Permitted Mezzanine Debt Loan-to-Value Ratio for the Properties subject to the Lien of the Mortgage is equal to or less than eighty percent (80%);

(c) as of the date the Permitted Mezzanine Loan is advanced, Permitted Mezzanine DSCR for the four-quarter period preceding such date for the Properties then subject to the Lien of the Mortgage(s) is equal to or greater than 1.2 to 1.0;

(d) the Permitted Mezzanine Loan shall be evidenced by one (1) Loan, that may be advanced in multiple draws provided that Borrower complies with the requirements set forth in this Section 2.8 with respect to each draw;

(e) the Permitted Mezzanine Loan shall be issued by one (1) lender (the “**Permitted Mezzanine Loan Lender**”) which shall be an Institutional Lender; provided, however, that such single Lender that is an Institutional Lender may grant participations in such Permitted Mezzanine Loan or syndicate the Permitted Mezzanine Loan to multiple lenders so long as at least fifty-one percent (51%) of such participants and syndicate lenders are Institutional Lenders and, in addition, so long a single lender serves as agent with respect to all approvals, consents and other matters relating to the Permitted Mezzanine Loan;

(f) the Permitted Mezzanine Loan shall have the same maturity date as the Maturity Date under the Loan, or a maturity date extending beyond the Maturity Date under the Loan;

(g) the Permitted Mezzanine Loan (including all of the terms, provisions and conditions of the Permitted Mezzanine Loan, including, without limitation, the loan documents evidencing and securing the Permitted Mezzanine Loan (“**Permitted Mezzanine Loan Documents**”)) shall be acceptable to Lender in its reasonable discretion (it being agreed that with respect (only) to Lender’s approval of the form of loan documents that loan documents in substantially the same form as the Ninth Mezzanine Loan Documents, appropriately modified to reflect subordination to the Mezzanine Loans still outstanding, shall be deemed to be acceptable);

(h) the Permitted Mezzanine Loan Lender shall enter into a co-lender or intercreditor agreement substantially on the standard CMSA form (or the form entered into by Lender, Other Mezzanine Lenders and Mortgage Lender in connection with the closing of the Loan) or in form and substance reasonably acceptable to Lender, acknowledging the subordination of the Permitted Mezzanine Loan in all respects to each of the Mezzanine Loans and the Mortgage Loan (and Lender agrees to enter into such co-lender or intercreditor agreement upon request);

(i) the Permitted Mezzanine Loan shall be a fixed rate loan, or a floating rate loan containing an interest rate that is capped at an amount that satisfies the debt service coverage ratio requirement set forth in subparagraph (c) above, with interest due and payable monthly (i.e., interest does not accrue) and such interest rate shall not be subject to adjustment except after an event of default (Borrower agreeing to cause the purchase of an interest rate cap to reflect the foregoing);

(j) if requested by Lender, Borrower shall execute amendments to the Loan Documents reasonably requested by Lender, to reflect the existence of such Permitted Mezzanine Loan, provided that any such amendments or agreements will not alter the payment terms of the Loan set forth in this Agreement or the other Loan Documents or materially and adversely affect Borrower or impose additional material obligations or liabilities upon Borrower;

(k) if required by Lender, Borrower shall deliver (i) Additional Insolvency Opinions and, if the Loan Documents are amended pursuant to Section 2.8(k), opinions regarding due execution and enforceability with respect to the Properties, Mortgage Borrower, Mezzanine Borrowers, Holdings, Guarantor and their respective Affiliates and the Loan Documents, and such related matters as Lender shall reasonably require, and (ii) revised organizational documents for Borrower, which opinions and organizational documents shall be reasonably satisfactory to Lender;

(l) all necessary or appropriate governmental or other third party consents (including any approvals, notices, filings or other actions under or pursuant to the Gaming Laws or other Legal Requirements) required to be obtained or taken by Borrower, Mortgage Borrower, any Mezzanine Borrower or the Permitted Mezzanine Borrower for the execution, delivery and performance by the Permitted Mezzanine Borrower of the Permitted Mezzanine Loan shall have been obtained or taken; and

(m) all reasonable out-of-pocket costs and expenses (including reasonable attorneys' fees and expenses) incurred by Lender in connection with this Section 2.8 shall be paid by Borrower (but no approval or consent fees shall be payable in connection therewith).

### III. CONDITIONS PRECEDENT

**Section 3.1. Conditions Precedent to Closing.** The obligation of Lender to make the Loan hereunder is subject to the fulfillment by Borrower or waiver by Lender of the following conditions precedent no later than the Closing Date:

**3.1.1 Representations and Warranties; Compliance with Conditions.** The representations and warranties of Borrower contained in this Agreement and the other Loan Documents shall be true and correct in all material respects on and as of the Closing Date with the same effect as if made on and as of such date, and no Default or an Event of Default shall have occurred and be continuing; and Borrower shall be in compliance in all material respects with all terms and conditions set forth in this Agreement and in each other Loan Document on its part to be observed or performed.

**3.1.2 Loan Agreement and Note.** Lender shall have received a copy of this Agreement and the Note, in each case, duly executed and delivered on behalf of Borrower.

**3.1.3 Delivery of Loan Documents; Title Insurance; Reports; Leases.**

(a) **Pledge Agreement.** Lender shall have received from Borrower fully executed and acknowledged counterparts of the Pledge Agreement and delivery of the Pledged Company Interests, the UCC Financing Statements, and such other documents required pursuant to the Pledge Agreement, in the reasonable judgment of Lender, so as to effectively create valid and enforceable Liens upon the Collateral, of the requisite priority, in favor of Lender, subject only to the Permitted Encumbrances and such other Liens as are permitted pursuant to the Loan Documents. Lender shall have also received from Borrower fully executed counterparts of the other Loan Documents.

(b) **Title Insurance.** Lender shall have received a UCC Title Insurance Policy (the “**UCC Title Insurance Policy**”) issued by a title company acceptable to Lender and dated as of the Closing Date, with reinsurance and direct access agreements acceptable to Lender. Such UCC Title Insurance Policy shall (i) provide coverage in amounts reasonably satisfactory to Lender, (ii) insure Lender that the Pledge Agreement and the documents executed and delivered in connection therewith create a valid lien on the Collateral of the requisite priority, free and clear of all exceptions from coverage other than Permitted Encumbrances and standard exceptions and exclusions from coverage (as modified by the terms of any endorsements), (iii) contain such endorsements and affirmative coverages as Lender may reasonably request, and (iv) name Lender as the insured. The UCC Title Insurance Policy shall be assignable. Lender also shall have received evidence that all premiums in respect of such UCC Title Insurance Policy have been paid. Lender shall have received each Owner’s Title Policy in an amount equal to the value of the Property, together with an endorsement in favor of Lender and in form and substance reasonably satisfactory to Lender.

(c) **Survey.** Lender shall have received a current Survey for each Individual Property, certified to the title company and Lender and their successors and assigns, in form and content reasonably satisfactory to Lender and prepared by a professional and properly licensed land surveyor satisfactory to Lender in accordance with the Accuracy Standards for ALTA/ACSM Land Title Surveys as adopted by ALTA, American Congress on Surveying & Mapping and National Society of Professional Surveyors in 2005. Each such Survey shall reflect the same legal description contained in the Title Insurance Policies relating to such Individual Property and shall include, among other things, a metes and bounds description (or other description reasonably satisfactory to Lender) of the real property comprising part of such Individual Property reasonably satisfactory to Lender. The surveyor’s seal shall be affixed to each Survey and the surveyor shall provide a certification for each Survey in form and substance reasonably acceptable to Lender.

(d) **Insurance.** Lender shall have received valid certificates of insurance for the Policies required hereunder, satisfactory to Lender in its reasonable discretion. Lender shall be included as an “additional insured” under such Policies and Lender shall have received evidence of the payment of all Insurance Premiums payable for the existing policy period.

(e) **Environmental Reports.** Lender shall have received a Phase I environmental report (and, if recommended by the Phase I environmental report, a Phase II environmental report) in respect of each Individual Property, in each case satisfactory in form and substance to Lender, Lender acknowledges that the foregoing condition has been satisfied, provided that the underground storage tank at Harrah's Las Vegas shall be registered if and to the extent the same is required under Legal Requirements and Lender shall have received and reasonably approved the O&M Plans contemplated pursuant to the above-referenced environmental reports in respect of Flamingo Las Vegas and Harrah's Las Vegas.

(f) **Zoning.** With respect to each Individual Property, Lender shall have received, at Lender's option, either (i) (A) letters or other evidence with respect to each Individual Property from the appropriate municipal authorities (or other Persons) concerning applicable zoning and building laws, and (B) an ALTA 3.1 zoning endorsement for the applicable Title Insurance Policy or (ii) a zoning report, in each case in substance reasonably satisfactory to Lender.

(g) **Encumbrances.** Borrower shall have taken or caused to be taken such actions in such a manner so that Lender has a valid and perfected first priority Lien as of the Closing Date on the Collateral and with respect to the Pledge Agreement and Lender shall have received satisfactory evidence thereof.

(h) **Senior Loan Documents.** The Mortgage Loan Documents and Senior Mezzanine Loan Documents shall have been duly authorized, executed and delivered by all parties thereto, the Mortgage Loan and Senior Mezzanine Loan shall have been contemporaneously funded and Lender shall have received and approved certified copies thereof. All of the conditions precedent set forth in Article III of the Mortgage Loan Agreement and Senior Mezzanine Loan Agreements shall have been satisfied and the Mortgage Loan and Senior Mezzanine Loans shall have closed and been fully advanced in accordance therewith.

**3.1.4 Related Documents.** Each additional document not specifically referenced herein, but relating to the transactions contemplated herein, shall be in form and substance reasonably satisfactory to Lender, and shall have been duly authorized, executed and delivered by all parties thereto and Lender shall have received and approved certified copies thereof.

**3.1.5 Delivery of Organizational Documents.** Borrower shall deliver or cause to be delivered to Lender copies certified by Borrower of all organizational documentation related to Borrower and each Loan Party and/or the formation, structure, existence, good standing and/or qualification to do business, as Lender may request in its sole discretion, including, without limitation, good standing certificates, qualifications to do business in the appropriate jurisdictions, resolutions authorizing the entering into of the Loan and incumbency certificates as may be requested by Lender.

**3.1.6 Opinions of Borrower's Counsel.** Lender shall have received opinions from Borrower's counsel with respect to non-consolidation and the due execution, authority, enforceability of the Loan Documents and such other matters as Lender may require, including True-Lease Opinions, an opinion with respect to the priority and perfection of the Collateral and

all such opinions shall be in form, scope and substance satisfactory to Lender and Lender's counsel in their reasonable discretion.

**3.1.7 Budgets.** Borrower shall have delivered, and Lender shall have approved in its reasonable discretion, the Annual Budget for the current Fiscal Year.

**3.1.8 Basic Carrying Costs.** Borrower shall have caused Mortgage Borrower to have paid all Basic Carrying Costs relating to the Properties which are in arrears, including, without limitation, (a) accrued but unpaid Insurance Premiums, (b) currently due Taxes (including any in arrears) and (c) currently due Other Charges, which amounts shall be funded with proceeds of the Loan.

**3.1.9 Completion of Proceedings.** All corporate and other proceedings taken or to be taken in connection with the transactions contemplated by this Agreement and other Loan Documents and all documents incidental thereto shall be satisfactory in form and substance to Lender, and Lender shall have received all such counterpart originals or certified copies of such documents as Lender may reasonably request.

**3.1.10 Payments.** All payments, deposits or escrows required to be made or established by Borrower under this Agreement, the Note and the other Loan Documents on or before the Closing Date shall have been paid.

**3.1.11 Windstorm Insurance Intercreditor Agreement.** The Windstorm Insurance Intercreditor Agreement shall have been executed by all parties thereto and delivered to Lender.

**3.1.12 Transaction Costs.** Borrower shall have paid or reimbursed Lender for all UCC Title Insurance Policy premiums, all Owner's Title Policy premiums, costs of obtaining recording and filing fees, costs of environmental reports, Physical Conditions Reports, appraisals and other reports, the reasonable fees and costs of Lender's counsel and all other third party out-of-pocket expenses reasonably incurred in connection with the origination of the Loan to the extent such costs and expenses relating to third party costs have not already been paid or reimbursed by Mortgage Borrower to Mortgage Lender.

**3.1.13 Material Adverse Change.** There shall have been no material adverse change in the financial condition or business condition of Borrower, any Loan Party, the Collateral, the Senior Mezzanine Collateral or the Properties since the date of the most recent financial statements delivered to Lender. The income and expenses of the Properties, the occupancy thereof, and all other features of the transaction shall be as represented to Lender without material adverse change. None of Borrower, any Loan Party, or any of their respective constituent Persons shall be the subject of any bankruptcy, reorganization, or insolvency proceeding.

**3.1.14 Leases and Rent Roll.** Lender shall have received copies of all Leases and certified copies of any Leases as requested by Lender. Lender shall have received a current certified rent roll of the Properties, reasonably satisfactory in form and substance to Lender.

**3.1.15 Tax Lot.** Lender shall have received evidence that each Individual Property constitutes one (1) or more separate tax lots, which evidence shall be reasonably satisfactory in form and substance to Lender.

**3.1.16 Physical Conditions Reports.** Lender shall have received Physical Conditions Reports with respect to each Individual Property, which reports shall be reasonably satisfactory in form and substance to Lender. Lender acknowledges that the foregoing condition has been satisfied.

**3.1.17 Operating Leases; Operating Lease Guaranty.** Lender shall have received copies of the Operating Leases, each Operating Lease Guaranty and the Gaming Equipment Facility Agreements, which shall be reasonably satisfactory in form and substance to Lender.

**3.1.18 Appraisal.** Lender shall have received an appraisal of each Individual Property, which shall be reasonably satisfactory in form and substance to Lender.

**3.1.19 Financial Statements.** Lender shall have received a balance sheet with respect to each Individual Property for the two most recent Fiscal Years and statements of income and statements of cash flows with respect to each Individual Property for the three most recent Fiscal Years, each in form and substance reasonably satisfactory to Lender.

**3.1.20 Further Documents.** Lender or its counsel shall have received a fully executed Interest Rate Cap Agreement and a Collateral Assignment of Interest Rate Cap Agreement, together with an opinion of counsel in form and substance satisfactory to it, or shall have received reasonably satisfactory evidence that same will be delivered promptly following the Closing Date.

**3.1.21 Gaming Authority Approvals.** Mortgage Borrower and Operating Company shall have obtained all Operating Permits from Gaming Authorities that are required in order to permit the closing of the Mortgage Loan and the Mezzanine Loans (if required), or in connection with the Operating Lease or the Operating Lease Guaranty (if required), or to permit the conveyances of any of the Properties to Mortgage Borrower (effected immediately prior hereto) and the operation of the Properties as currently conducted.

#### **IV. REPRESENTATIONS AND WARRANTIES**

##### **Section 4.1. Borrower Representations.**

Borrower represents and warrants as of the date hereof and as of the Closing Date, except as disclosed in Schedule XXIII, that:

**4.1.1 Organization.** (a) Borrower has been duly organized and is validly existing and in good standing with requisite power and authority to own the Individual Properties and to transact the businesses in which it is (or each of them is) now engaged. Borrower is duly qualified to do business and is in good standing in each jurisdiction where it is required to be so qualified in connection with its properties, businesses and operations. Borrower possesses all rights, licenses, permits and authorizations (governmental or otherwise) necessary to entitle it to own its properties and to transact the businesses in which it is now engaged and the failure to

possess which would reasonably be expected to have an Individual Material Adverse Effect. The sole business of Borrower is the ownership of Senior Mezzanine Borrower. The ownership interests of Borrower are as set forth on the organizational chart attached hereto as Schedule VIII.

(b) Each Operating Company has been duly organized and is validly existing and in good standing with requisite power and authority to own its properties or assets, including the Gaming Equipment, and to transact the businesses in which it is now engaged. Each Operating Company is duly qualified to do business and is in good standing in each jurisdiction where it is required to be so qualified in connection with its properties, businesses and operations, including the operation of the Casino Components at each Individual Property. Each Operating Company possesses all rights, licenses, permits and authorizations (governmental or otherwise) necessary to entitle it to operate the Properties currently operated by each such Operating Company and to transact the businesses in which it is now engaged and the failure to possess which would reasonably be expected to have an Individual Material Adverse Effect. The sole business of each Operating Company is the management and operation of the Individual Property or Properties currently operated by each such Operating Company. The ownership interests of each Operating Company are as set forth on the organizational chart attached hereto as Schedule VIII.

(c) Borrower has the power and authority and the requisite ownership interests in Senior Mezzanine Borrower and Mortgage Borrower to control the actions of Senior Mezzanine Borrower and Mortgage Borrower, and upon the realization of the Collateral under the Pledge Agreement, Lender or any other party succeeding to the Borrower's interest in the Collateral described in the Pledge Agreement would have such control. Without limiting the foregoing, Borrower has sufficient control over Senior Mezzanine Borrower and Mortgage Borrower to cause Senior Mezzanine Borrower and Mortgage Borrower to (i) take any action on Senior Mezzanine Borrower's or Mortgage Borrower's part required by the Loan Documents and (ii) refrain from taking any action prohibited by the Loan Documents.

**4.1.2 Proceedings.** Borrower and Operating Company have taken all necessary action to authorize the execution, delivery and performance of this Agreement and the other Loan Documents. This Agreement and such other Loan Documents have been duly executed and delivered by or on behalf of Borrower and Operating Company and constitute legal, valid and binding obligations of Borrower and Operating Company enforceable against Borrower and Operating Company (as applicable) in accordance with their respective terms, subject only to applicable bankruptcy, insolvency and similar laws affecting rights of creditors generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

**4.1.3 No Conflicts; Approvals.** (a) The execution, delivery and performance of this Agreement and the other Loan Documents by Borrower and Operating Company will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance (other than pursuant to the Loan Documents) upon any of the property or assets of Borrower or Operating Company pursuant to the terms of any indenture, mortgage, deed of trust, loan agreement, partnership agreement, management agreement, material lease or other material agreement or

instrument to which Borrower or Operating Company (as applicable) is a party or by which any of Borrower's or Operating Company's property or assets is or are subject, nor will such action result in any violation of the provisions of any statute or any order, rule or regulation of any Governmental Authority having jurisdiction over Borrower or Operating Company any of Borrower's or Operating Company's properties or assets, and any consent, approval, authorization, order, registration or qualification of or with any such Governmental Authority required for the execution, delivery and performance by Borrower and Operating Company of this Agreement or any other Loan Documents (and the execution by Lender of the remedies provided in the Loan Documents, subject to the limitations thereon pursuant to applicable Gaming Laws) has been obtained and is in full force and effect.

(b) Borrower, Senior Mezzanine Borrower, Mortgage Borrower and Operating Company have obtained all consents and approvals, including all approvals of Governmental Authorities including Gaming Authorities, if required, in connection with the execution, delivery and performance of the Loan Documents (including by Mortgage Lender and each Mezzanine Lender), the Operating Lease, the Operating Lease Guaranty and the operation of the business currently conducted at any of the Properties, and shall promptly execute any and all such instruments and documents, deliver any certificates and do all such other acts or things required by the Gaming Authorities to maintain or keep current such approvals.

**4.1.4 Litigation.** There are no actions, suits or proceedings at law or in equity by or before any Governmental Authority or other agency now pending or, to Borrower's knowledge, threatened against or affecting any Loan Party, any Affiliates of Borrower, including Holdings, Operating Company or any Individual Property, or any prior owner or other holder of any interest in any Individual Property, which actions, suits or proceedings, if determined against any Loan Party, Holdings, Operating Company, any other Affiliate or any Individual Property (taking into account the reasonably estimated damages payable in connection therewith), is reasonably likely to materially adversely affect the condition (financial or otherwise) or business of any Loan Party, any Affiliate of Borrower that is a direct or indirect owner of Mortgage Borrower, including Holdings and Operating Company, or the condition or ownership of any Individual Property, or any of the material rights, interests and remedies of Lender under the Loan Documents (taken as a whole). None of the actions described on Schedule XXIV, if determined adversely to Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company and/or any of their respective Affiliates, as applicable, would result in the payment by Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or such Affiliate of an amount in excess of Ten Million and no/100 Dollars (\$10,000,000.00), except to the extent covered by insurance.

**4.1.5 Agreements.** None of Borrower, Senior Mezzanine Borrower, Mortgage Borrower or Operating Company is in default, in any material respect, in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any material agreement or instrument to which it is a party or by which Borrower, Senior Mezzanine

Borrower, Mortgage Borrower, Operating Company, the Collateral, the Senior Mezzanine Collateral or any of the Properties are bound. None of Borrower, Senior Mezzanine Borrower, Mortgage Borrower or Operating Company has any material financial obligation under any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which Borrower, Senior Mezzanine Borrower, Mortgage Borrower or Operating Company is a party or by which Borrower, Senior Mezzanine Borrower, Mortgage Borrower, Operating Company, the Collateral, the Senior Mezzanine Collateral or the Properties is otherwise bound, other than (a) with respect to Mortgage Borrower, obligations incurred in the ordinary course of the operation of the Properties as permitted pursuant to clause (t) of the definition of "Special Purpose Entity" set forth in Section 1.1 of the Mortgage Loan Agreement, (b) with respect to Borrower, obligations under the Loan Documents, (c) with respect to Senior Mezzanine Borrower, obligations under the Senior Mezzanine Loan Documents, and (d) with respect to Operating Company, the Operating Lease and Permitted Indebtedness (Operating Company).

**4.1.6 Title.** (a) The Borrower (as pledgor under the Pledge Agreement) is the record and beneficial owner of, and Borrower has good and marketable title to the Collateral, free and clear of all Liens whatsoever except the Liens created by the Loan Documents. The Permitted Encumbrances in the aggregate do not materially and adversely affect the value, operation or use of any of the Properties (as currently used) or Borrower's ability to repay the Loan. The Pledge Agreement, together with the delivery of the certificates evidencing ownership of the Pledged Company Interests and the endorsement in blank, as being delivered concurrently herewith, will create a valid perfected, first priority lien on, and security interest in and to, the Collateral, all in accordance with the terms thereof. There are no claims for payment for work, labor or materials affecting any of the Properties which are or may become a Lien prior to, or of equal priority with, the Liens created by the Mortgage Loan Documents.

(b) Each Operating Company has good, marketable title to the Gaming Equipment, free and clear of all Liens whatsoever (except equipment financing and leasing arrangements entered into by Operating Company in the ordinary course of its business (subject to the limitations set forth in the definition of "Permitted Indebtedness (Operating Company)").

**4.1.7 Solvency.** Borrower has (a) not entered into the transaction or executed the Note, this Agreement or any other Loan Documents with the actual intent to hinder, delay or defraud any creditor and (b) received reasonably equivalent value in exchange for its obligations under such Loan Documents. The fair saleable value of Borrower's assets exceeds and will, immediately following the making of the Loan, exceed Borrower's total liabilities, including, without limitation, subordinated, unliquidated, disputed and contingent liabilities. The fair saleable value of Borrower's assets is and will, immediately following the making of the Loan, be greater than Borrower's probable liabilities, including the maximum amount of its contingent liabilities on its debts as such debts become absolute and matured. Borrower's assets do not and, immediately following the making of the Loan will not, constitute unreasonably small capital to carry out its business as conducted or as proposed to be conducted. Borrower does not intend to, and does not believe that it will, incur debt and liabilities (including contingent liabilities and other commitments) beyond its ability to pay such debt and liabilities as they mature (taking into account the timing and amounts of cash to be received by Borrower and the amounts to be payable on or in respect of obligations of Borrower). No petition in bankruptcy has been filed against Borrower, Operating Company, any Loan Party or any constituent Person, and none of

Borrower, Operating Company, any Loan Party or any constituent Person has ever made an assignment for the benefit of creditors or taken advantage of any insolvency act for the benefit of debtors. None of Borrower, Operating Company, any Loan Party or any of their respective constituent Persons are contemplating either the filing of a petition by it under any state or federal bankruptcy or insolvency laws or the liquidation of all or a major portion of Borrower's, Operating Company's, or any Loan Party's assets or properties, and Borrower has no knowledge of any Person contemplating the filing of any such petition against it, Operating Company, any Loan Party or such constituent Persons.

**4.1.8 Full and Accurate Disclosure.** No statement of fact made by Borrower in this Agreement or in any of the other Loan Documents contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained herein or therein not misleading. There is no material fact presently known to Borrower which has not been disclosed to Lender which has, nor as far as Borrower can foresee, might reasonably be expected to have an Individual Material Adverse Effect or an Aggregate Material Adverse Effect.

**4.1.9 No Plan Assets.** Borrower is not an "employee benefit plan," as defined in Section 3(3) of ERISA, subject to Title I of ERISA, and none of the assets of Borrower constitutes or will constitute "plan assets" of one or more such plans within the meaning of 29 C.F.R. Section 2510.3-101. In addition, (a) Borrower is not a "governmental plan" within the meaning of Section 3(32) of ERISA and (b) transactions by or with Borrower are not subject to any state statute regulating investments of, or fiduciary obligations with respect to, governmental plans similar to the provisions of Section 406 of ERISA or Section 4975 of the Code currently in effect, which prohibit or otherwise restrict the transactions contemplated by this Loan Agreement.

**4.1.10 Compliance.** Except as disclosed in the zoning reports obtained by Lender in connection with the origination of the Loan, Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company and each Individual Property (including the use thereof) comply in all material respects with all applicable Legal Requirements, including, without limitation, building and zoning ordinances and codes and Prescribed Laws. Borrower, Mortgage Borrower, Senior Mezzanine Borrower and Operating Company are not in default or violation of (i) any material order, writ, injunction, decree or demand of any Gaming Authority or (ii) any material order, writ, injunction, decree or demand of any other Governmental Authority. There has not been committed by Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any other Person in occupancy of or involved with the operation or use of the Properties any act or omission affording the federal government or any other Governmental Authority the right of forfeiture as against any Individual Property or any part thereof or any monies paid in performance of Borrower's obligations under any of the Loan Documents.

**4.1.11 Financial Information.** All financial data, including, without limitation, the statements of cash flow and income and operating expense, that have been delivered to Lender in connection with the Loan, the Collateral, the Senior Mezzanine Collateral, the Properties and each Loan Party (i) are true, complete and correct in all material respects, (ii) accurately represent in all material respects the financial condition of the Properties as of the

date of such reports, and (iii) to the extent prepared or audited by an independent certified public accounting firm, have been prepared in accordance with GAAP throughout the periods covered, except as disclosed therein. Except for Permitted Encumbrances, Borrower does not have any contingent liabilities, liabilities for taxes, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments that are known to Borrower and reasonably likely to have a materially adverse effect on the Collateral, the Senior Mezzanine Collateral, Borrower, any Loan Party, any Individual Property or the operation thereof as mixed-use hotel and casino properties, except as referred to or reflected in said financial statements. Borrower has no Indebtedness other than the Loan. Except for Permitted Indebtedness (Operating Company), Operating Company does not have any Indebtedness or contingent liabilities, or due and unpaid liabilities for taxes, that are known to Borrower, Mortgage Borrower, Senior Mezzanine Borrower or Operating Company and reasonably likely to have a materially adverse effect on the Collateral, any Senior Mezzanine Collateral, Borrower, any Loan Party, any Individual Property or the operation thereof as mixed-use hotel and casino properties, except as referred to or reflected in said financial statements. Since the date of such financial statements, there has been no material adverse change in the financial condition, operation or business of Borrower or Operating Company from that set forth in said financial statements.

**4.1.12 Condemnation.** No Condemnation or other similar proceeding has been commenced or, to Borrower's best knowledge, is threatened or contemplated with respect to all or any portion of any Individual Property or for the relocation of roadways providing access to any Individual Property.

**4.1.13 Federal Reserve Regulations.** No part of the proceeds of the Loan will be used for the purpose of purchasing or acquiring any "margin stock" within the meaning of Regulation U of the Board of Governors of the Federal Reserve System or for any other purpose which would be inconsistent with such Regulation U or any other Regulations of such Board of Governors, or for any purposes prohibited by Legal Requirements or by the terms and conditions of this Agreement or the other Loan Documents.

**4.1.14 Utilities and Public Access.** Each Individual Property has rights of access to public ways and is served by water, sewer, sanitary sewer and storm drain facilities adequate to service such Individual Property for its respective intended uses. All public utilities necessary or convenient to the full use and enjoyment of each Individual Property are located either in the public right-of-way abutting such Individual Property (which are connected so as to serve such Individual Property without passing over other property) or in recorded easements serving such Individual Property and such easements are set forth in and insured by the Title Insurance Policies. All roads necessary for the use of each Individual Property for their current respective purposes have been completed and dedicated to public use and accepted by all Governmental Authorities.

**4.1.15 Not a Foreign Person.** Borrower is not a "foreign person" within the meaning of § 1445(f)(3) of the Code.

**4.1.16 Separate Lots.** Each Individual Property is comprised of one (1) or more parcels which constitute a separate tax lot or lots and does not constitute a portion of any other tax lot not a part of such Individual Property.

**4.1.17 Assessments.** There are no pending or, to Borrower's knowledge, proposed special or other assessments for public improvements or otherwise affecting any Individual Property, nor are there any contemplated improvements to any Individual Property that may result in such special or other assessments.

**4.1.18 Enforceability.** The Loan Documents are not subject to any right of rescission, set-off, counterclaim or defense by Borrower, any Affiliates of Borrower including Holdings, Operating Company or Guarantor, including the defense of usury, nor would the operation of any of the terms of the Loan Documents, or the exercise of any right thereunder, render the Loan Documents unenforceable (subject to principles of equity and bankruptcy, insolvency and other laws generally affecting creditors' rights and the enforcement of debtors' obligations), and Borrower, any Affiliates of Borrower including Holdings, Operating Company and Guarantor have not asserted any right of rescission, set-off, counterclaim or defense with respect thereto.

**4.1.19 No Prior Assignment.** There are no prior assignments of the Leases (including the Operating Leases) or of the Rents (or any Revenue) due and payable or to become due and payable which are presently outstanding. There are no prior assignments of the Collateral which are presently outstanding except in accordance with the Loan Documents.

**4.1.20 Insurance.** Borrower (or Mortgage Borrower or Operating Company) has obtained and has delivered to Lender certified copies of all Policies reflecting the insurance coverages, amounts and other requirements set forth in this Agreement. No material claims have been made under any such Policies except such as have been disclosed to Lender, and no Person, including Borrower, Mortgage Borrower, Senior Mezzanine Borrower and Operating Company, has done, by act or omission, anything which would impair the coverage of any such Policies.

**4.1.21 Use of Property.** Each Individual Property is used exclusively as a mixed-use hotel and casino operation, and other appurtenant and related uses.

**4.1.22 Gaming Licenses and Operating Permits.** (a) Schedule IX contains a correct and complete list of all Gaming Licenses and other material licenses, certification and permits for each of the Properties (and the holder thereof).

(b) Borrower possesses all licenses, permits, franchises, authorizations, certificates, approvals and consents which are material to the ownership of the Collateral. Mortgage Borrower possesses all licenses, permits, franchises, authorizations, certificates, approvals and consents, including, without limitation, all certificates of occupancy, which are material to the ownership and use of each of the Properties, and Operating Company possesses all licenses, permits, franchises, authorizations, certificates, approvals and consents, including, without limitation, all environmental, liquor, Gaming Licenses, health and safety licenses of all Governmental Authorities which are material to the conduct of their business and the use, occupation and operation of each of the Properties and the failure to possess which would have

an Individual Material Adverse Effect (collectively, “**Operating Permits**”); each such Operating Permit is and will be in full force and effect (unless, in the case of any Operating Permit, such Operating Permit is no longer necessary or advisable for the conduct of Borrower’s, Senior Mezzanine Borrower’s, Mortgage Borrower’s or Operating Company’s business); Borrower, Senior Mezzanine Borrower, Mortgage Borrower, Operating Company and each of its Affiliates are in compliance in all material respects with all such Operating Permits, and no event (including, without limitation, any material violation of any law, rule or regulation) has occurred which would be reasonably likely to lead to the revocation or termination of any such Operating Permit or the imposition of any material restriction thereon.

(c) Operating Company and each of its Affiliates possesses all Gaming Licenses which are material to the conduct of their business and the ownership, use, occupation and operation of each of the Properties. Further, Borrower hereby represents and warrants as follows:

(i) Each Gaming License is in full force and effect (except for such Gaming Licenses as are no longer necessary or advisable for the conduct of Borrower’s, Senior Mezzanine Borrower’s, Mortgage Borrower’s or Operating Company’s business); Operating Company and each of its Affiliates, respective directors, members, managers, officers, key personnel and Persons holding a five percent (5%) or greater equity or economic interests directly or indirectly in Operating Company is in compliance in all material respects with all such Gaming Licenses (to the extent required by Legal Requirements), and no event (including, without limitation, any material violation of any Legal Requirements) has occurred which would be reasonably likely to lead to the revocation or termination of any such Gaming Licenses or the imposition of any restriction thereon;

(ii) Borrower has no reason to believe Mortgage Borrower and Operating Company will not be able to maintain in effect all Gaming Licenses necessary for the lawful conduct of their respective businesses or operations wherever now conducted and as planned to be conducted, including the ownership and operation of the Casino Components, pursuant to all applicable Legal Requirements;

(iii) All Gaming Licenses are in full force and effect and have not been amended or otherwise modified, rescinded, revoked or assigned in any manner that would reasonably be expected to have an Individual Material Adverse Effect;

(iv) Neither Mortgage Borrower nor Operating Company is in default in any material respect under, or in violation in any material respect of, any Gaming License (and no event has occurred, and no condition exists, which, with the giving of notice or passage of time or both, would constitute a default thereunder or violation thereof that has caused or would reasonably be expected to cause the loss of any Gaming License) (unless, in the case of any Gaming License, such Gaming License is no longer necessary or advisable for the conduct of Borrower’s or Operating Company’s business);

(v) Neither Mortgage Borrower nor Operating Company has received any notice of any violation of Legal Requirements which has caused or would reasonably be

expected to cause any Gaming License to be suspended, forfeited, modified in any manner that would have an Individual Material Adverse Effect, not renewed, rescinded or revoked (unless, in the case of any Gaming License, such Gaming License is no longer necessary or advisable for the conduct of Mortgage Borrower's or Operating Company's business);

(vi) No condition exists or event has occurred which would reasonably be expected to result in the suspension, revocation, impairment, forfeiture, rescission or non-renewal of any Gaming License (unless, in the case of any Gaming License, such Gaming License is no longer necessary or advisable for the conduct of Mortgage Borrower's or Operating Company's business); and

(vii) The continuation, validity and effectiveness of all Gaming Licenses will not be adversely affected by the transactions contemplated by this Agreement.

(d) There is no proceeding, investigation, or disciplinary action (including, without limitation, before any Gaming Authority, under any Gaming Law or under any Gaming License or other Operating Permit) pending or, to Borrower's knowledge, threatened against any of Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or, to Borrower's knowledge, any of their respective directors, members, managers, officers, key personnel or Persons holding a five percent (5%) or greater direct or indirect equity or economic interest in Mortgage Borrower, Senior Mezzanine Borrower or Operating Company and that could reasonably be expected to have an Individual Material Adverse Effect.

(e) There is no proceeding (including, without limitation, before any Gaming Authority, under any Gaming Law or under any Gaming License or other Operating Permit) pending or, to Borrower's knowledge, threatened either (a) in connection with, or that seeks to restrain, enjoin, prevent the consummation of or otherwise challenge, any of the Loan Documents or any of the transactions contemplated therein, or (b) that could reasonably be expected to have an Individual Material Adverse Effect.

(f) Neither the execution, delivery or performance of any of the Loan Documents (nor the Securitization or any participations in the Loan, or the creation or sale of any of the Mortgage Loan or Mezzanine Loans) will (i) require the consent of any Gaming Authority not heretofore obtained or (ii) allow or result in the imposition of any material penalty under, or the revocation or termination of, any Gaming License or any material impairment of the rights of the holder of any Gaming License.

**4.1.23 Intentionally Omitted.**

**4.1.24 Intentionally Omitted.**

**4.1.25 Intentionally Omitted.**

**4.1.26 Leases.** (a) The Operating Leases (together with any certificates and notifications entered into in connection therewith) and the Operating Lease Guaranty provided to Lender on the Closing Date are true, correct, accurate and complete copies of such documents and constitute the entire agreement between the parties thereto with respect to the subject matter

therein and there are no written agreements modifying, amending, supplementing or restating such documents. Except as set forth on Schedule X, the Properties are not subject to any space Leases other than the Operating Lease and space Leases providing for occupancy of less than one hundred (100) square feet. Each Operating Lease is a “true lease” for all purposes of the Bankruptcy Code (including Section 365(d) and 502(b)(6) thereof) and applicable Legal Requirements, and no Operating Lease constitutes a financing or conveys any interest in the Properties other than the leasehold interest therein demised thereby. Mortgage Borrower is the owner and lessor of landlord’s interest in the Operating Lease and the Operating Lease Guaranty. Currently, no Person has any possessory interest in any Individual Property or right to occupy the same except under and pursuant to the provisions of the Operating Lease, any other space Leases listed on Schedule X and, with respect to a right to occupancy only (and not a possessory interest), hotel guests. Each Operating Lease and Operating Lease Guaranty is in full force and effect and there are no material events of default thereunder by any party thereto and there are no conditions that, with the passage of time or the giving of notice, or both, would constitute a default thereunder. No Rent under any Operating Lease has been paid more than one (1) month in advance of its due date and no Rents or charges under the Operating Lease have been waived, released or otherwise discharged or compromised. There has been no prior sale, transfer or assignment, hypothecation or pledge of any Operating Lease, any Operating Lease Guaranty or of the Rents. No Operating Company has assigned the Operating Lease or sublet all or any portion of any Individual Property except pursuant to the Operating Lease and the terms hereof.

(b) The Properties are not subject to any space Leases other than the Leases described in Schedule X attached hereto. Operating Company is the owner and lessor of landlord’s interest in all such space Leases. No Person has any possessory interest in any Individual Property except under and pursuant to the provisions of the space Leases, and no Person has any right to occupy any portion of any Individual Property except under and pursuant to the provisions of the space Leases and hotel guests. The current space Leases are in full force and effect and, except as shown in Schedule X attached hereto, to Borrower’s knowledge, there are no material defaults thereunder by either party and there are no conditions that, with the passage of time or the giving of notice, or both, would constitute defaults thereunder. No Rent has been paid more than one (1) month in advance of its due date. Except as shown in Schedule X attached hereto, all work to be performed by Mortgage Borrower (or Operating Company) under each space Lease has been performed as and to the extent required and has been accepted by the applicable tenant, and any payments, free rent, partial rent, rebate of rent or other payments, credits, allowances or abatements required to be given by Mortgage Borrower (or Operating Company) to any tenant has already been received by such tenant. There has been no prior sale, transfer or assignment, hypothecation or pledge of any space Lease or of the Rents received therein which is still in effect. To Borrower’s knowledge, except as shown on Schedule X, no tenant listed on Schedule X has assigned its space Lease or sublet all or any portion of the premises demised thereby, no such tenant holds its leased premises under assignment or sublease, nor does anyone except such tenant and its employees occupy such leased premises. No tenant under any space Lease has a right or option pursuant to such Lease or otherwise to purchase all or any part of the leased premises or the building of which the leased premises are a part. No tenant under any space Lease has any right or option for additional space in the Improvements except pursuant to such tenant’s space Lease.

**4.1.27 Intentionally Omitted.**

**4.1.28 Principal Place of Business; State of Organization.** (a) Borrower's principal place of business as of the date hereof is the address set forth in Schedule I. Each Borrower is organized under the laws of the State of Delaware.

(b) Operating Company's principal place of business as of the date hereof is the address set forth in Schedule I. Each Operating Company is organized under the laws of the state of Delaware.

**4.1.29 Filing and Recording Taxes.** All transfer taxes, deed stamps, intangible taxes or other amounts in the nature of transfer taxes required to be paid by any Person under applicable Legal Requirements currently in effect in connection with the transfer of the Collateral to Borrower have been paid. All recording, stamp, intangible or other similar tax required to be paid by any Person under applicable Legal Requirements currently in effect in connection with the execution, delivery, recordation, filing, registration, perfection or enforcement of any of the Loan Documents, including, without limitation, the Pledge Agreement, have been paid, and, under current Legal Requirements, the Pledge Agreement is enforceable in accordance with their respective terms by Lender (or any subsequent holder thereof), subject to principles of equity and bankruptcy, insolvency and other laws generally applicable to creditors' rights and the enforcement of debtors' obligations.

**4.1.30 Special Purpose Entity/Separateness.** (a) Until the Debt has been paid in full, Borrower hereby represents, warrants and covenants that Borrower and each SPE Party is, shall be and shall continue to be a Special Purpose Entity.

(b) The representations, warranties and covenants set forth in Section 4.1.30(a) shall survive for so long as any amount remains payable to Lender under this Agreement or any other Loan Document.

(c) All of the assumptions made in the Insolvency Opinion, including, but not limited to, any exhibits attached thereto, are true and correct and any assumptions made in any subsequent non-consolidation opinion required to be delivered in connection with the Loan Documents (an "**Additional Insolvency Opinion**"), including, but not limited to, any exhibits attached thereto, will have been and shall be true and correct. Borrower has complied and will comply with, and Borrower shall cause each SPE Party and Operating Company to comply with, all of the assumptions made with respect to the SPE Parties and Operating Company in the Insolvency Opinion. The SPE Parties will have complied and will comply with all of the assumptions made with respect to the SPE Parties in any Additional Insolvency Opinion. Each entity with respect to which an assumption shall be made in any Additional Insolvency Opinion will have complied and will comply with all of the assumptions made with respect to it in any Additional Insolvency Opinion.

(d) All of the assumptions made in the True Lease Opinion, including, but not limited to, any exhibits attached thereto, are true and correct and any assumptions made in any subsequent true lease opinion required to be delivered in connection with the Loan Documents (an "**Additional True Lease Opinion**"), including, but not limited to, any exhibits attached thereto, will have been and shall be true and correct. Each SPE Party has complied and will comply with, and Borrower shall cause Operating Company to comply with, all of the

assumptions made with respect to such SPE Parties and Operating Company in the True Lease Opinion. Each SPE Party will have complied and will comply with all of the assumptions made with respect to such SPE Parties in any Additional True Lease Opinion. Each entity with respect to which an assumption shall be made in any Additional True Lease Opinion will have complied and will comply with all of the assumptions made with respect to it in any Additional True Lease Opinion.

**4.1.31 Operating Leases; Operating Lease Guaranty.** The Operating Leases and the Operating Lease Guaranty are in full force and effect and there is no default thereunder by any party thereto and no event has occurred that, with the passage of time and/or the giving of notice would constitute a default thereunder.

**4.1.32 Illegal Activity.** No portion of any Individual Property or the Collateral has been or will be purchased with proceeds of any illegal activity.

**4.1.33 Intentionally Omitted.**

**4.1.34 Investment Company Act.** Borrower is not an “investment company” or a company “controlled” by an “investment company,” within the meaning of the Investment Company Act of 1940, as amended.

**4.1.35 Embargoed Person.** At all times throughout the term of the Loan, including after giving effect to any Transfers permitted pursuant to the Loan Documents, (a) none of the funds or other assets of Borrower, Senior Mezzanine Borrower, Mortgage Borrower, Holdings, Operating Company and Guarantor constitute property of, or are beneficially owned, directly or indirectly, by any person, entity or government subject to trade restrictions under U.S. law, including, but not limited to, the International Emergency Economic Powers Act, 50 U.S.C. § 1701 *et seq.*, The Trading with the Enemy Act, 50 U.S.C. App. 1 *et seq.*, and any Executive Orders or regulations promulgated thereunder with the result that the investment in any Loan Party or Operating Company, as applicable (whether directly or indirectly), is prohibited by law or the Loan made by the Lender is in violation of law (“**Embargoed Person**”); (b) no Embargoed Person has any interest of any nature whatsoever in any Loan Party, Holdings or Operating Company, as applicable, with the result that the investment in any Loan Party, Holdings or Operating Company, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law; and (c) none of the funds of any Loan Party, Holdings or Operating Company, as applicable, have been derived from any unlawful activity with the result that the investment in any Loan Party, Borrower, Holdings or Operating Company, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law.

**4.1.36 Operating Lease Subsidiary.** Tahoe Propco, LLC is the owner of one hundred percent (100%) of the equity interests of Ground Lease Subsidiary; Ground Lease Subsidiary does not own any assets other than its interests in the Ground Lease and does not have any liabilities other than liabilities under the Ground Lease; Ground Lease Subsidiary does not engage in any business other than that related to its ownership of interests in the Ground Lease.

**4.1.37 Taxes including Gaming Taxes and Fees.** Mortgage Borrower, Borrower and each of their respective Affiliates, and Operating Company and each of its Affiliates, have filed or caused to be filed all Federal, state, local and foreign tax returns (including, without limitation, all reports relating to gaming taxes and fees to the Gaming Authorities) which are required to be filed by them, on or prior to the date hereof, other than tax returns in respect of taxes that (i) are not franchise, capital or income taxes, (ii) in the aggregate are not material and (iii) would not, if unpaid, result in the imposition of any material Lien on any property or assets of Mortgage Borrower, Senior Mezzanine Borrower, Borrower or Operating Company or any of their respective Affiliates. All such filed tax returns were, to Borrower's knowledge, true, correct and complete when filed. Mortgage Borrower, Senior Mezzanine Borrower, Borrower, Operating Company and each of their respective Affiliates, have paid or caused to be paid all taxes shown to be due and payable on such filed returns or on any assessments received by them, other than any taxes or assessments the validity of which Mortgage Borrower, Senior Mezzanine Borrower, Borrower, Operating Company or such Affiliate, as applicable) is contesting in good faith by appropriate proceedings, and with respect to which Mortgage Borrower, Senior Mezzanine Borrower, Borrower, Operating Company or such Affiliate, as applicable, shall have set aside adequate reserves. None of Mortgage Borrower, Senior Mezzanine Borrower, Borrower, Operating Company or any of their respective Affiliates, has as of the date hereof requested or been granted any extension of time to file any Federal, state, local or foreign tax return. None of Mortgage Borrower, Senior Mezzanine Borrower, Borrower or Operating Company is party to (or has any obligation under) any tax sharing agreement.

**4.1.38 Intentionally Omitted.**

**4.1.39 Intentionally Omitted.**

**4.1.40 Operation of Property.**

(a) The operation, management and use of each Individual Property by Mortgage Borrower and Operating Company is in compliance in all material respects with applicable Legal Requirements, including all applicable Gaming Laws, and all other federal, state, or local governmental authorities including, without limitation, those requirements relating to such Individual Property's physical structure and environment, except to the extent that non-compliance would not reasonably be expected to have an Individual Material Adverse Effect.

(b) The licenses, permits, and regulatory agreements, approvals and registrations relating to each Individual Property, including the Gaming Licenses, (i) may not be, and have not been, transferred to any location other than any Individual Property; have not been pledged as collateral security for any other loan or indebtedness; and are held free from restrictions or known conflicts that would materially impair the use or operation of any Individual Property as intended, (ii) are in full force and effect and in good standing and (iii) are not provisional, conditional or probationary in any manner.

(c) None of Mortgage Borrower, Senior Mezzanine Borrower, Borrower, Holdings, Guarantor or Operating Company is currently the subject of any proceeding by any Governmental Authority, and no notice of any violation has been received from a Governmental

Authority that, in either case, would reasonably be expected to have an Individual Material Adverse Effect or an Aggregate Material Adverse Effect.

(d) None of Mortgage Borrower, Senior Mezzanine Borrower, Borrower or Operating Company has received a statement of charges or deficiencies and no penalty enforcement actions have been undertaken against any of them relating to any Individual Property by any Governmental Authority during the last three (3) calendar years which caused or could cause an Individual Material Adverse Effect or an Aggregate Material Adverse Effect.

(e) Each Operating Lease and Operating Lease Guaranty is in full force and effect and no party to either agreement has defaulted thereunder in any material respect.

(f) None of Mortgage Borrower or Operating Company has pledged its receivables relating to any of the Properties as collateral security for any other loan or indebtedness.

**4.1.41 Mortgage Loan Representations and Warranties.** All of the representations and warranties contained in the Mortgage Loan Documents and Senior Mezzanine Loan Documents are hereby incorporated into this Agreement and deemed made hereunder as and when made thereunder and shall remain incorporated without regard to any waiver, amendment or other modification thereof by the Mortgage Lender or Senior Mezzanine Lender or to whether the related Mortgage Loan Document or Senior Mezzanine Loan Document has been repaid or otherwise terminated, unless otherwise consented to in writing by Lender.

**4.1.42 Affiliates.** Effective as of the consummation of the transactions contemplated by this Agreement, the sole member of Borrower is Principal, which owns one hundred percent (100%) of the membership interests in Borrower. Borrower does not have any subsidiaries except as set forth in Schedule VIII.

**Section 4.2. Survival of Representations.** Borrower agrees that all of the representations and warranties of Borrower set forth in Section 4.1 and elsewhere in this Agreement and in the other Loan Documents shall survive for so long as any amount remains owing to Lender under this Agreement or any of the other Loan Documents by Borrower. All representations, warranties, covenants and agreements made in this Agreement or in the other Loan Documents by Borrower shall be deemed to have been relied upon by Lender notwithstanding any investigation heretofore or hereafter made by Lender or on its behalf.

## **V. BORROWER COVENANTS**

### **Section 5.1. Affirmative Covenants.**

From the date hereof and until payment and performance in full of all obligations of Borrower under the Loan Documents or the earlier release of the Liens of the Pledge Agreement (and all related obligations) in accordance with the terms of this Agreement and the other Loan Documents, Borrower hereby covenants and agrees with Lender that:

**5.1.1 Existence; Compliance with Legal Requirements.** Borrower shall, and shall cause Mortgage Borrower, Senior Mezzanine Borrower and Operating Company to, do or cause to be done all things necessary to preserve, renew and keep in full force and effect their existence, rights, licenses, permits and franchises and comply with all Legal Requirements applicable to Borrower, Senior Mezzanine Borrower, Mortgage Borrower, the Collateral, the Senior Mezzanine Collateral, Operating Company and the Properties, including, without limitation, Prescribed Laws. There shall never be committed by Borrower and Borrower shall not permit Mortgage Borrower or Senior Mezzanine Borrower to permit any other Person in occupancy of or involved with the operation or use of the Properties, including Operating Company, to commit any act or omission affording the federal government or any state or local government the right of forfeiture against the Collateral, the Senior Mezzanine Collateral, any Individual Property or any part thereof or any monies paid in performance of Borrower's obligations under any of the Loan Documents. Borrower hereby covenants and agrees not to commit, permit or suffer to exist any act or omission affording such right of forfeiture. Borrower shall, and shall cause Mortgage Borrower to, at all times maintain, preserve and protect all franchises and trade names and preserve all the remainder of its property used or useful in the conduct of its business and shall keep the Properties in good working order and repair. Borrower shall cause Mortgage Borrower to keep the Properties insured at all times as (and in the amounts) provided elsewhere in this Agreement. Borrower shall cause Mortgage Borrower to operate any Individual Property that is the subject of the O&M Agreement in accordance with the terms and provisions thereof in all material respects. After prior notice to Lender, Borrower, at its own expense, may contest (or cause Mortgage Borrower to contest) by appropriate legal proceeding promptly initiated and conducted in good faith and with due diligence, the validity of any Legal Requirement, the applicability of any Legal Requirement to Borrower, Senior Mezzanine Borrower, Mortgage Borrower, the Collateral, the Senior Mezzanine Collateral or any Individual Property or any alleged violation of any Legal Requirement, provided that (i) no Event of Default has occurred and remains uncured; (ii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any applicable material instrument to which Borrower, Senior Mezzanine Borrower or Mortgage Borrower is subject and shall not constitute a default thereunder and such proceeding shall be conducted in accordance with all Legal Requirements; (iii) none of the Collateral, the Senior Mezzanine Collateral or any Individual Property nor any material part thereof or interest therein will be in imminent danger of being sold, forfeited, terminated, cancelled or lost; (iv) Borrower shall promptly upon receipt of a final, non-appealable determination thereof comply with any such Legal Requirement determined to be valid or applicable or cure any violation of any such Legal Requirement; (v) such proceeding shall suspend the enforcement of the contested Legal Requirement against Borrower, Senior Mezzanine Borrower, Mortgage Borrower, the Collateral, the Senior Mezzanine Collateral and any Individual Property; and (vi) Borrower shall furnish such security as may be required in the proceeding, or as may be reasonably requested by Lender, to insure compliance with such Legal Requirement, together with all interest and penalties payable in connection therewith. Lender may apply any such security, as necessary to cause compliance with such Legal Requirement at any time when, in the reasonable judgment of Lender, the validity, applicability or violation of such Legal Requirement is finally established or the Collateral, the Senior Mezzanine Collateral or any Individual Property (or any part thereof or interest therein) shall be in imminent danger of being sold, forfeited, terminated, cancelled or lost.

**5.1.2 Taxes and Other Charges.** Borrower shall pay or shall cause Mortgage Borrower to pay or cause to be paid all Taxes and Other Charges now or hereafter levied or assessed or imposed against the Properties or any part thereof as the same become due and payable; provided, however, Borrower's obligation to cause Mortgage Borrower to directly pay or cause to be paid Taxes shall be suspended for so long as Borrower complies with the terms and provisions of Section 7.2 hereof. Borrower will deliver or cause to be delivered to Lender receipts for payment or other evidence satisfactory to Lender that the Taxes and Other Charges have been so paid or are not then delinquent no later than the date on which the Taxes and/or Other Charges would otherwise be delinquent if not paid. Borrower shall furnish or cause to be furnished to Lender receipts for the payment of the Taxes and the Other Charges prior to the date the same shall become delinquent provided, however, Borrower is not required to furnish such receipts for payment of Taxes in the event that such Taxes have been paid by Lender pursuant to Section 7.2 hereof. Borrower shall not suffer (and shall not permit Mortgage Borrower to suffer) and shall promptly pay or cause to be paid and discharged (or cause Mortgage Borrower to pay or cause to be paid and discharged any Lien or charge whatsoever which may be or become a Lien or charge against the Properties other than Permitted Encumbrances, and shall promptly pay or cause to be paid for all utility services provided to the Properties. After prior notice to Lender, Borrower, at its own expense, may contest (or cause Mortgage Borrower to contest) by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any Taxes or Other Charges, provided that (a) no Default or Event of Default has occurred and remains uncured; (b) such proceeding shall be permitted under and be conducted in accordance with the provisions of any applicable material other instrument to which Borrower or Mortgage Borrower is subject and shall not constitute a default thereunder and such proceeding shall be conducted in accordance with all Legal Requirements; (c) none of the Collateral, the Senior Mezzanine Collateral, any Individual Property or any part of either or interest in either will be in imminent danger of being sold, forfeited, terminated, cancelled or lost; (d) Borrower shall promptly upon receipt of a final, non-appealable determination thereof pay (or cause Mortgage Borrower to pay) the amount of any such Taxes or Other Charges, together with all costs, interest and penalties which may be payable in connection therewith; (e) such proceeding shall suspend the collection of such contested Taxes or Other Charges from the applicable Individual Property; and (f) Borrower shall furnish or cause Mortgage Borrower to furnish such security as may be required in the proceeding, or as may be reasonably requested by Lender, to insure the payment of any such Taxes or Other Charges, together with all interest and penalties thereon. Lender may pay over any such cash deposit or part thereof held by Lender to the claimant entitled thereto at any time when, in the judgment of Lender, the entitlement of such claimant is established or any Individual Property (or part thereof or interest therein) shall be in danger of being sold, forfeited, terminated, cancelled or lost or there shall be any danger of the Lien of any Mortgage being primed by any related Lien.

**5.1.3 Litigation.** Borrower shall give prompt notice to Lender of any litigation or governmental proceedings pending or, to Borrower's knowledge, threatened against Borrower, Senior Mezzanine Borrower, Mortgage Borrower, the Collateral, Operating Company, Holdings or Guarantor which, in any such case, might materially adversely affect Borrower's, Senior Mezzanine Borrower's, Mortgage Borrower's, the Collateral's, Operating Company's, Holdings's or Guarantor's condition (financial or otherwise) or business or any Individual Property. Borrower shall not, without the prior written consent of Lender (which may be

furnished or withheld at its sole and absolute discretion), give its consent or approval to the settlement of any claim against Borrower, other than a fully insured third party claim, in any amount greater than One Hundred Thousand and no/100 Dollars (\$100,000.00).

**5.1.4 Access to Properties.** Borrower shall cause Mortgage Borrower to permit agents, representatives and employees of Lender and any Noteholder, and prospective purchasers of any Note or any interest therein, to inspect the Properties or any part thereof at reasonable hours upon reasonable advance notice, and Borrower shall cause Operating Company to permit such access by Lender, in each case subject to the rights of tenants under Leases and Hotel guests.

**5.1.5 Notice of Default.** Borrower shall promptly advise Lender of any material Default or Event of Default of which Borrower has knowledge, including any Mortgage Loan Default, Senior Mezzanine Loan Default, Senior Mezzanine Loan Event of Default or Mortgage Loan Event of Default.

**5.1.6 Cooperate in Legal Proceedings.** Borrower shall cooperate fully with Lender with respect to any proceedings before any court, board or other Governmental Authority which may in any way affect the rights of Lender hereunder or any rights obtained by Lender under any of the other Loan Documents and, in connection therewith, permit Lender, at its election, to participate in any such proceedings.

**5.1.7 Perform Loan Documents.** Borrower shall observe, perform and satisfy all the terms, provisions, covenants and conditions of, and shall pay when due all costs, fees and expenses to the extent required under the Loan Documents executed and delivered by, or applicable to, Borrower.

**5.1.8 Award and Insurance Benefits.** Borrower shall cooperate with Lender in obtaining for Lender the benefits of any Awards or Insurance Proceeds lawfully or equitably payable in connection with any Individual Property, and Lender shall be reimbursed for any actual, reasonable out-of-pocket expenses incurred in connection therewith (including actual, reasonable out-of-pocket attorneys' fees and disbursements, and, if reasonably required, the payment by Borrower of the expense of an appraisal on behalf of Lender in case of Casualty or Condemnation affecting any Individual Property or any part thereof) out of such Insurance Proceeds.

**5.1.9 Further Assurances.** Borrower shall and shall cause Mortgage Borrower, Senior Mezzanine Borrower, Guarantor and Operating Company to, at Borrower's sole cost and expense:

(a) furnish to Lender all instruments, documents, boundary surveys, footing or foundation surveys, certificates, plans and specifications, appraisals, title and other insurance reports and agreements, and each and every other document, certificate, agreement and instrument, in each case in such party's possession, not subject to confidentiality restrictions barring the delivery of such materials, and which are either required to be furnished by Borrower or Operating Company pursuant to the terms of the Loan Documents or which are reasonably requested by Lender in connection therewith;

(b) execute and deliver to Lender such documents, instruments, certificates, assignments and other writings, and do such other acts necessary or desirable, to evidence, preserve and/or protect the collateral at any time securing or intended to secure the obligations of Borrower under the Loan Documents, as Lender may reasonably require; and

(c) do and execute all and such further lawful and reasonable acts, conveyances and assurances for the better and more effective carrying out of the intents and purposes of this Agreement and the other Loan Documents, as Lender shall reasonably require from time to time.

**5.1.10 Mortgage Taxes.** Borrower represents that it has caused Mortgage Borrower to pay all state, county and municipal recording and all other taxes imposed upon the execution and recordation of the Mortgage.

**5.1.11 Financial Reporting.** (a) Borrower will keep or will cause to be kept and maintained on a Fiscal Year basis, in accordance with GAAP (or such other accounting basis acceptable to Lender), books, records and accounts reflecting all of the financial affairs of Borrower, Senior Mezzanine Borrower and Mortgage Borrower and all items of income and expense in connection with the operation on an individual basis of the Properties. Lender (at Lender's sole cost and expense) shall have the right from time to time at all times during normal business hours upon reasonable notice to examine the books, records and accounts of Borrower, Senior Mezzanine Borrower and Mortgage Borrower at the office of Borrower or any other Person maintaining such books, records and accounts and to make such copies or extracts thereof as Lender shall desire. After the occurrence and during the continuance of an Event of Default, Borrower shall pay any costs and expenses incurred by Lender to examine Borrower's, Senior Mezzanine Borrower's, Mortgage Borrower's or to the extent permitted under the Operating Lease, Operating Company's accounting records with respect to the Properties, as Lender shall determine to be necessary or appropriate in the protection of Lender's interest.

(b) Borrower will furnish or cause to be furnished to Lender annually, by no later than April 30, 2009, and thereafter within no more than one hundred twenty (120) days following the end of each Fiscal Year of Borrower, a complete copy of the annual financial statements of the Operating Companies, Mortgage Borrower, Senior Mezzanine Borrower and Borrower (and of no other entity or Person), audited by a "Big Four" accounting firm or other independent certified public accountant acceptable to Lender in accordance with GAAP (or such other accounting basis acceptable to Lender) covering the Properties on a combined basis for such Fiscal Year (and no other Persons, Properties or assets) and containing statements of profit and loss for the Operating Companies, Borrower, Senior Mezzanine Borrower, Mortgage Borrower and the Properties (on a combined basis) and a balance sheet for the Operating Companies, Borrower, Senior Mezzanine Borrower, Mortgage Borrower and the Properties (on a combined basis), in each case showing no other assets than the Properties (and the interests of Operating Companies, Mortgage Borrower, Senior Mezzanine Borrower and Borrower therein). In addition, Borrower will furnish or cause to be furnished to Lender by no later than April 30, 2008 (i) a "balance sheet only audit" prepared by a "Big Four" accounting firm or other independent certified public accountant acceptable to Lender (for the Fiscal Year ending December 31, 2007) and (ii) a complete copy of annual financial statements for the Operating Company, Mortgage Borrower, Senior Mezzanine Borrower and Borrower prepared in

accordance with GAAP (or such other accounting basis acceptable to Lender) covering the Operating Companies, Mortgage Borrower, Borrower, Senior Mezzanine Borrower, and the Properties on a combined basis for such Fiscal Year (ending December 31, 2007) and containing statements of profit and loss for the Operating Companies, Mortgage Borrower, Senior Mezzanine Borrower, Borrower and the Properties (in each case, on a combined basis), and a balance sheet for the Operating Companies, Mortgage Borrower, Senior Mezzanine Borrower, Borrower and the Properties (in each case on a combined basis). All such statements (including statements for the Fiscal Year ending December 31, 2007, and thereafter for all statements provided yearly to Lender) shall set forth the financial condition and the results of operations for the Properties for such Fiscal Year, and shall include, but not be limited to, amounts representing Borrower's reasonable and good faith determination of aggregate annual EBITDAR from all of the Properties and capital expenditures (allocated between maintenance and growth) at the Properties (it being acknowledged that Borrower's statement of EBITDAR pursuant to the above provisions of this sentence and the balance of this Section 5.1.11 shall not be binding on Lender and shall be subject to Lender's reasonable review). All such statements (including statements for the Fiscal Year ending December 31, 2007, and thereafter for all statements provided yearly to Lender) shall also set forth unaudited schedules for each Individual Property, detailing the statements of profit and loss and a balance sheet for each Individual Property, as well as gross revenues, gross hotel and casino revenues, EBITDAR and capital expenditures (allocated between maintenance and growth). The annual financial statements, as described above, shall be accompanied by (1) a comparison of the budgeted income and expenses and the actual income and expenses for the prior Fiscal Year, (2) in the case of any financial statements for Fiscal Year 2008 and thereafter, an unqualified opinion of a "Big Four" accounting firm or other independent certified public accountant reasonably acceptable to Lender, (3) room rate reports and RevPAR calculations, and (4) an Officer's Certificate certifying (A) that each annual financial statement presents fairly the financial condition and the results of operations of the Operating Companies, Borrower, Mortgage Borrower, Senior Mezzanine Borrower and the Properties being reported upon, (B) that such financial statements have been prepared in accordance with GAAP (or such other accounting basis acceptable to Lender) and (C) as of the date thereof whether there exists an event or circumstance which constitutes a Default or Event of Default, and if such Default or Event of Default exists, the nature thereof, the period of time it has existed and the action then being taken to remedy the same. Any audits performed by Borrower (and any audited materials and other information provided to Lender, as required hereunder in order for Borrower to comply with the requirements of this subparagraph (b)) may be performed with respect to the Properties on a "combining basis" (so that a single audit of the Properties, rather than individual audits of each of the separate Properties, may be performed and provided).

(c) Borrower will furnish, or cause to be furnished, to Lender on or before sixty (60) days after the end of each fiscal quarter the following items, accompanied by an Officer's Certificate stating that such items fairly present the financial condition and results of the Operating Companies, Mortgage Borrower, Senior Mezzanine Borrower, Borrower and the Properties, subject to normal year end adjustments, as applicable: (i) quarterly and year to date operating statements (including Capital Expenditures) noting such information as is necessary and sufficient to fairly represent the financial position and results of operation of the Properties during such quarter, and containing a comparison of budgeted income and expenses and the actual income and expenses together with a detailed explanation of any variances of ten percent (10%) or more between budgeted and actual amounts for such periods, all in form reasonably

satisfactory to Lender; and (ii) a calculation reflecting the Debt Service Coverage Ratio, gross revenues, gross hotel and casino revenues, EBITDAR and capital expenditures (allocated between maintenance and growth, in the case for the immediately preceding twelve (12) month period as of the last day of such quarter (it being acknowledged that Borrower's statement of EBITDAR pursuant to the above provisions of this sentence and the balance of this Section 5.1.11 shall not be binding on Lender and shall be subject to Lender's reasonable review). Borrower shall provide the statements and calculations required hereunder on both a "combined basis" for all Properties and on an Individual Property-by-Individual Property basis. In addition, such Officer's Certificate shall also state that the representations and warranties of Borrower set forth in Section 4.1.30 are true and correct as of the date of such certificate and that there are no trade payables outstanding for more than ninety (90) days. In addition, prior to a Securitization or Syndication, Borrower shall be obligated to provide the statements and calculations, as well as the Officer's Certificate, described in this subparagraph (c) to Lender on a monthly basis (such requirements to be modified as appropriate to reflect the fact that the information shall be required to be provided monthly (e.g., monthly rent rolls, monthly and year-to-date operating statements, a calculation reflecting the Debt Service Coverage Ratio for the immediately preceding twelve (12) month period as of the last day of such month), in each case within no more than thirty (30) days following the end of each calendar month.

(d) For the partial year period commencing on the date hereof, and for each Fiscal Year thereafter, Borrower shall submit to Lender for informational purposes only an Annual Budget not later than the commencement of such period or Fiscal Year in form reasonably satisfactory to Lender.

(e) Intentionally Omitted.

(f) If, at the time one or more Disclosure Documents are being prepared for a public Securitization, Lender expects that Borrower alone or Borrower and one or more Affiliates of Borrower collectively, or the Properties and Related Properties collectively, will be a "**Significant Obligor**", as that term is defined in Item 1101(k) of Regulation AB (as defined below), Borrower shall furnish to Lender upon request (i) the selected financial data or, if applicable, net operating income, required under Item 1112(b)(1) of Regulation AB, if Lender expects that the principal amount of the Loan together with any other loans made to an Affiliate of Borrower or secured by a Related Property, that is included in a Securitization with the Loan (each, a "**Related Loan**") as of the cut-off date for such Securitization may, or if the principal amount of the Loan together with any Related Loans as of the cut-off date for such Securitization and at any time during which the Loan and any Related Loans are included in a Securitization does, equal or exceed ten percent (10%) (but less than twenty percent (20%)) of the aggregate principal amount of all loans included or expected to be included, as applicable, in the Securitization or (ii) the financial statements required under Item 1112(b)(2) of Regulation AB, if Lender expects that the principal amount of the Loan together with any Related Loans as of the cut-off date for such Securitization may, or if the principal amount of the Loan together with any Related Loans as of the cut-off date for such Securitization and at any time during which the Loan and any Related Loans are included in a Securitization does, equal or exceed twenty percent (20%) of the aggregate principal amount of all loans included or expected to be included, as applicable, in the Securitization. Such financial data or financial statements shall be furnished to Lender (A) within ten (10) Business Days after written notice from Lender in connection with

the preparation of Disclosure Documents for the Securitization, (B) not later than thirty (30) days after the end of each fiscal quarter of Borrower and (C) not later than sixty (60) days after the end of each fiscal year of Borrower; provided, however, that Borrower shall not be obligated to furnish financial data or financial statements pursuant to clauses (B) or (C) of this sentence with respect to any period for which a filing pursuant to the Exchange Act in connection with or relating to the Securitization (an “**Exchange Act Filing**”) is not required. If requested by Lender, in writing, Borrower shall use commercially reasonable efforts to furnish to Lender financial data and/or financial statements for any tenant of any of the Properties (other than a tenant that is a reporting company under the Exchange Act) if, in connection with a Securitization, Lender expects there to be, with respect to such tenant or group of affiliated tenants, a concentration within all of the loans included or expected to be included, as applicable, in the Securitization such that such tenant or group of affiliated tenants would constitute a Significant Obligor. “**Related Property**” shall mean a parcel of real property, together with improvements thereon and personal property related thereto, that is “related”, within the meaning of the definition of Significant Obligor, to any of the Properties. “**Regulation AB**” shall mean Regulation AB under the Securities Act and the Exchange Act, as such Regulation may be amended from time to time.

(g) All financial data and financial statements provided by Borrower, Senior Mezzanine Borrower, Mortgage Borrower and Operating Company hereunder pursuant to Section 5.1.11(f), shall be prepared in accordance with GAAP, and all such financial statements shall meet the requirements of Regulation AB, Regulation S-X, Regulation S-K to the extent applicable and any other applicable legal requirements. All financial statements referred to in clause (ii) of Section 5.1.11(f) shall be audited by independent accountants of Borrower reasonably acceptable to Lender in accordance with Regulation AB, Regulation S-X, Regulation S-K to the extent applicable and all other applicable legal requirements, shall be accompanied by the manually executed report of the independent accountants thereon, which report shall meet the requirements of Regulation AB, Regulation S-X, Regulation S-K to the extent applicable and all other applicable legal requirements, and shall be further accompanied by a manually executed written consent of the independent accountants, in form and substance reasonably acceptable to Lender, to the inclusion of such financial statements in any Disclosure Document and any Exchange Act Filing and to the use of the name of such independent accountants and the reference to such independent accountants as “experts” in any Disclosure Document and Exchange Act Filing, all of which shall be provided at the same time as the related financial statements are required to be provided, in each case if applicable (i.e., in the case of a public securitization). All financial data and financial statements (audited or unaudited) provided by Borrower under this Section 5.1.11(g) shall be accompanied by an Officer’s Certificate which shall state that such financial statements meet the requirements set forth in the first sentence of this Section 5.1.11(g) to the extent applicable.

(h) If requested by Lender, Borrower shall provide Lender, promptly upon request, with any other or additional financial statements, or financial, statistical or operating information, as Lender shall reasonably determine to be required pursuant to Regulation AB, Regulation S-X, Regulation S-K or any amendment, modification or replacement thereto or other legal requirements in connection with any Disclosure Document or any Exchange Act Filing or as shall otherwise be reasonably requested by the Lender.

(i) In the event Lender reasonably determines, in connection with a Securitization, that the financial data and financial statements required in order to comply with Regulation AB, Regulation S-X, Regulation S-K or any amendment, modification or replacement thereto or other legal requirements are other than as provided herein, then notwithstanding the provisions of Sections 5.1.11(f) and (g), Lender may request, and Borrower shall promptly provide, such other financial statements as Lender determines to be necessary or appropriate for such compliance.

(j) Any reports, statements or other information required to be delivered under this Agreement shall be delivered (i) in paper form, and (ii) if requested by Lender and within the capabilities of Borrower's data systems without change or modification thereto, in electronic form and prepared using a Microsoft Word for Windows or WordPerfect for Windows files (which files may be prepared using a spreadsheet program and saved as word processing files). Borrower agrees that Lender may disclose information regarding any of the Properties, the Collateral, the Senior Mezzanine Collateral, Mortgage Borrower, Senior Mezzanine Borrower, Borrower and Operating Company that is provided to Lender pursuant to this Section in connection with the Securitization to such parties reasonably requesting such information in connection with such Securitization.

**5.1.12 Business and Operations.** Borrower will, and will cause Mortgage Borrower and Operating Company to, continue to engage in the businesses presently conducted by it as and to the extent the same are necessary for the ownership, maintenance, management and operation of the Properties. Borrower will and will cause Senior Mezzanine Borrower, Mortgage Borrower and Operating Company to qualify to do business and will remain in good standing under the laws of each jurisdiction as and to the extent the same are required for the ownership, maintenance, management and operation of the Properties.

**5.1.13 Title to the Properties.** Borrower will cause Mortgage Borrower to warrant and defend (a) the title to each Individual Property and every part thereof, subject only to Liens permitted hereunder (including Permitted Encumbrances) and (b) the validity and priority of the Liens of the Mortgages and the Assignments of Leases, subject only to Liens permitted hereunder (including Permitted Encumbrances), in each case against the claims of all Persons whomsoever. Borrower shall reimburse Lender for any actual out-of-pocket losses, costs, damages or expenses (including reasonable attorneys' fees and court costs) incurred by Lender if an interest in any Individual Property, other than as permitted hereunder, is claimed by another Person. Borrower will warrant and defend (a) the title to the Collateral and every part thereof, subject only to Liens permitted hereunder and (b) the validity and priority of the Liens of the Pledge Agreement, in each case against the claims of all Persons whomsoever. Borrower shall reimburse Lender for any actual out-of-pocket losses, costs, damages or expenses (including reasonable attorneys' fees and court costs) incurred by Lender if an interest in any part of the Collateral, other than as permitted hereunder, is claimed by another Person.

**5.1.14 Costs of Enforcement.** In the event (a) that any Mortgage encumbering any Individual Property or the Lien of the Pledge Agreement is foreclosed in whole or in part or that any such Mortgage or Pledge Agreement is put into the hands of an attorney for collection, suit, action or foreclosure, (b) of the foreclosure of any mortgage prior to or subsequent to any Mortgage or any Lien prior to or subsequent to the Lien of the Pledge Agreement in which

proceeding Mortgage Lender or Lender is made a party or exercises any or all of its rights or remedies under such Mortgage or the Pledge Agreement or any other Loan Documents as and when permitted thereby, or (c) of the bankruptcy, insolvency, rehabilitation or other similar proceeding in respect of Borrower, Senior Mezzanine Borrower, Mortgage Borrower or Operating Company or an assignment by Borrower, Senior Mezzanine Borrower, Mortgage Borrower or Operating Company for the benefit of its creditors, Borrower, its successors or assigns, shall be chargeable with and agrees to pay all reasonable out-of-pocket costs of collection and defense, including reasonable out-of-pocket attorneys' fees and costs, incurred by Lender, Mortgage Borrower, Senior Mezzanine Borrower or Borrower in connection therewith and in connection with any appellate proceeding or post-judgment action involved therein, together with all required service or use taxes.

**5.1.15 Estoppel Statement.** (a) After request by Lender, Borrower shall within ten (10) Business Days (but, provided there exists no Default or Event of Default, no more often than twice during the course of each fiscal year of Borrower) furnish Lender with a statement, duly acknowledged and certified, (i) with respect to the Loan, setting forth (A) the original principal amount of the Note, (B) the unpaid principal amount of the Loan, (C) the Interest Rate of the Loan, (D) the date installments of interest and/or principal were last paid, (E) any offsets or defenses to the payment of the Debt, if any, and (F) that the Note, this Agreement, the Pledge Agreement and the other Loan Documents are valid, legal and binding obligations and have not been modified or if modified, giving particulars of such modification, (ii) with respect to any Senior Mezzanine Loan, setting forth (A) the original principal amount of the applicable Senior Mezzanine Loan, (B) the unpaid principal amount of the Senior Mezzanine Loan, (C) the interest rate of the Senior Mezzanine Loan, (D) the date installments of interest and/or principal were last paid, (E) any offsets or defenses to the payment of the debt, if any, and (F) that the Senior Mezzanine Note, the Senior Mezzanine Loan Agreement and the other Senior Mezzanine Loan Documents are valid, legal and binding obligations and have not been modified or if modified, giving particulars of such modification and (iii) with respect to the Mortgage Loan, setting forth (A) the original principal amount of the Mortgage Loan, (B) the unpaid principal amount of the Mortgage Loan, (C) the interest rate of the Mortgage Loan, (D) the date installments of interest and/or principal were last paid, (E) any offsets or defenses to the payment of the debt, if any, and (F) that the Mortgage Note, the Mortgage Loan Agreement, the Security Instruments and the other Mortgage Loan Documents are valid, legal and binding obligations and have not been modified or if modified, giving particulars of such modification.

(b) Borrower shall exercise reasonable best efforts to deliver to Lender upon request, tenant estoppel certificates from each space tenant leasing space at the Properties, and shall exercise reasonable best efforts to deliver an estoppel certificate from each Ground Lessor, each in form and substance reasonably satisfactory to Lender provided that Borrower shall not be required to deliver such certificates more frequently than two (2) times in any calendar year.

(c) After request by Borrower, but not more than twice during the course of each year, Lender shall furnish Borrower with a statement setting forth (i) the original principal amount of the Loan, (ii) the unpaid principal amount of the Loan, (iii) the Interest Rate of the Loan, (iv) the date installments of interest and/or principal were last paid, and (v) that the Loan Documents have not been modified or if modified, giving particulars of such modification.

**5.1.16 Loan Proceeds.** Borrower shall use the proceeds of the Loan received by it on the Closing Date only for the purposes set forth in Section 2.1.4.

**5.1.17 Performance by Borrower.** Borrower shall in a timely manner observe, perform and fulfill each and every covenant, term and provision of each Loan Document executed and delivered by, or applicable to, Borrower, and shall not enter into or otherwise suffer or permit any amendment, waiver, supplement, termination or other modification of any Loan Document executed and delivered by, or applicable to, Borrower without the prior consent of Lender. Borrower shall cause Mortgage Borrower and Senior Mezzanine Borrower, in a timely manner, to observe, perform and fulfill each and every covenant, term and provision of each Mortgage Loan Document and Senior Mezzanine Loan Documents executed and delivered by, or applicable to, Mortgage Borrower and Senior Mezzanine Borrower, and shall not cause or permit Mortgage Borrower or Senior Mezzanine Borrower to enter into or otherwise suffer or permit any amendment, waiver, supplement, termination or other modification of any Mortgage Loan Document or Senior Mezzanine Loan Document executed and delivered by, or applicable to, Mortgage Borrower or Senior Mezzanine Borrower without the prior written consent of Lender.

**5.1.18 Confirmation of Representations.** Borrower shall deliver, in connection with any Securitization, (a) one or more Officer's Certificates certifying as to the accuracy of all representations made by Borrower in the Loan Documents as of the date of the closing of such Securitization in all relevant jurisdictions, and (b) certificates of the relevant Governmental Authorities in all relevant jurisdictions indicating the good standing and qualification of Mortgage Borrower, Senior Mezzanine Borrower, Borrower and Holdings as of the date of the Securitization.

**5.1.19 No Joint Assessment.** Borrower shall not, and shall not permit Mortgage Borrower to, suffer, permit or initiate the joint assessment of any Individual Property (a) with any other real property constituting a tax lot separate from such Individual Property, and (b) which constitutes real property with any portion of such Individual Property which may be deemed to constitute personal property, or any other procedure whereby the lien of any taxes which may be levied against such personal property shall be assessed or levied or charged to such real property portion of the Individual Property, except as required by Legal Requirements.

**5.1.20 Leasing Matters.** (a) Borrower shall not (and shall cause Mortgage Borrower and Guarantor (Operating Lease) not to), without the prior written consent of Lender (and, if a Securitization shall have occurred, Borrower shall have obtained and delivered to Lender a Rating Agency Confirmation) restate, materially modify, materially amend or materially supplement (or permit the restatement, material modification, amendment or supplement of) any Operating Lease or Operating Lease Guaranty (provided, that any modification, amendment or supplement affecting any of the economic terms of any Operating Lease or any of the terms of the Operating Lease Guaranty shall be deemed to be material for purposes hereof), terminate or accept the surrender (or permit the termination or surrender) of any Operating Lease or Operating Lease Guaranty, or release or materially waive (or permit the release or material waiver of) the Operating Company or Guarantor (Operating Lease) from the performance or observance of any obligation or condition under the Operating Leases or Operating Lease Guaranty. In connection with a material modification, Lender may request, and in such event, Borrower shall not effect such modification without, an Additional True Lease

Opinion in form and substance reasonably satisfactory to Lender issued by Borrower's counsel (at Borrower's expense). Borrower shall not permit (or cause or permit Mortgage Borrower to permit) the prepayment of any rents under the Operating Leases for more than one (1) month prior to the due date thereof. Notwithstanding the foregoing, Lender's consent shall not be required in connection with any modification, amendment or waiver of any provision of the Operating Lease as may be reasonably necessary to comply with the requirements of this Agreement or any other Loan Document or that makes the provisions of the Operating Lease consistent with the provisions of this Agreement or any other Loan Document. Notwithstanding anything contained in this Section 5.1.20(a), to the contrary, (x) Lender's consent to any amendment, modification or supplement of the Operating Lease (or any new Operating Lease) or the Operating Lease Guaranty may also be conditioned on the delivery by Borrower, upon the reasonable request of Lender, of an Additional Insolvency Opinion and/or an Additional True Lease Opinion acceptable to Lender (and, if a Securitization shall have occurred, acceptable to the Rating Agencies), and (y) Lender's consent to any assignment of any Operating Lease or Operating Lease Guaranty (or of any interest therein) or any material amendment, material modification or material supplement of any Operating Lease shall also be conditioned on the delivery by Borrower, upon the reasonable request of Lender, of an Additional Insolvency Opinion and an Additional True Lease Opinion acceptable to Lender (and, if a Securitization shall have occurred, acceptable to the Rating Agencies).

(b) Borrower shall not permit (or consent to) an assignment by any Operating Company of any such Operating Company's interest(s) under any Operating Lease or an assignment by any Mortgage Borrower of any such Mortgage Borrower's interest(s) under any Operating Lease Guaranty without, in each case, Lender's prior written consent (and, if a Securitization shall have occurred, at Lender's request, without Borrower providing to Lender a Rating Agency Confirmation and an Additional True Lease Opinion).

(c) All space Leases and all renewals of space Leases executed after the date hereof entered into by Operating Company shall (i) provide for rental rates, rent credits and free rent periods comparable to existing local market rates for comparable properties, (ii) be on commercially reasonable terms, (iii) provide that such Lease is subordinate to the Mortgage encumbering the Individual Property in question and that the lessee will attorn to Mortgage Lender and any purchaser at a foreclosure sale; (iv) not contain any terms which would materially adversely affect Lender's rights under the Loan Documents; (v) not grant to the Tenants thereunder any option or right to purchase the applicable Individual Property (or any portion thereof); and (v) in the case of Major Leases, have initial terms less than twenty (20) consecutive years, in each case (unless otherwise consented to by Lender pursuant to clause (d) below).

(d)(i) Any Major Lease entered into by Operating Company with respect to an Individual Property executed after the date hereof (and any renewal of any Major Lease with respect to an Individual Property), and any space Lease or space Lease renewal proposed to be entered into by Operating Company after the date hereof and that does not meet the criteria set forth in Sections 5.1.20(a) and subparagraph (c) above, shall be subject to the prior written approval of Lender, which approval shall not be unreasonably withheld, conditioned or delayed. Borrower shall not terminate or accept the surrender of (and shall not permit Operating Company

or Mortgage Borrower to terminate or accept the surrender of) a Major Lease (unless by reason of a tenant default) without the consent of Lender.

(ii) Every submission to Lender of any proposed Major Lease (or Major Lease renewal, amendment, modification or termination) for Lender's approval shall be forwarded to Lender together with a notice from Borrower (in bold typeface) that states "YOUR FAILURE TO RESPOND TO THIS NOTICE AND REQUEST FOR APPROVAL WITHIN TEN (10) BUSINESS DAYS OF YOUR RECEIPT OF THIS NOTICE SHALL CONSTITUTE YOUR DEEMED CONSENT TO THE MATTERS DESCRIBED IN OR THAT ARE THE SUBJECT OF THIS NOTICE". If Lender responds to Borrower's request by identifying missing documents or materials that are incomplete or inaccurate (and that are the subject of the request for approval), then Borrower shall re-submit such documents or materials to Lender for its approval together with a second notice from Borrower that complies with this section.

(iii) If Lender fails to approve or disapprove any such proposed request or submission attached to a first notice or request sent by Borrower (or the matters that are the subject of the re-submitted notice or request for approval) within ten (10) Business Days of receipt of same, Borrower shall re-submit such instruments or materials to Lender for Lender's approval and give Lender a second notice (in bold typeface) that states "SECOND NOTICE — YOUR FAILURE TO RESPOND TO THIS NOTICE AND REQUEST FOR APPROVAL WITHIN FIVE (5) BUSINESS DAYS OF YOUR RECEIPT OF THIS NOTICE SHALL CONSTITUTE YOUR DEEMED CONSENT TO THE MATTERS DESCRIBED IN OR THAT ARE THE SUBJECT OF THIS NOTICE". If Lender fails to respond to such second notice within five (5) Business Days of receipt of same, then Lender's consent to the proposed request or submission that is the subject of such notice shall be deemed granted.

(e) Borrower shall and shall cause Mortgage Borrower and Operating Company to (i) observe and perform the obligations imposed upon the lessor under the Leases in a commercially reasonable manner; (ii) enforce the terms, covenants and conditions contained in the Leases upon the part of the lessee thereunder to be observed or performed in a commercially reasonable manner and in a manner not to impair the value of the Individual Property involved; (iii) not collect any of the rents more than one (1) month in advance (other than security deposits); (iv) not execute any other assignment of lessor's interest in the Leases or the Rents (except as contemplated by the Loan Documents); (v) not alter, modify or change the terms of the Leases in a manner inconsistent with the provisions of the Loan Documents; and (vi) execute and deliver at the request of Lender all such further assurances, confirmations and assignments in connection with the Leases as Lender shall from time to time reasonably require.

(f) Upon request, Borrower shall furnish Lender with executed copies of all new Leases or Lease renewals or amendments.

(g) Notwithstanding anything to the contrary contained herein, Borrower shall not enter into (or permit Operating Company or Mortgage Borrower to enter into) a lease of all or substantially all of any Individual Property without Lender's prior consent.

**5.1.21 Alterations.** (a) Borrower shall cause all Alterations with respect to any portion of any of the Properties to be conducted and performed with due diligence in a good and

workmanlike manner, and all materials used and work done shall be in accordance with all applicable Legal Requirements. In addition, with respect to the Convention Center Project and the Tower Project, to the extent such projects are pursued, Borrower agrees to cause Mortgage Borrower to (i) diligently pursue each such project to completion in a timely manner, subject to delays arising from Force Majeure events, (ii) cause the work to be performed in connection with each such project in substantial conformance with the plans and specifications for such project, and otherwise in conformity with the Mortgage Loan Agreement, each Senior Mezzanine Loan Agreement and this Agreement, (iii) provide Lender with reasonably detailed monthly progress reports (and such information as Lender shall reasonably request from time to time) regarding the status of the Convention Center Project and the Tower Project, (iv) upon the substantial completion of each such project, provide Lender with evidence of the substantial completion of each such project, copies of final unconditional lien waivers from the general contractors, construction managers or subcontractors for such project (if requested by Lender) and evidence of the final payment of all amounts due in connection with each such project, and a title search for the affected Individual Property indicating that such Individual Property is free from all liens, claims and other encumbrances not previously approved by Lender, and (v) upon final completion of each such project, provide Lender with a final survey acceptable to Lender showing the "as-built" location of the completed Improvements and all easements appurtenant thereto, and "as-built" plans and specifications for Lender's file and a certificate of occupancy to the extent issued by the relevant Governmental Authority.

(b) Borrower shall obtain Lender's prior consent to (i) any Material Alterations (unless collateral or a completion guaranty is provided as set forth in subparagraph (c) below) or (ii) any Alterations to any of the Improvements (even if otherwise described in clause (i) above) that is reasonably likely to have an Individual Material Adverse Effect. Lender's consent shall not be required for any Alterations other than the Alterations described in the preceding sentence. Notwithstanding any provision hereof to the contrary, without Lender's consent, not to be unreasonably withheld or delayed, in no event shall Borrower close or shutter, or undertake or permit any Tenant or other Person to undertake, an Alteration that, alone or together with other work then being undertaken, closes or shutters, more than ten percent (10%) of the income-generating space in any Individual Property at any one time. Prior to undertaking any Alteration with respect to an Individual Property in excess of five percent (5%) of the sum of the Allocated Loan Amount for such Individual Property and the "Allocated Loan Amounts" under (and as defined in each of) the Mortgage Loan Agreement and the Other Mezzanine Loan Agreements for such Individual Property, to afford Lender a prior and reasonable opportunity to determine whether or not the proposed Alteration would have an Individual Material Adverse Effect, Borrower will deliver such plans, specifications, project schedules, logistical plans, construction budgets (including a statement of sources and uses) and such other information as Lender may reasonably request in respect of such Alteration for review by Lender (and its consultants). All reasonable out-of-pocket costs and expenses incurred by Lender in connection with reviewing said Alterations proposal, including, without limitation, reasonable counsel fees and disbursements and Lender's consultants, shall be paid by Borrower. The above-referenced submission to Lender shall be delivered with a notice from Borrower (in bold typeface) that states "YOUR FAILURE TO RESPOND TO THIS NOTICE AND REQUEST FOR APPROVAL WITHIN TEN (10) BUSINESS DAYS OF YOUR RECEIPT OF THIS NOTICE SHALL CONSTITUTE YOUR DEEMED CONSENT TO THE MATTERS DESCRIBED IN OR THAT ARE THE SUBJECT OF THIS NOTICE". If Lender responds to Borrower's request

by identifying missing documents or materials that are incomplete or inaccurate (and that are the subject of the request for approval), then Borrower shall re-submit such documents or materials to Lender for its approval together with a second notice from Borrower that complies with this Section. If Lender fails to approve or disapprove any such proposed request or submission attached to a first notice or request sent by Borrower (or the matters that are the subject of the re-submitted notice or request for approval) within ten (10) Business Days of receipt of same, Borrower shall re-submit such instruments or materials to Lender for Lender's approval and give Lender a second notice (in bold typeface) that states "SECOND NOTICE — YOUR FAILURE TO RESPOND TO THIS NOTICE AND REQUEST FOR APPROVAL WITHIN TEN (10) BUSINESS DAYS OF YOUR RECEIPT OF THIS NOTICE SHALL CONSTITUTE YOUR DEEMED CONSENT TO THE MATTERS DESCRIBED IN OR THAT ARE THE SUBJECT OF THIS NOTICE". If Lender fails to respond to such second notice within ten (10) Business Days of receipt of same, then Lender's consent to the proposed request or submission that is the subject of such notice shall be deemed granted.

(c) With respect to any Material Alteration, unless otherwise consented to by Lender, Borrower shall promptly deliver to Mortgage Lender as security for the payment of such amounts and as additional security for Borrower's obligations under the Loan Documents any of the following: (A) cash, (B) U.S. Obligations, (C) other securities having a rating acceptable to Lender and that the applicable Rating Agencies have confirmed in writing will not, in and of itself, result in a downgrade, withdrawal or qualification of the initial, or, if higher, then current ratings assigned to any Securities or any class thereof in connection with any Securitization, (D) a completion and performance bond or an irrevocable letter of credit (payable on sight draft only) issued by an Eligible Institution, or (E) a completion guaranty from an Approved Guarantor in the form attached hereto as Exhibit A (with such changes as Lender shall approve), together with evidence reasonably satisfactory to Lender that the Approved Guarantor has reasonable liquidity taking into account the nature and amount of the guaranteed obligations under such completion guaranty (it being agreed that, if the Approved Guarantor in question is Holdings, then the amounts available for repayment of such obligations under any revolving credit facility in effect at such time in favor of Harrah's Operating Company, Inc. will be taken into account in determining whether Holdings has reasonable liquidity), and with, if required by applicable Rating Agency requirements, an Additional Insolvency Opinion. Such security, including the amount of the guaranteed obligations under any completion guaranty delivered as aforesaid, shall be in an amount equal to the sum of (i) the excess of the total unpaid amounts with respect to alterations to the Improvements on the applicable Individual Property (other than such amounts to be paid or reimbursed by tenants under the Leases) over the Threshold Amount and (ii) the costs of collection, and, upon the occurrence and during the continuance of an Event of Default, Lender may apply such security from time to time at the option of Lender to pay for such alterations.

**5.1.22 Operation of Properties.** (a) Borrower shall cause Mortgage Borrower to cause each of the Properties to be operated, in all material respects, in accordance with the Operating Leases and in accordance with all applicable Legal Requirements, including Gaming Laws, and all Gaming Licenses and other Operating Permits and in a manner consistent with their respective use as of the Closing Date. Borrower shall cause Operating Company to post all required bonds, if any, with any Gaming Authority as and in the amounts required under all

applicable Legal Requirements (and shall, if Lender makes a request therefor, promptly provide Lender with copies of all such bonds).

(b) Borrower shall not, without Lender's prior written consent, permit Operating Company to assign or transfer, and Operating Company shall not, without Lender's prior written consent, assign or transfer, or delegate any responsibilities with respect to, any Gaming License or Operating Permit.

(c) Borrower shall cause Operating Company to make all filings required under the Gaming Laws, or in connection with any Gaming Licenses or Operating Permits, including in connection with the origination of the Mortgage Loan and the Mezzanine Loans, and shall deliver copies of such filings as Lender shall reasonably request to Lender, promptly upon request. Borrower will timely pay all fees, investigative fees and costs required by the Gaming Authorities with respect to any such approvals and licenses. Borrower will and will cause Mortgage Borrower to diligently and comprehensively respond to any inquiries and requests from the Gaming Authorities and promptly file or cause to be filed any additional information required in connection with any required filings as soon as practicable after receipt of requests therefor.

(d) Upon request of Lender, Borrower shall deliver to Lender (or cause Operating Company to deliver to Lender) such evidence of compliance (by Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company and each Individual Property) with all Legal Requirements, including Gaming Laws as shall be reasonably requested by Lender. Borrower shall immediately deliver to Lender (and shall cause Operating Company and Mortgage Borrower to deliver to Lender) any notice of material non-compliance or material violation of any Legal Requirement, or of any material inquiry or investigation commenced by the Gaming Authorities in connection with any of the Properties. Borrower shall immediately notify Lender if it, Senior Mezzanine Borrower, Mortgage Borrower or Operating Company believe that any material license, including any Gaming License, is being or could be revoked or suspended, or that any action is pending, being considered or being, or could be, taken to revoke or suspend Borrower's, Senior Mezzanine Borrower's, Mortgage Borrower's or Operating Company's material licenses, including the Gaming Licenses, or to fine, penalize or impose remedies upon Borrower, Mortgage Borrower, Senior Mezzanine Borrower or Operating Company, or that any action is pending, being considered, or being, or could be, taken to discontinue, suspend, deny, decrease or recoup any payments due, made or coming due to Borrower, Senior Mezzanine Borrower, Mortgage Borrower or Operating Company, in each case if same might reasonably be expected to have an Individual Material Adverse Effect. Borrower shall immediately deliver to Lender any notice received by Borrower, Senior Mezzanine Borrower, Mortgage Borrower or Operating Company alleging or relating to the material non-compliance by Borrower, Senior Mezzanine Borrower, Mortgage Borrower or Operating Company with any Legal Requirements, including Gaming Laws.

(e) In the event that any of the Operating Leases expire or are terminated (without limiting any obligation of Borrower to obtain Lender's consent to any termination or modification of any of the Operating Leases in accordance with the terms and provisions of this Agreement), Borrower shall cause Mortgage Borrower to promptly enter into a replacement Operating Lease (in form and substance satisfactory to Lender) with Operating Company or

another operating company reasonably satisfactory to Lender, provided Borrower will obtain a Rating Agency Confirmation as a condition to the effectiveness of such replacement Operating Lease and that Borrower will cause Guarantor (Operating Lease) to execute and deliver an operating lease guaranty in the same form and substance as the Operating Lease Guaranty.

(f) Borrower shall cause Mortgage Borrower to: (i) promptly perform and/or observe, in all material respects, all of the covenants and agreements required to be performed and observed by it under the Operating Lease and do all things necessary to preserve and to keep unimpaired its material rights thereunder; (ii) promptly notify Lender of any material default under any Operating Lease or Operating Lease Guaranty of which it is aware; (iii) promptly deliver to Lender a copy of each financial statement, business plan, capital expenditures plan, notice, report and estimate received by it under each Operating Lease; and (iv) enforce the performance and observance of all of the material covenants and agreements required to be performed and/or observed by each Operating Company under each Operating Lease and by each Guarantor (Operating Lease) under each Operating Lease Guaranty, in a commercially reasonable manner.

(g) Borrower shall cause Mortgage Borrower to cause the Hotel Components to be at all times open for business as a hotel and the Casino Components to be open for business as a casino, except to the extent necessary to undertake any alterations or repairs (subject to the provisions of this Agreement with respect to the performance of any such alterations or repairs). Borrower shall cause each Individual Property to be at all times operated, managed and maintained, at all times and in the manner and accordance with the standards required pursuant to the Operating Leases and all applicable Legal Requirements in all material respects.

(h) If Mortgage Borrower shall be in material default under any Operating Lease, then, subject to the terms of such Operating Lease, Borrower shall cause Mortgage Borrower (subject to any applicable Legal Requirements) to grant Lender the right (but not the obligation), to cause the default or defaults under such Operating Lease to be remedied and otherwise exercise any and all rights of Mortgage Borrower under such Operating Lease, as may be necessary to prevent or cure any default provided such actions are necessary to protect Lender's interest under the Loan Documents, and Lender shall have the right to enter all or any portion of the affected Individual Property at such times and in such manner as Lender deems necessary, to prevent or to cure any such default. The actions or payments of Lender to cure any default by Mortgage Borrower under any Operating Lease shall not remove or waive, as between Borrower and Lender, any default that may occur or occurred under this Agreement by virtue of such default by Mortgage Borrower under such Operating Lease. All out-of-pocket sums reasonably expended by Lender to cure any such default shall be paid by Borrower to Lender, upon demand, with interest on such sum at the rate set forth in this Agreement from the date such sum is expended to and including the date the reimbursement payment is made to Lender. All such indebtedness shall be deemed to be secured by the Pledge Agreement and the Collateral.

(i) Borrower shall notify Lender promptly in writing of (i) the occurrence, to Borrower's knowledge, of any material default by any party to any Operating Lease or any Operating Lease Guaranty, (ii) the occurrence, to Borrower's knowledge, of any event that, with the passage of time or service of notice, or both, would constitute a material default by any party under any Operating Lease or any Operating Lease Guaranty, and (iii) the receipt by Borrower or

its Affiliate of any notice (written or otherwise) from any party under any Operating Lease or any Operating Lease Guaranty noting or claiming the occurrence of any material default by Borrower under such Operating Lease or such Operating Lease Guaranty.

(j) Borrower shall (subject to any applicable Legal Requirements) promptly cause Mortgage Borrower to execute, acknowledge and deliver to Lender such instruments as may reasonably be required to permit Lender to cure any material default under any Operating Lease or permit Lender to take such other action required to enable Lender to cure or remedy the matter in default and preserve the value of the security interest of Lender under the Loan Documents with respect to the Collateral. Upon the occurrence and during the continuance of an Event of Default, Borrower irrevocably appoints Lender as its true and lawful attorney-in-fact to do, in its name or otherwise, any and all acts and to execute any and all documents that are necessary to preserve any rights of Mortgage Borrower under or with respect to any Operating Lease, including, without limitation, the right to effectuate any extension or renewal of any Operating Lease, or to preserve any rights of Mortgage Borrower whatsoever in respect of any part of any Operating Lease (and the above powers granted to Lender are coupled with an interest and shall be irrevocable).

(k) With respect to any Operating Lease or any Operating Lease Guaranty, Borrower shall, from time to time, upon ten (10) Business Days' prior written request from Lender, execute, acknowledge and deliver to Lender, a statement containing the following: (A) a statement that such Operating Lease or such Operating Lease Guaranty is unmodified and in full force and effect or, if there have been modifications, that the Operating Lease or the Operating Lease Guaranty is in full force and effect as modified and setting forth such modifications, (B) a statement that Mortgage Borrower is not in default thereunder beyond any applicable grace, cure or notice period or, if any such default shall exist thereunder, a description of such default and the steps being taken to cure such default, (C) a statement that, to Borrower's knowledge, either the other party thereto is not in default thereunder beyond any applicable grace, cure or notice period or, if any such default shall exist thereunder, a description of such default and the steps being taken to cure such default and (D) such other information with respect to the Operating Lease or the Operating Lease Guaranty as Lender shall reasonably request.

(l) With respect to any Operating Lease, Borrower shall, from time to time, upon ten (10) Business Days of Lender's prior written request from Lender, provide Lender with a statement from each Operating Company containing the following: (A) a statement that such Operating Lease is unmodified and in full force and effect or, if there have been modifications, that the Operating Lease is in full force and effect as modified and setting forth such modifications, (B) a statement that Operating Company is not in default thereunder beyond any applicable grace, cure or notice period or, if any such default shall exist thereunder, a description of such default and the steps being taken to cure such default, (C) a statement that, to Operating Company's knowledge, the Mortgage Borrower is not in default thereunder beyond any applicable grace, cure or notice period or, if any such default shall exist thereunder, a description of such default and the steps being taken to cure such default and (D) such other information with respect to Operating Company, any Operating Lease and/or any Operating Lease Guaranty as Lender shall reasonably request.

(m) With respect to any Operating Lease Guaranty, Borrower shall, from time to time, upon ten (10) Business Days of Lender's prior written request from Lender, provide Lender with a statement from Guarantor (Operating Lease) containing the following: (A) a statement that such Operating Lease Guaranty is unmodified and in full force and effect or, if there have been modifications, that the Operating Lease Guaranty is in full force and effect as modified and setting forth such modifications; (B) a statement that Guarantor (Operating Lease) is not in default thereunder beyond any applicable grace, cure or notice period or, if any such default shall exist thereunder, a description of such default and the steps being taken to cure such default; and (C) such other information with respect to such Guarantor (Operating Lease) and/or Operating Lease Guaranty as Lender shall reasonably request.

**5.1.23 Ground Lease Estoppel.** Borrower shall, on or prior to May 28, 2008, either (i) effect the substitution of the Properties commonly known as "Paris Las Vegas" and "Harrah's Laughlin" for the Individual Properties referred to as "Harrah's Lake Tahoe", "Harvey's Lake Tahoe", "Bill's Lake Tahoe" and "Showboat Atlantic City" as described in Section 2.5.2 of this Agreement or (ii) (x) cause the occurrence of the events set forth in paragraph 1, clause (ii) of the Ground Lease Side Letter and (y) in connection therewith, deliver to Lender updates to its UCC Title Insurance Policy and any endorsements to the Mortgage Borrower's owner's policies delivered to Lender in connection with the closing of the Loan, together with such other documents, instruments and new or updated opinions (including as to enforceability, non-consolidation and true lease matters) as Lender may reasonably request. The failure by Borrower to cause the occurrence of the event described in clause (i) or of the events described in clause (ii) above, on or prior to May 28, 2008 shall constitute a "Ground Lease Estoppel Trigger Event" hereunder, but shall not constitute a Default or an Event of Default hereunder.

**5.1.24 Mortgage Loan Reserve Funds.** Borrower shall cause Mortgage Borrower and Senior Mezzanine Borrower to deposit and maintain each of the Mortgage Loan Reserve Funds and Senior Mezzanine Loan Reserve Funds (if any) as more particularly set forth in Article VII of the Mortgage Loan Agreement and Senior Mezzanine Loan Agreement and to perform and comply with all the terms and provisions relating thereto. Borrower grants to Lender a first-priority perfected security interest in Borrower's interest in each of the Mortgage Loan Reserve Funds and Senior Mezzanine Loan Reserve Funds, if any, subject to the prior rights of Mortgage Lender and Senior Mezzanine Lender, and any and all monies now or hereafter deposited in each Mortgage Loan Reserve Fund and Senior Mezzanine Loan Reserve Funds as additional security for payment of the Debt to the extent Borrower has an interest in same. Subject to the qualifications regarding Mortgage Lender's and Senior Mezzanine Lender's interest in the Mortgage Loan Reserve Funds and Senior Mezzanine Loan Reserve Funds (as applicable), if any, until expended or applied in accordance with the Mortgage Loan Documents, Senior Mezzanine Loan Documents or the Loan Documents, Borrower's interest in the Mortgage Loan Reserve Funds and Senior Mezzanine Loan Reserve Funds shall constitute additional security for the Debt and upon the occurrence of an Event of Default, Lender may, in addition to any and all other remedies available to Lender, apply any sums then present in any or all of the Mortgage Loan Reserve Funds and Senior Mezzanine Loan Reserve Funds to the payment of the Debt in any order in its sole discretion and/or hold the same as Collateral for the Loan.

**5.1.25 Notices.** Borrower shall give notice, or cause notice to be given to Lender promptly upon the occurrence and during the continuance of an Event of Default and upon any of the following:

(a) any Mortgage Loan Event of Default or Senior Mezzanine Loan Event of Default;

(b) any default or event of default under any contractual obligation of Borrower, or, to the knowledge of Borrower, Senior Mezzanine Borrower, Mortgage Borrower, Operating Company, Principal or Guarantor that could reasonably be expected to have an Individual Material Adverse Affect or an Aggregate Material Adverse Affect;

(c) any litigation or proceeding affecting Borrower, or, to the knowledge of Borrower, affecting any of Mortgage Borrower, Senior Mezzanine Borrower, Operating Company, Principal or Guarantor, which could or could reasonably be expected to have an Individual Material Adverse Effect or an Aggregate Material Adverse Effect; or

(d) a change in the business, operations, property or financial or other condition or prospects of Borrower, or, to the knowledge of Borrower, Senior Mezzanine Borrower, Mortgage Borrower, Operating Company, Principal or Guarantor which could reasonably be expected to have an Individual Material Adverse Affect or an Aggregate Material Adverse Affect.

**5.1.26 Special Distributions.** On each date on which amounts are required to be paid to Lender under any of the Loan Documents (or required be disbursed to the Mezzanine Collection Account, if applicable) Borrower shall exercise its rights under the First Mezzanine Borrower Company Agreement to cause Senior Mezzanine Borrower to make to Borrower a distribution in an aggregate amount such that Lender shall receive the amount required to be disbursed to the Mezzanine Collection Account or otherwise paid to Lender on such date.

**5.1.27 Curing.** Lender shall have the right, but shall not have the obligation, to exercise Borrower's rights under the First Mezzanine Borrower Company Agreement (a) to cure a Mortgage Loan Default, or Senior Mezzanine Loan Default, (b) to cure a Mortgage Loan Event of Default, or Senior Mezzanine Loan Event of Default, (c) to satisfy any Liens, claims or judgments against the Properties (except for Liens permitted by the Mortgage Loan Documents or Senior Mezzanine Loan Documents), (d) to satisfy any Liens, claims or judgments against the Senior Mezzanine Collateral, in the case of either (a), (b) or (c), unless Borrower, Senior Mezzanine Borrower or Mortgage Borrower shall be diligently pursuing remedies to cure the Mortgage Loan Default, the Senior Mezzanine Loan Default, the Senior Mezzanine Loan Event of Default or Mortgage Loan Event of Default or to satisfy any such Liens, claims or judgments, in either case to Lender's sole satisfaction. Borrower shall reimburse Lender on demand for any and all costs incurred by Lender in connection with curing any such Mortgage Loan Default, Senior Mezzanine Loan Default, Mortgage Loan Event of Default or Senior Mezzanine Loan Event of Default or satisfying any Liens, claims or judgments against any of the Properties or the Senior Mezzanine Collateral.

**5.1.28 Senior Borrower Covenants.** Borrower shall cause Mortgage Borrower and Senior Mezzanine Borrower to comply with all obligations with which Mortgage Borrower and/or Senior Mezzanine Borrower have covenanted to comply under the Mortgage Loan Agreement, Senior Mezzanine Loan Agreement, all Senior Mezzanine Loan Documents and all other Mortgage Loan Documents, as applicable (including, without limitation, those certain affirmative and negative covenants set forth in Article V of the Mortgage Loan Agreement and Senior Mezzanine Loan Agreement), unless otherwise consented to in writing by Lender.

**Section 5.2. Negative Covenants.** From the date hereof until payment and performance in full of all obligations of Borrower under the Loan Documents or the earlier release of the Liens of the Collateral in accordance with the terms of this Agreement and the other Loan Documents, Borrower covenants and agrees with Lender that it will not do, directly or indirectly, any of the following (without, in each case, the prior written consent of Lender):

**5.2.1 Operation of Properties.** (a) Borrower shall not cause or permit Mortgage Borrower to, without Lender's prior consent: (i) surrender, terminate or cancel (or permit to be surrendered, terminated or canceled) any of the Operating Leases or any Operating Lease Guaranty; (ii) reduce or consent to the reduction of (or permit the reduction or the consent to the reduction) of the term of any of the Operating Leases; (iii) decrease or consent to any decrease (or permit to be decreased or the consent to the decrease) of the amount of any rent or other charges payable under any of the Operating Leases; (iv) Transfer, convey, assign, sell, mortgage, encumber, pledge, hypothecate, grant a security interest in, grant an option or options with respect to, or otherwise dispose of (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, whether or not for consideration) the Properties or any collateral for the Mortgage Loan (or permit Operating Company to do so), in each case without the prior written consent of Lender or except as expressly permitted in Section 5.2.10, or (v) otherwise modify, change, supplement, alter or amend, or waive or release (or permit to be modified, changed, supplemented, altered, amended, waived or released) any of the rights and remedies of Borrower, Mortgage Borrower or any Operating Company under any of the Operating Leases in any material respect or any Operating Lease Guaranty (provided that Lender shall not unreasonably withhold its consent to any modification, change, supplement, alteration, amendment, waiver or release of the Operating Lease as may be reasonably necessary to comply with the requirements of this Agreement or any other Loan Document).

(b) During the continuance of an Event of Default, Borrower shall not exercise (and shall not cause or permit Mortgage Borrower to exercise) any rights, make any decisions, grant any approvals or otherwise take any action under any Operating Lease, Operating Lease Guaranty or any management agreement without, in each instance, the prior written consent of Lender, which consent may be withheld in Lender's sole discretion.

**5.2.2 Liens.** (a) Borrower shall not create, incur, assume or suffer to exist any Lien on any of the Collateral, except Liens created by or permitted pursuant to the Loan Documents. Borrower shall not, and shall not cause or permit Mortgage Borrower or Senior Mezzanine Borrower to create, incur, assume or suffer to exist any Lien on any portion of any Individual Property or Senior Mezzanine Collateral or permit any such action to be taken, except:

(i) Permitted Encumbrances;

(ii) Liens created by or permitted pursuant to the Loan Documents, Senior Mezzanine Loan Documents or Mortgage Loan Documents; and

(iii) Liens for Taxes or Other Charges not yet due.

(b) Borrower shall not incur any Indebtedness other than the Loan, shall not permit Mortgage Borrower to incur any Indebtedness other than the Mortgage Loan and Permitted Indebtedness (as defined in the Mortgage Loan Agreement), and shall not permit Senior Mezzanine Borrower to incur any Indebtedness other than the Senior Mezzanine Loans. Borrower shall not permit any Operating Company to incur Indebtedness in excess or other than Permitted Indebtedness (Operating Company).

**5.2.3 Dissolution.** Borrower shall not, and shall not permit Mortgage Borrower, Senior Mezzanine Borrower or Operating Company to, (a) engage in any dissolution, liquidation or consolidation or merger with or into any other business entity, (b) engage in any business activity not related to (i) in the case of Borrower, the ownership of the Collateral, (ii) in the case of Senior Mezzanine Borrower, ownership of the Senior Mezzanine Collateral, (iii) in the case of Mortgage Borrower, the ownership and operation of the Properties and (iv) in the case of Operating Company, the leasing and operation of the Properties, (c) transfer, lease or sell, in one transaction or any combination of transactions, the assets or all or substantially all of the properties or assets of Borrower, Senior Mezzanine Borrower or Mortgage Borrower except to the extent permitted by the Loan Documents, (d) modify (in any material respect), amend (in any material respect), waive or terminate its organizational documents or its qualification and good standing in any jurisdiction or (e) cause Holdings to (i) dissolve, wind up or liquidate or take any action, or omit to take an action, as a result of which Holdings, Senior Mezzanine Borrower or Mortgage Borrower would be dissolved, wound up or liquidated in whole or in part, or (ii) amend (in any material respect), modify (in any material respect), waive or terminate the certificate of incorporation or bylaws of Holdings, Senior Mezzanine Borrower or Mortgage Borrower, in each case, without obtaining the prior consent of Lender.

**5.2.4 Change in Business.** Borrower shall not cause Mortgage Borrower to enter into any line of business other than the ownership and operation of any of the Properties and other activities reasonably ancillary thereto, or make any material change in the scope or nature of its business objectives, purposes or operations, or undertake or participate in activities other than the continuance of its present business. In addition, Borrower shall not permit or cause Mortgage Borrower to cancel or otherwise forgive or release any material claim or debt (other than termination of Leases in accordance herewith) owed to Mortgage Borrower by any Person, except for adequate consideration and in the ordinary course of Mortgage Borrower's business. Borrower shall not enter into any line of business other than the ownership of the Collateral, or make any material change in the scope or nature of its business objectives, purposes or operations, or undertake or participate in activities other than the continuance of its present business. Borrower shall not allow Senior Mezzanine Borrower to enter into any line of business other than the direct or indirect ownership of the applicable Senior Mezzanine Collateral or make any material change in the scope or nature of its business objectives, purposes

or operations, or undertake or participate in activities other than the continuance of its present business.

**5.2.5 Debt Cancellation.** Borrower shall not, and shall not permit Mortgage Borrower, Senior Mezzanine Borrower or Operating Company to, cancel or otherwise forgive or release any claim or debt (other than termination of Leases in accordance herewith) owed to Mortgage Borrower, Borrower or Senior Mezzanine Borrower by any Person, except for adequate consideration and in the ordinary course of Mortgage Borrower's, Borrower's or Senior Mezzanine Borrower's business. In addition, Borrower shall not permit or cause itself, Senior Mezzanine Borrower, or Mortgage Borrower to cancel or otherwise forgive or release any material claim or debt (other than termination of Leases in accordance herewith) owed to Senior Mezzanine Borrower, Borrower or Mortgage Borrower by any Person, except for adequate consideration and in the ordinary course of Mortgage Borrower's, Borrower's or Senior Mezzanine Borrower's business.

**5.2.6 Zoning.** Borrower shall not, and shall not permit Mortgage Borrower or Operating Company to, initiate or consent to any zoning reclassification of any portion of any Individual Property or seek any variance under any existing zoning ordinance or use or permit the use of any portion of any Individual Property in any manner that could result in such use becoming a non-conforming use under any zoning ordinance or any other applicable land use law, rule or regulation, without the prior consent of Lender.

**5.2.7 Ground Lease.** Borrower shall not (or shall not cause or permit Mortgage Borrower or Ground Lease Subsidiary, as applicable, to) (a) fail to pay any rent, additional rent or other charge mentioned in or made payable under any Ground Lease as and when such rent or other charge is due (unless waived in writing by the ground lessor under such Ground Lease), (b) permit to occur any event of default (beyond any applicable notice, grace or cure periods) by any Mortgage Borrower or Ground Lease Subsidiary, as applicable, as tenant under the related Ground Lease, in the observance or performance of any term, covenant or condition of such Ground Lease on the part of such Mortgage Borrower or Ground Lease Subsidiary, as applicable, to be observed or performed (unless waived in writing by the ground lessor under such Ground Lease), (c) permit any one or more of the events referred to in any Ground Lease to occur which would cause such Ground Lease to terminate without notice or action by the ground lessor under such Ground Lease or which would entitle such ground lessor to terminate such Ground Lease and the term thereof by giving notice to the related Mortgage Borrower or Ground Lease Subsidiary, as applicable, as tenant thereunder (unless waived in writing by the ground lessor under such Ground Lease), (d) permit the leasehold estate created by any Ground Lease to be surrendered or any Ground Lease to be terminated or canceled for any reason or under any circumstances whatsoever or (e) permit any of the terms, covenants or conditions of any Ground Lease to be materially modified, materially changed, materially supplemented, materially altered, or materially amended without the consent of Lender except as otherwise may be permitted by this Agreement.

**5.2.8 Principal Place of Business and Organization.** Borrower shall not, nor shall Borrower permit Mortgage Borrower, Senior Mezzanine Borrower or Operating Company to, change the place of its organization as set forth in Section 4.1.28 without the consent of Lender, which consent shall not be unreasonably withheld. Upon Lender's request, Borrower

shall (and shall cause Mortgage Borrower, Senior Mezzanine Borrower or Operating Company to) execute and deliver additional financing statements, security agreements and other instruments which may be necessary to effectively evidence or perfect Mortgage Lender's security interest in any of the Properties, any Senior Mezzanine Lender's Security Interest in the related Senior Mezzanine Collateral or Lender's security interest in the Collateral as a result of such change of place of organization.

**5.2.9 ERISA.** (a) Borrower shall not engage in any transaction which would cause any obligation, or action taken or to be taken, hereunder (or the exercise by Lender of any of its rights under the Note, this Agreement or the other Loan Documents) to be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under ERISA.

(b) Borrower further covenants and agrees to deliver to Lender such certifications or other evidence from time to time throughout the term of the Loan, as requested by Lender in its sole discretion, that (i) Borrower is not an "employee benefit plan" as defined in Section 3(3) of ERISA, which is subject to Title I of ERISA, or a "governmental plan" within the meaning of Section 3(32) of ERISA; (ii) Borrower is not subject to any state statute regulating investments of, or fiduciary obligations with respect to, governmental plans; and (iii) one or more of the following circumstances is true:

(A) Equity interests in Borrower are publicly offered securities, within the meaning of 29 C.F.R. § 2510.3-101(b)(2);

(B) Less than twenty-five percent (25%) of each outstanding class of equity interests in Borrower is held by "benefit plan investors" within the meaning of 29 C.F.R. § 2510.3-101(f)(2); or

(C) Borrower qualifies as an "operating company" or a "real estate operating company" within the meaning of 29 C.F.R. § 2510.3-101(c) or (e).

**5.2.10 Transfers.** (a) Without the prior consent of Lender and except to the extent otherwise set forth in this Section 5.2.10, Borrower shall not, and shall not permit any other Person holding any direct or indirect legal, economic, beneficial or other ownership interest in Borrower, the Collateral, the Senior Mezzanine Collateral or one or more of the Properties to, (1) Transfer all or any part of the Collateral, the Senior Mezzanine Collateral or one or more of the Properties, (2) permit any Transfer (directly or indirectly) of any direct or indirect interest in Borrower, or (3) permit any Transfer (directly or indirectly) of any direct or indirect interest in Operating Company or any transfer or assignment or subletting (of all or substantially of any Individual Property) by any Operating Company under any Operating Lease.

(b) A Transfer of (but not a mortgage, pledge, hypothecation, encumbrance or grant of a security interest in) an indirect beneficial interest in Borrower consisting of ownership interests in or at any level above the Borrower shall be permitted without Lender's consent (but subject to the last sentence of Section 5.2.10(d)), provided that (i) immediately prior to such Transfer, no Event of Default shall have occurred and be continuing, (ii) Borrower is at all times Controlled and at least fifty percent (50%) owned (directly or indirectly) by Qualified Transferees, (iii) subsequent to such Transfer, Borrower will continue to be a Special Purpose

Entity, (iv) if (1) such Transfer causes the Transferee to own, in the aggregate with the ownership interests of its Affiliates, more than a forty nine percent (49%) interest in Borrower (and the Transferee (together with the ownership interests of its Affiliates) did not, prior to such Transfer, own more than a forty-nine percent (49%) interest in Borrower), or (2) such Transfer, together with all other Transfers by Borrower, whether in a single Transfer or in a series of Transfers and whether or not effected simultaneously, results in a Transfer of more than forty-nine percent (49%) of the aggregate interests in Borrower, then if required by applicable Rating Agency requirements, an acceptable non-consolidation opinion is delivered to the holder of the Loan and to each of the Rating Agencies concerning, as applicable, Borrower, the new Transferee and/or their respective owners, and (v) subsequent to such Transfer, the beneficial ownership of Borrower and Operating Company will be substantially identical. For purposes hereof, Control shall not be deemed absent solely because other parties have veto rights with respect to major decisions. Further, a Change in Control shall be deemed a Transfer hereunder and, unless clauses (ii) through (v) of this Section 5.2.10(b) shall be satisfied, the same shall be an Event of Default hereunder (and for the sake of clarity, nothing else contained in this Section 5.2.10 or this Agreement shall be deemed to limit or qualify the above terms of this sentence).

(c) A Transfer of (but not a mortgage, pledge, hypothecation, encumbrance or grant of a security interest in) a direct or indirect beneficial interest in Operating Company shall be permitted without Lender's consent (but subject to the last sentence of Section 5.2.10(d)), provided that (i) immediately prior to such Transfer, no Event of Default shall have occurred and be continuing, (ii) Operating Company is at all times Controlled and at least fifty percent (50%) owned (directly or indirectly) by Qualified Transferees, and (iii) subsequent to such Transfer, the beneficial ownership of Borrower and Operating Company will be substantially identical. For purposes hereof, Control shall not be deemed absent solely because other parties have veto rights with respect to major decisions.

(d) In the event that a permitted Transfer of more than a forty nine percent (49%) interest in Borrower is made pursuant to this Section 5.2.10, at Borrower's request, Lender shall release Guarantor from (i) the obligations and liabilities under any Guaranty for obligations and liabilities that occurred subsequent to such Transfer, provided that a replacement guarantor(s) reasonably satisfactory to Lender shall have executed and delivered to Lender replacement guarantees in form and substance substantially similar to the applicable Guaranty, pursuant to which such replacement guarantor(s) expressly assumes all of Guarantor's obligations under the applicable Guaranty for obligations and liabilities arising from and after the date of such Transfer, and (ii) the obligations and liabilities under any Guaranty for obligations and liabilities that occurred either prior or subsequent to such Transfer, provided that a replacement guarantor(s) reasonably satisfactory to Lender shall have executed and delivered to Lender replacement guarantees in form and substance substantially similar to the applicable Guaranty, pursuant to which such replacement guarantor(s) expressly assumes all of Guarantor's obligations under the applicable Guaranty, including those which occurred prior to the Transfer. Notwithstanding the foregoing or anything else that may be construed to the contrary, in no event may Borrower effect a Transfer, or permit or suffer any Transfer, that would result in any loss or impairment of any Gaming License or in any similar event that would have an Individual Property Material Adverse Effect or Aggregate Property Material Adverse Effect.

(e) Notwithstanding the foregoing or anything herein to the contrary, but subject to the final sentence of Section 5.2.10(d), nothing contained in this Agreement or the other Loan Documents shall in any way restrict or prohibit, nor shall any notice to Lender or consent of Lender or Rating Agency Confirmation be required in connection with the Transfer or issuance in the ordinary course of any securities in any Person whose securities are publicly traded on a national exchange (except to the extent that the same would cause a Change of Control) or with an initial public offering of securities issued by Holdings or of subsidiary of Holdings (other than the Borrower and any Mezzanine Borrower (provided that, in the case of an issuance by a subsidiary, such issuance would not cause a Change of Control)).

(f) Assumptions of the Loan shall be permitted, provided that the following conditions are satisfied and/or occur to Lender's satisfaction:

(i) such sale has been approved or deemed approved under the Mortgage Loan Documents and Senior Mezzanine Loan Documents and all conditions set forth in the Mortgage Loan Documents and Senior Mezzanine Loan Documents relating thereto have been satisfied;

(ii) an assumption of this Agreement, the Note, the Pledge Agreement and the other Loan Documents as so modified by the proposed transferee, subject to the provisions of Section 9.3 hereof;

(iii) payment of all of reasonable out-of-pocket costs and expenses incurred in connection with such Transfer including, without limitation, the cost of any legal fees and expenses, Rating Agency fees and expenses or required legal opinions;

(iv) the payment of a non-refundable assumption fee equal to Lender's Share of One Million and No/100 Dollars (\$1,000,000) per transaction (effecting an assumption of the Loan) or series of related transactions (effected to implement an assumption of the Loan);

(v) the delivery of an Additional Insolvency Opinion reflecting the proposed transfer satisfactory in form and substance to Lender; and the delivery of an Additional True-Lease Opinion in form and substance satisfactory to Lender;

(vi) the proposed Transferee being Controlled and at least 50% owned, directly or indirectly, by one or more Qualified Transferees;

(vii) the Operating Company being Controlled and at least 50% owned, directly or indirectly, by one or more Qualified Transferees, having sufficient experience (or having a manager that has sufficient experience) in the management of properties similar to the Properties, and such Operating Company or its manager not having materially less than the same level of experience in the operation of properties similar to the Properties as the current Operating Company under the Operating Lease and, in each case, Lender shall be provided with reasonable evidence thereof (and Lender reserves the right to approve the Transferee(s) without approving the substitution of the Operating Company) and the operating tenant shall be either the Operating Company or, if permitted by applicable Legal Requirements, a manager acceptable to Lender under a management

agreement acceptable to Lender; provided that so long as the Operating Lease is in force and effect and the current Operating Company shall continue to be the tenant thereunder and owned and Controlled by the same Person(s) that currently own and Control the Operating Company, the condition with respect to the Operating Company set forth in this subclause (vi) shall be deemed to have been met in all respects;

(viii) the delivery of evidence reasonably satisfactory to Lender that the single purpose nature and bankruptcy remoteness of Borrower, its shareholders, partners or members, as the case may be, following such transfers are in accordance with the then current standards of Lender and the Rating Agencies; and the Transferee(s)' continued compliance with the representations and covenants set forth in Section 4.1.30 and Section 5.2.9 hereof;

(ix) Borrower's delivery to Lender of evidence reasonably satisfactory to Lender of any required approval or consent of any Governmental Authority, including the Gaming Authorities, that has direct or indirect authority or oversight over Borrower, Mortgage Borrower, Senior Mezzanine Borrower, the Properties, Operating Company or the operations conducted at the Properties to the change in ownership and/or operator of the Properties (or any part thereof);

(x) prior to any release of the Guarantor, a substitute guarantor reasonably acceptable to Lender shall have assumed all of the obligations of the Guarantor under the Guaranty (FF&E), the Guaranty (Recourse Carveouts), the Operating Lease Guaranty, the Guaranty (Ground Lease Estoppel), any completion guaranty provided under Section 5.1.21 and the Environmental Indemnity or executed replacement guaranties and an environmental indemnity reasonably satisfactory to Lender;

(xi) receipt of evidence satisfactory to Lender that all of the entities which own interests in the transferee similar to the interests in Borrower owned by Principal (1) shall assume all the agreements of Principal related to the Loan, if any (and without limiting the foregoing, all of the ownership interests in Borrower, all payments thereon and all proceeds thereof shall be pledged to Lender on terms no less favorable than the pledge of the Collateral under the applicable Pledge Agreement) and (2) shall each be a bankruptcy remote single purpose entity.

(xii) a written consent to the transfer from the lender under each Mezzanine Loan (and, if any, a Permitted Mezzanine Loan) or receipt by Lender of other evidence satisfactory to Lender that all conditions imposed under the terms of each Mezzanine Loan and Permitted Mezzanine Loan shall have been complied with by the borrower thereunder or otherwise waived by the applicable lender;

(xiii) subsequent to such assumption of the Loan, the beneficial ownership of Borrower and Operating Company will be substantially identical; and

(xiv) the delivery of a new Owner's Title Policy, in an amount equal to the value of the Properties, together with an endorsement to Lender in form and substance reasonably satisfactory to Lender.

Lender agrees to provide a written consent to a transfer pursuant to this Section 5.2.10(f) upon satisfaction of all of the conditions set forth in this Section 5.2.10(f) other than the condition set forth in clause (xiii) of this Section 5.2.10(f).

(g) Restrictions on Transfers set forth herein or in the Pledge shall not apply to (i) the pledge of the Collateral to Lender pursuant to the Pledge Agreement, (ii) the pledge by First Mezzanine Borrower of the ownership interests in Mortgage Borrower as security for the First Mezzanine Loan pursuant to the First Mezzanine Loan Agreement, (iii) the pledge by Second Mezzanine Borrower of the ownership interests in First Mezzanine Borrower as security for the Second Mezzanine Loan pursuant to the Second Mezzanine Loan Agreement, (iv) the pledge by Third Mezzanine Borrower of the ownership interests in Second Mezzanine Borrower as security for the Third Mezzanine Loan pursuant to the Third Mezzanine Loan Agreement, (v) the pledge by Fourth Mezzanine Borrower of the ownership interests in Third Mezzanine Borrower as security for the Fourth Mezzanine Loan pursuant to the Fourth Mezzanine Loan Agreement, (vi) the pledge by Fifth Mezzanine Borrower of the ownership interests in Fourth Mezzanine Borrower as security for the Fifth Mezzanine Loan pursuant to the Fifth Mezzanine Loan Agreement, (vii) the pledge by Sixth Mezzanine Borrower of the ownership interests in Fifth Mezzanine Borrower as security for the Sixth Mezzanine Loan pursuant to the Sixth Mezzanine Loan Agreement, (viii) the pledge by Seventh Mezzanine Borrower of the ownership interests in Sixth Mezzanine Borrower as security for the Seventh Mezzanine Loan pursuant to the Seventh Mezzanine Loan Agreement, (ix) the pledge by Eighth Mezzanine Borrower of the ownership interests in Seventh Mezzanine Borrower as security for the Eighth Mezzanine Loan pursuant to the Eighth Mezzanine Loan Agreement, (x) any pledge pursuant to a New Mezzanine Loan or (xi) the Transfer or pledge of any direct or indirect interest in Holdings, provided that no Change in Control shall occur.

(h) Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Debt immediately due and payable upon a Transfer without Lender's consent. This provision shall apply to every Transfer regardless of whether voluntary or not, or whether or not Lender has consented to any previous Transfer.

**5.2.11 Operating Lease Subsidiary.** Borrower shall not cause or permit Mortgage Borrower to Transfer any of its interests in Ground Lease Subsidiary without the prior written consent of Lender; Borrower shall not permit Mortgage Borrower to cause or permit Ground Lease Subsidiary to own any assets other than its interests in the Ground Lease or to incur any liabilities other than liabilities under the Ground Lease; Borrower shall not permit Mortgage Borrower to cause or permit Ground Lease Subsidiary to engage in any business other than that related to its ownership of interests in the Ground Lease.

**5.2.12 Limitations on Distributions.** Following the occurrence and during the continuance of an Event of Default, Borrower shall not make any distributions to its members. If any Distributions shall be received by Borrower or any Affiliate of Borrower after the occurrence and during the continuance of an Event of Default, Borrower shall hold, or shall cause the same to be held, in trust for the benefit of Lender.

**5.2.13 Other Limitations.** Prior to the payment in full of the Debt, neither Borrower nor any of its Affiliates shall, without the prior written consent of Lender (which may be furnished or withheld at its sole and absolute discretion), give its consent or approval to any of the following actions or items: the distribution by Mortgage Borrower or Senior Mezzanine Borrower of property other than cash.

**5.2.14 Refinancing.** Borrower shall not consent to or permit a refinancing of the Mortgage Loan or Senior Mezzanine Loan unless it obtains the prior consent of Lender, unless the Loan shall be paid in full in connection with such refinancing in accordance with this Agreement. Borrower shall not consent to or permit a prepayment in full or in part of the Mortgage Loan or Senior Mezzanine Loan unless it obtains the prior consent of Lender, unless the Loan shall likewise be prepaid (in the same proportion, in the case of any partial prepayment) in accordance with this Agreement.

**Section 5.3. General.** For avoidance of doubt, all requirements contained in this Article V with respect to the Operating Company shall mean that it shall be a Default or Event of Default hereunder if Operating Company fails to perform in the specified manner, but Lender acknowledges that Operating Company is not a party to this Agreement and that Borrower does not control Operating Company.

## **VI. INSURANCE; CASUALTY; CONDEMNATION**

**Section 6.1. Insurance.** (a) Borrower shall cause Mortgage Borrower to maintain at all times during the term of the Loan the Policies required under Section 6.1 of the Mortgage Loan Agreement, including, without limitation, meeting all insurer requirements thereunder. In addition, Borrower shall cause Lender to be named “as their interest may appear”, under the Policies required under Sections 6.1(a)(i), (ii), (iii), (iv), (v), (vi), (vii), (viii), (ix), (x) and (xi) of the Mortgage Loan Agreement and as an “additional insured” with respect to liability coverages. Borrower shall also cause all insurance policies required under this Section 6.1 to provide for at least thirty (30) days’ prior notice to Lender in the event of policy cancellation or material changes. Borrower shall provide Lender with evidence of all such insurance required hereunder on or before the date on which Mortgage Borrower is required to provide such evidence to Mortgage Lender. For purposes of this Agreement, Lender shall have the same approval rights over the insurance referred to above and in the Mortgage Loan Agreement (including, without limitation, the insurers, deductibles and coverages thereunder, as well as the right to require other reasonable insurance pursuant to Section 6.1 of the Mortgage Loan Agreement) as are provided in favor of the Mortgage Lender in the Mortgage Loan Agreement.

(b) If at any time Lender is not in receipt of written evidence that all insurance required hereunder is in full force and effect, Lender shall have the right, without notice to Borrower, to take such action as Lender deems necessary to protect its interest in any of the Properties or the Collateral, including, without limitation, the obtaining of such insurance coverage as Lender in its sole discretion deems appropriate (but limited to the coverages and amounts required under the Mortgage Loan Agreement) and all premiums incurred by Lender in connection with such action or in obtaining such insurance and keeping it in effect shall be paid by Borrower to Lender upon demand and shall bear interest at the Default Rate.

**Section 6.2. Casualty.** If the Individual Property shall be materially damaged or destroyed, in whole or in part, by fire or other casualty (a “Casualty”), Borrower shall give prompt notice of such damage to Lender and shall cause Mortgage Borrower to promptly commence and diligently prosecute the completion of the Restoration of the Individual Property as nearly as possible to the condition the Individual Property was in immediately prior to such Casualty, with such alterations as may be reasonably approved by Lender and otherwise in accordance with Section 6.4 of the Mortgage Loan Agreement. Borrower shall cause Mortgage Borrower to pay all costs of such Restoration whether or not such costs are covered by insurance. Lender may, but shall not be obligated to make proof of loss if not made promptly by Borrower or Mortgage Borrower. In addition, Lender may participate in any settlement discussions with any insurance companies with respect to any Casualty in which the Net Proceeds or the costs of completing the Restoration are equal to or greater than, in the case of each Casualty, an amount equal to five percent (5%) of the sum of the Allocated Loan Amount for the affected Individual Property and the “Allocated Loan Amounts” under (and as defined in each of) the Mortgage Loan Agreement and the Other Mezzanine Loan Agreements for the affected Individual Property, and Borrower shall deliver to Lender all instruments required by Lender to permit such participation.

**Section 6.3. Condemnation.** Borrower shall promptly give Lender notice of the actual or threatened commencement of any proceeding for the Condemnation of any Individual Property and shall cause Mortgage Borrower to deliver to Lender copies of any and all papers served in connection with such proceedings. Lender may participate in any such proceedings, and Borrower shall from time to time deliver to Lender all instruments requested by it to permit such participation. Borrower shall, at its expense, diligently prosecute any such proceedings, and shall consult with Lender, its attorneys and experts, and cooperate with them in the carrying on or defense of any such proceedings. Notwithstanding any taking by any public or quasi-public authority through Condemnation or otherwise (including, but not limited to, any transfer made in lieu of or in anticipation of the exercise of such taking), Borrower shall continue to pay the Debt at the time and in the manner provided for its payment in the Note and in this Agreement and the Debt shall not be reduced until any Award shall have been actually received and applied by Lender, after the deduction of expenses of collection, to the reduction or discharge of the Debt. Lender shall not be limited to the interest paid on the Award by the condemning authority but shall be entitled to receive out of the Award interest at the rate or rates provided herein or in the Note. If any Individual Property or any portion thereof is taken by a condemning authority, Borrower shall cause Mortgage Borrower to promptly commence and diligently prosecute the Restoration of the applicable Individual Property and otherwise comply with the provisions of Section 6.4 of the Mortgage Loan Agreement. If any Individual Property is sold, through foreclosure or otherwise, prior to the receipt by Lender of the Award, Lender shall have the right, whether or not a deficiency judgment on the Note shall have been sought, recovered or denied, to receive the Award, or a portion thereof sufficient to pay the Debt.

**Section 6.4. Restoration.** Borrower shall, or shall cause Mortgage Borrower to, deliver to Lender all reports, plans, specifications, documents and other materials that are delivered to Mortgage Lender under Section 6.4 of the Mortgage Loan Agreement in connection with the Restoration of any Individual Property after a Casualty or Condemnation.

## VII. RESERVE FUNDS

### Section 7.1. Intentionally Omitted.

**Section 7.2. Tax and Insurance Escrow Fund.** (a) If (and for so long as) a Trigger Event shall have occurred and shall not have been cured by a Trigger Event Cure, on each Payment Date during such period, Borrower shall pay to Lender (or Servicer, as directed by Lender) an amount equal to (i) one-twelfth of the Taxes that Lender estimates will be payable during the next ensuing twelve (12) months in order to accumulate with Lender sufficient funds to pay all such Taxes at least thirty (30) days prior to their respective due dates, and (ii) one-twelfth of the Insurance Premiums that Lender estimates will be payable for the renewal of the coverage afforded by the Policies upon the expiration thereof in order to accumulate with Lender sufficient funds to pay all such Insurance Premiums at least thirty (30) days prior to the expiration of the Policies (said amounts in (i) and (ii) above hereinafter called the "**Tax and Insurance Escrow Fund**"). Lender shall apply the Tax and Insurance Escrow Fund to payments of Taxes and Insurance Premiums required to be made by Borrower pursuant to Section 5.1.2 hereof and under the Mortgage Loan Agreement. In making any payment relating to the Tax and Insurance Escrow Fund, Lender may do so according to any bill, statement or estimate procured from the appropriate public office (with respect to Taxes) or insurer or agent (with respect to Insurance Premiums), without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof. If the amount of the Tax and Insurance Escrow Fund shall exceed the amounts due for Taxes and Insurance Premiums pursuant to Section 5.1.2 hereof, provided no Event of Default shall have occurred and be continuing, then Lender shall return any excess to Borrower (or to Operating Company, if so directed by Borrower). In allocating such excess, Lender may deal with the Person shown on the records of Lender to be the owner of the Properties. If at any time Lender reasonably determines that the Tax and Insurance Escrow Fund is not or will not be sufficient to pay Taxes and Insurance Premiums by the dates set forth in (i) and (ii) above, Lender shall notify Borrower of such determination and Borrower shall increase its monthly payments to Lender by the amount that Lender estimates is sufficient to make up the deficiency at least thirty (30) days prior to the due date of the Taxes and/or thirty (30) days prior to expiration of the Policies, as the case may be.

(b) Notwithstanding the foregoing, Borrower shall not be required to make any deposits into the Tax and Insurance Escrow Fund on account of Insurance Premiums if (and for so long as) Borrower shall maintain a blanket insurance policy in respect of the Properties that is in accordance with the provisions of Section 6.1(a) and otherwise satisfactory to Lender in all material respects.

(c) Any amount remaining in the Tax and Insurance Escrow Fund following the occurrence of a Trigger Event Cure shall be returned to Borrower (or Operating Company, as directed by Borrower).

**7.2.1 Waiver of Tax Escrow.** Borrower shall be relieved of its obligation to make deposits of Tax and Insurance Escrow Fund under Section 7.2 above, provided that (a) Mortgage Borrower or Senior Mezzanine Borrower is required to and does make monthly deposits to a tax escrow account under the Mortgage Loan or Senior Mezzanine Loan, and

(b) Lender receives evidence acceptable to it of the making of such deposits and of the payment of all such Taxes.

**7.2.2 Tax and Insurance Escrow Funds After Debt Paid.** Any Tax and Insurance Escrow Funds remaining after the Debt has been paid in full shall be remitted to Borrower or, at Borrower's election, shall be credited against the Debt simultaneously with the satisfaction of the balance of the Loan.

**Section 7.3. FF&E Reserve Account.**

**7.3.1 FF&E Reserve Fund.** (a) Unless Borrower shall have delivered to Lender a Guaranty (FF&E), Borrower shall pay to Lender (or Servicer, as directed by Lender) on each Payment Date an amount equal to (i) one-twelfth of three percent (3%) of the amount of all Revenues for the full calendar year prior to the first (1st) day of the month in which such Payment Date occurs, less (ii) any amount spent during the previous calendar month by Borrower or Operating Company on behalf of Borrower in accordance with the Operating Lease on account of FF&E (other than from the FF&E Reserve Fund, it being understood that amounts expended on account of FF&E from the FF&E Reserve Fund shall not be included in any deductions required pursuant to the preceding subclause (i) and that any FF&E that is purchased through disbursements from the FF&E Reserve Fund may not be subsequently financed by Borrower or Operating Company). Notwithstanding anything to the contrary contained herein, in no event shall Borrower be required to maintain in the FF&E Reserve Account an amount in excess of the aggregate amount of all FF&E deposits required to be made in the preceding calendar year (as determined, for purposes of this sentence, utilizing the monthly formula set forth in the preceding sentence). In addition, notwithstanding anything to the contrary contained herein, for purposes of determining the amount of any required FF&E Reserve Fund deposits (and for purposes of calculating such amount, monthly, based on the formula set forth in the first sentence of this Section 7.3.1), Revenues shall include Revenue from the Hotel Component and the Casino Component but shall not include non-Hotel or Casino related Revenues (e.g., Rents from retail tenants).

(b) Amounts deposited by Borrower as described in this Section 7.3.1 shall hereinafter be referred to as the "FF&E Reserve Fund" and the account in which such amounts are held shall hereinafter be referred to as the "FF&E Reserve Account".

**7.3.2 Disbursements from FF&E Reserve Account.** (a) All disbursements from the FF&E Reserve Account shall be made solely for the purpose of reimbursing Borrower (or Operating Company for FF&E bought on behalf and in the name of Borrower in accordance with the Operating Lease, as directed by Borrower) for its costs and expenses incurred, or for paying costs to be incurred, in connection with the repair, replacement and/or upgrade of FF&E at the Properties. Provided no Event of Default shall have occurred and be continuing, Lender shall, within ten (10) days following request by Borrower, make disbursements from the FF&E Reserve Fund no more frequently than once in any thirty (30) day period, in amounts no less than \$10,000 per disbursement (or a lesser amount if the total amount in the FF&E Reserve Account is less than \$10,000, in which case only one disbursement of the amount remaining in the account shall be made), and upon delivery by Borrower (or Operating Company) of Lender's standard form of draw request accompanied by copies of invoices for the amounts requested and,

if required by Lender for requests in excess of \$50,000 for a single item, receipts and releases from all parties furnishing materials and/or services in connection with the requested payment.

(b) Disbursements may be made from the FF&E Reserve Account, at Borrower's election, directly to third parties (as directed by Borrower).

(c) In no event shall funds in the FF&E Reserve Account be utilized to pay (or reimburse any Person) for any Capital Expenditures or non-recurring work being performed at the Properties.

**7.3.3 Balance in the FF&E Reserve Account.** (a) The insufficiency of any balance in the FF&E Reserve Account shall not relieve Borrower from its obligation to fulfill all preservation and maintenance covenants in the Loan Documents.

**7.3.4 Waiver of FF&E Reserve.** Borrower shall be relieved of its obligation to make deposits of FF&E Reserve Fund under Section 7.3 above, provided that either (a)(i) Mortgage Borrower or Senior Mezzanine Borrower is required to and does make monthly deposits to a FF&E reserve account under the Mortgage Loan or Senior Mezzanine Loan, and (ii) Lender receives evidence acceptable to it of the making of such deposits or (b) an FF&E Guaranty is provided to Mortgage Lender.

**7.3.5 FF&E Reserve Funds After Debt Paid.** Any FF&E Reserve Funds remaining after the Debt has been paid in full shall be remitted to Borrower or, at Borrower's election, shall be credited against the Debt simultaneously with the satisfaction of the balance of the Loan.

#### **Section 7.4. Ground Rent Funds.**

**7.4.1 Deposits of Ground Rent Funds.** If (and for so long as) a Trigger Event shall have occurred and shall not have been cured by a Trigger Event Cure, Borrower shall deposit with Lender (or Servicer, as directed by Lender), at least ten (10) Business Days prior to each Payment Date during such period, an amount equal to the Ground Rent that will be payable under the Ground Lease for the month in which such Payment Date occurs. Amounts deposited by Borrower as described in this Section 7.4.1 shall hereinafter be referred to as the "**Ground Rent Reserve Fund**" and the account in which such amounts are held shall hereinafter be referred to as the "**Ground Rent Reserve Account**". Such deposit may be increased by Lender in the amount Lender deems is necessary in its reasonable discretion based on any increases in the Ground Rent.

**7.4.2 Release of Ground Rent Funds.** Provided no Event of Default has occurred and is continuing, Lender shall apply the Ground Rent Reserve Funds to payments of Ground Rent. In making any payment relating to Ground Rent, Lender may do so according to any bill or statement given by the Ground Lessor without inquiry into the accuracy of such bill or statement or into the validity of any rent, additional rent or other charge thereof. If the amount of the Ground Rent Reserve Funds shall exceed the amounts due for Ground Rent, Lender shall return any excess to Borrower.

**7.4.3 Waiver of Ground Rent Reserve.** Borrower shall be relieved of its obligation to make deposits of Ground Rent Reserve Funds under Section 7.4 above, provided that (a) Mortgage Borrower or Senior Mezzanine Borrower is required to and does make monthly deposits to a ground rent reserve account under the Mortgage Loan or Senior Mezzanine Loan, and (b) Lender receives evidence acceptable to it of the making of such deposits and of the payment of all Ground Rent.

**7.4.4 Ground Rent Reserve Funds After Debt Paid.** Any Ground Rent Reserve Funds remaining after the Debt has been paid in full shall be remitted to Borrower or, at Borrower's election, shall be credited against the Debt simultaneously with the satisfaction of the balance of the Loan.

**Section 7.5. Reserve Funds, Generally.** (a) Borrower grants to Lender a first-priority perfected security interest in each of the Reserve Funds and any and all monies now or hereafter deposited in each Reserve Fund as additional security for payment of the Debt. Until expended or applied in accordance herewith, the Reserve Funds shall constitute additional security for the Debt. Upon the occurrence and during the continuance of an Event of Default, Lender may, in addition to any and all other rights and remedies available to Lender, apply any sums then present in any or all of the Reserve Funds to the payment of the Debt in any order in its sole discretion. The Reserve Funds shall not constitute trust funds and may be commingled with other monies held by Lender.

(b) Borrower shall not, without obtaining the prior consent of Lender, further pledge, assign or grant any security interest in any Reserve Fund or the monies deposited therein or permit any lien or encumbrance to attach thereto, or any levy to be made thereon, or any UCC-1 Financing Statements, except those naming Lender as the secured party, to be filed with respect thereto.

(c) The Reserve Funds shall be held by Lender (or Servicer) and may be invested at Borrower's election and direction in Permitted Investments routinely offered by the Servicer of the Securitization for investment by Borrower. All interest or other earnings on a Reserve Fund shall be added to and become a part of such Reserve Fund for the benefit of Borrower and shall be disbursed in the same manner as other monies deposited in such Reserve Fund. Borrower shall have the right to direct Lender (or Servicer) to invest sums on deposit in the Eligible Account in Permitted Investments provided (a) such investments are permitted by applicable federal, state and local rules, regulations and laws, (b) the maturity date of the Permitted Investment is not later than the date on which the applicable Reserve Funds are required for payment of an obligation for which such Reserve Fund was created, and (c) no Event of Default shall have occurred and be continuing. Borrower shall be responsible for payment of any federal, state or local income or other tax applicable to the interest or income earned on the Reserve Funds. No other investments of the sums on deposit in the Reserve Funds shall be permitted except as set forth in this Section 7.5. Borrower shall bear all reasonable costs associated with the investment of the sums in the account in Permitted Investments. Such costs shall be deducted from the income or earnings on such investment, if any, and to the extent such income or earnings shall not be sufficient to pay such costs, such costs shall be paid by Borrower promptly on demand by Lender. Lender shall have no liability for the rate of return earned or losses incurred on the investment of the sums in Permitted Investments.

(d) Borrower shall indemnify Lender and hold Lender harmless from and against any and all actions, suits, claims, demands, liabilities, losses, damages, obligations and costs and expenses (including litigation costs and reasonable attorneys fees and expenses) arising from or in any way connected with the Reserve Funds or the performance of the obligations for which the Reserve Funds were established. Borrower shall assign to Lender all rights and claims Borrower may have against all Persons supplying labor, materials or other services which are to be paid from or secured by the Reserve Funds; provided, however, that Lender may not pursue any such right or claim unless an Event of Default has occurred and remains uncured.

**Section 7.6. Transfer of Reserve Funds Under Mortgage Loan and Senior Mezzanine Loan.** If Mortgage Lender or Senior Mezzanine Lender waives any reserves or escrow accounts required in accordance with the terms of the Mortgage Loan Agreement or Senior Mezzanine Loan Agreement which reserves or escrow accounts are also required in accordance with the terms of this Article VII, or if the Mortgage Loan or Senior Mezzanine Loan is refinanced or paid off in full (without a prepayment of the Loan) and Reserve Funds that are required hereunder are not required under the new mortgage loan, if any, then Borrower shall cause any amounts that would have been deposited into any reserves or escrow accounts in accordance with the terms of the Mortgage Loan Agreement or Senior Mezzanine Loan Agreement to be paid to and deposited with Lender in accordance with the terms of this Article VII (and Borrower shall enter into lockbox and cash management agreements for the benefit of Lender in form and substance acceptable to Lender).

#### **VIII. DEFAULTS**

**Section 8.1. Event of Default.** (a) Each of the following events shall constitute an event of default hereunder (an “Event of Default”):

- (i) if (A) any portion of the Debt is not paid in full on the Maturity Date, (B) the Debt Service is not paid in full on or before the related Payment Date, or (C) any other portion of the Debt is not paid within five (5) days of when due;
- (ii) if any of the Taxes or Other Charges are not paid (with respect to each Individual Property) prior to Delinquency;
- (iii) if the Policies (with respect to each Individual Property) are not kept in full force and effect, or if certified copies of the Policies (for each Individual Property) are not delivered to Lender upon request (or certificates thereof, if a Policy shall be renewed and certified copies of the Policy are not immediately available upon such renewal (Borrower agreeing in such instance to provide copies of the Policies to Lender promptly thereafter));
- (iv) if Borrower Transfers or otherwise encumbers any portion of the Properties or the Collateral or Senior Mezzanine Collateral, or there shall otherwise occur a Transfer, without Lender’s prior consent in violation of the provisions of this Agreement, the Pledge Agreement or any other Loan Document or any Transfer is made in violation of the provisions of Section 5.2.10;

(v) if any representation or warranty made by Borrower or any other Loan Party herein or in any other Loan Document, or in any report, certificate, financial statement or other instrument, agreement or document furnished to Lender shall have been false or misleading in any material respect as of the date the representation or warranty was made (and, with respect to any such breach which is not the subject of any other subsection of this Section 8.1 and which is capable of being cured, Borrower fails to remedy such condition within ten (10) days following notice to Borrower from Lender, in the case of any such breach which can be cured by the payment of a sum of money, or within thirty (30) days following notice from Lender in the case of any other such breach);

(vi) if Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Principal, Holdings, Operating Company or any Guarantor shall make an assignment for the benefit of creditors;

(vii) if a receiver, liquidator or trustee shall be appointed for Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Principal, Holdings, Operating Company or Guarantor, or if Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Principal, Holdings, Operating Company or Guarantor shall be adjudicated a bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to federal bankruptcy law, or any similar federal or state law, shall be filed by or against, consented to, or acquiesced in by, Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Principal, Holdings, Operating Company or Guarantor, or if any proceeding for the dissolution or liquidation of Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Principal, Holdings, Operating Company or Guarantor shall be instituted; provided, however, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Principal, Holdings, Operating Company or Guarantor, upon the same not being discharged, stayed or dismissed within ninety (90) days;

(viii) if Borrower attempts to assign its rights under this Agreement or any of the other Loan Documents or any interest herein or therein in contravention of the Loan Documents;

(ix) if Borrower breaches any of its respective negative covenants contained in Section 5.2 or any covenant contained in Section 4.1.30 or Section 5.1.11 hereof (and, with respect to any such breach of any covenant set forth in Section 5.1.11 which is not the subject of any other subsection of this Section 8.1, Borrower fails to remedy such condition within ten (10) days after notice to Borrower from Lender, in the case of any such Default under Section 5.1.11 which can be cured by the payment of a sum of money, or for thirty (30) days after notice from Lender in the case of any other such Default under Section 5.1.11);

(x) with respect to any term, covenant or provision set forth herein which specifically contains a notice requirement or grace period, if Borrower shall be in default under such term, covenant or condition after the giving of such notice or the expiration of such grace period;

(xi) if any of the assumptions contained in the Insolvency Opinion delivered to Lender in connection with the Loan, or in the Additional Insolvency Opinion delivered subsequent to the closing of the Loan, is or shall become untrue in any material respect; or if any of the assumptions contained in the True Lease Opinion delivered to Lender in connection with the Loan, or in the Additional True Lease Opinion delivered subsequent to the closing of the Loan, is or shall become untrue in any material respect;

(xii) if Mortgage Borrower, Operating Company or Guarantor (Operating Lease) is in default of any of its material obligations under the Operating Lease (or under another lease and/or management agreement in substitution for the Operating Lease in accordance herewith) or under the Operating Lease Guaranty (or under another operating lease guaranty in substitution for the Operating Lease Guaranty in accordance herewith) beyond any applicable notice and cure periods contained therein; or if any Operating Lease (or such other lease and/or management agreement) or any Operating Lease Guaranty (or such other operating lease guaranty) shall be surrendered or any Operating Lease or any Operating Lease Guaranty shall be terminated or canceled for any reason or under any circumstances whatsoever, except with the consent of Lender; or if any of the terms, covenants or conditions of the Operating Lease (or such other lease and/or management agreement) or the Operating Lease Guaranty (or such other operating lease guaranty) shall in any manner be modified, changed, supplemented, altered, restated or amended without the consent of Lender except as may otherwise expressly permitted in this Agreement;

(xiii) if any Affiliate of Borrower that is or becomes a party to the Windstorm Insurance Intercreditor Agreement is in default of any of its material obligations under the Windstorm Insurance Intercreditor Agreement beyond any applicable notice and cure periods contained therein; or if the Windstorm Insurance Intercreditor Agreement shall be surrendered, terminated or canceled for any reason or under any circumstances whatsoever, except with the consent of Lender; or if any of the terms, covenants or conditions of the Windstorm Insurance Intercreditor Agreement shall in any manner be modified, changed, supplemented, altered, restated or amended without the consent of Lender;

(xiv) if Borrower, Senior Mezzanine Borrower or Mortgage Borrower fails to comply with the covenants as to Prescribed Laws set forth in Section 5.1.1 hereof;

(xv) if (A) subject to any notice and cure periods contained in the applicable Ground Lease, Mortgage Borrower or Ground Lease Subsidiary, as applicable, shall fail in the payment of any rent, additional rent or other charge mentioned in or made payable by such Ground Lease as and when such rent or other charge is payable (unless waived by the landlord under such Ground Lease), (B) subject to any notice and cure periods contained in the applicable Ground Lease, there shall occur any default by Mortgage Borrower or Ground Lease Subsidiary, as applicable, as tenant under such Ground Lease, in the observance or performance of any term, covenant or condition of the Ground Lease on the part of Mortgage Borrower or Ground Lease Subsidiary, as applicable, to be observed or performed (unless waived by the landlord under the Ground Lease) (other than any such default being contested by Borrower in good faith by appropriate

proceedings, provided that (i) no Event of Default has occurred and remains uncured, (ii) such proceeding shall be conducted in accordance with all applicable statutes, laws and ordinances, (iii) in Lender's reasonable determination, the Ground Lease is not in imminent danger of being forfeited, terminated, cancelled or lost and the Operating Company's use and operation of the ground leased premises in connection with the operation of Harrah's Lake Tahoe", "Harvey's Lake Tahoe" or "Bill's Lake Tahoe" is not in imminent danger of being denied, forfeited, terminated, cancelled or lost and (iv) Borrower shall furnish such security as may be reasonably requested by Lender), (C) any one or more of the events referred to in any Ground Lease shall occur which would cause the Ground Lease to terminate without notice or action by the landlord under the Ground Lease or which would entitle the landlord to terminate the Ground Lease and the term thereof by giving notice to Mortgage Borrower or Ground Lease Subsidiary, as applicable, as tenant thereunder (unless waived by the landlord under the Ground Lease), (D) the leasehold estate created by any Ground Lease shall be surrendered or the Ground Lease shall be terminated or canceled for any reason or under any circumstances whatsoever unless Mortgage Borrower or Ground Lease Subsidiary, as applicable, acquires the fee interest and mortgages same to Lender (unless Mortgage Borrower or Ground Lease Subsidiary, as applicable, acquires the fee interest, with Lender's prior reasonable approval, and mortgages same to Mortgage Lender) or (E) if any of the terms, covenants or conditions of any Ground Lease shall in any manner be modified, changed, supplemented, altered, or amended without the consent of Lender except as otherwise permitted by this Agreement;

(xvi) any Gaming License shall be refused, suspended, revoked, modified in a materially adverse manner or canceled or allowed to lapse or any proceeding is commenced by any Governmental Authority for the purpose of suspending, revoking or canceling any Gaming License in any materially adverse respect, or any Governmental Authority shall have appointed a conservator, supervisor or trustee to or for any of the Casino Components and, in each case of the foregoing, such action could reasonably be expected to (A) have an Individual Material Adverse Effect, (B) materially and adversely effect the continued operation of the Casino Components in the usual course of business and in substantially the same manner and to at least the same standard as was maintained prior to such action, or (C) result in any material decrease in the then expected cash flow and revenues to be derived from the Casino Components;

(xvii) if Borrower shall continue to be in Default under any of the other terms, covenants or conditions of this Agreement not specified in subsections (i) to (xv) above, for ten (10) days after notice to Borrower from Lender, in the case of any Default which can be cured by the payment of a sum of money, or for thirty (30) days after notice from Lender in the case of any other Default; provided, however, that if such non-monetary Default is susceptible of cure but cannot reasonably be cured within such thirty (30) day period and provided further that Borrower shall have commenced to cure such Default within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for such time as is reasonably necessary for Borrower in the exercise of due diligence to cure such Default, such additional period not to exceed one hundred twenty (120) days;

(xviii) if there shall be a default under any of the other Loan Documents beyond any applicable cure periods contained in such documents, whether as to Borrower, Mortgage Borrower, Senior Mezzanine Borrower, the Collateral or any Individual Property, or if any other such event shall occur or condition shall exist, if the effect of such event or condition is to accelerate the maturity of any portion of the Debt or to permit Lender to accelerate the maturity of all or any portion of the Debt;

(xix) if the Liens created pursuant to any Loan Document shall cease to be a fully protected enforceable first priority security interest in the Collateral, or any portion of the Collateral is Transferred without Lender's prior written consent except as permitted hereunder; or

(xx) if a Mortgage Loan Event of Default or Senior Mezzanine Loan Event of Default shall occur.

(b) Upon the occurrence of an Event of Default (other than an Event of Default described in clauses (vi) or (vii) above) and at any time thereafter, in addition to any other rights or remedies available to it pursuant to this Agreement and the other Loan Documents or at law or in equity, Lender may take such action, without notice or demand, that Lender deems advisable to protect and enforce its rights against Borrower and in and to all or any of the Collateral, including, without limitation, declaring the Debt to be immediately due and payable, and Lender may enforce or avail itself of any or all rights or remedies provided in the Loan Documents and may exercise all the rights and remedies of a secured party under the Uniform Commercial Code, as adopted and enacted by the State or States where any of the Collateral is located against Borrower and any or all of the Collateral, including, without limitation, all rights or remedies available at law or in equity; and upon any Event of Default described in clauses (vi) or (vii) above, the Debt and all other obligations of Borrower hereunder and under the other Loan Documents shall immediately and automatically become due and payable, without notice or demand, and Borrower hereby expressly waives any such notice or demand, anything contained herein or in any other Loan Document to the contrary notwithstanding.

**Section 8.2. Remedies.** (a) Upon the occurrence of an Event of Default, but in compliance with applicable Gaming Laws, all or any one or more of the rights, powers, privileges and other remedies available to Lender against Borrower under this Agreement or any of the other Loan Documents executed and delivered by, or applicable to, Borrower or at law or in equity may be exercised by Lender at any time and from time to time, whether or not all or any of the Debt shall be declared due and payable, and whether or not Lender shall have commenced any foreclosure proceeding or other action for the enforcement of its rights and remedies under any of the Loan Documents with respect to all or any of the Collateral. Any such actions taken by Lender shall be cumulative and concurrent and may be pursued independently, singularly, successively, together or otherwise, at such time and in such order as Lender may determine in its sole discretion, to the fullest extent permitted by law, without impairing or otherwise affecting the other rights and remedies of Lender permitted by law, equity or contract or as set forth herein or in the other Loan Documents. Without limiting the generality of the foregoing, Borrower agrees that if an Event of Default is continuing (i) Lender is not subject to any "one action" or "election of remedies" law or rule, and (ii) all liens and other rights, remedies or privileges provided to Lender shall remain in full force and effect until Lender has

exhausted all of its remedies against the Collateral and the Collateral has been foreclosed upon, sold and/or otherwise realized upon in satisfaction of the Debt or the Debt has been paid in full.

(b) With respect to Borrower and the Collateral, nothing contained herein or in any other Loan Document shall be construed as requiring Lender to resort to any portion of the Collateral for the satisfaction of any of the Debt in preference or priority to any other portion of the Collateral, and Lender may seek satisfaction out of all of the Collateral or any part thereof, in its absolute discretion in respect of the Debt. In addition, Lender shall have the right from time to time to partially foreclose upon the Collateral in any manner and for any amounts secured by the Pledge Agreement then due and payable as determined by Lender in its sole discretion including, without limitation, the following circumstances: (i) in the event Borrower defaults beyond any applicable grace period in the payment of one or more scheduled payments of principal and interest, Lender may foreclose upon the Collateral to recover such delinquent payments, or (ii) in the event Lender elects to accelerate less than the entire outstanding principal balance of the Loan, Lender may foreclose upon the Collateral to recover so much of the principal balance of the Loan as Lender may accelerate and such other sums secured by the Collateral as Lender may elect. Notwithstanding one or more partial foreclosures, the Collateral shall remain subject to the Pledge Agreement and the other Loan Documents to secure payment of sums secured by the Pledge Agreement and other Loan Documents and not previously recovered.

(c) Upon the occurrence and during the continuance of an Event of Default, Lender shall have the right from time to time to sever the Note and the other Loan Documents into one or more separate notes, pledges and other security documents (the “**Severed Loan Documents**”) in such denominations as Lender shall determine in its sole discretion for purposes of evidencing and enforcing its rights and remedies provided hereunder. Borrower shall execute and deliver to Lender from time to time, promptly after the request of Lender, a severance agreement and such other documents as Lender shall request in order to effect the severance described in the preceding sentence, all in form and substance reasonably satisfactory to Lender. Borrower hereby absolutely and irrevocably appoints Lender as its true and lawful attorney, coupled with an interest, in its name and stead to make and execute all documents necessary or desirable to effect the aforesaid severance, Borrower ratifying all that its said attorney shall do by virtue thereof; provided, however, Lender shall not make or execute any such documents under such power until three (3) days after notice has been given to Borrower by Lender of Lender’s intent to exercise its rights under such power. Borrower shall be obligated to pay any costs or expenses incurred in connection with the preparation, execution, recording or filing of the Severed Loan Documents. The Severed Loan Documents shall not contain any representations, warranties or covenants not contained in the Loan Documents and any such representations and warranties contained in the Severed Loan Documents will be given by Borrower only as of the Closing Date. The Severed Loan Documents shall (a) not increase the aggregate stated principal amount of the Loan, (b) provide that the weighted average spread of the Loan on the date of such severance shall equal the weighted average spread which was applicable to the Loan immediately prior to such severance (Borrower acknowledging that such Severed Loan Document may, in connection with the application of principal to the amounts evidenced by such Severed Loan Documents, subsequently cause the weighted average spread of such new notes or modified notes to change), (c) not adversely affect the overall economics to Borrower of the Loan, taken as a whole, or (d) expose Borrower to any additional costs or increased risk of any

liability (beyond that or greater than that existing in the Loan Documents in effect on the date hereof).

(d) The rights, powers and remedies of Lender under this Agreement shall be cumulative and not exclusive of any other right, power or remedy which Lender may have against Borrower pursuant to this Agreement or the other Loan Documents, or existing at law or in equity or otherwise. Lender's rights, powers and remedies may be pursued singularly, concurrently or otherwise, at such time and in such order as Lender may determine in Lender's sole discretion. No delay or omission to exercise any remedy, right or power accruing upon an Event of Default shall impair any such remedy, right or power or shall be construed as a waiver thereof, but any such remedy, right or power may be exercised from time to time and as often as may be deemed expedient. A waiver of one Default or Event of Default with respect to Borrower shall not be construed to be a waiver of any subsequent Default or Event of Default by Borrower or to impair any remedy, right or power consequent thereon.

(e) Any amounts recovered from the Collateral after an Event of Default may be applied by Lender toward the payment of any interest and/or principal of the Loan and/or any other amounts due under the Loan Documents in such order, priority and proportions as Lender in its sole discretion shall determine.

(f) Upon the occurrence and during the continuance of an Event of Default, Lender may, but without any obligation to do so and without notice to or demand on Borrower and without releasing Borrower from any obligation hereunder or being deemed to have cured any Event of Default hereunder, make, do or perform any obligation of Borrower hereunder in such manner and to such extent as Lender may deem necessary. Borrower shall cause Mortgage Borrower to permit Lender to enter upon any Individual Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in any Individual Property for such purposes, and the cost and expense thereof (including reasonable attorneys' fees to the extent permitted by law), with interest as provided in this Section 8.2, shall constitute a portion of the Debt and shall be due and payable to Lender upon demand. All such costs and expenses incurred by Lender in remedying such Event of Default or such failed payment or act or in appearing in, defending, or bringing any action or proceeding shall bear interest at the Default

Rate, for the period after such cost or expense was incurred into the date of payment to Lender. All such costs and expenses incurred by Lender together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and be secured by the liens, claims and security interests provided to Lender under the Loan Documents and shall be immediately due and payable upon demand by Lender therefore. Upon the occurrence and during the continuance of a Senior Mezzanine Loan Event of Default, Lender may, but without any obligation to do so and without notice to or demand on Borrower or Senior Mezzanine Borrower and without releasing Senior Mezzanine Borrower from any obligation under the Senior Mezzanine Loan Documents or being deemed to have cured any Senior Mezzanine Loan Event of Default, make, do or perform any obligation of Senior Mezzanine Borrower under Senior Mezzanine Loan Documents in such manner and to such extent as Lender may deem necessary. All such costs and expenses incurred by Lender in remedying such Senior Mezzanine Loan Event of Default or such failed payment or act shall bear interest at the Default Rate, for the period after such cost or expense was incurred into the date of payment to Lender. All such costs and expenses incurred by Lender together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and be secured by the liens, claims and security interests provided to Lender under the Loan Documents and shall be immediately due and payable upon demand by Lender therefor. Upon the occurrence and during the continuance of a Mortgage Loan Event of Default, Lender may, but without any obligation to do so and without notice to or demand on Borrower or Mortgage Borrower and without releasing Mortgage Borrower from any obligation under the Mortgage Loan Documents or being deemed to have cured any Mortgage Loan Event of Default, make, do or perform any obligation of Mortgage Borrower under Mortgage Loan Documents in such manner and to such extent as Lender may deem necessary. All such costs and expenses incurred by Lender in remedying such Mortgage Loan Event of Default or such failed payment or act shall bear interest at the Default Rate, for the period after such cost or expense was incurred into the date of payment to Lender. All such costs and expenses incurred by Lender together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and be secured by the liens, claims and security interests provided to Lender under the Loan Documents and shall be immediately due and payable upon demand by Lender therefor.

(g) For the purpose of carrying out the provisions and exercising the rights, powers and privileges granted in this Section 8.2, Borrower hereby irrevocably constitutes and appoints the Lender its true and lawful attorney-in-fact to execute, acknowledge and deliver any instruments and do and perform any acts such as are referred to in this subsection in the name and on behalf of Borrower upon the occurrence and during the continuance of an Event of Default. This power of attorney is a power coupled with an interest and cannot be revoked.

**Section 8.3. Intentionally Omitted.**

**Section 8.4. Costs of Collection.** In the event that after an Event of Default and during the continuance thereof: (a) the Note or any of the Loan Documents is placed in the hands of an attorney for collection or enforcement or is collected or enforced through any legal proceeding; (b) an attorney is retained to represent Lender in any bankruptcy, reorganization, receivership, or other proceedings affecting creditors' rights and involving a claim under the Note or any of the Loan Documents or (c) an attorney is retained to protect or enforce the lien or any of the terms of this Agreement, the Pledge Agreement or any of the Loan Documents, then, in any such instance, Borrower shall pay to Lender all reasonable attorneys' fees, costs and expenses actually incurred in connection therewith, including costs of appeal, together with interest on any judgment obtained by Lender at the Default Rate.

**IX. SPECIAL PROVISIONS**

**Section 9.1. Sale of Notes and Securitization.** Borrower acknowledges and agrees that the Lender may sell all or any portion of the Loan and the Loan Documents, or issue one or more participations therein, or consummate one or more private or public securitizations of rated single- or multi-class securities (the "**Securities**") secured by or evidencing ownership interests in all or any portion of the Loan and the Loan Documents or a pool of assets that include the Loan and the Loan Documents (such sales, participations and/or securitizations, collectively, a "**Securitization**"). At the request of Lender, and to the extent not already required to be provided by Borrower under this Agreement, Borrower shall use reasonable efforts to provide information not in the possession of Lender or which may be reasonably required by

Lender in order to satisfy the market standards to which Lender customarily adheres or which may be reasonably required by prospective investors and/or the Rating Agencies in connection with any such Securitization including, without limitation, to:

(a) provide or cause Mortgage Borrower and Senior Mezzanine Borrower to provide additional and/or updated Provided Information, together with appropriate verification and/or consents related to the Provided Information through letters of auditors or opinions of counsel of independent attorneys reasonably acceptable to Lender and the Rating Agencies;

(b) cooperate in good faith in the preparation of descriptive materials for presentations to any or all of the Rating Agencies, and work with, and if requested, supervise, third-party service providers engaged by Borrower, Holdings and their respective affiliates to obtain, collect, and deliver information requested or required by Lender or the Rating Agencies;

(c) deliver, if required or requested by any Rating Agency, (i) updated opinions of counsel as to non-consolidation, due execution and enforceability with respect to the Properties, Borrower, Mortgage Borrower, Senior Mezzanine Borrower, the Collateral, the Senior Mezzanine Collateral, Principal, Holdings and their respective Affiliates and the Loan Documents, and (ii) revised organizational documents for Borrower, which counsel opinions and organizational documents shall be reasonably satisfactory to Lender and the Rating Agencies;

(d) if required by any Rating Agency, use commercially reasonable efforts to deliver such additional tenant estoppel letters, subordination agreements or other agreements from parties to agreements that affect any of the Properties, which estoppel letters, subordination agreements or other agreements shall be reasonably satisfactory to Lender and the Rating Agencies;

(e) execute such amendments to the Loan Documents as may be requested by Lender or the Rating Agencies to effect the Securitization and/or deliver one or more new component notes to replace the original note or modify the original note to reflect multiple components of the Loan such that the pricing and marketability of the Securities and the size of each class of Securities and the rating assigned to each such class by the Rating Agencies shall provide the most favorable rating levels and achieve the optimum rating levels for the Loan, provided that, (i) the aggregate stated principal amount of the notes, following such amendments or delivery of new or component notes, shall equal the aggregate stated principal amount of the Loan immediately prior thereto, (ii) the weighted average spread of the Loan on the date of such amendment or delivery of new or component notes shall equal the weighted average spread which was applicable to the Loan immediately prior to such adjustment (Borrower acknowledging that such new notes or modified notes may, in connection with the application of principal to such new notes or modified note following the occurrence of an Event of Default, but not otherwise, subsequently cause the weighted average spread of such new notes or modified notes to change and (iii) the provisions of Section 2.1.5 otherwise shall apply to any such amendments and delivery of new or component notes (such provisions being incorporated herein by this reference);

(f) if requested by Lender, review any information regarding any of the Properties, Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Principal, the Collateral,

the Senior Mezzanine Collateral, Holdings, the Operating Company and the Loan which is contained in a preliminary or final private placement memorandum, prospectus, prospectus supplement (including any amendment or supplement to either thereof), or other disclosure document to be used by Lender or any affiliate thereof; and

(g) supply to Lender such documentation, financial statements and reports in form and substance required in order to comply with any applicable securities laws (to the extent in Borrower's possession, or in the possession of Borrower's advisors, agents or employees), including, without limitation, if applicable, information necessary to comply with any applicable reporting or information requirements under Regulation D under the Securities Act of 1933 or Regulation S under the Securities Act of 1933.

Lender and Borrower each shall pay their respective costs and expenses incurred in connection with the foregoing, including, without limitation, legal fees in connection with any of the foregoing matters; except that all costs and expenses of Lender and Borrower associated with any restructuring of the Loan requested by Lender, including under Sections 2.1.5, 2.1.6 and 2.1.7, shall be paid solely by Lender.

**Section 9.2. Securitization Indemnification.** (a) Borrower understands that certain of the Provided Information may be included in Disclosure Documents in connection with the Securitization and may also be included in filings with the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended (the "**Securities Act**"), or the Securities and Exchange Act of 1934, as amended (the "**Exchange Act**"), or provided or made available to investors or prospective investors in the Securities, the Rating Agencies, and service providers relating to the Securitization. In the event that the Disclosure Document is required to be revised prior to the sale of all Securities, Borrower will cooperate with the holder of the Note in updating the Disclosure Document by providing all current information necessary to keep the Disclosure Document accurate and complete in all material respects to the extent in Borrower's possession.

(b) Borrower agrees to provide, in connection with the Securitization, an indemnification agreement (i) certifying that (A) Borrower has carefully examined the Disclosure Documents, including, without limitation, the sections entitled "Risk Factors," "Special Considerations," "Description of the Collateral," "Description of the Mezzanine Loans," "The Operating Company," "The Borrower" and "Certain Legal Aspects of the Mezzanine Loans," and (B) such sections and such other information in the Disclosure Documents (to the extent such information relates to or includes any Provided Information or any information regarding the Properties, Borrower, Mortgage Borrower, the Collateral, the Senior Mezzanine Collateral and/or Operating Company) (collectively with the Provided Information, the "**Covered Disclosure Information**") do not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, (ii) indemnifying Lender, each Noteholder, JPM (whether or not it is the Lender), any Affiliate of JPM or a Noteholder that has filed any registration statement relating to the Securitization or has acted as the sponsor or depositor in connection with the Securitization, any Affiliate of JPM or a Noteholder that acts as an underwriter, placement agent or initial purchaser of Securities issued in the Securitization, any other co-underwriters, co-placement agents or co-initial purchasers of

Securities issued in the Securitization, and each of their respective officers, directors, partners, employees, representatives, agents and Affiliates and each Person or entity who controls any such Person within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act (collectively, the “**Indemnified Persons**”), for any losses, claims, damages, liabilities, costs or expenses (including, without limitation, legal fees and expenses for enforcement of these obligations (collectively, the “**Liabilities**”)) to which any such Indemnified Person may become subject insofar as the Liabilities arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in the Covered Disclosure Information or arise out of or are based upon the omission or alleged omission to state in the Covered Disclosure Information a material fact required to be stated therein or necessary in order to make the statements in the Covered Disclosure Information, in light of the circumstances under which they were made, not misleading and (iii) agreeing to reimburse each Indemnified Person for any legal or other expenses incurred by such Indemnified Person, as they are incurred, in connection with investigating or defending the Liabilities provided, however, that Borrower shall have liability with respect to Liabilities arising out of or based upon the Covered Disclosure Information only to the extent that such Liabilities arise out of or are based upon any such untrue statement or omission made in the Covered Disclosure Information in reliance upon and in conformity with information furnished to Lender or such Noteholder by or on behalf of Borrower in connection with the preparation of the Disclosure Documents or in connection with the underwriting or the closing of the Loan (including without limitation financial statements of Borrower and operating statements and rent rolls with respect to the Properties), and in no event shall Borrower be liable for Liabilities arising from information contained in a Disclosure Document that was not provided to Borrower for comment at least five (5) Business Days prior to its dissemination or on which Borrower provided comments to Lender in writing and Lender failed to incorporate such comments (assuming such comments were accurate). This indemnity agreement will be in addition to any liability which Borrower may otherwise have. Moreover, the indemnification provided for in clauses (ii) and (iii) above shall be effective whether or not an indemnification agreement described in clause (i) above is provided.

(c) In connection with filings under the Exchange Act (if any), Borrower agrees to indemnify (i) the Indemnified Persons for Liabilities to which any such Indemnified Person may become subject insofar as the Liabilities arise out of or are based upon any untrue statement or alleged untrue statement of any material fact in the Covered Disclosure Information, or the omission or alleged omission to state in the Covered Disclosure Information a material fact required to be stated therein or necessary in order to make the statements in the Covered Disclosure Information, in light of the circumstances under which they were made, not misleading and (ii) reimburse each Indemnified Person for any legal or other expenses incurred by such Indemnified Persons, as they are incurred, in connection with defending or investigating the Liabilities.

(d) Promptly after receipt by an Indemnified Person of notice of any claim or the commencement of any action, the Indemnified Person shall, if a claim in respect thereof is to be made against Borrower, notify Borrower in writing of the claim or the commencement of that action; provided, however, that the failure to notify Borrower shall not relieve it from any liability which it may have under the indemnification provisions of this Section 9.2 except to the extent that it has been materially prejudiced by such failure and, provided, further, that the failure to notify Borrower shall not relieve it from any liability which it may have to an Indemnified

Person otherwise than under the provisions of this Section 9.2. If any such claim or action shall be brought against an Indemnified Person, and it shall notify Borrower thereof, Borrower shall be entitled to participate therein and, to the extent that it wishes, assume the defense thereof with counsel reasonably satisfactory to the Indemnified Person. After notice from any Borrower to an Indemnified Person of its election to assume the defense of such claim or action, Borrower shall not be liable to the Indemnified Person for any legal or other expenses subsequently incurred by the Indemnified Person in connection with the defense thereof except as provided in the following sentence; provided, however, if the defendants in any such action include both Borrower, on the one hand, and one or more Indemnified Persons on the other hand, and an Indemnified Person shall have reasonably concluded that there are any legal defenses available to it and/or other Indemnified Persons that are different or in addition to those available to Borrower, the Indemnified Person or Persons shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on behalf of such Indemnified Person or Persons. The Indemnified Person shall instruct its counsel to maintain reasonably detailed billing records for fees and disbursements for which such Indemnified Person is seeking reimbursement hereunder and shall submit copies of such detailed billing records to substantiate that such counsel's fees and disbursements are solely related to the defense of a claim for which Borrower is required hereunder to indemnify such Indemnified Person. Borrower shall not be liable for the expenses of more than one (1) such separate counsel unless such Indemnified Person shall have reasonably concluded that there may be legal defenses available to it that are different from or additional to those available to another Indemnified Person.

(e) Without the prior consent of the Indemnified Person in question (which consent shall not be unreasonably withheld), Borrower shall not settle or compromise or consent to the entry of any judgment in any pending or threatened claim, action, suit or proceeding in respect of which indemnification may be sought hereunder (whether or not any Indemnified Person is an actual or potential party to such claim, action, suit or proceeding) unless Borrower shall have given such Indemnified Person reasonable prior notice thereof and shall have obtained an unconditional release of each Indemnified Person hereunder from all liability arising out of such claim, action, suit or proceedings. As long as Borrower has complied with its obligations to defend and indemnify hereunder, Borrower shall not be liable for any settlement made by any Indemnified Person without the consent of Borrower (which consent shall not be unreasonably withheld).

(f) Borrower agrees that if any indemnification or reimbursement sought pursuant to this Section 9.2 is finally judicially determined to be unavailable for any reason or is insufficient to hold any Indemnified Person harmless (with respect only to the Liabilities that are the subject of this Section 9.2), then Borrower, on the one hand, and such Indemnified Person, on the other hand, shall contribute to the Liabilities for which such indemnification or reimbursement is held unavailable or is insufficient: (x) in such proportion as is appropriate to reflect the relative benefits to Borrower, on the one hand, and such Indemnified Person, on the other hand, from the transactions to which such indemnification or reimbursement relates; or (y) if the allocation provided by clause (x) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (x) but also the relative faults of Borrower, on the one hand, and all Indemnified Persons, on the other hand, as well as any other equitable considerations. Notwithstanding the provisions of this

Section 9.2, (A) no party found liable for a fraudulent misrepresentation shall be entitled to contribution from any other party who is not also found liable for such fraudulent misrepresentation, and (B) Borrower agrees that in no event shall the amount to be contributed by the Indemnified Persons collectively pursuant to this paragraph exceed the amount of the fees (by underwriting discount or otherwise) actually received by the Indemnified Persons in connection with the closing of the Loan or the Securitization.

(g) Borrower agrees that the indemnification, contribution and reimbursement obligations set forth in this Section 9.2 shall apply whether or not any Indemnified Person is a formal party to any lawsuits, claims or other proceedings. Borrower further agrees that the Indemnified Persons are intended third party beneficiaries under this Section 9.2.

(h) The liabilities and obligations of the Indemnified Persons and Borrower under this Section 9.2 shall survive the termination of this Agreement and the satisfaction and discharge of the Debt.

(i) Notwithstanding anything to the contrary contained herein, Borrower shall have no obligation to act as depositor with respect to the Loan or an issuer or registrant with respect to the Securities issued in any Securitization.

**Section 9.3. Exculpation.** (a) Subject to the qualifications below, Lender shall not enforce the liability and obligation of Borrower to perform and observe the obligations contained in the Note, this Agreement, the Pledge Agreement or the other Loan Documents by any action or proceeding wherein a money judgment shall be sought against Borrower, except that Lender may bring a foreclosure action, an action for specific performance or any other appropriate action or proceeding to enable Lender and each Noteholder to enforce and realize upon its interest under the Note, this Agreement, the Pledge Agreement and the other Loan Documents, or in the Collateral, or any other collateral given to Lender pursuant to the Loan Documents; provided, however, that, except as specifically provided herein, any judgment in any such action or proceeding shall be enforceable against Borrower only to the extent of Borrower's interest in the Collateral and in any other collateral given to Lender, and Lender, by accepting the Note, this Agreement, the Pledge Agreement and the other Loan Documents, agrees that it shall not sue for, seek or demand any deficiency judgment against Borrower in any such action or proceeding under, or by reason of, or in connection with, the Note, this Agreement, the Pledge Agreement or the other Loan Documents. The provisions of this Section shall not, however, (a) constitute a waiver, release or impairment of any obligation evidenced or secured by any of the Loan Documents; (b) impair the right of Lender to name Borrower as a party defendant in any action or suit for foreclosure and sale under the Pledge Agreement; (c) affect the validity or enforceability of or any Guaranty made in connection with the Loan or any of the rights and remedies of Lender thereunder; (d) impair the right of Lender to obtain the appointment of a receiver; (e) intentionally omitted; (f) constitute a prohibition against Lender to seek a deficiency judgment against Borrower in order to fully realize the security granted by the Pledge Agreement or to commence any other appropriate action or proceeding in order for Lender to exercise its remedies against all of the Collateral; or (g) constitute a waiver of the right of Lender to enforce the liability and obligation of Borrower, by money judgment or otherwise, to the extent of any actual loss, damage, cost, expense, liability, claim or other obligation incurred by Lender

(including attorneys' fees and costs reasonably incurred) arising out of or in connection with the following:

- (i) fraud or intentional misrepresentation by Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor in connection with the execution and delivery of the Loan Documents and/or the Loan;
- (ii) the misappropriation, conversion or misapplication in contravention of the Loan Documents by Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor of any funds of Borrower, Senior Mezzanine Borrower, Mortgage Borrower or Operating Company, including, without limitation, (A) any Revenues, (B) any Net Liquidation Proceeds or Insurance Proceeds, (C) any Awards received in connection with a Condemnation, (D) any Rents or security deposits (or any item of Revenue, from whatever source) following an Event of Default, or (E) any distribution or other payments made in connection with any part of the Collateral or Senior Mezzanine Collateral;
- (iii) the misappropriation, conversion or misapplication by Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor of any security deposits or Rents paid more than one (1) month in advance;
- (iv) any act of actual intentional physical waste by Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor;
- (v) the breach of any representation, warranty, covenant or indemnification provision in the Environmental Indemnity Agreement concerning environmental laws, hazardous substances and asbestos and any indemnification of Lender with respect thereto in either document;
- (vi) if Borrower, Mortgage Borrower, Senior Mezzanine Borrower or Operating Company fails to obtain Lender's prior consent to any voluntary intentional Transfer as required by this Agreement, the Mortgage Loan Agreement or the Mortgages, as applicable;
- (vii) any security deposits, advance deposits or any other deposits collected with respect to any of the Properties which are not delivered to Mortgage Lender upon a foreclosure of any of the Properties or action in lieu thereof, except to the extent any such security deposits were applied in accordance with the terms and conditions of any of the Leases prior to the occurrence of the Event of Default that gave rise to such foreclosure or action in lieu thereof;
- (viii) in the event of: (A) Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor filing a voluntary petition under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (B) the filing of an involuntary petition against Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law by any Person in which Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor

or any of their respective Affiliates, agents or employees colludes with or such other Person, or Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor soliciting or causing to be solicited petitioning creditors for any involuntary petition against Borrower, Operating Company or any Guarantor from any Person; (C) Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor filing an answer consenting to or otherwise acquiescing in or joining in any involuntary petition filed against it by any other Person, other than Lender, under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (D) Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor consenting to or acquiescing in or joining in an application for the appointment of a custodian, receiver, trustee, or examiner for Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor or any of the Properties, the Collateral, the Senior Mezzanine Collateral or any portion thereof, other than at the request of Lender; or (E) Borrower, Mortgage Borrower, Senior Mezzanine Borrower, Operating Company or any Guarantor making an assignment for the benefit of creditors (other than Lender), or admitting, in writing or in any legal proceeding, its insolvency or inability to pay its debts as they become due;

(ix) if Borrower, Senior Mezzanine Borrower or Mortgage Borrower fails to maintain its status as a Special Purpose Entity or breaches any material representation or warranty set forth in Section 4.1.30 of this Agreement; and

(x) if Borrower, Mortgage Borrower, Senior Mezzanine Borrower or Operating Company fails to obtain Lender's prior consent to any voluntary Indebtedness (other than (x) with respect to Mortgage Borrower, Permitted Indebtedness and (y) with respect to Operating Company, Permitted Indebtedness (Operating Company), as applicable) or voluntary Lien (other than Permitted Encumbrances) encumbering any of the Properties, Senior Mezzanine Collateral or Collateral as required by this Agreement, the Senior Mezzanine Loan Agreement, the Mortgage Loan Agreement, the Pledge Agreement or the Mortgages.

Notwithstanding anything to the contrary under this Agreement, neither any present or future Affiliate of Borrower (other than Guarantor, to the extent provided under the Guaranty) nor any present or future shareholder, officer, director, employee, trustee, beneficiary, advisor, partner, member, principal, participant or agent of or in any Borrower or of or in any person or entity that is or becomes an Affiliate of any Borrower shall have any personal liability, directly or indirectly, under or in connection with the Loan Documents. Neither the negative capital account of any Affiliate of Borrower in Borrower, or in any other Affiliate of Borrower in any other Affiliate of Borrower, nor any obligation of any Affiliate of Borrower in any Borrower to restore a negative capital account or to contribute or loan capital to any Borrower or to any other Affiliate of Borrower shall at any time be deemed to be the property or an asset of any Borrower (or any other Affiliate of Borrower) and neither Lender nor its successors or assigns shall have any right to collect, enforce or proceed against any such negative capital account or obligation to restore, contribute or loan capital.

(b) Notwithstanding anything to the contrary in this Agreement, the Note or any of the Loan Documents, Lender shall not be deemed to have waived any right which Lender

may have under Section 506(a), 506(b), 1111(b) or any other provisions of the Bankruptcy Code to file a claim for the full amount of the Indebtedness or to require that all collateral shall continue to secure all of the Indebtedness owing to Lender in accordance with the Loan Documents.

**Section 9.4. Servicer.** (a) At the option of Lender, the Loan may be serviced by a servicer/trustee (the “**Servicer**”) selected by Lender and Lender may delegate all or any portion of its responsibilities under this Agreement and the other Loan Documents to the Servicer pursuant to a servicing agreement (the “**Servicing Agreement**”) between Lender and Servicer. Lender shall be responsible for any set-up fees or any other initial costs relating to or arising under the Servicing Agreement (arising in connection with the Securitization) and the payment of the monthly servicing fee due to Servicer under the Servicing Agreement, and, unless otherwise specifically set forth herein, Borrower shall be responsible for the payment of all fees and other reasonable out-of-pocket expenses incurred by Servicer resulting from any Borrower requests (for approvals or otherwise) to Servicer.

(b) In the event of a Securitization or syndication, the grant of participations in the Loan or any secondary marketing by Lender, Mortgage Borrower and the Mezzanine Borrowers, collectively may rely upon approvals or consents given by one (1) agent or representative in respect of the Mortgage Lender and the Mezzanine Lenders for the matter in question (which such parties shall designate, and pending further notice from Lender, such agent shall be JPM). Borrower shall only pay legal fees for the outside counsel of one Servicer.

**Section 9.5. Assignments and Participations.** (a) In addition to the rights Lender has under Section 9.1, Lender shall have the right, subject to this Section 9.5, to assign, sell, negotiate, pledge or hypothecate all or any portion of their rights and obligations hereunder (a “**Syndication**”). Except in connection with a Securitization, no Lender shall assign, sell, negotiate, pledge, hypothecate or otherwise transfer all or any portion of its rights in and to the Loan to any other Person (an “**Assignee**”) (a) other than in compliance with Section 9.9 hereof; and (b) unless such transaction shall be an assignment of a constant (and not varying), ratable percentage of such Lender’s interest in the Loan; provided, however, any Lender shall have the right at any time without the consent of or notice to any other Lender or other Person to grant a security interest in all or any portion of such Lender’s interest in the Loan to any Federal Reserve Bank or the central reserve bank or similar authority of any other country to secure any obligation of such Lender to such bank or similar authority (a “**Central Bank Pledge**”). Effective on any such assignment and assumption by the assignee and on compliance with Section 9.9 hereof, the assigning Lender shall have no further liability hereunder with respect to the interest of such Lender that was the subject of such transfer and such Assignee shall be a Lender with respect to such interest, and Borrower shall have the same rights as to such Assignee with respect to such interest from and after the date of such assignment as if such Lender were an original Lender hereunder. Except for a Central Bank Pledge or financing transaction under a repurchase agreement, a Lender making any such assignment shall notify Borrower of same, specifying the Assignee thereof and the amount of the assignment and shall provide such other detail as Borrower may reasonably request to substantiate compliance with the foregoing.

**Section 9.6. Participation.** Lender may, without the consent of the Borrower, in compliance with applicable law, sell participations to one or more banks or other entities (a

**“Participant”**), in all or a portion of Lender’s rights and obligations under this Agreement (including all or a portion of the Loan owing to it); provided that (A) Lender’s obligations under this Agreement shall remain unchanged, (B) Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) the Borrower shall continue to deal solely and directly with Lender in connection with Lender’s rights and obligations under this Agreement. The Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.2.3 and 2.2.4 (subject to requirements and limitations therein) to the same extent as if it were a Noteholder and had acquired its interest by assignment pursuant to Section 9.5. Each Lender that sells a participation shall, acting solely for this purpose as an agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each participant’s interest in the Loans or other obligations under this Agreement (the **“Participant Register”**). The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each person whose name is recorded in the Participant Register as the owner of such Loan or other obligation hereunder as the owner thereof for all purposes of this Agreement notwithstanding any notice to the contrary.

**Section 9.7. Borrower’s Facilitation of Transfer.** In order to facilitate permitted assignments and other transfers to Assignees and sales to Participants, Borrower shall execute and deliver to Lender and shall cause Guarantor to execute and deliver to Lender such further documents, instruments or agreements as Lender may reasonably require, including, if required by Lender, supplemental notes in the principal amount of such Lender’s pro rata share of the Loan substantially in the form of such Lender’s Note against surrender of the prior notes, and such supplemental note shall (i) be payable to order of such Lender, (ii) be dated as of the date hereof, and (iii) mature on the Maturity Date. Such supplemental note shall provide that it evidences a portion of the existing indebtedness hereunder and under the Notes and not any new or additional indebtedness of Borrower. The term “Note” as used in this Agreement and in all the other Loan Documents shall include all such supplemental notes but exclude any Note it replaces. Notwithstanding the foregoing, such documents, instruments or agreements shall not (a) increase the obligations or liabilities of any such Person hereunder or under the other Loan Documents in excess of the obligations or liabilities intended to be provided herein or in the other Loan Documents or (b) decrease such Person’s rights hereunder or under the other Loan Documents to less than what they were prior to the execution of such documents, instruments or agreements. In addition, Borrower agrees to reasonably cooperate with Lender, including providing such information and documentation regarding Borrower, Senior Mezzanine Borrower, Mortgage Borrower, Holdings, the Operating Company and any other Person as Lender or any potential Assignee or Participant may reasonably request and to meet with potential Assignees and Participants upon reasonable notice. Lender and Borrower each shall pay their respective costs and expenses incurred in connection with the foregoing, including, without limitation, legal fees in connection with any of the foregoing matters, except that all costs and expenses of Lender and Borrower associated with any restructuring of the Loan requested by Lender, including under Section 2.1.5, 2.1.6 and 2.1.7, shall be paid solely by Lender.

**Section 9.8. Notice; Registration Requirement.** No Syndication of any part of Lender’s interest in and to the Loan shall be effective or permitted under Section 9.5 until (a) an assignment and acceptance agreement in a form reasonably acceptable to Lender (an **“Assignment and Acceptance”**) with respect to such Syndication shall have been delivered to Lender, (b) Lender shall have registered such Assignee’s name and address in the Register which

Lender maintains for the recordation of the names, addresses and interests of Noteholders, and (c) if such Assignee is not already a Lender hereunder, such Assignee shall deliver any tax forms required hereunder. The entries in the Register shall be conclusive, absent manifest error. This Section 9.8 shall not apply to any Central Bank Pledge.

**Section 9.9. Registry.** Borrower hereby designates Lender to serve as Borrower's agent, solely for purposes of this Section 9.9, to maintain at one of its offices a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the names and addresses of each Assignee, and the principal amount of the Loan (or portions thereof) owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). Failure to make any such recordation, or any error in such recordation shall not affect Borrower's obligations in respect of the Loan. With respect to any Lender, the transfer of the rights to the principal of, and interest on, its interest in the Loan shall not be effective until such transfer is recorded on the Register maintained by Lender with respect to ownership of such Loan and prior to such recordation all amounts owing to the transferor with respect to such Note shall remain owing to the transferor. The registration of a transfer of all or part of the Loan shall be recorded by Lender on the Register only upon the acceptance by Lender of a properly executed and delivered Assignment and Acceptance by the assignor and assignee. At the assigning Lender's option, concurrently with the delivery of an Assignment and Acceptance pursuant to which an interest of such Lender in the Loan was assigned to such Assignee, the assigning Lender shall surrender to Borrower its Note, if any, evidencing the portion of the Loan corresponding to the interest so transferred and Borrower shall deliver to Lender one or more new promissory notes in the same aggregate principal amount issued to the assigning Lender and/or the Assignee.

**Section 9.10. Cooperation in Syndication.** Borrower agrees to assist the Lender in completing a Syndication satisfactory to the Lender. Such assistance shall include (i) direct contact between senior management and advisors of Borrower and the proposed Assignees and/or Participants, (ii) assistance in the preparation of a confidential information memorandum and other marketing materials to be used in connection with the Syndication, (iii) the hosting, with the Lender, of one or more meetings of prospective Assignees and/or Participants, (iv) the delivery of appraisals satisfactory to the Lender if required. To assist the Lender in its Syndication efforts, Borrower agrees promptly to prepare and provide to the Lender all information with respect to Borrower, Senior Mezzanine Borrower, Mortgage Borrower, Holdings, the Operating Company, Guarantor, the Collateral, the Senior Mezzanine Collateral and the Properties contemplated hereby, including all financial information and projections (the "**Projections**"), as the Lender may reasonably request in connection with the Syndication of the Loan. If required in connection with the Syndication, Borrower hereby agrees to:

(a) deliver updated financial and operating statements and other information reasonably required by the Lender to facilitate the Syndication;

(b) use reasonable efforts to deliver reliance letters reasonably satisfactory to the Lender with respect to the environmental assessments and reports delivered to the Lender prior to the Closing Date, which will run to the Lender and its successors and assigns;

(c) execute modifications to the Loan Documents required by the Lender, provided that such modification will not (except as set forth in (d)) change any material or

economic terms of the Loan Documents, or otherwise increase the obligations or decrease the rights of Borrower pursuant to the Loan Documents (except to a de minimis extent); and

(d) if the Lender elects, in its sole discretion, prior to or upon a Syndication, to exercise its rights under Section 2.1.5, Borrower agrees to cooperate with the Lender in connection with the foregoing and to execute the required modifications and amendments to the Notes, this Agreement and the Loan Documents and to use reasonable efforts to provide opinions necessary to effectuate the same. Such Notes or components may be assigned different interest rates, so long as the weighted average of such interest rates does not exceed the Applicable Interest Rate, except in connection with the application of principal to such Notes or components following the occurrence of an Event of Default.

Lender and Borrower each shall pay their respective costs and expenses incurred in connection with the foregoing, including, without limitation, legal fees in connection with any of the foregoing matters, except that all costs and expenses of Lender and Borrower associated with any restructuring of the Loan requested by Lender, including under Sections 2.1.5, 2.1.6 and 2.1.7, shall be paid solely by Lender.

## **X. MISCELLANEOUS**

**Section 10.1. Survival.** This Agreement and all covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the making by Lender of the Loan and the execution and delivery to Lender of the Note, and shall continue in full force and effect so long as all or any of the Debt is outstanding and unpaid unless a longer period is expressly set forth herein or in the other Loan Documents. Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the legal representatives, successors and assigns of such party. All covenants, promises and agreements in this Agreement, by or on behalf of Borrower, shall inure to the benefit of the legal representatives, successors and assigns of Lender.

**Section 10.2. Lender's Discretion.** Whenever pursuant to this Agreement, Lender exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Lender, the decision of Lender to approve or disapprove or to decide whether arrangements or terms are satisfactory or not satisfactory shall (except as is otherwise specifically herein provided) be in the sole discretion of Lender and shall be final and conclusive. Whenever this Agreement expressly provides that Lender may not withhold or shall be reasonable in granting its consent or its approval of an arrangement or term, such provisions shall also be deemed to prohibit Lender from delaying or conditioning such consent or approval.

**Section 10.3. Governing Law.** (a) **THIS AGREEMENT WAS NEGOTIATED IN THE STATE OF NEW YORK, THE LOAN WAS MADE BY LENDER AND ACCEPTED BY BORROWER IN THE STATE OF NEW YORK, AND THE PROCEEDS OF THE LOAN DELIVERED PURSUANT HERETO WERE DISBURSED FROM THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING,**

MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS AND THE OBLIGATIONS ARISING HEREUNDER AND THEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA. TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER AND LENDER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVE ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS, AND THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER OR BORROWER ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS MAY AT LENDER'S OPTION BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW AND BORROWER WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND BORROWER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. BORROWER DOES HEREBY DESIGNATE AND APPOINT:

Corporation Service Company  
2711 Centerville Road, Suite 400  
Wilmington, DE 19808

AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON ITS BEHALF SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY FEDERAL OR STATE COURT IN NEW YORK, NEW YORK, AND AGREES THAT SERVICE OF PROCESS UPON SAID AGENT AT SAID ADDRESS AND NOTICE OF SAID SERVICE MAILED OR DELIVERED TO BORROWER IN THE MANNER PROVIDED HEREIN SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON BORROWER IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE STATE OF NEW YORK. BORROWER (I) SHALL GIVE PROMPT NOTICE TO LENDER OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER, (II) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN NEW YORK, NEW YORK (WHICH SUBSTITUTE AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS), AND (III) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE IF ITS AUTHORIZED AGENT CEASES TO

**Section 10.4. Modification, Waiver in Writing.** No modification, amendment, extension, discharge, termination or waiver of any provision of this Agreement, or of the Note, or of any other Loan Document, nor consent to any departure by Borrower therefrom, shall in any event be effective unless the same shall be in a writing signed by the party against whom enforcement is sought, and then such waiver or consent shall be effective only in the specific instance, and for the purpose, for which given. Except as otherwise expressly provided herein, no notice to, or demand on Borrower, shall entitle Borrower to any other or future notice or demand in the same, similar or other circumstances. To the extent required by any Gaming Law, Borrower shall notify all relevant Gaming Authorities of any amendment to this Agreement or any Loan Document.

**Section 10.5. Delay Not a Waiver.** Except as expressly set forth herein, neither any failure nor any delay on the part of Lender in insisting upon strict performance of any term, condition, covenant or agreement, or exercising any right, power, remedy or privilege hereunder, or under the Note or under any other Loan Document, or any other instrument given as security therefor, shall operate as or constitute a waiver thereof, nor shall a single or partial exercise thereof preclude any other future exercise, or the exercise of any other right, power, remedy or privilege. In particular, and not by way of limitation, by accepting payment after the due date of any amount payable under this Agreement, the Note or any other Loan Document, Lender shall not be deemed to have waived any right either to require prompt payment when due of all other amounts due under this Agreement, the Note or the other Loan Documents, or to declare a default for failure to effect prompt payment of any such other amount.

**Section 10.6. Notices.** All notices, consents, approvals and requests required or permitted hereunder or under any other Loan Document shall be given in writing and shall be effective for all purposes if hand delivered or sent by (a) certified or registered United States mail, postage prepaid, return receipt requested or (b) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery, and by telecopier (with answer back acknowledged), addressed as follows (or at such other address and Person as shall be designated from time to time by any party hereto, as the case may be, in a notice to the other parties hereto in the manner provided for in this Section 10.6):

If to Lender: JPMorgan Chase Bank, N.A.  
270 Park Avenue, 10th Floor  
New York, New York 10017  
Attention: Michael Mesard  
Facsimile No.: (212) 834-6592

with a copy to: Sullivan & Cromwell LLP  
125 Broad Street  
New York, New York 10004  
Attention: Arthur S. Adler  
Facsimile No.: 212-558-3588

Cadwalader, Wickersham & Taft LLP  
One World Financial Center  
New York, New York 10281  
Attention: Fredric L. Altschuler  
Facsimile No.: (212) 504-6666

If to Borrower: One Caesars Palace Drive  
Las Vegas, Nevada 89109  
Attention: Chief Financial Officer  
Facsimile No.: (702) 407-6081

With a copy to: One Caesars Palace Drive  
Las Vegas, Nevada 89109  
Attention: General Counsel  
Facsimile No.: (702) 407-6418

and

Cleary Gottlieb Steen & Hamilton LLP  
One Liberty Plaza  
New York, New York 10006  
Attention: Michael Weinberger  
Facsimile No.: (212) 225-3999

and

Pircher, Nichols & Meeks  
1925 Century Park East, Seventeenth Floor  
Los Angeles, California 90067  
Attention: David Packer  
Facsimile No.: (310) 201-8922

A notice shall be deemed to have been given: in the case of hand delivery, at the time of delivery; in the case of registered or certified mail, when delivered or the first attempted delivery on a Business Day; or in the case of expedited prepaid delivery and telecopy, upon the first attempted delivery on a Business Day; or in the case of telecopy, upon sender's receipt of a machine-generated confirmation of successful transmission after advice by telephone to recipient that a telecopy notice is forthcoming. Each Borrower hereby designates Tahoe Mezz 9, LLC, a Delaware limited liability company ("**Borrower Agent**"), as the party to give and receive notices on behalf of Borrower hereunder, and any notice received by Lender by a Borrower other than Borrower Agent shall not constitute effective notice to, or be binding upon Lender hereunder.

Notwithstanding the foregoing, any notice by Lender to one or more Borrowers other than Borrower Agent shall be deemed to constitute effective notice to all of the Borrowers.

**Section 10.7. Trial by Jury.** BORROWER AND LENDER HEREBY AGREE NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVE ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY BORROWER AND LENDER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. BORROWER AND LENDER ARE HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER.

**Section 10.8. Headings.** The Article and/or Section headings and the Table of Contents in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

**Section 10.9. Severability.** Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

**Section 10.10. Preferences.** Lender shall have the continuing and exclusive right to apply or reverse and reapply any and all payments by Borrower to any portion of the obligations of Borrower hereunder (except that, unless there exists an Event of Default, payments of principal shall be applied to components of the Note on a pro-rata basis). To the extent Borrower makes a payment or payments to Lender, which payment or proceeds or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable cause, then, to the extent of such payment or proceeds received, the obligations hereunder or part thereof intended to be satisfied shall be revived and continue in full force and effect, as if such payment or proceeds had not been received by Lender.

**Section 10.11. Waiver of Notice.** Borrower hereby expressly waives, and shall not be entitled to, any notices of any nature whatsoever from Lender except with respect to matters for which this Agreement or the other Loan Documents specifically and expressly provide for the giving of notice by Lender to Borrower and except with respect to matters for which Borrower is not, pursuant to applicable Legal Requirements, permitted to waive the giving of notice.

**Section 10.12. Remedies of Borrower.** In the event that a claim or adjudication is made that Lender or its agents have acted unreasonably or unreasonably delayed

acting in any case where by law or under this Agreement or the other Loan Documents, Lender or such agent, as the case may be, has an obligation to act reasonably or promptly, Borrower agrees that neither Lender nor its agents shall be liable for any monetary damages, and Borrower's sole remedies shall be limited to commencing an action seeking injunctive relief or declaratory judgment (except in cases of bad faith, gross negligence or willful misconduct). The parties hereto agree that any action or proceeding to determine whether Lender has acted reasonably shall be determined by an action seeking declaratory judgment.

**Section 10.13. Expenses; Indemnity.** (a) Borrower covenants and agrees to pay or, if Borrower fails to pay, to reimburse, Lender and each Noteholder upon receipt of notice from such Person for all reasonable out-of-pocket costs and expenses (including reasonable attorneys' fees and disbursements) incurred by such Person in connection with (i) the preparation, negotiation, execution and delivery of this Agreement and the other Loan Documents and the consummation of the transactions contemplated hereby and thereby and all the costs of furnishing all opinions by counsel for Borrower (including, without limitation, any opinions requested by such Person as to any legal matters arising under this Agreement or the other Loan Documents with respect to the Properties); (ii) Borrower's ongoing performance of and compliance with Borrower's respective agreements and covenants contained in this Agreement and the other Loan Documents on its part to be performed or complied with after the Closing Date, including, without limitation, confirming compliance with environmental, gaming and insurance requirements if necessary or advisable due to reasonably suspected non-compliance; (iii) the negotiation, preparation, execution, delivery and administration of any consents, amendments, waivers or other modifications to this Agreement and the other Loan Documents and any other documents or matters requested by Borrower; (iv) securing Borrower's compliance with any requests made pursuant to the provisions of this Agreement, if Borrower defaults in its obligations hereunder; (v) the filing and recording fees and expenses, title insurance and reasonable fees and expenses of counsel for providing to Lender or any Noteholder all required legal opinions, and other similar expenses incurred in creating and perfecting the Liens in favor of Lender (or, as applicable, any Noteholder) pursuant to this Agreement and the other Loan Documents; (vi) enforcing or preserving any rights, either in response to third party claims or in prosecuting or defending any action or proceeding or other litigation, in each case against, under or affecting Borrower, Senior Mezzanine Borrower, Mortgage Borrower, Operating Company, this Agreement, the other Loan Documents, the Properties, the Collateral or any other security given for the Loan; and (vii) enforcing any obligations of or collecting any payments due from Borrower under this Agreement, the other Loan Documents or with respect to the Properties, Operating Company or in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a "work-out" or of any insolvency or bankruptcy proceedings; provided, however, that Borrower shall not be liable for the payment of any such costs and expenses to any Person to the extent the same arise by reason of the gross negligence, illegal acts, fraud or willful misconduct of such Person. Any cost and expenses due and payable to Lender or any Noteholder may be paid from any amounts in the Mezzanine Collection Account upon the occurrence and during the continuance of an Event of Default.

(b) Borrower shall indemnify, defend and hold harmless Lender from and against any and all other actual liabilities, obligations, losses, damages (excluding, however, any punitive and consequential damages), penalties, actions, judgments, suits, claims, costs, expenses

and disbursements of any kind or nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel for Lender in connection with any investigative, administrative or judicial proceeding commenced or threatened, whether or not Lender shall be designated a party thereto), that may be imposed on, incurred by, or asserted against Lender in any manner relating to or arising out of (i) any breach by Borrower of its obligations under, or any material misrepresentation by Borrower contained in, this Agreement or the other Loan Documents, (ii) the use or intended use of the proceeds of the Loan, (iii) the Leases or any of the duties, responsibilities or obligations of Borrower or any Operating Company thereunder, (iv) the transactions contemplated in the Collection Account Agreements or (v) any third-party claims alleging that the Loan, the Senior Mezzanine Loan, the Mortgage Loan, the Operating Lease, the Operating Lease Guaranty or any of the Loan Documents violates any agreements or Legal Requirements binding on the Borrower or its Affiliates or their respective properties (collectively, the “**Indemnified Liabilities**”); provided, however, that Borrower shall not have any obligation to Lender hereunder to the extent that such Indemnified Liabilities arise from the gross negligence, illegal acts, fraud or willful misconduct of Lender. To the extent that the undertaking to indemnify, defend and hold harmless set forth in the preceding sentence may be unenforceable because it violates any law or public policy, Borrower shall pay the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by Lender.

(c) Borrower covenants and agrees to pay for or, if Borrower fails to pay, to reimburse Lender for, any fees and expenses incurred by any Rating Agency in connection with any request by Borrower that required Rating Agency Confirmation pursuant to the terms hereof.

**Section 10.14. Schedules Incorporated.** The Schedules annexed hereto are hereby incorporated herein as a part of this Agreement with the same effect as if set forth in the body hereof.

**Section 10.15. Offsets, Counterclaims and Defenses.** Any assignee of Lender’s interest in and to this Agreement, the Note and the other Loan Documents shall take the same free and clear of all offsets, counterclaims or defenses which are unrelated to such documents which Borrower may otherwise have against any assignor of such documents, and no such unrelated counterclaim or defense shall be interposed or asserted by Borrower in any action or proceeding brought by any such assignee upon such documents and any such right to interpose or assert any such unrelated offset, counterclaim or defense in any such action or proceeding is hereby expressly waived by Borrower.

**Section 10.16. No Joint Venture or Partnership; No Third Party Beneficiaries.** (a) Borrower and Lender intend that the relationships created hereunder and under the other Loan Documents be solely that of borrower and lender. Nothing herein or therein is intended to create a joint venture, partnership, tenancy-in-common, or joint tenancy relationship between Borrower and Lender nor to grant Lender any interest in the Properties other than that of mortgagee, beneficiary or lender.

(b) Except as expressly provided herein, this Agreement and the other Loan Documents are solely for the benefit of Lender and Borrower and nothing contained in this Agreement or the other Loan Documents shall be deemed to confer upon anyone other than

Lender and Borrower any right to insist upon or to enforce the performance or observance of any of the obligations contained herein or therein. Lender and Borrower acknowledge and agree that the Noteholders are intended third party beneficiaries of all rights and remedies of the Lender hereunder. All conditions to the obligations of Lender to make the Loan hereunder are imposed solely and exclusively for the benefit of Lender and no other Person shall have standing to require satisfaction of such conditions in accordance with their terms or be entitled to assume that Lender will refuse to make the Loan in the absence of strict compliance with any or all thereof and no other Person shall under any circumstances be deemed to be a beneficiary of such conditions, any or all of which may be freely waived in whole or in part by Lender if, in Lender's sole discretion, Lender deems it advisable or desirable to do so.

**Section 10.17. Intentionally Omitted.**

**Section 10.18. Waiver of Marshalling of Assets.** To the fullest extent permitted by law, Borrower, for itself and its successors and assigns, waives all rights to a marshalling of the assets of Borrower, Borrower's partners and others with interests in Borrower, and of the Properties, or to a sale in inverse order of alienation in the event of foreclosure of all or any of the Mortgages, and agrees not to assert any right under any laws pertaining to the marshalling of assets, the sale in inverse order of alienation, homestead exemption, the administration of estates of decedents, or any other matters whatsoever to defeat, reduce or affect the right of Lender under the Loan Documents to a sale of the Properties for the collection of the Debt without any prior or different resort for collection or of the right of Lender to the payment of the Debt out of the net proceeds of the Properties in preference to every other claimant whatsoever. In addition, Borrower, for itself and its successors and assigns, waives in the event of foreclosure of any or all of the Collateral, any equitable right otherwise available to Borrower which would require the separate sale of the Collateral with respect to each Mortgage Borrower or require Lender to exhaust its remedies against any Collateral with respect to each Mortgage Borrower or any combination of such Collateral before proceeding against any other Collateral with respect to one or more Mortgage Borrowers; and further in the event of such foreclosure Borrower does hereby expressly consent to and authorize, at the option of Lender, the foreclosure and sale either separately or together of any combination of the Collateral.

**Section 10.19. Waiver of Counterclaim.** Borrower hereby waives the right to assert a counterclaim, other than a compulsory counterclaim, in any action or proceeding brought against it by Lender or its agents.

**Section 10.20. Conflict; Construction of Documents; Reliance.** In the event of any conflict between the provisions of this Loan Agreement and any of the other Loan Documents, the provisions of this Loan Agreement shall control. The parties hereto acknowledge that they were represented by competent counsel in connection with the negotiation, drafting and execution of the Loan Documents and that such Loan Documents shall not be subject to the principle of construing their meaning against the party which drafted same. Borrower acknowledges that, with respect to the Loan, Borrower shall rely solely on its own judgment and advisors in entering into the Loan without relying in any manner on any statements, representations or recommendations of Lender or any parent, subsidiary or Affiliate of Lender. Lender shall not be subject to any limitation whatsoever in the exercise of any rights or remedies available to it under any of the Loan Documents or any other agreements or

instruments which govern the Loan by virtue of the ownership by it or any parent, subsidiary or Affiliate of Lender of any equity interest any of them may acquire in Borrower, and Borrower hereby irrevocably waives the right to raise any defense or take any action on the basis of the foregoing with respect to Lender's exercise of any such rights or remedies. Borrower acknowledges that Lender engages in the business of real estate financings and other real estate transactions and investments which may be viewed as adverse to or competitive with the business of Borrower or its Affiliates.

**Section 10.21. Brokers and Financial Advisors.** Borrower hereby represents that it has dealt with no financial advisors, brokers, underwriters, placement agents, agents or finders in connection with the transactions contemplated by this Agreement (other than those the fees and other claims of which shall be paid by Borrower). Borrower hereby agrees to indemnify, defend and hold Lender and each Noteholder harmless from and against any and all claims, liabilities, costs and expenses of any kind (including Lender's attorneys' fees and expenses) in any way relating to or arising from a claim by any Person that such Person acted on behalf of Borrower or Lender in connection with the transactions contemplated herein. Each of Lender and (by its acceptance of its respective Note) the Noteholders hereby represents that it has dealt with no financial advisors, brokers, underwriters, placement agents, agents or finders in connection with the transactions contemplated by this Agreement. The provisions of this Section 10.21 shall survive the expiration and termination of this Agreement and the payment of the Debt.

**Section 10.22. Prior Agreements.** This Agreement and the other Loan Documents contain the entire agreement of the parties hereto and thereto in respect of the transactions contemplated hereby and thereby, and all prior agreements among or between such parties, whether oral or written, including, without limitation, the Commitment Letter dated December 19, 2006 between Affiliates of Borrower and Lender are superseded by the terms of this Agreement and the other Loan Documents.

**Section 10.23. Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which counterparts together shall constitute one agreement with the same effect as if the parties had signed the same signature page.

**Section 10.24. Intentionally Omitted.**

**Section 10.25. Gaming Laws.** All rights, remedies and powers in or under this Agreement may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of the Gaming Laws.

**Section 10.26. Certain Additional Rights of Lender (VCOC).** Notwithstanding anything to the contrary contained in this Agreement, Lender shall have:

(a) the right to routinely consult with and advise Borrower's management regarding the significant business activities and business and financial developments of Borrower, Senior Mezzanine Borrower and Mortgage Borrower, provided that any such advice or consultation shall be completely nonbinding on Borrower, and; provided, however, that such

consultations shall not include discussions of environmental compliance programs or disposal of hazardous substances;

(b) the right, in accordance with the terms of this Agreement, to examine the books and records of Borrower, Senior Mezzanine Borrower and Mortgage Borrower at any reasonable times upon reasonable notice;

(c) the right, in accordance with the terms of this Agreement, including, without limitation, Section 5.1.11 hereof, to receive monthly, quarterly and year end financial reports, including balance sheets, statements of income, shareholder's equity and cash flow, a management report and schedules of outstanding indebtedness, in each case to the extent explicitly set forth herein; and

(d) the right, without restricting any other rights of Lender under this Agreement (including any similar right), to reasonably approve any acquisition by Borrower, Senior Mezzanine Borrower or Mortgage Borrower of any other significant real property.

The rights described above in this Section 10.26 may be exercised by any entity which owns and controls, directly or indirectly, substantially all of the interests in Lender.

#### **XI. JOINT AND SEVERAL LIABILITY; WAIVERS**

**Section 11.1. Joint and Several Liability; Primary Obligors.** Each entity comprising Borrower (each, a "**Borrower Entity**") shall be a primary obligor with respect to payment of the Debt and performance of Borrower's obligations under the Loan Documents and all such Borrower Entities shall be jointly and severally liable for payment of the Debt and performance of such other obligations. As used in this Article, references to "**Other Borrowers**" shall mean all Borrower Entities other than the particular Borrower Entity referred to.

**Section 11.2. Waivers.** Without limiting the primary liability of each Borrower Entity as set forth above, to the extent any such Borrower Entity is determined to be secondarily liable with respect to any portion of the Debt or any other obligation hereunder, the following shall apply:

**11.2.1 No Duty To Pursue Others.** It shall not be necessary for Lender (and each Borrower Entity hereby waives any rights which such Borrower Entity may have to require Lender), in order to enforce the obligations of such Borrower Entity hereunder, first to (a) institute suit or exhaust its remedies against any Other Borrower or others liable on the Debt or any other person, (b) enforce Lender's rights against any collateral mortgaged, pledged or granted by any Other Borrower which shall ever have been given to secure the Debt ("**Other Borrower Collateral**"), (c) enforce Lender's rights against any other guarantors of the Debt, (d) join Borrower or any others liable on the Debt in any action against any Other Borrower seeking to enforce the Loan Documents, (e) exhaust any remedies available to Lender against any collateral which shall ever have been given to secure the Debt, or (f) resort to any other means of obtaining payment of the Loan by any Other Borrower. Lender shall not be required to

mitigate damages or take any other action pertaining to any Other Borrower or any Other Borrower Collateral to reduce, collect or enforce the Debt from any Other Borrower.

**11.2.2 Waivers.** Such Borrower Entity agrees to the provisions of the Loan Documents, and hereby waives notice of (a) any loans or advances made by Lender to any Other Borrower, (b) acceptance of the Loan Documents, (c) any amendment or extension of the Note, the Loan Agreement or of any other Loan Documents entered into by any Other Borrower, (d) the execution and delivery by any Other Borrower and Lender of any other loan or credit agreement or of any Other Borrower's execution and delivery of any promissory notes or other documents arising under the Loan Documents or in connection with the Other Borrower Collateral, (e) the occurrence of any breach by any Other Borrower or an Event of Default with respect to any Other Borrower or Other Borrower Collateral, (f) Lender's transfer or disposition of the Debt, or any part thereof, (g) sale or foreclosure (or posting or advertising for sale or foreclosure) of any Other Borrower Collateral, (h) protest, proof of non-payment or default by any Other Borrower and (i) any other action at any time taken or omitted by Lender, and, generally, all demands and notices to any Other Borrower of every kind in connection with the Loan Documents, any documents or agreements evidencing, securing or relating to any of the Debt.

**11.2.3 Waiver of Subrogation, Reimbursement and Contribution.** Notwithstanding anything to the contrary contained in the Loan Documents, each Borrower hereby unconditionally and irrevocably waives, releases and abrogates, prior to the payment in full of the Loan and for a period of ninety-one (91) days thereafter any and all rights it may now or hereafter have under any agreement, at law or in equity (including any law subrogating such Borrower Entity to the rights of Lender), to assert any claim against or seek contribution, indemnification or any other form of reimbursement (other than pursuant to the express provisions of the Contribution Agreement) from any Other Borrower or any other party liable for payment of any or all of the Debt for any payment made by such Borrower Entity under or in connection with the Loan Documents or otherwise.

**11.2.4 Events And Circumstances Not Reducing Or Discharging Guarantor's Obligations.** Each Borrower Entity hereby consents and agrees to each of the following, and agrees that such Borrower Entity's obligations under the Loan Documents shall not be released, diminished, impaired, reduced or adversely affected by any of the following, and waives any common law, equitable, statutory or other rights (including rights to notice) which such Borrower Entity might otherwise have as a result of or in connection with any of the following:

(a) Modifications. Any renewal, extension, increase, modification, alteration, restatement or rearrangement entered into by any Other Borrower of all or any part of the Debt, the Note, the Loan Agreement, the other Loan Documents, or any other document, instrument, contract or understanding between any Other Borrower and Lender, or any other parties, pertaining to the Debt or any failure of Lender to notify Borrower Entity of any such action.

(b) Adjustment. Any adjustment, indulgence, forbearance or compromise that might be granted or given by Lender to any Other Borrower.

(c) Condition of Borrower or Borrower Entity. The insolvency, bankruptcy, arrangement, adjustment, composition, liquidation, disability, dissolution or lack of power of any Other Borrower or any other party at any time liable for the payment of all or part of the Debt; or any dissolution of any Other Borrower, or any sale, lease or transfer of any or all of the assets of Borrower or of any Other Borrower, or any changes in the shareholders, partners or members of any Other Borrower; or any reorganization of any Other Borrower.

(d) Invalidity of Debt. The invalidity, illegality or unenforceability of all or any part of the Debt, or any document or agreement executed in connection with the Debt, for any reason whatsoever, including the fact that (a) the Debt, or any part thereof, exceeds the amount permitted by law, (b) the act of creating the Debt or any part thereof is ultra vires, (c) the officers or representatives executing the Note, the Loan Agreement or the other Loan Documents or otherwise creating the Debt acted in excess of their authority, (d) the Debt violate applicable usury laws, (e) any Other Borrower has valid defenses, claims or offsets (whether at law, in equity or by agreement) which render the Debt wholly or partially uncollectible from such Other Borrower, (f) the creation, performance or repayment of the Debt (or the execution, delivery and performance of any document or instrument by any Other Borrower representing part of the Debt or executed in connection with the Debt, or given to secure the repayment of the Debt) is illegal, uncollectible or unenforceable, or (g) the Note, the Loan Agreement or any of the other Loan Documents have been forged or otherwise are irregular or not genuine or authentic, it being agreed that such Borrower Entity shall remain liable hereon regardless of whether any Other Borrower or any other Person be found not liable on the Debt or any part thereof for any reason.

(e) Release of Obligors. Any full or partial release of the liability of any Other Borrower on the Debt, or any part thereof, or of any guarantor(s) thereof, or any other person or entity now or hereafter liable, whether directly or indirectly, jointly, severally, or jointly and severally, to pay, perform, guarantee or assure the payment of the Debt, or any part thereof, it being recognized, acknowledged and agreed by such Borrower Entity that such Borrower Entity may be required to pay the Debt in full without assistance or support of any other party, and such Borrower Entity has not been induced to enter into the Loan Documents on the basis of a contemplation, belief, understanding or agreement that other Persons will be liable to pay or perform the Debt, or that Lender will look to other Persons to pay or perform the Debt.

(f) Other Collateral. The taking or accepting of any other security, collateral or guaranty, or other assurance of payment, for all or any part of the Debt.

(g) Release of Collateral. Any release, surrender, exchange, subordination, deterioration, waste, loss or impairment (including negligent, willful, unreasonable or unjustifiable impairment) of any collateral, property or security at any time existing in connection with, or assuring or securing payment of, all or any part of the Debt.

(h) Care and Diligence. The failure of Lender or any other party to exercise diligence or reasonable care in the preservation, protection, enforcement, sale or other handling or treatment of Other Borrower Collateral, all or any part of such collateral, property or security, including any neglect, delay, omission, failure or refusal of Lender (a) to take or prosecute any action for the collection of any of the Debt or (b) to foreclose, or initiate any action to foreclose, or, once commenced, prosecute to completion any action to foreclose upon Other Borrower

Collateral, or (c) to take or prosecute any action in connection with any instrument or agreement evidencing or securing all or any part of the Debt.

(i) Unenforceability. The fact that any collateral, security, security interest or lien contemplated or intended to be given, created or granted as security for the repayment of the Debt, or any part thereof, shall not be properly perfected or created, or shall prove to be unenforceable or subordinate to any other security interest or lien, it being recognized and agreed by such Borrower Entity that such Borrower Entity is not entering into the Loan Documents in reliance on, or in contemplation of the benefits of, the validity, enforceability, collectibility or value of any of the collateral for the Debt.

(j) Offset. Any existing or future right of offset, claim or defense of Borrower against Lender, or any other Person, or against payment of the Debt by any Other Borrower, whether such right of offset, claim or defense arises in connection with the Debt (or the transactions creating the Debt) or otherwise.

(k) Merger. The reorganization, merger or consolidation of any Other Borrower into or with any other corporation or entity.

(l) Preference. Any payment by Borrower to Lender is held to constitute a preference under bankruptcy laws, or for any reason Lender is required to refund such payment or pay such amount to Borrower or someone else.

**Section 11.3. Other Actions Taken or Omitted.** Any other action taken or omitted to be taken with respect to the Loan Documents, the Debt, or Other Borrower Collateral, whether or not such action or omission prejudices such Borrower Entity or increases the likelihood that such Borrower Entity will be required to pay the Debt pursuant to the terms hereof, it is the unambiguous and unequivocal intention of such Borrower Entity that such Borrower Entity shall be obligated to pay the Debt when due, notwithstanding any occurrence, circumstance, event, action, or omission whatsoever pertaining to any Other Borrower or any Other Borrower Collateral, whether contemplated or not, and whether or not otherwise or particularly described herein, which obligation shall be deemed satisfied only upon the full and final payment and satisfaction of the Debt.

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**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed by their duly authorized representatives, all as of the day and year first above written.

**BORROWER:**

**HARRAH'S LAS VEGAS MEZZ 9, LLC**, a Delaware limited liability company

By: /s/ Jonathan S. Halkyard

Name: Jonathan S. Halkyard

Title: President and Treasurer

**HARRAH'S ATLANTIC CITY MEZZ 9, LLC**, a Delaware limited liability company

By: /s/ Jonathan S. Halkyard

Name: Jonathan S. Halkyard

Title: President and Treasurer

**TAHOE MEZZ 9, LLC**, a Delaware limited liability company

By: /s/ Jonathan S. Halkyard

Name: Jonathan S. Halkyard

Title: President and Treasurer

**RIO MEZZ 9, LLC**, a Delaware limited liability company

By: /s/ Jonathan S. Halkyard

Name: Jonathan S. Halkyard

Title: President and Treasurer

**FLAMINGO LAS VEGAS MEZZ 9, LLC**, a Delaware  
limited liability company

By: /s/ Jonathan S. Halkyard

Name: Jonathan S. Halkyard

Title: President and Treasurer

**SHOWBOAT ATLANTIC CITY MEZZ 9, LLC**, a Delaware  
limited liability company

By: /s/ Jonathan S. Halkyard

Name: Jonathan S. Halkyard

Title: President and Treasurer

**LENDER:**

**JPMORGAN CHASE BANK, N.A.**

By: /s/ Jennifer A. Loughrey

Name: Jennifer A. Loughrey

Title: Vice President

**STOCKHOLDERS' AGREEMENT**

**BY AND AMONG**

**APOLLO HAMLET HOLDINGS, LLC,**

**APOLLO HAMLET HOLDINGS B, LLC,**

**TPG HAMLET HOLDINGS, LLC,**

**TPG HAMLET HOLDINGS B, LLC,**

**CO-INVEST HAMLET HOLDINGS, SERIES LLC,**

**CO-INVEST HAMLET HOLDINGS B, LLC,**

**HAMLET HOLDINGS LLC**

**AND**

**HARRAH'S ENTERTAINMENT, INC.**

**AND**

**SOLELY WITH RESPECT TO SECTIONS 3.01 AND 6.07,**

**APOLLO INVESTMENT FUND VI, L.P.**

**AND**

**TPG V HAMLET AIV, L.P.**

**DATED AS OF JANUARY 28, 2008**

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**HARRAH'S ENTERTAINMENT, INC.**  
**STOCKHOLDERS AGREEMENT**

THIS STOCKHOLDERS' AGREEMENT (as it may be amended from time to time in accordance with the terms hereof, the "Agreement"), dated as of January 28, 2008, is made by and among Apollo, TPG, Hamlet Holdings and the Co-Investment Entities (each as defined below) and each other Person (as defined below) who may become party to this agreement from time to time in accordance with the provisions herein (with TPG, Apollo, Hamlet Holdings and the Co-Investment Entities, the "Stockholders"), and Harrah's Entertainment, Inc., a Delaware corporation (the "Company"), and solely with respect to Sections 3.01 and 6.07, Apollo Investment Fund VI, L.P. and TPG V Hamlet AIV, L.P.

**RECITALS**

WHEREAS, pursuant to an Agreement and Plan of Merger, dated as of December 19, 2006, by and among Hamlet Holdings LLC, a Delaware limited liability company ("Hamlet Holdings"), Hamlet Merger Inc., a Delaware corporation and a wholly owned subsidiary of Hamlet Holdings ("Hamlet Merger") and the Company (as amended from time to time, the "Merger Agreement"), Hamlet Merger will be merged with and into the Company with the Company surviving such merger (the "Merger");

WHEREAS, after the Merger, the Stockholders shall directly hold all of the equity securities of the Company (other than equity securities of the Company held by certain employees of the Company, which employees are parties to a management investor rights agreement of the Company, to be entered into in connection with the closing of the Merger); and

WHEREAS, the Stockholders and the Company desire to provide for the management of the Company and to set forth the respective rights and obligations of the Stockholders generally.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises, covenants and agreements of the parties hereto, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01. Certain Definitions. As used in this Agreement, the following terms have the following meanings:

"Adverse Disclosure" means public disclosure of (a) material non-public information that, in the Board of Directors' good faith judgment, after consultation with independent outside counsel to the Company, (i) would be required to be made in any Registration Statement or report filed with the SEC by the Company so that such Registration Statement would not be materially misleading; (ii) would not be required to be made at such time but for the filing of such Registration Statement or report; and (iii) the Company has a bona fide business purpose for not disclosing publicly or (b) that would otherwise be materially adverse to

the Company for a Registration Statement to be filed on or before the date such filing would otherwise be required under this Agreement, in the Board's good faith judgment, after consultation with independent counsel to the Company.

"Affiliate" means, with respect to any Person, any other Person that directly or indirectly controls, is controlled by, or is under common control with, such Person. For these purposes, "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise; provided that for purposes of Article V, Affiliate has the meaning specified in Rule 12b-2 under the Exchange Act; provided, further that, for purposes of this Agreement (other than Article V), (i) no Stockholder shall be deemed an Affiliate of the Company or any of its subsidiaries, (ii) that the Co-Investment Entities and Hamlet Holdings shall not be deemed Affiliates of the Sponsors and (iii) except for Section 3.01(d)(ix), Section 6.02 and Section 6.13, portfolio companies of the Sponsors and their respective investment fund affiliates shall not be deemed to be Affiliates of the Sponsors.

"Agreement" has the meaning set forth in the preamble.

"Apollo" means Apollo Hamlet Holdings, LLC, Apollo Hamlet Holdings B, LLC and any Affiliate thereof investing directly or indirectly in the Company.

"Apollo Members" means the Members of Hamlet Holdings associated with Apollo, which as of the Closing Date will be Leon Black, Joshua Harris and Marc Rowan.

"Apollo Directors" has the meaning set forth in Section 3.01(a).

"Board of Directors" has the meaning set forth in Section 3.01(a).

"Breaching Drag-Along Stockholder" has the meaning set forth in Section 4.05(d).

"Business Day" means any day other than a Saturday, a Sunday or a day on which banks in New York, New York are authorized or obligated by law or executive order to close.

"Closing Date" means the date of the consummation of the Merger.

"Code" means the U.S. Internal Revenue Code of 1986, as amended. Any reference to a section of the Code shall include a reference to any successor provision thereto.

"Co-Investment Entities" means Co-Invest Hamlet Holdings B, LLC, a Delaware limited liability company, and Co-Invest Hamlet Holdings, Series LLC, a Delaware series limited liability company.

"Confidential Information" has the meaning set forth in Section 6.03.

"Company" has the meaning set forth in the preamble.

"Company Public Sale" has the meaning set forth in Section 5.03(a).

“Company Shares” means Non-Voting Shares and Preferred Shares. The term “Company Shares” when used in determining the Pro Rata Portion at any time shall refer to either the Non-Voting Shares or the Preferred Shares as the context may require.

“Company Shares Equivalents” means securities (including, without limitation, warrants) exercisable, exchangeable or convertible into Company Shares.

“control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise, and “controlled” has a correlative meaning.

“Demand Notice” has the meaning set forth in Section 5.01(e).

“Demand Period” has the meaning set forth in Section 5.01(d).

“Demand Registration” has the meaning set forth in Section 5.01(a).

“Demand Registration Statement” has the meaning set forth in Section 5.01(a).

“Demand Suspension” has the meaning set forth in Section 5.01(f).

“Demanding Sponsor” has the meaning set forth in Section 5.01(a).

“Drag-Along Buyer” has the meaning set forth in Section 4.05(a).

“Drag-Along Notice” has the meaning set forth in Section 4.05(b).

“Drag-Along Proxy Holder” has the meaning set forth in Section 4.05(d).

“Drag-Along Stockholder” has the meaning set forth in Section 4.05(a).

“Drag-Along Transfer” has the meaning set forth in Section 4.05(a).

“Effectiveness Date” means the date on which Stockholders are no longer subject to any underwriter’s lock-up or other contractual restriction on the sale of Registrable Securities in connection with the Company’s Initial Public Offering.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, and any successor thereto, and any rules and regulations promulgated thereunder, all as the same shall be in effect from time to time.

“FINRA” means the Financial Industry Regulatory Authority.

“Fiscal Year” means the calendar year or, in the case of the first and last fiscal years of the term of the Company, the portion thereof commencing on the Closing Date or ending on the date on which the winding up of the Company is completed, as the case may be.

“Gaming Laws” means any federal, state, local or foreign law, statute, ordinance, rule, regulation, permit, consent, registration, finding of suitability, approval, license, judgment,

order, decree, injunction or other authorization (including any condition or limitation placed thereon and including liquor laws) governing or relating to the current or contemplated casino, hotel and gaming activities and operations of the Company (including all laws relating to related activities such as liquor, cabaret and the like).

“Hamlet Holdings” has the meaning set forth in the recitals.

“Hamlet Merger” has the meaning set forth in the recitals.

“Holdings Members” means the Apollo Members or the TPG Members, as the case may be.

“Initial Holding Period” means the Non-Sponsors’ Initial Holding Period or the Sponsors’ Initial Holding Period, as the case may be.

“Initial Interest” means the dollar value of the Company Shares held by a Sponsor or its Permitted Transferees on the Closing Date.

“Initial Public Offering” means the first bona fide firm commitment underwritten public offering and sale of common stock, limited liability company interests or other equity securities of the Company or its successors for cash pursuant to an effective registration statement (other than Form S-4, S-8 or a comparable form) under the Securities Act, and in which such shares of common stock, limited liability company interests or other equity securities are listed on the New York Stock Exchange, the NASDAQ Stock Market or another internationally recognized stock exchange.

“Long-Form Registration” has the meaning set forth in Section 5.01(a).

“Material Adverse Change” means (i) any general suspension of trading in, or limitation on prices for, securities on any national securities exchange or in the over-the-counter market in the United States; (ii) the declaration of a banking moratorium or any suspension of payments in respect of banks in the United States; (iii) a material outbreak or escalation of armed hostilities or other international or national calamity involving the United States or the declaration by the United States of a national emergency or war or a change in national or international financial, political or economic conditions; and (iv) any event, change, circumstance or effect that is or is reasonably likely to be materially adverse to the business, properties, assets, liabilities, condition (financial or otherwise), operations, results of operations or prospects of the Company and its subsidiaries taken as a whole.

“Merger” has the meaning set forth in the recitals.

“Merger Agreement” has the meaning set forth in the recitals.

“Necessary Action” means, with respect to a specified result, all actions that are permitted by law and necessary to cause such result, including (i) voting or providing a written consent or proxy with respect to the Company Shares, (ii) causing the adoption of Stockholders’ resolutions and amendments to the Organizational Documents, (iii) causing members of the Board of Directors (to the extent such members were nominated or designated by the Person

obligated to undertake the Necessary Action, and subject to any fiduciary duties that such members may have as directors of the Company) to act in a certain manner or causing them to be removed in the event they do not act in such a manner, (iv) executing agreements and instruments, and (v) making, or causing to be made, with governmental, administrative or regulatory authorities, all filings, registrations or similar actions that are required to achieve such result.

“Non-Sponsors’ Initial Holding Period” has the meaning set forth in Section 4.01(a)(ii).

“Non-Voting Shares” means the non-voting common stock of the Company.

“Non-Voting Stockholder” means an entity that owns Non-Voting Shares and does not own Voting Shares.

“Offer Notice” has the meaning set forth in Section 4.03(a)(i).

“Organizational Documents” means the Certificate of Incorporation and By-Laws of the Company, each as amended from time to time.

“Participation Shares” has the meaning set forth in Section 4.07(a).

“Participating Stockholder” means, with respect to any Registration, any Stockholder of Registrable Securities covered by the applicable Registration Statement.

“Permitted Transfer” has the meaning set forth in Section 4.02.

“Permitted Transferee” means (i) as to any Sponsor, an Affiliate of such Sponsor, other than an Affiliate formed for the purpose of investing in the Company and providing co-investment opportunities to persons that are not Affiliates of such Sponsor, and (ii) as to any Stockholder (including any Sponsor), any direct or indirect wholly owned subsidiary of such Stockholder.

“Person” means any individual, partnership, corporation, limited liability company, unincorporated organization, trust or joint venture, or a governmental agency or political subdivision thereof.

“Piggyback Registration” has the meaning set forth in Section 5.03(a).

“Preferred Shares” means the Company’s Non-Voting Perpetual Preferred Stock, par value \$0.01 per share, and any shares of capital stock of the Company issued or issuable with respect to the Preferred Shares by way of a stock dividend or distribution payable thereon or stock split, reverse stock split, recapitalization, reclassification, reorganization, exchange, subdivision or combination thereof.

“Pro Rata Portion” means:

(a) for purposes of Section 4.03 (with respect to the Sponsors’ right of first offer), a number of Company Shares determined by multiplying (i) the number of such class of Company Shares offered in the relevant Offer Notice by (ii) a fraction, the numerator of which is the number of Company Shares the relevant Sponsor elected to purchase (or to cause one or more of its Affiliates or designees to purchase) and the denominator of which is the aggregate number of Company Shares the Sponsors elected to purchase (or to cause one or more of their respective Affiliates or designees to purchase).

(b) for purposes of Section 4.04 (with respect to each class of Company Shares to be transferred pursuant to the tag-along rights), (x) with respect to each Tagging Stockholder, a number of such class of Company Shares determined by multiplying (i) the total number of such class of Company Shares proposed to be Transferred by the Transferring Stockholder to the Proposed Transferee, by (ii) a fraction, the numerator of which is the number of such class of Company Shares held by the Tagging Stockholder and the denominator of which is the aggregate number of such class of Company Shares held by all stockholders of the Company, and (y) with respect to the Transferring Stockholder, the total number of such class of Company Shares proposed to be Transferred by the Transferring Stockholder minus the aggregate number of such class of Company Shares over which the Tagging Stockholders have exercised their tag-along rights pursuant to Section 4.04 and minus the aggregate number of such class of Company Shares over which any employee stockholders of the Company have exercised “tag along” or similar rights.

(c) for purposes of Section 4.05 (with respect to each class of Company Shares to be Transferred pursuant to the drag-along rights), a number of such class of Company Shares determined by multiplying (i) the aggregate number of such class of Company Shares held by the Drag-Along Stockholder by (ii) a fraction, the numerator of which is the aggregate number of such class of Company Shares proposed to be Transferred by the Selling Sponsor(s) to the Drag-Along Buyer and the denominator of which is the aggregate number of such class of Company Shares held by the Sponsors.

(d) for purposes of Section 4.07 (with respect to the preemptive rights), a number of Participation Shares determined by multiplying (i) the aggregate number of Participation Shares the Company proposes to issue on the relevant issuance date by (ii) a fraction, the numerator of which is the number of Company Shares held by the relevant stockholder immediately prior to such date and the denominator of which is the aggregate number of Company Shares held by all stockholders of the Company.

(e) for purposes of Section 5.02 (with respect to the Non-Sponsor Stockholders’ rights to include Registrable Securities in a Shelf Registration Statement), a number of Company Shares determined by multiplying (i) the aggregate number of such class of Company Shares held by such Stockholder by (ii) a fraction, the numerator of which is the Sponsor Shelf Registration Amount in effect as of such date with respect to such Shelf Registration and the denominator of which is the aggregate number of Registrable Securities owned by the Sponsors and their Affiliates as of such date.

“Proposed Transferee” has the meaning set forth in Section 4.04(a).

“Prospectus” means the prospectus included in any Registration Statement, all amendments and supplements to such prospectus, including pre- and post-effective amendments to such Registration Statement, and all other material incorporated by reference in such prospectus.

“Registrable Securities” means any Company Shares (including any issuable or issued upon exercise, exchange or conversion of any Company Shares Equivalents) and any securities that may be issued or distributed or be issuable in respect of any Company Shares by way of conversion, dividend, stock split or other distribution, merger, consolidation, exchange, recapitalization or reclassification or similar transaction; provided, however, that any such Registrable Securities shall cease to be Registrable Securities to the extent (i) a Registration Statement with respect to the sale of such Registrable Securities has been declared effective under the Securities Act and such Registrable Securities have been disposed of in accordance with the plan of distribution set forth in such Registration Statement, (ii) such Registrable Securities have been sold pursuant to Rule 144 under the Securities Act (or any similar or analogous rule promulgated under the Securities Act), (iii) such Registrable Securities shall have been otherwise transferred and new certificates for them not bearing a legend restricting transfer under the Securities Act shall have been delivered by the Company and such securities may be publicly resold without Registration under the Securities Act or (iv) with respect to Registrable Securities held by any of the Sponsors, such Stockholder, together with its Permitted Transferees, beneficially owns less than 2% (two percent) of the Registrable Securities that are outstanding at such time and such Stockholder and its Permitted Transferees are able to dispose of all of their Registrable Securities in any 90 day period pursuant to Rule 144 (or any similar or analogous rule promulgated under the Securities Act).

“Registration” means a registration with the SEC of the Company’s securities for offer and sale to the public under a Registration Statement. The term “Register” shall have a correlative meaning.

“Registration Expenses” has the meaning set forth in Section 5.08.

“Registration Statement” means any registration statement of the Company filed with, or to be filed with, the SEC under the rules and regulations promulgated under the Securities Act, including the related Prospectus, amendments and supplements to such registration statement, including pre- and post-effective amendments, and all exhibits and all material incorporated by reference in such registration statement.

“Regulatory Laws” means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, or any other applicable antitrust, competition, fair trade or Gaming Laws or regulations.

“Representatives” means, with respect to any Person, any of such Person’s officers, directors, employees, agents, attorneys, accountants, actuaries, consultants, equity financing partners or financial advisors or other Person associated with, or acting on behalf of, such Person.

“SEC” means the Securities and Exchange Commission.

“Securities Act” means the Securities Act of 1933, as amended, and any successor thereto, and any rules and regulations promulgated thereunder, all as the same shall be in effect from time to time.

“Selling Sponsor” has the meaning set forth in Section 4.05(a).

“Shelf Period” has the meaning set forth in Section 5.02(b).

“Shelf Registration” means a Registration effected pursuant to Section 5.02.

“Shelf Registration Statement” means a Registration Statement of the Company filed with the SEC on either (i) Form S-3 (or any successor form or other appropriate form under the Securities Act) or (ii) if the Company is not permitted to file a Registration Statement on Form S-3, an Registration Statement on Form S-1 (or any successor form or other appropriate form under the Securities Act), in each case for an offering to be made on a continuous basis pursuant to Rule 415 under the Securities Act (or any similar rule that may be adopted by the SEC) covering the Registrable Securities, as applicable.

“Shelf Suspension” has the meaning set forth in Section 5.02(d).

“Short-Form Registration Statement” has the meaning set forth in Section 5.01(a).

“Sponsor Directors” means the Apollo Directors and the TPG Directors.

“Sponsor Shelf Registration Amount” has the meaning set forth in Section 5.02(a).

“Sponsors” means each of TPG and Apollo.

“Sponsors’ Initial Holding Period” has the meaning set forth in Section 4.01(a)(ii).

“Stockholder” has the meaning set forth in the preamble.

“Strategic Partner” has the meaning set forth in Section 4.04(d).

“Tag-Along Notice” has the meaning set forth in Section 4.04(b).

“Tag-Along Transfer” has the meaning set forth in Section 4.04(a).

“Tagging Stockholder” has the meaning set forth in Section 4.04(a).

“TPG” means, collectively, TPG Hamlet Holdings, LLC, TPG Hamlet Holdings B, LLC and their respective Affiliates that are Stockholders hereunder.

“TPG Directors” has the meaning set forth in Section 3.01(e).

“TPG Members” means the Members of Holdings associated with TPG, which as of the Closing Date will be David Bonderman, James Coulter and Jonathan Coslet.

“Transfer” means, with respect to any common or preferred stock (including Company Shares), limited liability company interests or other equity securities of the Company or Hamlet Holdings, a direct or indirect transfer, sale, conveyance, exchange, assignment, gift, pledge, hypothecation or other encumbrance or disposition, including the grant of an option or other right, whether directly or indirectly, whether voluntarily, involuntarily or by operation of law, of such common stock, limited liability company interests or other equity securities; and “Transferred”, “Transferee” and “Transferability” shall each have a correlative meaning. A transfer, sale, conveyance, exchange, assignment, gift, pledge, hypothecation or other encumbrance or other disposition, including the grant of an option or other right, of an interest in any Stockholder shall constitute an indirect “Transfer” for purposes of this Agreement (as if such interest was a direct interest in the Company or Hamlet Holdings, as the case may be) if and only if all or substantially all of such interest in such Stockholder represents a beneficial interest in common stock (including Company Shares), limited liability company interests or other equity interests of the Company or Hamlet Holdings.

“Transferring Stockholder” has the meaning set forth in Section 4.03(a).

“Treasury Regulations” means the regulations promulgated by the U.S. Department of the Treasury under the Code, as amended from time to time (including any successor regulations).

“Underwritten Offering” means a Registration in which securities of the Company are sold to an underwriter or underwriters on a firm commitment basis for reoffering to the public.

“Voting Shares” means the shares of voting common stock of the Company.

Section 1.02. Other Interpretive Provisions. (a) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.

(b) The words “hereof”, “herein”, “hereunder” and similar words refer to this Agreement as a whole and not to any particular provision of this Agreement; and any subsection, Section, Exhibit, Schedule and Annex references are to this Agreement unless otherwise specified.

(c) The term “including” is not limiting and means “including without limitation.”

(d) The word “or” is not exclusive.

(e) The captions and headings of this Agreement are for convenience of reference only and shall not affect the interpretation of this Agreement.

(f) Whenever the context requires, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms.

(g) Unless the context provides otherwise, whenever a percentage is used with respect to an ownership interest or amount of outstanding securities (including with respect to a percentage of Company Shares), such percentage shall be calculated as if the Preferred Shares had been converted into Non-Voting Shares on the date of such calculation and in accordance with the terms of such Preferred Shares.

## ARTICLE II

### REPRESENTATIONS; WARRANTIES AND COVENANTS

Section 2.01. Representations and Warranties of the Stockholders. Each Stockholder hereby represents and warrants, severally and not jointly, and solely on its own behalf, to each other Stockholder and to the Company that on the date hereof:

(a) Existence; Authority; Enforceability. Such Stockholder has the necessary power and authority to enter into this Agreement and to carry out its obligations hereunder. Such Stockholder is duly organized and validly existing under the laws of its jurisdiction of organization, and the execution of this Agreement, and the consummation of the transactions contemplated herein, have been authorized by all necessary corporate or other action, and no other act or proceeding, corporate or otherwise, on its part is necessary to authorize the execution of this Agreement or the consummation of any of the transactions contemplated hereby. This Agreement has been duly executed by such Stockholder and constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms.

(b) Absence of Conflicts. The execution and delivery by such Stockholder of this Agreement and the performance of its obligations hereunder do not and will not (i) conflict with, or result in the breach of any provision of the constitutive documents of such Stockholder; (ii) result in any violation, breach, conflict, default or event of default (or an event which with notice, lapse of time, or both, would constitute a default or event of default), or give rise to any right of acceleration or termination or any additional payment obligation, under the terms of any material contract, agreement or permit to which such Stockholder is a party or by which such Stockholder's assets or operations are bound or affected; or (iii) violate, in any material respect, any law applicable to such Stockholder.

(c) Consents. Other than any consents that have already been obtained, no governmental consent, waiver, approval, authorization, exemption, registration, license or declaration is required to be made or obtained by such Stockholder in connection with (i) the execution, delivery or performance of this Agreement or (ii) the consummation of any of the transactions contemplated herein.

Section 2.02. Representations and Warranties of the Company. The Company hereby represents and warrants to each Stockholder that on the date hereof:

(a) Existence; Authority; Enforceability. The Company has the necessary power and authority to enter into this Agreement and to carry out its obligations hereunder. The Company is duly organized and validly existing under the laws of its jurisdiction of organization, and the execution of this Agreement, and the consummation of the transactions contemplated

herein, have been authorized by all necessary limited liability company action, and no other act or proceeding on its part is necessary to authorize the execution of this Agreement or the consummation of any of the transactions contemplated hereby. This Agreement has been duly executed by the Company and constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms.

(b) Absence of Conflicts. The execution and delivery by the Company of this Agreement and the performance of its obligations hereunder do not and will not (i) conflict with, or result in the breach of any provision of the organizational documents of the Company or any of its subsidiaries; (ii) result in any violation, breach, conflict, default or event of default (or an event which with notice, lapse of time, or both, would constitute a default or event of default), or give rise to any right of acceleration or termination or any additional payment obligation, under the terms of any material contract, agreement or permit to which the Company or any of its subsidiaries is a party or by which the Company's or any of its subsidiaries' assets or operations are bound or affected; or (iii) violate, in any material respect, any law applicable to the Company or any of its subsidiaries.

(c) Consents. Other than any consents that have already been obtained, no governmental consent, waiver, approval, authorization, exemption, registration, license or declaration is required to be made or obtained by the Company or any of its subsidiaries in connection with (i) the execution, delivery or performance of this Agreement or (ii) the consummation of any of the transactions contemplated herein.

(d) Voting Shares. As of the Effective Time, the holders of the Voting Shares shall have no economic rights or privileges, including rights in liquidation.

Section 2.03. Entitlement of the Company and the Stockholders to Rely on Representations and Warranties. The foregoing representations and warranties may be relied upon by the Company, and by the Stockholders, in connection with the entering into of this Agreement.

### ARTICLE III

#### GOVERNANCE

Section 3.01. Board of Directors. (a) Hamlet Holdings and the Company shall take all Necessary Action to cause the board of directors of the Company (the "Board of Directors") to be comprised of at least nine (9) directors, (i) four (4) of whom (the "Apollo Directors") shall be designated by the Apollo Members, (ii) four (4) of whom (the "TPG Directors") shall be designated by the TPG Members, and (iii) one (1) of whom (the "Joint Director") shall be the Chairman (or equivalent) of the Company, who shall be jointly appointed by the Apollo Members and the TPG Members. The Board of Directors may increase or decrease its size in accordance with the provisions of Section 3.01(d)(xiv). For so long as the Apollo Members are entitled to designate more than one director, at least one Apollo Director will be appointed to serve on behalf of Co-Invest Hamlet Holdings B, LLC by Co-Invest Hamlet Holdings B, LLC. For so long as the Apollo Members are entitled to designate a director, at least one Apollo Director will be appointed to serve on behalf of Apollo Investment Fund VI,

L.P. by Apollo Investment Fund VI, L.P. For so long as the TPG Members are entitled to designate a director, at least one TPG Director will be appointed to serve on behalf of TPG V Hamlet AIV, L.P. by TPG V Hamlet AIV, L.P. Notwithstanding the foregoing, no person shall be appointed to the Board of Directors unless such person has obtained all required licenses as required by applicable Gaming Laws. Each of the Apollo Members and the TPG Members shall have the sole right to remove and replace their respective designees with or without cause at any time, and such designee's appointment as a director of the Board of Directors shall immediately terminate upon such removal. If as a result of death, disability, retirement, resignation, removal (with or without cause) or otherwise, there shall exist or occur any vacancy on the Board of Directors, the Apollo Members or TPG Members, as the case may be, who are entitled to designate such director pursuant to this Section 3.01 may designate another Person to be a director.

(b) The right of the Apollo Members or TPG Members, as the case may be, to designate directors as set forth in Section 3.01(a) above shall be subject to the following:

(i) If a Sponsor Transfers (through one or more Transfers) more than thirty-three percent (33%) of its Initial Interest (excluding pro rata Transfers agreed to by both Sponsors and Transfers to Affiliates), the Holdings Members associated with such Sponsor shall only be entitled to designate three (3) directors for appointment to the Board of Directors;

(ii) If a Sponsor Transfers (through one or more Transfers) more than fifty percent (50%) of its Initial Interest (excluding pro rata Transfers agreed to by both Sponsors and Transfers to Affiliates), the Holdings Members associated with such Sponsor shall only be entitled to designate two (2) directors for appointment to the Board of Directors;

(iii) If a Sponsor Transfers (through one or more Transfers) more than sixty-six (66%) of its Initial Interest (excluding pro rata Transfers agreed to by both Sponsors and Transfers to Affiliates), the Holdings Members associated with such Sponsor shall only be entitled to designate one (1) director for appointment to the Board of Directors; and

(iv) If a Sponsor Transfers (through one or more Transfers) more than ninety percent (90%) of its Initial Interest (excluding pro rata Transfers agreed to by both Sponsors and Transfers to Affiliates), the Holdings Members associated with such Sponsor shall not be entitled to designate any directors for appointment to the Board of Directors.

(c) If the number of directors that a Sponsor's Holdings Members have the right to designate to the Board of Directors is decreased pursuant to Section 3.01(b), then such Sponsor's Holdings Members shall immediately remove such director or directors, as the case may be, from the Board of Directors and the number of members of the Board of Directors shall be reduced accordingly. In the event that a non-Sponsor Director (excluding the Chief Executive Officer) is removed pursuant to any agreement by and between the Company and Hamlet Holdings, the number of members of the Board of Directors shall be reduced accordingly to

eliminate such non-Sponsor Director seat. Except as provided in Section 3.01(b), each Sponsor's Holdings Members shall have the sole and exclusive right to immediately appoint and remove its respective designees to the Board of Directors, as well as the exclusive right to fill vacancies created by not designating a director initially or by reason of death, removal or resignation of such designees.

(d)(x) Any actions by the Board of Directors shall require the approval of at least one of the Apollo Directors and one of the TPG Directors; (y) any actions that require the approval of the voting stockholders of the Company shall require the approval of Hamlet Holdings, including approval by at least one Apollo Member and at least one TPG Member; and (z) any actions that require the approval of the holders of Non-Voting Shares shall require the consent of each of Apollo and TPG, in each case, for so long as there is at least one Apollo Director or TPG Director, respectively. Notwithstanding the foregoing, the following actions by the Company and its direct and indirect subsidiaries shall require approval by the Board of Directors, including approval by at least one Apollo Director and one TPG Director, in each case, for so long as there is at least one of each such designees on the Board of Directors:

- (i) any merger, consolidation or sale of all or substantially all of the assets of the Company or any of its subsidiaries;
- (ii) any liquidation, winding up or dissolution of the Company or any of its subsidiaries or the initiation of any action relating to bankruptcy, reorganization or recapitalization with respect to the Company or any of its subsidiaries;
- (iii) the initiation or completion of a public offering of the securities of the Company or any of its subsidiaries;
- (iv) the acquisition or disposition, or a related series of acquisitions or dispositions, of assets with a value in excess of \$50,000,000 or the entering into of a joint venture requiring a capital contribution in excess of \$50,000,000;
- (v) any fundamental change in the Company's or its subsidiaries' existing lines of business or the entry by the Company or any of its subsidiaries into a new significant line of business;
- (vi) the creation of any new class of equity security of the Company or any of its subsidiaries, the issuance, repurchase, redemption or other retirement for value of equity securities of the Company or any of its subsidiaries or securities exchangeable or exercisable for, or convertible into, any such equity securities, and the amendment of the rights, preferences or privileges provided to any class of equity security (other than (A) intra-company issuances and repurchases among the Company and its wholly-owned subsidiaries, (B) issuances pursuant to equity compensation plans approved in accordance with Section 3.01(d)(xvii) and (C) repurchases of equity securities held by members of management of the Company and its subsidiaries made in the ordinary course in connection with the termination of employment);

(vii) any declaration of dividends or other distributions by the Company or any of its subsidiaries, other than intra-company dividends or distributions made by wholly-owned subsidiaries of the Company;

(viii) any amendment to the Organizational Documents of the Company or any of its subsidiaries (other than wholly-owned subsidiaries);

(ix) the entering into or completion of any transaction or agreement by any Stockholder or any of its Affiliates with the Company or any of its subsidiaries (other than (A) those transactions and agreements contemplated by the Management Services Agreement between the Sponsors and the Company, dated as of the date hereof or (B) any transaction or agreement between the Company or one of its subsidiaries, on the one hand, and a portfolio company of Apollo (or any of its investment fund Affiliates) or TPG (or any of its investment fund Affiliates), on the other hand, that is negotiated at arms length between the managements of the Company or such subsidiary and such portfolio company or otherwise entered into in the ordinary course of business without involvement by Apollo, TPG or their respective Affiliates);

(x) the incurrence or guarantee by the Company or any of its subsidiaries of, or the granting of an encumbrance over the Company, any of its subsidiaries or any of their respective assets in connection with, indebtedness or derivatives liability, or any related series of indebtedness or derivative liabilities, in excess of \$100,000,000 or amending in any material respect the terms of existing or future indebtedness or derivatives liability in excess of \$100,000,000;

(xi) the approval or adoption of annual budgets or business plans, or any material changes thereto;

(xii) the approval of any material changes to the Company's or any of its subsidiaries' investment or underwriting guidelines;

(xiii) the appointment or termination of the Chief Executive Officer, Chief Financial Officer or any other senior executive officer of the Company, or any person with substantially equivalent responsibilities;

(xiv) any increase or decrease in the size of the Board of Directors, other than those required by this Section 3.01;

(xv) the creation of a committee of the Board of Directors or changing the scope of authority of a committee of the Board of Directors;

(xvi) the appointment or change of the independent auditor for the Company or any of its subsidiaries;

(xvii) the adoption of employee equity incentive plans;

(xviii) the creation of any non-wholly owned subsidiary;

(xix) the settling of any litigation, arbitration or administrative proceeding for an amount in excess of \$10,000,000 or that provides for any material limitation on the conduct of the business by the Company or any of its subsidiaries;

(xx) the exercise or material modification of the terms of, any option held by the Company or any of its subsidiaries to acquire equity securities or assets for aggregate consideration in excess of \$50,000,000 from a Person other than a wholly-owned subsidiary of the Company; and

(xxi) any single or series of related capital expenditures in excess of \$25,000,000.

Notwithstanding anything to the contrary, the approval of one TPG Director or one Apollo Director shall in all cases be required for any action that is disproportionately adverse to TPG or Apollo, respectively, or for matters involving the Company and its subsidiaries on the one hand and Affiliates or portfolio companies of TPG or Apollo, respectively, on the other hand.

(e) The initial Apollo Directors shall be Jeffrey Benjamin, Anthony Civale, Eric Press and Marc Rowan (each, an “Apollo Director”). The initial TPG Directors shall be David Bonderman, Jonathan Coslet, Kelvin Davis and Karl Peterson (each, a “TPG Director”).

(f) Gary Loveman shall serve as initial chairman of the Board of Directors and shall be appointed as the initial Joint Director.

(g) For so long as a Sponsor’s Holdings Members have the right to designate at least one director to the Board of Directors, such Sponsor’s Holdings Members shall have the right to appoint at least one representative to each committee of the Board of Directors of the Company (and any of its subsidiaries) as permitted by applicable laws and regulations. For so long as a Sponsor’s Holdings Members have the right to designate at least one director to the Board of Directors, no committee of the Company or any of its subsidiaries shall approve any of the actions specified in Section 3.01(d) without the approval of a director designated by such Sponsor’s Holdings Members.

(h) The Company and Hamlet Holdings shall take all Necessary Action to cause the persons constituting the Board of Directors to be appointed as the sole members of the board of directors of the Company and to implement the provisions of this Article III. Notwithstanding anything that may be permitted pursuant to the Organizational Documents, no Person shall take any action with respect to the Company or any of its subsidiaries that would be inconsistent with the provisions of this Agreement.

(i) The Company shall reimburse the members of the Board of Directors for all reasonable out-of-pocket expenses incurred in connection with their attendance at meetings of the Board of Directors and any committees thereof, including without limitation travel, lodging and meal expenses.

(j) The Company shall obtain customary director and officer indemnity insurance on commercially reasonable terms.

Section 3.02. Additional Management Provisions. (a) Each Stockholder agrees and acknowledges that the directors designated by the Sponsors' Holdings Members may share confidential, non-public information about the Company with the Stockholders.

(b) No Non-Voting Stockholder shall have the authority to manage the business and affairs of the Company or contract for or incur on behalf of the Company any debts, liabilities or other obligations, and no such action of a Non-Voting Stockholder will be binding on the Company.

(c) The Company shall deliver to each Stockholder within a reasonable time after the close of each fiscal quarter and fiscal year, (a) to the extent that the Company is not a reporting company under the Exchange Act of 1934, as amended, the quarterly unaudited financial statements, annual audited financial reports and management's discussion and analysis of the financial results included in such reports, of the Company for such period, and (b) copies of the regular reports required to be delivered to lenders pursuant to the senior secured credit facilities of the Company.

Section 3.03. Termination of Management Provisions. The provisions of this Article III shall terminate upon the unanimous consent of the Sponsors or upon an Initial Public Offering; provided that the provisions set forth in Section 3.02(c) shall survive until an Initial Public Offering.

Section 3.04. Tax Covenants. The Company shall use its reasonable best efforts to conduct its affairs in a manner that does not cause any Stockholder (or any direct or indirect partner or member thereof) (i) that is exempt from taxation pursuant to Section 501 of the Code, to be allocated "unrelated business taxable income" (within the meaning of Section 512 of the Code) from the Company, or (ii) that is not a United States person for U.S. federal income tax purposes to be deemed engaged in a "trade or business" by virtue of the activities of the Company.

#### ARTICLE IV

##### TRANSFERS OF SHARES; PREEMPTIVE RIGHTS

Section 4.01. Limitations on Transfer. (a) The Stockholders shall not be permitted to Transfer all or any portion of their Company Shares other than:

(i) to any Permitted Transferee in accordance with the terms of Section 4.02; provided that in the case of any Stockholder that is a partnership, limited liability company, or any foreign equivalent thereof, any Transfer to a partner, member or foreign equivalent thereof of such Stockholder may only be made as a pro rata distribution in accordance with such Stockholder's governing documents;

(ii) with the consent of Hamlet Holdings and subject to the tag-along rights, drag-along rights and the right of first offer provisions of this Article IV prior to the sixth (6th) anniversary of the date hereof (the "Sponsors' Initial Holding Period") if such Stockholder is a Sponsor, or prior to the ninth (9th) anniversary of the date hereof (the "Non-Sponsors' Initial Holding Period") if such Stockholder is not a Sponsor;

(iii) pursuant to, or consequent upon, the exercise of the tag-along or drag-along rights set forth in Sections 4.04 and 4.05; and

(iv) after the applicable Initial Holding Period, subject to the tag-along rights, drag-along rights and rights of first offer provisions of this Article IV.

(b) Notwithstanding anything to the contrary herein, in no event shall any Stockholder be entitled to Transfer its Company Shares without the consent of Hamlet Holdings, to any Person that, in the reasonable judgment of Hamlet Holdings, is an actual or potential competitor of, or otherwise other Person who is adverse to the interests of, the Company, or to any Person that (directly or indirectly) holds more than a de minimis ownership interest in any such actual or potential competitor. In addition, notwithstanding anything to contrary herein, no Stockholder shall be entitled to Transfer any Company Shares or any other rights under this Agreement (including to a Permitted Transferee) at any time unless Hamlet Holdings is reasonably satisfied that such Transfer would not:

(i) violate the Securities Act, or any federal or state (or other jurisdiction) securities or "Blue Sky" laws applicable to the Company or the Company Shares;

(ii) cause the Company to become subject to the registration requirements of the U.S. Investment Company Act of 1940, as amended from time to time;

(iii) be a non-exempt "prohibited transaction" under ERISA or the Code or cause all or any portion of the assets of the Company to constitute "plan assets" under ERISA or Section 4975 of the Code;

(iv) violate any applicable Regulatory Laws; or

(v) cause or result in any Stockholder or other Person (other than the Sponsors and their Permitted Transferees) to have a greater than 4.9% direct or indirect ownership interest in the Company.

Any purported Transfer of Company Shares other than in accordance with this Agreement shall be null and void to the extent permitted by law, and the Company shall refuse to recognize any such Transfer for any purpose and shall not reflect in its records any change in record ownership of Company Shares pursuant to any such Transfer.

(c) Any Stockholder that proposes to Transfer Company Shares in accordance with the terms and conditions hereof shall be responsible for any reasonable expenses incurred by the Company in connection with such Transfer.

(d) Each certificate evidencing the Company Shares shall bear the following restrictive legend, either as an endorsement or on the face thereof:

THE SALE, ASSIGNMENT, TRANSFER OR OTHER DISPOSITION OF THE SECURITIES EVIDENCED BY THIS CERTIFICATE IS RESTRICTED BY THE TERMS OF A STOCKHOLDERS AGREEMENT, DATED AS OF JANUARY 28, 2008, COPIES OF WHICH ARE ON FILE WITH THE ISSUER OF THIS CERTIFICATE. NO SALE, ASSIGNMENT, TRANSFER OR OTHER DISPOSITION SHALL BE EFFECTIVE UNLESS AND UNTIL THE TERMS AND CONDITIONS OF SUCH STOCKHOLDERS' AGREEMENT HAVE BEEN COMPLIED WITH IN FULL.

THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED, OR UNDER THE SECURITIES LAWS OF ANY OTHER JURISDICTION AND MAY NOT BE SOLD OR TRANSFERRED OTHER THAN IN ACCORDANCE WITH THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT OF 1933, AS AMENDED (OR OTHER APPLICABLE LAW), OR AN EXEMPTION THEREFROM.

(e) In the event that the restrictive legend set forth in Section 4.01(d) has ceased to be applicable, the Company shall provide any Stockholder, or their respective transferees, at their request, without any expense to such persons (other than applicable transfer taxes and similar governmental charges, if any), with new certificates for such securities of like tenor not bearing the legend with respect to which the restriction has ceased and terminated (it being understood that the restriction referred to in the first paragraph of the legend in Section 4.01(d) shall cease and terminate upon the termination of this Article IV).

Section 4.02. Transfer to Permitted Transferees. Subject to Section 4.06, a Stockholder may Transfer its Company Shares to a Permitted Transferee of such Stockholder (each such transfer a "Permitted Transfer"); provided that each Permitted Transferee of any Stockholder to which Company Shares are Transferred shall, and such Stockholder shall cause such Permitted Transferee to, Transfer back to such Stockholder (or to another Permitted Transferee of such Stockholder) any Company Shares it owns if such Permitted Transferee ceases to be a Permitted Transferee of such Stockholder.

Section 4.03. Right of First Offer. (a) If a Stockholder proposes to Transfer all or any portion of its Company Shares (such Stockholder, the "Transferring Stockholder") following the applicable Initial Holding Period and prior to an Initial Public Offering, then subject to the provisions of Section 4.01(a)(i), each Sponsor shall have a right of first offer over such Company Shares, in accordance with the following provisions:

(i) The Transferring Stockholder shall provide the Sponsors with written notice (an “Offer Notice”) of its desire to Transfer such Company Shares no later than twenty (20) Business Days prior to the anticipated Transfer date. The Offer Notice shall specify the number and class of Company Shares such Stockholder wishes to Transfer, the proposed purchase price for such Company Shares and any other terms and conditions material to the sale proposed by such Stockholder.

(ii) Each Sponsor shall have a period of up to twenty (20) Business Days following receipt of the Offer Notice to elect to purchase (or to cause one or more of its Affiliates or designees to purchase) all or any portion of such Company Shares on the terms and conditions set forth in the Offer Notice by delivering to the Transferring Stockholder a written notice indicating the amount of Company Shares over which such right is exercised.

(iii) If any Sponsor receiving the Offer Notice elects to purchase (or to cause one or more of its Affiliates or designees to purchase) any of the Company Shares which are the subject of the proposed Transfer within the applicable twenty (20) Business Day period, such purchase shall be consummated within fifteen (15) days after the date on which such Sponsor notifies the Transferring Stockholder of such election. If the Sponsors elect to purchase (or to cause one or more of their respective Affiliates or designees to purchase) an aggregate amount of Company Shares that exceeds the amount of Company Shares offered pursuant to the Offer Notice, each Sponsor shall purchase its Pro Rata Portion of the Company Shares proposed to be sold, unless the Sponsors otherwise agree on the allocation of the purchase of all of such Company Shares offered pursuant to the Offer Notice. If neither Sponsor elects to purchase any Company Shares within the applicable twenty (20) Business Day period, the Transferring Stockholder may Transfer such Company Shares at any time within ninety (90) days following such period at a price which is not less than the purchase price and on terms and conditions no more favorable to such Transferee than those specified in the Offer Notice.

(b) In connection with the Transfer of all or any portion of a Stockholder’s Company Shares pursuant to this Section 4.03, the Transferring Stockholder shall only be required to represent and warrant as to its authority to sell, the enforceability of agreements against such Stockholder, that the Company Shares to be transferred are free and clear of any liens, claims or encumbrances (other than restrictions imposed by this Agreement and pursuant to applicable federal, state and foreign securities laws), that it is the record and beneficial owner of such Company Shares and that it has obtained or made all necessary consents, approvals, filings and notices from governmental authorities or third parties to consummate the Transfer.

(c) The provisions of this Section 4.03 shall not apply to Transfers of Company Shares (i) to Permitted Transferees in accordance with Section 4.02, (ii) made pursuant to, or consequent upon, the exercise of the tag-along or drag-along rights set forth in Sections 4.04 and 4.05, respectively, or (iii) made pursuant to a registered public offering.

Section 4.04. Tag-Along Rights. (a) Prior to the later of (i) an Initial Public Offering and (ii) the date on which the Co-Investment Entities cease to own any Company Shares, if any Transferring Stockholder proposes to Transfer to a third party that is not an Affiliate of such Transferring Stockholder (the “Proposed Transferee”) any of its Company Shares and, if such Transferring Stockholder is a Sponsor, does not exercise its drag-along rights pursuant to Section 4.05 (each such proposed Transfer, a “Tag-Along Transfer”), the Transferring Stockholder and each other Stockholder shall have the right to participate (and, with respect to the Co-Investment Entities, to the extent required pursuant to the tag-along obligations in the operating agreement of such Co-Investment Entity shall elect its right to participate) in the Tag-Along Transfer by Transferring up to its Pro Rata Portion to the Proposed Transferee on the same terms and conditions as those proposed by the Transferring Stockholder (each such participating Stockholder, other than the Transferring Stockholder, the “Tagging Stockholder”).

(b) The Transferring Stockholder shall give written notice (a “Tag-Along Notice”) to each other Stockholder of a Tag-Along Transfer, setting forth the number and class(es) of Company Shares proposed to be so Transferred, the name and address of the Proposed Transferee, the proposed amount and form of consideration and other terms and conditions of payment offered by the Proposed Transferee. The Transferring Stockholder shall deliver or cause to be delivered to each other Stockholder copies of all transaction documents relating to the Tag-Along Transfer as the same become available. The tag-along rights provided by this Section 4.04 must be exercised by a Stockholder by delivery of an irrevocable written notice to the Transferring Stockholder, within a period of (i) prior to an Initial Public Offering, fifteen (15) days from the Tag-Along Notice or (ii) at any time after an Initial Public Offering, three (3) Business Days from the Tag-Along Notice, specifying the portion of its Pro Rata Portion of the Company Shares (of each class proposed to be Transferred) which it wishes the Company to include in the Tag-Along Transfer. With respect to each class of Company Shares proposed to be Transferred, if the Proposed Transferee fails to purchase all the Company Shares of such class proposed to be Transferred by the Transferring Stockholder and the Tagging Stockholders, then the number of Company Shares of such class that each such Stockholder is permitted to sell in such Tag-Along Transfer shall be reduced pro rata based on the number of Company Shares of such class proposed to be Transferred by such Stockholder relative to the aggregate number of Company Shares of such class proposed to be Transferred by all Stockholders participating in such Tag-Along Transfer and by any employee stockholders of the Company exercising “tag along” or similar rights. The Transferring Stockholder shall have a period of sixty (60) days following the expiration of the fifteen (15) day period or three (3) Business Day period, as the case may be, mentioned above to sell all the Company Shares agreed to be purchased by the Proposed Transferee on the terms specified in the notice required by the first sentence of this Section 4.04(b). With respect to each class of Company Shares proposed to be Transferred, if the Proposed Transferee agrees to purchase more Company Shares of such class than specified in the Tag-Along Notice in the Proposed Transfer, the Stockholders shall also have the same right to participate (and, with respect to the Co-Investment Entities, to the extent required pursuant to the tag-along obligations in the operating agreement of such Co-Investment Entity shall elect its right to participate) in the Transfer of such Company Shares of such class that are in excess of the amount set forth on the Tag-Along Notice on a pro rata basis based on the number of Company Shares of such class proposed to be Transferred by such Stockholder relative to the aggregate number of Company Shares of such class proposed to be

Transferred by all Stockholders participating in such Tag-Along Transfer and by any employee stockholders of the Company exercising “tag along” or similar rights.

(c) Any Transfer of Company Shares by a Tagging Stockholder to a Proposed Transferee pursuant to this Section 4.04 shall be on the same terms and conditions (including, without limitation, price, time of payment and form of consideration) as to be paid to the Transferring Stockholder; provided that, in order to be entitled to exercise its tag-along right pursuant to this Section 4.04, each Tagging Stockholder Entity must agree to make to the Proposed Transferee representations, warranties, covenants, indemnities and agreements the same mutatis mutandis as those made by the Transferring Stockholder in connection with the Tag-Along Transfer (other than any non-competition, non-solicitation or similar agreements or covenants that would bind the Tagging Stockholder, its Affiliates or any of their respective portfolio companies), and agree to the same conditions to the Proposed Transferee as the Transferring Stockholder agrees, it being understood that all such representations, warranties, covenants, indemnities and agreements shall be made by the Transferring Stockholder and each Tagging Stockholder severally and not jointly and that the aggregate amount of the liability of the Tagging Stockholder shall not exceed, except with respect to individual representations, warranties, covenants, indemnities and other agreements of the Tagging Stockholder as to the unencumbered title to its Company Shares and the power, authority and legal right to Transfer such Company Shares, such Tagging Stockholder’s pro rata share of any such liability to be determined in accordance with such Tagging Stockholder’s portion of the total number of Company Shares included in such Transfer; provided that, in any event the amount of liability of any Tagging Stockholder shall not exceed the proceeds such Tagging Stockholder received in connection with such Transfer. Each Tagging Stockholder shall be responsible for its proportionate share of the costs of the Proposed Transfer to the extent not paid or reimbursed by the Proposed Transferee or the Company.

(d) Notwithstanding the foregoing, this Section 4.04 shall not apply to (i) Transfers of Company Shares among the Sponsors or (ii) Transfers, within two years from the date hereof, by the Sponsors to strategic partners of the Company (a “Strategic Partner”) of an aggregate amount of up to ten percent (10%) of the outstanding Company Shares.

Section 4.05. Drag-Along Rights. (a) At any time both Sponsors agree to Transfer all or any portion of their Company Shares (such Sponsors, the “Selling Sponsors”) to a third party that is not an Affiliate of either Sponsor (such third party, the “Drag-Along Buyer”, and each such Transfer, a “Drag-Along Transfer”), such Selling Sponsors may compel each other Stockholder (together, the “Drag-Along Stockholders”) to Transfer its Pro Rata Portion of Company Shares in the Drag-Along Transfer on the same terms and conditions as those proposed by the Selling Sponsors

(b) The Selling Sponsors shall promptly give written notice (a “Drag-Along Notice”) to the Drag-Along Stockholders not later than three (3) Business Days prior to the consummation of the Drag-Along Transfer of any election by the Selling Sponsors to exercise its drag-along rights under this Section 4.05, setting forth the name and address of the Drag-Along Buyer, the total number of Company Shares proposed to be Transferred by the Selling Sponsors, the proposed amount and form of consideration for such Company Shares and all other material terms and conditions of the Drag-Along Transfer. In determining the proposed purchase price

per share referred to in the immediately preceding sentence, there shall be taken into account (and the Members shall receive their Pro-Rata Portion of) any other consideration to be received from the Drag-Along Buyer, directly or indirectly, by the Selling Sponsors in connection with or relating to the Drag-Along Transfer. The Drag-Along Notice shall also specify each Drag-Along Stockholder's Pro Rata Portion of the Company Shares to be Transferred and the estimated amount of the proceeds to be distributed to such Drag-Along Stockholder by the Company upon completion of the Drag-Along Transfer. To the extent of any liability or loss as a result of any representation, warranty, covenant, indemnity or agreement that a Drag-Along Stockholder may be required to agree to pursuant to this Article IV, the proceeds to which a Drag-Along Stockholder is entitled shall be reduced by the amount of such liability or loss based on such Drag-Along Stockholder's Pro Rata Portion of the Company Shares and such liability or loss shall not exceed, except with respect to individual representations, warranties, covenants, indemnities and other agreements of the Drag-Along Stockholder as to the unencumbered title to its Company Shares and the power, authority and legal right to Transfer such Company Shares, such Drag-Along Stockholder's pro rata share of any such liability to be determined in accordance with such Drag-Along Stockholder's portion of the total number of Company Shares included in such Transfer; provided that, in any event the amount of liability of any Drag-Along Stockholder shall not exceed the proceeds such Drag-Along Stockholder received in connection with such Transfer. Each Drag-Along Stockholder shall also represent to the Company at such time that it has unencumbered title to its Company Shares; provided that the aggregate amount of liability for breach of any such representation, together with any reduction in proceeds pursuant to the prior sentence, shall not exceed the U.S. dollar value of the total proceeds to be paid to such Drag-Along Stockholder as a result of a Drag-Along Transfer.

(c) In the event that any such Transfer is structured as a merger, consolidation, or similar business combination, each Drag-Along Stockholder agrees to (i) vote in favor of the transaction, (ii) take such other action as may be required to effect such transaction (subject to Section 4.05(b)) and (iii) take all action to waive any dissenters, appraisal or other similar rights with respect thereto.

(d) Solely for purposes of Section 4.05(c)(i) and in order to secure the performance of each Stockholder's obligations under Section 4.05(c)(i), each Stockholder hereby irrevocably appoints each other Stockholder that qualifies as a Drag-Along Proxy Holder (as defined below) the attorney-in-fact and proxy of such first Stockholder (with full power of substitution) to vote or provide a written consent with respect to its Company Shares as described in this paragraph if, and only in the event that, such Stockholder fails to vote or provide a written consent with respect to its Company Shares in accordance with the terms of Section 4.05(c)(i) (each such Stockholder, a "Breaching Drag-Along Stockholder") within three (3) days of a request for such vote or written consent. Upon such failure, the Selling Sponsors shall have and are hereby irrevocably granted a proxy to vote or provide a written consent with respect to each such Breaching Drag-Along Stockholder's Company Shares for the purposes of taking the actions required by Section 4.05(c)(i) (such Selling Stockholder, a "Drag-Along Proxy Holder"). Each Stockholder intends this proxy to be, and it shall be, irrevocable and coupled with an interest, and each Stockholder will take such further action and execute such other instruments as may be necessary to effectuate the intent of this proxy and hereby revoke any proxy previously granted by it with respect to the matters set forth in Section 4.05(c)(i) with respect to the Company Shares owned by such Stockholder. Notwithstanding the foregoing, the

conditional proxy granted by this Section 4.05(d) shall be deemed to be revoked upon the termination of this Article IV in accordance with its terms.

(e) The provisions of this Section 4.05 shall not apply to Transfers of Company Shares among the Sponsors or any of their Affiliates.

Section 4.06. Rights and Obligations of Transferees. Any Transferee of Company Shares (including any Permitted Transferee) shall be required, at the time of and as a condition to such Transfer, to become a party to this Agreement by executing and delivering such agreements, documents or instruments as may be necessary, in the reasonable opinion of the Board of Directors, to make such Person a party thereto, whereupon such Transferee will be treated as, and admitted as, a Member for all purposes of this Agreement.

Section 4.07. Preemptive Rights. (a) If, subject to Section 4.07(d), at any time prior to the Initial Public Offering, the Company or any of its controlled Affiliates proposes to issue additional Company Shares, any warrants, options or other rights to acquire Company Shares, debt securities that are convertible into Company Shares or any other equity securities of the Company or its controlled Affiliates (the "Participation Shares"), the Company shall provide written notice to each Stockholder of such anticipated issuance no later than ten (10) days prior to the anticipated issuance date. Such notice shall set forth the principal terms and conditions of the issuance, including the proposed purchase price for the new Participation Shares, and the Pro Rata Portion of such new Participation Shares which the Stockholder to which the notice is directed may purchase in connection with such issuance. Each Stockholder shall have the right to purchase (and, with respect to the Co-Investment Entities, to the extent required pursuant to the preemptive obligations in the operating agreement of such Co-Investment Entity shall elect its right to participate to the extent permitted in such operating agreement) up to its Pro Rata Portion of such new Participation Shares (which in the case of an issuance of Participation Shares by a controlled Affiliate of the Company will be determined on a "look-through" basis) at the price and on the terms and conditions specified in the Company's notice by delivering an irrevocable written notice to the Company no later than ten (10) days from the date such notice is delivered to such Stockholder, at the price and upon the terms specified in such notice, by delivering an irrevocable written notice to the Company setting out the number of new Participation Shares with respect to which such right is exercised. Such notice shall also include the maximum number of new Participation Shares the Stockholder would be willing to purchase in the event any other Stockholder elects to purchase less than its Pro Rata Portion of such Participation Shares. If any Stockholder fails to elect to purchase its full Pro Rata Portion of such new Participation Shares, the Company shall allocate any remaining amount among those Stockholders (pro rata in accordance with the Company Shares then held by each such Stockholder relative to the aggregate number of Company Shares held by all Stockholders participating in issuance of Participation Shares and by any employee stockholders of the Company exercising "preemptive" or similar rights) who have indicated in their notice to the Company a desire to purchase new Participation Shares in excess of their respective Pro Rata Portions (it being understood that if Stockholders elect to purchase more new Participation Shares than remain available for sale, such allocation shall be made pro rata in accordance with the Company Shares then held by each such Stockholder relative to the aggregate number of Company Shares held by all Stockholders participating in issuance of Participation Shares and by any employee stockholders of the Company exercising "preemptive" or similar rights;

provided that in the case of a Co-Investment Entity, such allocation shall not be in excess of the maximum number of Newly Issued Securities each such Member (as such terms are defined in the operating agreement of such Co-Investment Entity) is willing to purchase as set forth in such notice); provided that no Stockholder shall be required to purchase more Participation Shares than the maximum number set forth in such Stockholder's irrevocable written notice.

(b) In the event Stockholders do not purchase all such new Participation Shares in accordance with the procedures set forth in Section 4.07(a), the Company shall have sixty (60) days after the expiration of the ten (10) day period to sell to other Persons (including other Stockholders) the remaining new Participation Shares at the price and on the terms and conditions specified in the Company's notice to the Stockholders pursuant to Section 4.07(a). If the Company fails to sell such Participation Shares within sixty (60) days of the anticipated issuance date provided in the notice given to Stockholders pursuant to Section 4.07(a), the Company shall not thereafter issue or sell any Participation Shares without first offering such Participation Shares to the Stockholders in the manner provided in Section 4.07(a).

(c) If any Stockholder does not deliver such a notice of election within such ten (10) day period, such Stockholder shall be deemed to have irrevocably waived any and all rights under this Section 4.07 with respect to the purchase of such Participation Shares (but not with respect to future issuances in accordance with this Section 4.07). Any sale of such securities by the Company without first giving the Stockholders the rights described in this Section 4.07 shall be void and of no force and effect.

(d) Notwithstanding the foregoing, this Section 4.07 shall not apply to any issuance of Company Shares that (i) (x) is approved by the Board of Directors and (y) is made (A) to a Strategic Partner, (B) in or to fund an acquisition or property development project by the Company or its Affiliates or an entity in which the Company or its Affiliates holds a direct or indirect interest, or (C) to employees of the Company, or (ii) are Company Shares in an aggregate amount of up to ten percent (10%) of the outstanding Company Shares, issued to the Sponsors or their Affiliates in exchange for a cash reimbursement of the cash used by the Company to pay a portion of the merger consideration at the Effective Time, within sixty (60) days of the Closing Date (subject to reasonable delays in the event of late receipt of required regulatory approvals), at the same price, on a per share basis, as the Company Shares issued to each Stockholder at the Effective Time.

## ARTICLE V

### REGISTRATION RIGHTS

#### Section 5.01. Demand Registration.

(a) Demand by the Sponsors. If, after the Effectiveness Date, there is no currently effective Shelf Registration Statement on file with the SEC, a Sponsor beneficially owning (together with its Affiliates), directly or indirectly, in the aggregate, not less than five percent (5%) of the Registrable Securities then outstanding may make a written request to the Company for Registration of all or part of the Registrable Securities held by such Sponsor (a "Demanding Sponsor") (i) on Form S-1 or any similar long-form registration statement (a

“Long-Form Registration”) or (ii) on Form S-3 or any similar short-form registration statement (a “Short-Form Registration Statement”) if the Company is qualified to use such short form. Any such requested Long-Form Registration or Short-Form Registration shall hereinafter be referred to as a “Demand Registration.” Each request for a Demand Registration shall specify the kind and aggregate amount of Registrable Securities to be Registered and the intended methods of disposition thereof. Within (i) ninety (90) days in the case of a request for a Long-Form Registration or (ii) thirty (30) days in the case of a request for a Short-Form Registration, the Company shall file a Registration Statement relating to such Demand Registration (a “Demand Registration Statement”), and shall use its reasonable best efforts to cause such Demand Registration Statement to promptly be declared effective under (x) the Securities Act and (y) the “Blue Sky” laws of such jurisdictions as any Participating Stockholder or any underwriter, if any, reasonably requests.

(b) Limitation on Demand Registrations. Each Sponsor shall have the right to request up to three (3) Long-Form Registrations and an unlimited number of Short-Form Registrations. Notwithstanding the foregoing, (i) each Sponsor may request no more than (A) three (3) Demand Registrations in any twelve (12) -month period or (B) more than one (1) Demand Registration in any three (3) -month period and (ii) in no event shall the Company be required to effect more than three (3) Demand Registrations in any twelve (12) -month period. The limitations on Demand Registrations in this Section 5.01(b) shall not apply to any Demand Registrations agreed upon by the Sponsors that are in excess of such limitations.

(c) Demand Withdrawal. A Demanding Sponsor and any other Stockholder that has requested its Registrable Securities be included in a Demand Registration pursuant to Section 5.01(e) may withdraw all or any portion of its Registrable Securities from a Demand Registration at any time prior to the effectiveness of the applicable Demand Registration Statement. Upon receipt of a notice to such effect from the Demanding Sponsor with respect to all of its Registrable Securities, the Company shall cease all efforts to secure effectiveness of the applicable Demand Registration Statement and such Registration nonetheless shall be deemed a Demand Registration with respect to such Demanding Sponsor for purposes of Section 5.01(b) unless (i) the withdrawing Demanding Sponsor shall have paid or reimbursed the Company for its pro rata share of all reasonable and documented out-of-pocket fees and expenses incurred by the Company in connection with the Registration of such Demanding Sponsor’s withdrawn Registrable Securities (based on the number of securities the Demanding Sponsor sought to register, as compared to the total number of securities included on such Demand Registration Statement) or (ii) the withdrawal is made following the occurrence of a Material Adverse Change or because the Registration would require the Company to make an Adverse Disclosure. In addition, if the Company receives a Demand Registration and the Company is then in the process of preparing to engage in a Company Public Sale, the Company shall inform the Demanding Sponsor of the Company’s intention to engage in a Company Public Sale and may require the Demanding Sponsor to withdraw such Registration Request for a period of up to 120 days so that the Company may complete the Company Public Sale. In the event that the Company ceases to pursue such Company Public Sale, it shall promptly inform the Demanding Sponsor and the Demanding Sponsor shall be permitted to submit a new Registration Request. The foregoing shall be without prejudice to any rights of the Demanding Sponsor pursuant to Section 5.01.

(d) Effective Registration. The Company shall be deemed to have effected a Demand Registration if the Demand Registration Statement is declared effective by the SEC and remains effective for not less than one hundred eighty (180) days (or such shorter period as shall terminate when all Registrable Securities covered by such Demand Registration Statement have been sold or withdrawn), or if such Registration Statement relates to an Underwritten Offering, such longer period as, in the opinion of counsel for the underwriter or underwriters, a Prospectus is required by law to be delivered in connection with sales of Registrable Securities by an underwriter or dealer (the applicable period, the “Demand Period”). No Demand Registration shall be deemed to have been effected if (i) during the Demand Period such Registration is interfered with by any stop order, injunction or other order or requirement of the SEC or other governmental agency or court or (ii) the conditions to closing specified in the underwriting agreement, if any, entered into in connection with such Registration are not satisfied other than by reason of a wrongful act, misrepresentation or breach of such applicable underwriting agreement by the Demanding Sponsor. The Company shall use its reasonable best efforts to keep any Registration Statement filed in response to a Registration Request effective for as long as is necessary for the Demanding Sponsor to dispose of the covered securities.

(e) Demand Notice. Promptly upon receipt of any request for a Demand Registration pursuant to Section 5.01(a) (but in no event more than five (5) Business Days thereafter), the Company shall deliver a written notice (a “Demand Notice”) of any such Registration request to all other Stockholders, and the Company shall include in such Demand Registration all such Registrable Securities with respect to which the Company has received written requests for inclusion therein within ten (10) Business Days after the date that the Demand Notice has been delivered. All requests made pursuant to this Section 5.01(e) shall specify the aggregate amount of Registrable Securities to be registered and the intended method of distribution of such securities. At any time prior to the Registration, the Demanding Sponsor may revoke such request, without liability to any of the other Demanding Sponsor, by providing a notice to the Company revoking such request.

(f) Delay in Filing; Suspension of Registration. If the filing, initial effectiveness or continued use of a Demand Registration Statement at any time would require the Company to make an Adverse Disclosure, the Company may, upon giving prompt written notice of such action to the Stockholders, delay the filing or initial effectiveness of, or suspend use of, the Demand Registration Statement (a “Demand Suspension”); provided, however, that the Company shall not be permitted to exercise a Demand Suspension or Shelf Suspension (as defined in Section 5.02(d)) (i) more than once during any twelve (12)-month period, or (ii) for a period exceeding thirty (30) days on any one occasion. In the case of a Demand Suspension, the Stockholders agree to suspend use of the applicable Prospectus in connection with any sale or purchase, or offer to sell or purchase, Registrable Securities, upon receipt of the notice referred to above. The Company shall immediately notify the Stockholders upon the termination of any Demand Suspension, amend or supplement the Prospectus, if necessary, so it does not contain any untrue statement or omission and furnish to the Stockholders such numbers of copies of the Prospectus as so amended or supplemented as the Stockholders may reasonably request. The Company agrees, if necessary, to supplement or make amendments to the Demand Registration Statement, if required by the registration form used by the Company for the Demand Registration or by the instructions applicable to such registration form or by the Securities Act or

the rules or regulations promulgated thereunder or as may reasonably be requested by the Demanding Sponsor.

(g) Underwritten Offering. If a Demanding Sponsor so requests in connection with an offering with estimated gross proceeds of at least \$500,000,000, an offering of Registrable Securities pursuant to a Demand Registration shall be in the form of an Underwritten Offering, and such Demanding Sponsor shall have the right to select the managing underwriter or underwriters to administer the offering; provided that such managing underwriter or underwriters shall be reasonably acceptable to the Company and the other Sponsor.

(h) Priority of Demand Registrations. If the managing underwriter or underwriters of a proposed Underwritten Offering of the Registrable Securities included in a Demand Registration (or, in the case of a Demand Registration not being underwritten, the Sponsors), advise the Board of Directors in writing that, in its or their opinion, the number of securities requested to be included in such Demand Registration exceeds the number which can be sold in such offering without being likely to have a significant adverse effect on the price, timing or distribution of the securities offered or the market for the securities offered, the securities to be included in such Demand Registration shall be allocated, (i) first, pro rata among the Stockholders (including the Demanding Sponsor) that have requested to participate in such Demand Registration based on the relative number of Registrable Securities then held by each such Stockholder (provided that any securities thereby allocated to a Stockholder that exceed such Stockholder's request shall be reallocated among the remaining requesting Stockholders in like manner) and (ii) next, and only if all the securities referred to in clause (i) have been included, the number of securities that the Company proposes to include in such Registration that, in the opinion of the managing underwriter or underwriters (or the Sponsors, as the case may be) can be sold without having such adverse effect.

(i) In the event any Stockholder requests to participate in a registration pursuant to this Section 5.01 in connection with a distribution of Registrable Securities to its partners or members, the registration shall provide for resale by such partners or members, if requested by the Stockholder.

(j) The Co-Investment Entities shall be entitled to participate in any Registration Request subject to the terms and conditions set forth in Section 5.03.

#### Section 5.02. Shelf Registration.

(a) Filing. After the Effectiveness Date, as promptly as practicable following a request as may be made from time to time by one or more Sponsors beneficially owning (together with its Affiliates), directly or indirectly, in the aggregate, not less than five percent (5%) of the Registrable Securities then outstanding, the Company shall file with the SEC a Shelf Registration Statement relating to the offer and sale by Stockholders from time to time of the number of Registrable Securities specified in the requests of the Sponsor(s) pursuant to this Section 5.02 and the other Stockholders pursuant to Section 5.02(c) in accordance with the methods of distribution elected by the participating Sponsor(s) and set forth in the Shelf Registration Statement and, as promptly as practicable thereafter, shall use its reasonable best efforts to cause such Shelf Registration Statement to be declared effective under the Securities

Act; provided that any request to file a Shelf Registration Statement on Form S-1 (or any successor form thereto) must be made by Apollo and TPG together. If a Sponsor makes a request pursuant to this Section 5.02(a) to file a Shelf Registration Statement and the other Sponsor did not join in such request, the Company shall promptly (and, in any event, within five (5) Business Days) notify the other Sponsor. No later than ten (10) Business Days after the receipt of the initial request to file a Shelf Registration Statement pursuant to this Section 5.02(a), each Sponsor shall notify the Company in writing the number of its Registrable Securities (if any) that such Sponsor is requesting to be registered on such Shelf Registration Statement. At any time prior to or after the filing of a Shelf Registration Statement, either of the Sponsors may request that the number of its Registrable Securities (if any) previously requested to be registered on such Shelf Registration Statement be increased to a larger number of its Registrable Securities and the Company shall thereafter use its reasonable best efforts to effect such increase for such Shelf Registration Statement as promptly as practicable thereafter. The aggregate number of Registrable Securities that the Sponsors request to be so registered on such Shelf Registration Statement (as increased from time to time at the election of either of the Sponsors pursuant to the immediately foregoing sentence) shall be referred to in this Section 5.02 as the “Sponsor Shelf Registration Amount.” If, on the date of any such request, the Company does not qualify to file a Shelf Registration Statement under the Securities Act, the provisions of this Section 5.02 shall not apply, and the provisions of Section 5.01 shall apply instead.

(b) Continued Effectiveness. The Company shall use its reasonable best efforts to keep such Shelf Registration Statement continuously effective under the Securities Act in order to permit the Prospectus forming a part thereof to be usable by Stockholders until the earlier of (i) the date as of which all Registrable Securities have been sold pursuant to the Shelf Registration Statement or another registration statement filed under the Securities Act (but in no event prior to the applicable period referred to in Section 4(3) of the Securities Act and Rule 174 thereunder) and (ii) the date as of which each of the Stockholders is permitted to sell its Registrable Securities without Registration pursuant to Rule 144 under the Securities Act without volume limitation or other restrictions on transfer thereunder (such period of effectiveness, the “Shelf Period”). Subject to Section 5.02(d), the Company shall not be deemed to have used its reasonable best efforts to keep the Shelf Registration Statement effective during the Shelf Period if the Company voluntarily takes any action or omits to take any action that would result in Stockholders of Registrable Securities covered thereby not being able to offer and sell any Registrable Securities pursuant to such Shelf Registration Statement during the Shelf Period, unless such action or omission is required by applicable law.

(c) Shelf Notice. Promptly upon receipt of any request by a Sponsor to file a Shelf Registration Statement or any request by a Sponsor to increase the number of its Registrable Securities registered on such Shelf Registration Statement pursuant to Section 5.02(a) (but in no event more than five (5) Business Days thereafter), the Company shall deliver a written notice (a “Shelf Notice”) of any such request to all non-Sponsor Stockholders specifying the Sponsor Shelf Registration Amount. Each Stockholder shall have the right to (and, with respect to the Co-Investment Entities, to the extent required pursuant to the piggyback obligations in the operating agreement of such Co-Investment Entity shall elect its right to participate) include in such registration up to its Pro Rata Portion of Registrable Securities by delivering an irrevocable written notice to the Company specifying the number of Registrable

Securities such Stockholder desires to so include no later than ten (10) Business Days of the delivery of the Shelf Notice, and the Company shall include in such registration the number of Registrable Securities for which the Company receives written notice in accordance with this provision.

(d) Suspension of Registration. If the continued use of such Shelf Registration Statement at any time would require the Company to make an Adverse Disclosure, the Company may, upon giving prompt written notice of such action to the Stockholders, suspend use of the Shelf Registration Statement (a “Shelf Suspension”); provided that the Company shall not be permitted to exercise a Shelf Suspension or Demand Suspension (i) more than one time during any twelve (12)-month period, or (ii) for a period exceeding thirty (30) days on any one occasion. In the case of a Shelf Suspension, the Stockholders agree to suspend use of the applicable Prospectus in connection with any sale or purchase of, or offer to sell or purchase, Registrable Securities, upon receipt of the notice referred to above. The Company shall immediately notify the Stockholders upon the termination of any Shelf Suspension, amend or supplement the Prospectus, if necessary, so it does not contain any untrue statement or omission and furnish to the Stockholders such numbers of copies of the Prospectus as so amended or supplemented as the Stockholders may reasonably request. The Company agrees, if necessary, to supplement or make amendments to the Shelf Registration Statement, if required by the registration form used by the Company for the Shelf Registration or by the instructions applicable to such registration form or by the Securities Act or the rules or regulations promulgated thereunder or as may reasonably be requested by the Sponsors.

(e) Underwritten Offering. If a Sponsor holding, directly or indirectly, in the aggregate, not less than five percent (5%) of the Registrable Securities then outstanding so elects in connection with an offering with estimated gross proceeds of at least \$500,000,000, an offering of Registrable Securities pursuant to the Shelf Registration Statement shall be in the form of an Underwritten Offering, and the Company shall amend or supplement the Shelf Registration Statement for such purpose, such Sponsor shall have the right to select the managing underwriter or underwriters to administer such offering; provided that such managing underwriter or underwriters shall be reasonably acceptable to the Company and the other Sponsor. Each Stockholder shall have the right to (and, with respect to the Co-Investment Entities, to the extent required pursuant to the piggyback obligations in the operating agreement of such Co-Investment Entity shall elect its right to participate) include in such offering up to its Pro Rata Portion of Registrable Securities in the manner described in Section 5.02(c). The provisions of Section 5.01(h) shall apply to any underwritten offering pursuant to this Section 5.02(e).

#### Section 5.03. Piggyback Registration.

(a) Participation. If the Company at any time proposes to file a Registration Statement under the Securities Act with respect to any offering, including the Initial Public Offering, of its equity securities for its own account or for the account of any other Persons (other than (i) a registration incidental to an issuance of debt securities under Rule 144A, (ii) a Registration on Form S-4 or S-8 or any successor form to such Forms, or (iii) a Registration of securities solely relating to an offering and sale to employees or directors of the Company pursuant to any employee stock plan or other employee benefit plan arrangement, a dividend

reinvestment plan, or a merger or consolidation) (a “Company Public Sale”), then, as soon as reasonably practicable, the Company shall give written notice of such proposed filing to the Stockholders, and such notice shall offer the Stockholders the opportunity to Register under such Registration Statement such number of Registrable Securities as each such Stockholder may request in writing (a “Piggyback Registration”); provided, however, that the Co-Investor Entities shall only have such rights to Piggyback Registration with respect to a Company Public Sale in which a Sponsor is participating as a selling stockholder. Subject to Section 5.03(b), the Company shall include in such Registration Statement all such Registrable Securities that are requested to be included therein within fifteen (15) days after the receipt by such Stockholders of any such notice (or ten (10) Business Days in the case of a Shelf Notice) (and, with respect to the Co-Investment Entities, such Co-Investment entities shall elect to include Registrable Securities to the extent required pursuant to the piggyback obligations in the operating agreement of such Co-Investment Entity); provided that if at any time after giving written notice of its intention to Register any securities and prior to the effective date of the Registration Statement filed in connection with such Registration, the Company shall determine for any reason not to Register or to delay Registration of such securities, the Company shall give written notice of such determination to each Stockholder and, thereupon, (i) in the case of a determination not to Register, shall be relieved of its obligation to Register any Registrable Securities in connection with such Registration (but not from its obligation to pay the Registration Expenses in connection therewith), without prejudice, however, to the rights of the Sponsors to request that such Registration be effected as a Demand Registration under Section 5.01, and (ii) in the case of a determination to delay Registering, in the absence of a request for a Demand Registration, shall be permitted to delay Registering any Registrable Securities, for the same period as the delay in Registering such other securities. If the offering pursuant to such Registration Statement is to be underwritten, then each Stockholder making a request for a Piggyback Registration pursuant to this Section 5.03(a) must, and the Company shall make such arrangements with the managing underwriter or underwriters so that each such Stockholder may, participate in such Underwritten Offering. If the offering pursuant to such Registration Statement is to be on any other basis, then each Stockholder making a request for a Piggyback Registration pursuant to this Section 5.03(a) must, and the Company shall make such arrangements so that each such Stockholder may, participate in such offering on such basis. Each Stockholder shall be permitted to withdraw all or part of its Registrable Securities from a Piggyback Registration at any time prior to the effectiveness of such Registration Statement.

(b) Priority of Piggyback Registration. If the managing underwriter or underwriters of any proposed Underwritten Offering of Registrable Securities included in a Piggyback Registration informs the Company and the Stockholders of Registrable Securities in writing that, in its or their opinion, the number of securities which such Stockholders and any other Persons intend to include in such Piggyback Registration exceeds the number which can be sold in such offering without being likely to have a significant adverse effect on the price, timing or distribution of the securities offered or the market for the securities offered, then the securities to be included in such Piggyback Registration shall be (i) first, 100% of the securities proposed to be sold in such Piggyback Registration by the Company or (subject to Section 5.07) any Person (other than a Stockholder) exercising a contractual right to demand Registration, as the case may be, proposes to sell, and (ii) second, and only if all the securities referred to in clause (i) have been included, the number of Registrable Securities that, in the opinion of such managing underwriter or underwriters, can be sold without having such adverse effect, with such

number to be allocated pro rata among the Stockholders that have requested to participate in such Registration based on the relative number of Registrable Securities then held by each such Stockholder (provided that any securities thereby allocated to a Stockholder that exceed such Stockholder's request shall be reallocated among the remaining requesting Stockholders in like manner) and (iii) third, and only if all of the Registrable Securities referred to in clause (ii) have been included in such Registration, any other securities eligible for inclusion in such Registration.

(c) No Effect on Demand Registrations. No Registration of Registrable Securities effected pursuant to a request under this Section 5.03 shall be deemed to have been effected pursuant to Sections 5.01 and 5.02 or shall relieve the Company of its obligations under Section 5.01 or 5.02.

Section 5.04. Black-out Periods.

(a) Black-out Periods for Stockholders. In the event of a Company Public Sale of the Company's equity securities in an Underwritten Offering, the Stockholders agree, if requested by the managing underwriter or underwriters in such Underwritten Offering and agreed to by both Sponsors, not to effect any public sale or distribution of any securities (except, in each case, as part of the applicable Registration, if permitted) that are the same as or similar to those being Registered in connection with such Company Public Sale, or any securities convertible into or exchangeable or exercisable for such securities, during the period beginning seven (7) days before and ending one hundred eighty (180) days (in the event of the Company's Initial Public Offering) or ninety (90) days (in the event of any other Company Public Sale) (or, in either case, such lesser period as may be permitted by the Company or such managing underwriter or underwriters) after the effective date of the Registration Statement filed in connection with such Registration, to the extent timely notified in writing by the Company or the managing underwriter or underwriters; provided, however, such restrictions shall not apply to (i) securities acquired in the public market subsequent to the Initial Public Offering, (ii) distributions-in-kind to a Stockholder's partners or members and (iii) Transfers to Affiliates but only if such Affiliates agree to be bound by the restrictions herein.

(b) Black-out Period for the Company and Others. In the case of a Registration of Registrable Securities pursuant to Section 5.01 or 5.02 for an Underwritten Offering, the Company and the Stockholders agree, if requested by the participating Sponsors or the managing underwriter or underwriters with respect to such Registration, not to effect any public sale or distribution of any securities that are the same as or similar to those being Registered, or any securities convertible into or exchangeable or exercisable for such securities, during the period beginning seven (7) days before, and ending ninety (90) days (or such lesser period as may be permitted by the participating Sponsors or such managing underwriter or underwriters) after, the effective date of the Registration Statement filed in connection with such Registration (or, in the case of an offering under a Shelf Registration Statement, the date of the closing under the underwriting agreement in connection therewith), to the extent timely notified in writing by the Sponsors or the managing underwriter or underwriters. Notwithstanding the foregoing, the Company may effect a public sale or distribution of securities of the type described above and during the periods described above if such sale or distribution is made as part of any Registration of securities for offering and sale to employees or directors of the

Company pursuant to any employee stock plan or other employee benefit plan arrangement. The Company agrees to use its reasonable best efforts to obtain from each Stockholder of restricted securities of the Company which securities are the same as or similar to the Registrable Securities being Registered, or any restricted securities convertible into or exchangeable or exercisable for any of such securities, an agreement not to effect any public sale or distribution of such securities during any such period referred to in this paragraph, except as part of any such Registration, if permitted. Without limiting the foregoing (but subject to Section 5.07), if after the date hereof the Company grants any Person (other than a Stockholder) any rights to demand or participate in a Registration, the Company agrees that the agreement with respect thereto shall include such Person's agreement to comply with any black-out period required by this Section as if it were a Stockholder hereunder.

Section 5.05. Registration Procedures.

(a) In connection with the Company's Registration obligations under Sections 5.01, 5.02 and 5.03, the Company shall use its reasonable best efforts to effect such Registration to permit the sale of such Registrable Securities in accordance with the intended method or methods of distribution thereof as expeditiously as reasonably practicable, and in connection therewith the Company shall:

(i) prepare the required Registration Statement including all exhibits and financial statements required under the Securities Act to be filed therewith, and before filing a Registration Statement or Prospectus, or any amendments or supplements thereto, (x) furnish to the underwriters, if any, and to Participating Stockholders, copies of all documents prepared to be filed, which documents shall be subject to the review of such underwriters and such Stockholders and their respective counsel and (y) except in the case of a Registration under Section 5.03, not file any Registration Statement or Prospectus or amendments or supplements thereto to which the Sponsors or the underwriters, if any, shall reasonably object;

(ii) as soon as reasonably practicable (in the case of a Demand Registration or Shelf Registration, no later than thirty (30) days after a request for a Demand Registration or Shelf Registration on Form S-3 or ninety (90) days after a request for a Demand Registration or Shelf Registration on Form S-1) file with the SEC a Registration Statement relating to the Registrable Securities including all exhibits and financial statements required by the SEC to be filed therewith, and use its reasonable best efforts to cause such Registration Statement to become effective under the Securities Act as soon as practicable;

(iii) prepare and file with the SEC such pre- and post-effective amendments to such Registration Statement and supplements to the Prospectus as may be (x) reasonably requested by a Sponsor, (y) reasonably requested by any other Participating Stockholder (to the extent such request relates to information relating to such Stockholder), or (z) necessary to keep such Registration effective for the period of time required by this Agreement, and comply with provisions of the applicable securities laws with respect to the sale or other disposition of all securities covered by such Registration Statement during such period in

accordance with the intended method or methods of disposition by the sellers thereof set forth in such Registration Statement;

(iv) notify the Participating Stockholders and the managing underwriter or underwriters, if any, and (if requested) confirm such advice in writing and provide copies of the relevant documents, as soon as reasonably practicable after notice thereof is received by the Company (a) when the applicable Registration Statement or any amendment thereto has been filed or becomes effective, and when the applicable Prospectus or any amendment or supplement to such Prospectus has been filed, (b) of any written comments by the SEC or any request by the SEC or any other federal or state governmental authority for amendments or supplements to such Registration Statement or such Prospectus or for additional information, (c) of the issuance by the SEC of any stop order suspending the effectiveness of such Registration Statement or any order by the SEC or any other regulatory authority preventing or suspending the use of any preliminary or final Prospectus or the initiation or threatening of any proceedings for such purposes, (d) if, at any time, the representations and warranties of the Company in any applicable underwriting agreement cease to be true and correct in all material respects, and (e) of the receipt by the Company of any notification with respect to the suspension of the qualification of the Registrable Securities for offering or sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose;

(v) promptly notify the Participating Stockholders and the managing underwriter or underwriters, if any, when the Company becomes aware of the happening of any event as a result of which the applicable Registration Statement or the Prospectus included in such Registration Statement (as then in effect) contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements therein (in the case of such Prospectus and any preliminary Prospectus, in light of the circumstances under which they were made) not misleading or, if for any other reason it shall be necessary during such time period to amend or supplement such Registration Statement or Prospectus in order to comply with the Securities Act and, in either case as promptly as reasonably practicable thereafter, prepare and file with the SEC, and furnish without charge to the Participating Stockholders and the managing underwriter or underwriters, if any, an amendment or supplement to such Registration Statement or Prospectus which shall correct such misstatement or omission or effect such compliance;

(vi) use its reasonable best efforts to prevent, or obtain the withdrawal of, any stop order or other order suspending the use of any preliminary or final Prospectus;

(vii) promptly incorporate in a Prospectus supplement or post-effective amendment such information as the managing underwriter or underwriters and the Sponsors agree should be included therein relating to the plan of distribution with respect to such Registrable Securities, and make all required filings of such

Prospectus supplement or post-effective amendment as soon as reasonably practicable after being notified of the matters to be incorporated in such Prospectus supplement or post-effective amendment;

(viii) furnish to each Participating Stockholder and each underwriter, if any, without charge, as many conformed copies as such Stockholder or underwriter may reasonably request of the applicable Registration Statement and any amendment or post-effective amendment thereto, including financial statements and schedules, all documents incorporated therein by reference and all exhibits (including those incorporated by reference);

(ix) deliver to each Participating Stockholder and each underwriter, if any, without charge, as many copies of the applicable Prospectus (including each preliminary prospectus) and any amendment or supplement thereto as such Stockholder or underwriter may reasonably request (it being understood that the Company consents to the use of such Prospectus or any amendment or supplement thereto by such Stockholder and the underwriters, if any, in connection with the offering and sale of the Registrable Securities covered by such Prospectus or any amendment or supplement thereto) and such other documents as such Stockholder or underwriter may reasonably request in order to facilitate the disposition of the Registrable Securities by such Stockholder or underwriter;

(x) on or prior to the date on which the applicable Registration Statement is declared effective, use its reasonable best efforts to register or qualify, and cooperate with the Participating Stockholders, the managing underwriter or underwriters, if any, and their respective counsel, in connection with the registration or qualification of such Registrable Securities for offer and sale under the securities or "Blue Sky" laws of each state and other jurisdiction of the United States as any Participating Stockholder or managing underwriter or underwriters, if any, or their respective counsel reasonably request in writing and do any and all other acts or things reasonably necessary or advisable to keep such registration or qualification in effect for such period as required by Section 5.01(d) or 5.02(b), whichever is applicable; provided that the Company shall not be required to qualify generally to do business in any jurisdiction where it is not then so qualified or to take any action which would subject it to taxation or general service of process in any such jurisdiction where it is not then so subject;

(xi) cooperate with the Participating Stockholders and the managing underwriter or underwriters, if any, to facilitate the timely preparation and delivery of certificates representing Registrable Securities to be sold and not bearing any restrictive legends, and enable such Registrable Securities to be in such denominations and registered in such names as the managing underwriters may request at least two business days prior to any sale of Registrable Securities to the underwriters;

(xii) use its reasonable best efforts to cause the Registrable Securities covered by the applicable Registration Statement to be registered with or approved by such other governmental agencies or authorities as may be necessary to enable the seller or sellers thereof or the underwriter or underwriters, if any, to consummate the disposition of such Registrable Securities;

(xiii) not later than the effective date of the applicable Registration Statement, provide a CUSIP number for all Registrable Securities and provide the applicable transfer agent with printed certificates for the Registrable Securities which are in a form eligible for deposit with The Depository Trust Company;

(xiv) make such representations and warranties to the Participating Stockholders and the underwriters or agents, if any, in form, substance and scope as are customarily made by issuers in secondary underwritten public offerings;

(xv) enter into such customary agreements (including underwriting and indemnification agreements) and take all such other actions as the Sponsors or the managing underwriter or underwriters, if any, reasonably request in order to expedite or facilitate the registration and disposition of such Registrable Securities;

(xvi) obtain for delivery to the Participating Stockholders and to the underwriter or underwriters, if any, an opinion or opinions from counsel for the Company dated the effective date of the Registration Statement or, in the event of an Underwritten Offering, the date of the closing under the underwriting agreement, in customary form, scope and substance, which opinions shall be reasonably satisfactory to such Stockholders or underwriters, as the case may be, and their respective counsel;

(xvii) in the case of an Underwritten Offering, obtain for delivery to the Company and the managing underwriter or underwriters, with copies to the Participating Stockholders, a cold comfort letter from the Company's independent certified public accountants in customary form and covering such matters of the type customarily covered by cold comfort letters as the managing underwriter or underwriters reasonably request, dated the date of execution of the underwriting agreement and brought down to the closing under the underwriting agreement;

(xviii) cooperate with each Participating Stockholder and each underwriter, if any, participating in the disposition of such Registrable Securities and their respective counsel in connection with any filings required to be made with FINRA;

(xix) use its reasonable best efforts to comply with all applicable securities laws and make available to its security Stockholders, as soon as reasonably practicable, an earnings statement satisfying the provisions of Section 11(a) of the Securities Act and the rules and regulations promulgated thereunder;

(xx) provide and cause to be maintained a transfer agent and registrar for all Registrable Securities covered by the applicable Registration Statement from and after a date not later than the effective date of such Registration Statement;

(xxi) use its best efforts to cause all Registrable Securities covered by the applicable Registration Statement to be listed on each securities exchange on which any of the Company's securities are then listed or quoted and on each inter-dealer quotation system on which any of the Company's securities are then quoted;

(xxii) make available upon reasonable notice at reasonable times and for reasonable periods for inspection by the Sponsors, by any underwriter participating in any disposition to be effected pursuant to such Registration Statement and by any attorney, accountant or other agent retained by the Sponsors or any such underwriter, all pertinent financial and other records, pertinent corporate documents and properties of the Company, and cause all of the Company's officers, directors and employees and the independent public accountants who have certified its financial statements to make themselves available to discuss the business of the Company and to supply all information reasonably requested by any such Person in connection with such Registration Statement as shall be necessary to enable them to exercise their due diligence responsibility; provided that any such Person gaining access to information regarding the Company pursuant to this Section 5.05(a)(xxii) shall agree to hold in strict confidence and shall not make any disclosure or use any information regarding the Company that the Company determines in good faith to be confidential, and of which determination such Person is notified, unless (w) the release of such information is requested or required (by deposition, interrogatory, requests for information or documents by a governmental entity, subpoena or similar process), (x) such information is or becomes publicly known other than through a breach of this or any other agreement of which such Person has knowledge, (y) such information is or becomes available to such Person on a non-confidential basis from a source other than the Company or (z) such information is independently developed by such Person; and

(xxiii) in the case of an Underwritten Offering, cause the senior executive officers of the Company to participate in the customary "road show" presentations that may be reasonably requested by the managing underwriter or underwriters in any such Underwritten Offering and otherwise to facilitate, cooperate with, and participate in each proposed offering contemplated herein and customary selling efforts related thereto.

(b) The Company may require each Participating Stockholder to furnish to the Company such information regarding the distribution of such securities and such other information relating to such Stockholder and its ownership of Registrable Securities as the Company may from time to time reasonably request in writing. Each Participating Stockholder

agrees to furnish such information to the Company and to cooperate with the Company as reasonably necessary to enable the Company to comply with the provisions of this Agreement.

(c) Each Participating Stockholder agrees that, upon receipt of any notice from the Company of the happening of any event of the kind described in Section 5.05(a)(v), such Stockholder will forthwith discontinue disposition of Registrable Securities pursuant to such Registration Statement until such Stockholder's receipt of the copies of the supplemented or amended Prospectus contemplated by Section 5.05(a)(v), or until such Stockholder is advised in writing by the Company that the use of the Prospectus may be resumed, and if so directed by the Company, such Stockholder shall deliver to the Company (at the Company's expense) all copies, other than permanent file copies then in such Stockholder's possession, of the Prospectus covering such Registrable Securities current at the time of receipt of such notice. In the event the Company shall give any such notice, the period during which the applicable Registration Statement is required to be maintained effective shall be extended by the number of days during the period from and including the date of the giving of such notice to and including the date when each seller of Registrable Securities covered by such Registration Statement either receives the copies of the supplemented or amended Prospectus contemplated by Section 5.05(a)(v) or is advised in writing by the Company that the use of the Prospectus may be resumed.

Section 5.06. Underwritten Offerings.

(a) Demand and Shelf Registrations. If requested by the underwriters for any Underwritten Offering requested by the Sponsors pursuant to a Registration under Section 5.01 or 5.02, the Company shall enter into an underwriting agreement with such underwriters for such offering, such agreement to be reasonably satisfactory in substance and form to the Company, the Sponsors and the underwriters, and to contain such representations and warranties by the Company and such other terms as are generally prevailing in agreements of that type, including indemnities no less favorable to the recipient thereof than those provided in Section 5.09. The Participating Stockholders shall cooperate with the Company in the negotiation of such underwriting agreement and shall give consideration to the reasonable suggestions of the Company regarding the form thereof. Such Stockholders shall be parties to such underwriting agreement, which underwriting agreement shall (i) contain such representations and warranties by, and the other agreements on the part of, the Company to and for the benefit of such Stockholders as are customarily made by issuers to selling holders in secondary underwritten public offerings and (ii) provide that any or all of the conditions precedent to the obligations of such underwriters under such underwriting agreement also shall be conditions precedent to the obligations of such Stockholders. Such Stockholders shall not be required to make any representations or warranties to or agreements with the Company or the underwriters other than representations, warranties or agreements regarding such Stockholders, such Stockholder's title to the Registrable Securities, such Stockholder's intended method of distribution and any other representations required to be made by such Stockholder (provided that any such representation shall be made on a several basis) under applicable law, and the aggregate amount of the liability of such Stockholder shall not exceed such Stockholder's net proceeds from such Underwritten Offering.

(b) Piggyback Registrations. If the Company proposes to register any of its securities under the Securities Act as contemplated by Section 5.03 and such securities are to be

distributed in an Underwritten Offering through one or more underwriters, the Company shall, if requested by any Stockholder pursuant to Section 5.03 and subject to the provisions of Section 5.03(b), use its reasonable best efforts to arrange for such underwriters to include on the same terms and conditions that apply to the other sellers in such Registration all the Registrable Securities to be offered and sold by such Stockholder among the securities of the Company to be distributed by such underwriters in such Registration. The Participating Stockholders shall be parties to the underwriting agreement between the Company and such underwriters, which underwriting agreement shall (i) contain such representations and warranties by, and the other agreements on the part of, the Company to and for the benefit of such Stockholders as are customarily made by issuers to selling holders in secondary underwritten public offerings and (ii) provide that any or all of the conditions precedent to the obligations of such underwriters under such underwriting agreement also shall be conditions precedent to the obligations of such Stockholders. Any such Stockholder shall not be required to make any representations or warranties to, or agreements with the Company or the underwriters other than representations, warranties or agreements regarding such Stockholder, such Stockholder's title to the Registrable Securities and such Stockholder's intended method of distribution or any other representations required to be made by such Stockholder under applicable law, and the aggregate amount of the liability of such Stockholder shall not exceed such Stockholder's net proceeds from such Underwritten Offering.

(c) Participation in Underwritten Registrations. Subject to provisions of Sections 5.06(a) and (b) above, no Person may participate in any Underwritten Offering hereunder unless such Person (i) agrees to sell such Person's securities on the basis provided in any underwriting arrangements approved by the Persons entitled to approve such arrangements and (ii) completes and executes all questionnaires, powers of attorney, indemnities, underwriting agreements and other documents required under the terms of such underwriting arrangements.

(d) Price and Underwriting Discounts. In the case of an Underwritten Offering under Section 5.01 or 5.02, the price, underwriting discount and other financial terms for the Registrable Securities shall be determined by the Demanding Sponsor(s) (or, in the case of a Shelf Registration, the Sponsor(s) selling Registrable Securities under the Shelf Registration Statement). In addition, in the case of any Underwritten Offering, each of the Stockholders may withdraw their request to participate in the registration pursuant to Section 5.01, 5.02 or 5.03 after being advised of such price, discount and other terms and shall not be required to enter into any agreements or documentation that would require otherwise.

Section 5.07. No Inconsistent Agreements; Additional Rights. The Company shall not hereafter enter into, and is not currently a party to, any agreement with respect to its securities that is inconsistent with the rights granted to the Stockholders by this Agreement. Without the consent of the Sponsors, the Company shall not enter into any agreement granting registration or similar rights to any Person.

Section 5.08. Registration Expenses. All expenses incident to the Company's performance of or compliance with this Agreement shall be paid by the Company, including (i) all registration and filing fees, and any other fees and expenses associated with filings required to be made with the SEC or FINRA, (ii) all fees and expenses in connection with compliance with any securities or "Blue Sky" laws, (iii) all printing, duplicating, word

processing, messenger, telephone, facsimile and delivery expenses (including expenses of printing certificates for the Registrable Securities in a form eligible for deposit with The Depository Trust Company and of printing prospectuses), (iv) all fees and disbursements of counsel for the Company and of all independent certified public accountants of the Company (including the expenses of any special audit and cold comfort letters required by or incident to such performance), (v) Securities Act liability insurance or similar insurance if the Company so desires or the underwriters so require in accordance with then-customary underwriting practice, (vi) all fees and expenses incurred in connection with the listing of the Registrable Securities on any securities exchange or quotation of the Registrable Securities on any inter-dealer quotation system, (vii) all applicable rating agency fees with respect to the Registrable Securities, (viii) all reasonable fees and disbursements of legal counsel for each Sponsor participating in such Registration (or, in the case of a Shelf Registration, each Sponsor selling Registrable Securities under the Shelf Registration Statement), (ix) all fees and expenses of accountants selected by the Demanding Sponsor (or, in the case of a Shelf Registration, the Stockholder selling Registrable Securities under the Shelf Registration Statement), (x) any reasonable fees and disbursements of underwriters customarily paid by issuers or sellers of securities, (xi) all fees and expenses of any special experts or other Persons retained by the Company in connection with any Registration, (xii) all of the Company's internal expenses (including all salaries and expenses of its officers and employees performing legal or accounting duties) and (xiii) all expenses related to the "road-show" for any underwritten offering, including all travel, meals and lodging. All such expenses are referred to herein as "Registration Expenses." The Company shall not be required to pay underwriting discounts and commissions and transfer taxes, if any, attributable to the sale of Registrable Securities.

Section 5.09. Indemnification.

(a) Indemnification by the Company. The Company agrees to indemnify and hold harmless, to the full extent permitted by law, each Stockholder, each member, limited partner or general partner thereof, each member, limited partner or general partner of each such member, limited or general partner, each of their respective Affiliates, officers, directors, stockholders, employees, advisors, and agents and each Person who controls (within the meaning of the Securities Act or the Exchange Act) such Persons and each of their respective Representatives from and against any and all losses, penalties, judgments, suits, costs, claims, damages, liabilities and expenses, joint or several (including reasonable costs of investigation and legal expenses) (each, a "Loss" and collectively "Losses") arising out of or based upon (i) any untrue or alleged untrue statement of a material fact contained in any Registration Statement under which such Registrable Securities were Registered under the Securities Act (including any final, preliminary or summary Prospectus contained therein or any amendment thereof, supplement thereto or any documents incorporated by reference therein) or any other disclosure document produced by or on behalf of the Company or any of its subsidiaries including, without limitation, reports and other documents filed under the Exchange Act, (ii) any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein (in the case of a Prospectus or preliminary Prospectus, in light of the circumstances under which they were made) not misleading or (iii) any actions or inactions or proceedings in respect of the foregoing whether or not such indemnified party is a party thereto; provided that the Company shall not be liable to any particular indemnified party (A) to the extent that any such Loss arises out of or is based upon an untrue statement or alleged untrue

statement or omission or alleged omission made in any such Registration Statement or other document in reliance upon and in conformity with written information furnished to the Company by such indemnified party expressly for use in the preparation thereof or (B) to the extent that any such Loss arises out of or is based upon an untrue statement or omission in a preliminary Prospectus relating to Registrable Securities, if a Prospectus (as then amended or supplemented) that would have cured the defect was furnished to the indemnified party from whom the Person asserting the claim giving rise to such Loss purchased Registrable Securities at least five (5) days prior to the written confirmation of the sale of the Registrable Securities to such Person and a copy of such Prospectus (as amended and supplemented) was not sent or given by or on behalf of such indemnified party to such Person at or prior to the written confirmation of the sale of the Registrable Securities to such Person. This indemnity shall be in addition to any liability the Company may otherwise have. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of such Stockholder or any indemnified party and shall survive the transfer of such securities by such Stockholder. The Company shall also indemnify underwriters, selling brokers, dealer managers and similar securities industry professionals participating in the distribution, their officers and directors and each Person who controls such Persons (within the meaning of the Securities Act and the Exchange Act) to the same extent as provided above with respect to the indemnification of the indemnified parties.

(b) Indemnification by the Participating Stockholders. Each Participating Stockholder agrees (severally and not jointly) to indemnify and hold harmless, to the fullest extent permitted by law, the Company, its directors and officers and each Person who controls the Company (within the meaning of the Securities Act or the Exchange Act) from and against any Losses resulting from (i) any untrue statement of a material fact in any Registration Statement under which such Registrable Securities were Registered under the Securities Act (including any final, preliminary or summary Prospectus contained therein or any amendment thereof or supplement thereto or any documents incorporated by reference therein), or (ii) any omission to state therein a material fact required to be stated therein or necessary to make the statements therein (in the case of a Prospectus or preliminary Prospectus, in light of the circumstances under which they were made) not misleading, in each case, to the extent, but only to the extent, that such untrue statement or omission is contained in any information furnished in writing by such Stockholder to the Company specifically for inclusion in such Registration Statement and has not been corrected in a subsequent writing prior to or concurrently with the sale of the Registrable Securities to the Person asserting the claim. In no event shall the liability of such Stockholder hereunder be greater in amount than the dollar amount of the net proceeds received by such Stockholder under the sale of Registrable Securities giving rise to such indemnification obligation. The Company shall be entitled to receive indemnities from underwriters, selling brokers, dealer managers and similar securities industry professionals participating in the distribution, to the same extent as provided above (with appropriate modification) with respect to information furnished in writing by such Persons specifically for inclusion in any Prospectus or Registration Statement.

(c) Conduct of Indemnification Proceedings. Any Person entitled to indemnification hereunder shall (i) give prompt written notice to the indemnifying party of any claim with respect to which it seeks indemnification (provided that any delay or failure to so notify the indemnifying party shall relieve the indemnifying party of its obligations hereunder only to the extent, if at all, that it is actually prejudiced by reason of such delay or failure) and

(ii) permit such indemnifying party to assume the defense of such claim with counsel reasonably satisfactory to the indemnified party; provided that any Person entitled to indemnification hereunder shall have the right to select and employ separate counsel and to participate in the defense of such claim, but the fees and expenses of such counsel shall be at the expense of such Person unless (A) the indemnifying party has agreed in writing to pay such fees or expenses, (B) the indemnifying party shall have failed to assume the defense of such claim within a reasonable time after receipt of notice of such claim from the Person entitled to indemnification hereunder and employ counsel reasonably satisfactory to such Person, (C) the indemnified party has reasonably concluded (based upon advice of its counsel) that there may be legal defenses available to it or other indemnified parties that are different from or in addition to those available to the indemnifying party, or (D) in the reasonable judgment of any such Person (based upon advice of its counsel) a conflict of interest may exist between such Person and the indemnifying party with respect to such claims (in which case, if the Person notifies the indemnifying party in writing that such Person elects to employ separate counsel at the expense of the indemnifying party, the indemnifying party shall not have the right to assume the defense of such claim on behalf of such Person). If the indemnifying party assumes the defense, the indemnifying party shall not have the right to settle such action without the consent of the indemnified party. No indemnifying party shall consent to entry of any judgment or enter into any settlement which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such indemnified party of an unconditional release from all liability in respect to such claim or litigation without the prior written consent of such indemnified party. If such defense is not assumed by the indemnifying party, the indemnifying party will not be subject to any liability for any settlement made without its prior written consent, but such consent may not be unreasonably withheld. It is understood that the indemnifying party or parties shall not, except as specifically set forth in this Section 5.09(c), in connection with any proceeding or related proceedings in the same jurisdiction, be liable for the reasonable fees, disbursements or other charges of more than one separate firm admitted to practice in such jurisdiction at any one time unless (x) the employment of more than one counsel has been authorized in writing by the indemnifying party or parties, (y) an indemnified party has reasonably concluded (based on the advice of counsel) that there may be legal defenses available to it that are different from or in addition to those available to the other indemnified parties or (z) a conflict or potential conflict exists or may exist (based upon advice of counsel to an indemnified party) between such indemnified party and the other indemnified parties, in each of which cases the indemnifying party shall be obligated to pay the reasonable fees and expenses of such additional counsel or counsels.

(d) Contribution. If for any reason the indemnification provided for in paragraphs (a) and (b) of this Section 5.09 is unavailable to an indemnified party or insufficient in respect of any Losses referred to therein, then the indemnifying party shall contribute to the amount paid or payable by the indemnified party as a result of such Loss (i) in such proportion as is appropriate to reflect the relative fault of the indemnifying party on the one hand and the indemnified party or parties on the other hand in connection with the acts, statements or omissions that resulted in such losses, as well as any other relevant equitable considerations. In connection with any Registration Statement filed with the SEC by the Company, the relative fault of the indemnifying party on the one hand and the indemnified party on the other hand shall be determined by reference to, among other things, whether any untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the indemnifying party or by the indemnified party and the parties'

relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The parties hereto agree that it would not be just or equitable if contribution pursuant to this Section 5.09(d) were determined by pro rata allocation or by any other method of allocation that does not take account of the equitable considerations referred to in this Section 5.09(d). No Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation. The amount paid or payable by an indemnified party as a result of the Losses referred to in Sections 5.09(a) and 5.09(b) shall be deemed to include, subject to the limitations set forth above, any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this Section 5.09(d), in connection with any Registration Statement filed by the Company, a Participating Stockholder shall not be required to contribute any amount in excess of the dollar amount of the net proceeds received by such Stockholder under the sale of Registrable Securities giving rise to such contribution obligation less any amounts paid by such Stockholder pursuant to Section 5.09(b). If indemnification is available under this Section 5.09, the indemnifying parties shall indemnify each indemnified party to the full extent provided in Sections 5.09(a) and 5.09(b) hereof without regard to the provisions of this Section 5.09(d). The remedies provided for in this Section 5.09 are not exclusive and shall not limit any rights or remedies which may otherwise be available to any indemnified party at law or in equity.

Section 5.10. Rules 144 and 144A and Regulation S. The Company covenants that it will file the reports required to be filed by it under the Securities Act and the Exchange Act and the rules and regulations adopted by the SEC thereunder (or, if the Company is not required to file such reports, it will, upon the reasonable request of the Sponsors, make publicly available such necessary information for so long as necessary to permit sales pursuant to Rules 144, 144A or Regulation S under the Securities Act), and it will take such further action as the Sponsors may reasonably request, all to the extent required from time to time to enable the Sponsors to sell Registrable Securities without Registration under the Securities Act within the limitation of the exemptions provided by (i) Rules 144, 144A or Regulation S under the Securities Act, as such Rules may be amended from time to time, or (ii) any similar rule or regulation hereafter adopted by the SEC. Upon the reasonable request of a Stockholder, the Company will deliver to such Stockholder a written statement as to whether it has complied with such requirements and, if not, the specifics thereof.

## ARTICLE VI

### GENERAL PROVISIONS

Section 6.01. Waivers. No waiver of any breach of any of the terms of this Agreement shall be effective unless such waiver is made expressly in writing and executed and delivered by the party against whom such waiver is claimed. No waiver of any breach shall be deemed to be a further or continuing waiver of such breach or a waiver of any other or subsequent breach. Except as otherwise expressly provided herein, no failure on the part of any party to exercise, and no delay in exercising, any right, power or remedy hereunder, or otherwise available in respect hereof at law or in equity, shall operate as a waiver thereof, nor shall any

single or partial exercise of such right, power or remedy by such party preclude any other or further exercise thereof, or the exercise of any other right, power or remedy.

Section 6.02. Conflicts of Interest; Transactions with Affiliates. (a) Subject to the other express provisions of this Agreement or except as otherwise expressly agreed in writing, the Sponsors, each other Stockholder and the officers of the Company at any time and from time to time may engage in and possess interests in other business ventures of any and every type and description, independently or with others, including ones in competition with the Company, with no obligation to offer to the Company, the Sponsors or any other Stockholder or officer the right to participate therein. The Sponsors and the officers of the Company may invest in, or provide services to, any Person that directly or indirectly competes with the Company and shall have no obligation to present any business opportunity to the Company or any of its Stockholders, even if the opportunity is one that the Company might reasonably be deemed to have pursued or had the ability or desire to pursue if granted the opportunity to do so. The Sponsors and the officers of the Company shall not be liable to the Company or any Stockholder for breach of any fiduciary or other duty solely by reason of the fact that the Stockholders or such officers pursue or acquire such business opportunity, direct such business opportunity to another Person or fail to present such business opportunity to the Company (unless such business opportunity was offered expressly to the Sponsors).

(b) Transactions with Affiliates of the Company shall not be void, voidable or subject to change if made on terms that the Board of Directors in good faith determine are no less favorable in the aggregate to the Company than would be obtainable on an arms'-length basis from an unaffiliated third party. No party to such a transaction shall be obligated to obtain a fairness opinion concerning that transaction. Nonetheless, an opinion provided by an independent third party with expertise in the relevant matter to the effect that such a transaction is fair to the Company shall conclusively establish the fairness of that transaction.

(c) Each Stockholder (for itself and on behalf of the Company) hereby, to the fullest extent permitted by applicable law:

(i) confirms that each Sponsor Director, in his or her capacity as director, has no duty to the Company or any of its subsidiaries;

(ii) confirms that each Sponsor Director, in his or her capacity as director, has no duty to any Stockholder (other than the Stockholder who appointed such Sponsor Director);

(iii) confirms that none of the Sponsors has any duty to any other Stockholder or to the Company or any of its subsidiaries other than the specific covenants and agreements set forth in this Agreement;

(iv) acknowledges and agrees that, (A) in the event of any conflict of interest between the Company or any of its subsidiaries, on the one hand, and any Sponsor, on the other hand, such Sponsor (or its respective Sponsor Directors acting in his or her capacity as a director) may act in its best interest and (B) no Sponsor (or its respective Sponsor Directors acting in his or her capacity as a

director), shall be obligated (1) to reveal to the Company or its subsidiaries confidential information belonging to or relating to the business of such person or (2) to recommend or take any action in its capacity as such Stockholder or director, as the case may be, that prefers the interest of the Company or its subsidiaries over the interest of such person; and

(v) waives any claim or cause of action against any Sponsor, any Sponsor Director and any officer, employee, agent or Affiliate of any such person that may from time to time arise in respect of a breach by any such person of any duty or obligation disclaimed under Section 6.02(c)(i) through (iv).

(d) Each Stockholder agrees that the waivers, limitations, acknowledgments and agreements set forth in this Section 6.02 shall not apply to any alleged claim or cause of action against a Sponsor Director, Sponsor, any of a Sponsor's Affiliates or any of their respective employees, officers, directors, agents or authorized representatives based upon the breach or nonperformance by such person of this Agreement or other agreement to which such person is a party.

(e) The provisions of this Section 6.02, to the extent that they restrict the duties and liabilities of a Sponsor or Sponsor Director otherwise existing at law or in equity, are agreed by the Stockholders to replace such other duties and liabilities of such Sponsors or Sponsor Director to the fullest extent permitted by applicable law.

Section 6.03. Publicity and Confidentiality. Each Stockholder agrees that Confidential Information has been and will be made available to it in connection with its interest in the Company. Each Stockholder agrees not to divulge or communicate to a third party, or use for any purpose other than in connection with such Stockholder's investment in the Company, in whole or in part, Confidential Information, without the prior written consent of the Company and the Sponsors; provided that, (i) Confidential Information may be disclosed if required by applicable law or any governmental authority, and (ii) each Stockholder may disclose Confidential Information to its partners, members, advisors, employees, agents, accountants, attorneys or Persons who have expressed a bona fide interest in becoming partners or members in or Permitted Transferees of such Stockholder or its related investment funds (collectively, the "Representatives"), so long as such Representatives agree to keep such information confidential. "Confidential Information" means any information concerning this Agreement or the transactions contemplated hereby and any information received by the Stockholder concerning the Company furnished to the Stockholders in their capacity as stockholders of the Company; provided that Confidential Information does not include (i) information that was or becomes generally available publicly other than, with respect to a Stockholder, as a result of a disclosure by such Stockholder, in violation of this Section 6.03, (ii) information that was or becomes available to the Stockholder or a Representative of such Stockholder on a non-confidential basis from a source other than the Company or (iii) information that the Stockholder or a Representative of the Stockholder independently developed without reference to the Confidential Information or any derivative thereof.

Section 6.04. Assignment; Benefit. (a) The rights and obligations hereunder shall not be assignable without the prior written consent of Hamlet Holdings except as provided

under Article IV. Any assignment of rights or obligations in violation of this Section 6.04 shall be null and void.

(b) Except as set forth in Section 5.09, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and permitted assigns, and there shall be no third-party beneficiaries to this Agreement.

(c) Any Person that acquires Company Shares pursuant to the terms of this Agreement or the amended and restated limited liability company operating agreement of any Stockholder shall execute a counterpart to this Agreement and become a party hereto and such Person and its Company Shares shall be subject to the terms of this Agreement.

Section 6.05. Termination. Article III of this Agreement shall terminate as set forth in Section 3.03. The provisions of Article IV shall terminate as specified therein. The remainder of this Agreement shall terminate automatically (without any action by any party hereto) as to each Stockholder when such Stockholder ceases to hold any Company Shares.

Section 6.06. Severability. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 6.07. Entire Agreement; Amendment. This Agreement (together with the Management Services Agreement, dated as of the Closing Date, by and among the Company and the Sponsors) sets forth the entire understanding and agreement between the parties with respect to the transactions contemplated herein and supersedes and replaces any prior understanding, agreement or statement of intent, in each case written or oral, of any kind and every nature with respect hereto. No provision of this Agreement may be amended, modified or waived in whole or in part at any time without an agreement in writing executed by the Sponsors; provided that (a) any amendment (other than to Articles IV and V) that would have a material adverse effect on a Stockholder shall require the written consent of that Stockholder, (b) Article IV, Article V, this Section 6.07 and the definitions used therein may not be amended without the prior written consent of all Stockholders and (c) Section 3.01(a) to the extent such Section relates to the rights of Co-Invest Hamlet Holdings B, LLC, Apollo Investment Fund VI, L.P. or TPG V Hamlet AIV, L.P., may not be amended without the prior written consent of Co-Invest Hamlet Holdings B, LLC, Apollo Investment Fund VI, L.P., or TPG V Hamlet AIV, L.P., as the case may be. There are no other agreements with respect to the transactions contemplated herein between any Stockholders or any of their Affiliates relating to the Company. Each Party to this Agreement shall receive notice of any amendments and copies of any material amendment to this Agreement.

Section 6.08. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

Section 6.09. Notices. Unless otherwise specified herein, all notices, consents, approvals, reports, designations, requests, waivers, elections and other communications authorized or required to be given pursuant to this Agreement shall be in writing and shall be

given or made (and shall be deemed to have been duly given or made upon receipt) by personal hand-delivery, by facsimile transmission, by electronic mail, by mailing the same in a sealed envelope, registered first-class mail, postage prepaid, return receipt requested, or by air courier guaranteeing overnight delivery, sent to the Stockholders at the following addresses (or such other address as such Stockholders may specify by notice to the Company):

If to the Company:

One Caesars Palace Drive  
Las Vegas, NV 89109  
Attention: Steve Brammell  
Telephone: 702-407-6393  
Fax: 702-407-6418

with a copy to each of (which shall not constitute notice):

Cleary Gottlieb Steen & Hamilton LLP  
One Liberty Plaza  
New York, NY 10006  
Attention: Michael A. Gerstenzang, Esq.  
Telephone: 212.225.2000  
Fax: 212.225.3999

and

Wachtell, Lipton, Rosen & Katz  
51 West 52<sup>nd</sup> Street  
New York, New York 10019  
Attention: Steven A. Cohen, Esq.  
Gregory E. Ostling, Esq.  
Telephone: 212.403.1000  
Facsimile: 212.403.2000

if to Apollo, to:

Apollo Management VI, L.P.  
9 West 57<sup>th</sup> Street  
43<sup>rd</sup> Floor  
New York, New York 10019  
Attention: Eric L. Press  
Telephone: 212.515.3243  
Facsimile: 212.515.3288

with a copy (which shall not constitute notice) to:

Wachtell, Lipton, Rosen & Katz  
51 West 52<sup>nd</sup> Street  
New York, New York 10019

Attention: Steven A. Cohen, Esq.  
Gregory E. Ostling, Esq.

Telephone: 212.403.1000

Facsimile: 212.403.2000

If to TPG, to:

TPG Capital, L.P.

301 Commerce Street

Suite 3300

Fort Worth, Texas 76102

Attention: Clive D. Bode

Telephone: 817.871.4000

Fax: 817.871.4088

with a copy (which shall not constitute notice) to:

Cleary, Gottlieb, Steen & Hamilton LLP

One Liberty Plaza

New York, NY 10006

Attention: Michael A. Gerstenzang, Esq.

Telephone: 212.225.2000

Fax: 212.225.3999

If to a Co-Investment Entity, to both of the Sponsors.

Section 6.10. Governing Law; Jurisdiction. THIS AGREEMENT SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE, WITHOUT REGARD TO THE CONFLICTS OF LAW PRINCIPLES THEREOF. ANY ACTION OR PROCEEDING AGAINST THE PARTIES RELATING IN ANY WAY TO THIS AGREEMENT MAY BE BROUGHT AND ENFORCED EXCLUSIVELY IN THE COURTS OF THE STATE OF DELAWARE OR (TO THE EXTENT SUBJECT MATTER JURISDICTION EXISTS THEREFOR) THE U.S. DISTRICT COURT FOR THE DISTRICT OF DELAWARE, AND THE PARTIES IRREVOCABLY SUBMIT TO THE JURISDICTION OF BOTH SUCH COURTS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING.

Section 6.11. Waiver of Jury Trial. BECAUSE DISPUTES ARISING IN CONNECTION WITH COMPLEX FINANCIAL TRANSACTIONS ARE MOST QUICKLY AND ECONOMICALLY RESOLVED BY AN EXPERIENCED AND EXPERT PERSON AND THE PARTIES WISH APPLICABLE STATE AND FEDERAL LAWS TO APPLY (RATHER THAN ARBITRATION RULES), THE PARTIES DESIRE THAT THEIR DISPUTES BE RESOLVED BY A JUDGE, APPLYING SUCH APPLICABLE LAWS. THEREFORE, TO ACHIEVE THE BEST COMBINATION OF THE BENEFITS OF THE JUDICIAL SYSTEM, THE PARTIES HERETO WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT OR PROCEEDING BROUGHT TO ENFORCE OR DEFEND ANY RIGHT OR REMEDIES UNDER THIS AGREEMENT OR ANY DOCUMENTS ENTERED

INTO IN CONNECTION WITH THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREIN. The Company or any Stockholder may file an original counterpart or a copy of this Section 6.11 with any court as written evidence of the consent of the Stockholders to the waiver of their rights to trial by jury.

Section 6.12. Specific Performance. Each party to this Agreement acknowledges that a remedy at law for any breach or attempted breach of this Agreement will be inadequate, agrees that each other party to this Agreement shall be entitled to specific performance and injunctive and other equitable relief in case of any such breach or attempted breach and further agrees to waive (to the extent legally permissible) any legal conditions required to be met for the obtaining of any such injunctive or other equitable relief (including posting any bond in order to obtain equitable relief).

Section 6.13. No Third Party Liability. This Agreement may only be enforced against the named parties hereto. All claims or causes of action (whether in contract or tort) that may be based upon, arise out of or relate to this Agreement, or the negotiation, execution or performance of this Agreement (including any representation or warranty made in or in connection with this Agreement or as an inducement to enter into this Agreement), may be made only against the entities that are expressly identified as parties hereto; and no past, present or future director, officer, employee, incorporator, member, partner, stockholder, Affiliate, agent, attorney or representative of any party hereto (including any Person negotiating or executing this Agreement on behalf of a party hereto), unless party to this Agreement, shall have any liability or obligation with respect to this Agreement or with respect any claim or cause of action (whether in contract or tort) that may arise out of or relate to this Agreement, or the negotiation, execution or performance of this Agreement (including a representation or warranty made in or in connection with this Agreement or as an inducement to enter into this Agreement).

Section 6.14. Further Assurances. In connection with this Agreement and the transactions contemplated hereby, each Stockholder shall execute and deliver any additional documents and instruments and perform any additional acts that the Company or the Sponsors determine to be necessary or appropriate to effectuate and perform the provisions of this Agreement and those transactions.

Section 6.15. Splits; Issuances. If, and as often as, there are any changes in the Company Shares by way of stock split, stock dividend, combination or reclassification, or through merger, consolidation, reorganization or recapitalization, or by any other means, appropriate adjustment shall be made in the provisions of this Agreement, as may be required, so that the rights, privileges, duties and obligations hereunder shall continue with respect to the Company Shares as so changed. In the event additional shares of Company Shares are issued by the Company to Apollo, TPG, an Apollo Member or a TPG Member, or the Co-Investment Entities at any time during the term of this Agreement, either directly or upon the exercise or exchange of securities of the Company exercisable for or exchangeable into shares or Company Shares, such additional shares of Company Shares, as a condition to their issuance, shall become subject to the terms and provisions of this Agreement.

[REST OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS HEREOF, the parties hereto have duly executed this Agreement as of the date first above written.

APOLLO HAMLET HOLDINGS, LLC

By: /s/ Laurie Medley

Name: Laurie Medley

Title: Vice President

APOLLO HAMLET HOLDINGS B, LLC

By: /s/ Laurie Medley

Name: Laurie Medley

Title: Vice President

TPG HAMLET HOLDINGS, LLC

By: /s/ David Bonderman

Name: David Bonderman

Title: President

TPG HAMLET HOLDINGS B, LLC

By: /s/ David Bonderman

Name: David Bonderman

Title: President

CO-INVEST HAMLET HOLDINGS, SERIES LLC

By: /s/ Anthony Civale

Name: Anthony Civale

Title: Secretary

CO-INVEST HAMLET HOLDINGS B, LLC

By: /s/ Anthony Civale

Name: Anthony Civale

Title: Secretary

HAMLET HOLDINGS LLC

By: /s/ Anthony Civale

Name: Anthony Civale

Title: Secretary

HARRAH'S ENTERTAINMENT, INC.

By: /s/ Anthony Civale

Name: Anthony Civale

Title: Director

APOLLO INVESTMENT FUND VI, L.P.

(solely with respect to Sections 3.01 and 6.07)

By: Apollo Advisors VI, L.P., its General Partner

By: Apollo Capital Management VI, LLC, its General Partner

By: /s/ Laurie Medley

Name: LAURIE MEDLEY

Title: VICE PRESIDENT

TPG V HAMLET AIV, L.P.

(solely with respect to Sections 3.01 and 6.07)

By: /s/ Clive D. Bode

Name: Clive D. Bode

Title: Vice President of

TPG Advisors V, Inc.,

The general partner of

TPG GenPar V, L. P.,

the general partner of

TPG V Hamlet AIV, L.P.

## SERVICES AGREEMENT

This Services Agreement (the "Agreement") is entered into as of January 28, 2008, by and among Harrah's Entertainment, Inc., a Delaware corporation (the "Company"), Apollo Management VI, L.P., on behalf of affiliated investment funds ("Apollo Management"), Apollo Alternative Assets, L.P. ("Apollo Alternative," and, together with Apollo Management, "Apollo") and TPG Capital, L.P. ("TPG," and, together with Apollo, the "Managers").

WHEREAS, pursuant to an Agreement and Plan of Merger, dated as of December 19, 2006, by and among Hamlet Holdings LLC, a Delaware limited liability company, Hamlet Merger Inc., a Delaware corporation and a wholly owned subsidiary of Hamlet Holdings LLC, and the Company (as amended, the "Merger Agreement"), Hamlet Merger Inc. has been merged with and into the Company (the "Merger") with the Company surviving such merger;

WHEREAS, certain investment funds affiliated with Apollo and TPG (collectively, the "Funds") are making an equity investment in the Company in connection with the Merger; and

WHEREAS, the Company wishes to retain the Managers to provide certain management and advisory services to the Company, and the Managers are willing to provide such services on the terms set forth below.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Services. Each Manager hereby severally agrees that, during the term of this Agreement (the "Term"), it will provide to the Company, to the extent requested by the Company and mutually agreed by the Company and each Manager, by and through itself and/or such Manager's successors, assigns, affiliates, officers, partners, directors, employees, agents and/or representatives and third parties (collectively hereinafter referred to as the "Manager Designees"), as such Manager in its sole discretion may designate from time to time, management, advisory and consulting services in relation to the affairs of the Company; provided that the responsibilities of one Manager shall not be substantially disproportionate to the responsibilities of any other Manager. The Company shall request such services by way of written notice to the Managers, which notice shall specify the services required of the Managers and shall include all background material necessary for the Managers to complete such services. Such management, advisory and consulting services shall include, without limitation:

(a) advice in connection with the negotiation and consummation of agreements, contracts, documents and instruments necessary to provide the Company with financing on terms and conditions satisfactory to the Company and its respective subsidiaries;

(b) advice in connection with acquisition, disposition and change of control transactions involving the Company or its subsidiaries;

(c) financial, managerial and operational advice in connection with operations, including, without limitation, advice with respect to the development and implementation of strategies for improving the operating, marketing and financial performance of the Company or its subsidiaries; and

(d) such other services (which may include financial and strategic planning and analysis, consulting services, human resources and executive recruitment services and other services) as the Managers and the Company may from time to time agree in writing.

The Managers or the Manager Designees will devote such time and efforts to the performance of the services contemplated hereby as the Managers deem reasonably necessary or appropriate; provided, however, that no minimum number of hours is required to be devoted by the Managers or the Manager Designees on a weekly, monthly, annual or other basis. The Company acknowledges that each of the services are not exclusive to the Company or its subsidiaries and that the Managers and the Manager Designees may render similar services to other persons and entities. The Managers and the Company understand that the Company or its subsidiaries or affiliates (other than the Managers or their affiliates) may at times engage one or more financial advisor, consultant, investment bankers or financial advisers or similar agents to provide services in addition to, but not in lieu of, services provided by the Managers and the Manager Designees under this Agreement. In providing services to the Company or its subsidiaries, the Managers and Manager Designees will act as independent contractors and it is expressly understood and agreed that this Agreement is not intended to create, and does not create, any partnership, agency, joint venture or similar relationship and that no party has the right or ability to contract for or on behalf of any other party or to effect any transaction for the account of any other party.

## 2. Payment of Fees.

(a) As consideration to the Managers for their agreement to render the services in Section 1, on the date hereof, the Company will pay to the Managers (or their respective Manager Designees) an aggregate transaction fee equal to \$200,000,000 (two hundred million dollars) (the "Transaction Fee"). The Transaction Fee will be divided among the Managers as follows: (i) Apollo or its designee will be entitled to 50% and (ii) TPG or its designee will be entitled to 50%. Neither Manager nor any of their respective affiliates shall be paid any separate fee in connection with the Merger other than the fees contemplated by this Agreement. In addition to the Transaction Fee, on the date hereof, the Company will pay to the Managers (or their respective Manager Designees), upon obtaining the unanimous consent of the Managers as to the amounts to be paid, an amount equal to all out-of-pocket expenses incurred by or on behalf of Hamlet Holdings LLC and each Manager or their respective affiliates, including, without limitation, (i) the reasonable fees, expenses and disbursements of lawyers, accountants, consultants and other advisors that may have been retained by the Company and/or any Manager or its affiliates and (ii) any fees (including any financing fees) related to the Merger (all such fees and expenses, in the aggregate, the "Covered Costs").

(b) During the Term, the Company will pay to the Managers (or their respective Manager Designees) an annual monitoring fee equal to the greater of (x) \$30 million and (y) 1.0% (one percent) of the Company's EBITDA (as defined below) (the "Monitoring Fee") as compensation for the services provided by the Managers or the Manager Designees under this Agreement, with such fee being payable by the Company (including the method and timing of payment) as reasonably determined and mutually agreed to by Apollo, TPG and the Company; provided that the Monitoring Fee shall be payable in respect of the period from the date of consummation of the Merger through the end of the calendar quarter during which such

consummation occurs shall be pro rated based on the number of days in such period; provided, further, that the Managers or Manager Designees may, with the unanimous consent of the Managers, pay, or cause Merger Sub to pay, any portion of the Monitoring Fee to any third-party in respect of services provided from time to time by such third party to the Company. The Managers or Manager Designees retain the right to defer any portion of the Monitoring Fee without waiving the right to receive such payment at a future date. For purposes of calculating the Monitoring Fee, "EBITDA" shall have the meaning set forth in the credit agreement, dated January 28, 2008, by and among the Company and the other parties thereto (the "Credit Agreement"), as applied to the Company and its Subsidiaries on a consolidated basis.

(c) During the Term, in addition to the fees paid pursuant to Section 2(b), the Company will pay to the Managers (or their respective Manager Designees) an aggregate fee (the "Subsequent Fee") in connection with the consummation of any financing or refinancing (equity or debt), dividend, recapitalization, acquisition, disposition, spin-off or split-off transactions involving the Company or any of its direct or indirect subsidiaries equal to customary fees charged by internationally-recognized investment banks for serving as a financial advisor in similar transactions, such fee to be due and payable for the foregoing services at the closing of such transaction.

(d) Each payment made pursuant to this Section 2 shall be paid by wire transfer of immediately available federal funds to the accounts specified on Schedule 1 hereto, or to such respective other account(s) as the respective Managers may specify to the Company in writing prior to such payment. Each payment made pursuant to this Section 2 (other than the Covered Costs) shall be allocated among the Managers (or their respective Manager Designees) as follows:

(i) Apollo will be entitled to 50%; and (ii) TPG will be entitled to 50%; provided that such allocation shall be adjusted on the date on which payment is due under this Section 2 to reflect any transfers of Company Shares (as defined in the Stockholders' Agreement) owned by the Sponsor (as defined in the Stockholders' Agreement) affiliated with a Manager and following the date hereof (such Manager, a "Transferring Manager"), other than (x) transfers to affiliates of such Transferring Manager or (y) pro rata transfers by both Sponsors (such allocation, as adjusted from time to time, the "Allocation Percentage"). For the avoidance of doubt, upon a transfer giving rise to an adjustment pursuant to the preceding sentence (i) the Transferring Manager's Allocation Percentage shall be equal to (x) the number of Company Shares held by the Sponsor affiliated with such Transferring Manager after giving effect to the transfer over (y) the total number of Company Shares held by both Sponsors after giving effect to such transfer, and (ii) the Allocation Percentage of the non-Transferring Manager shall be equal to 100% minus the Transferring Manager's Allocation Percentage determined in clause (i) above.

(e) Each payment made to a Manager pursuant to this Section 2 shall be received in respect of the Affiliates of such Manager investing in the Company as provided by such Manager in writing to the Company prior to such payment.

3. Deferral. In the event that any financing or similar agreements to which the Company is a party and that have been approved by both Sponsors in accordance with the Stockholders' Agreement (the "Financing Documents") restrict the payment of all or any portion of any fee payable to the Managers (or their respective Manager Designees) pursuant to Section 2 above for any payment period (such restricted fees, the "Deferred Fees"), the amount of fees paid to each

Manager and Manager Designee in such period will be reduced pro rata (based on aggregate fees payable to each such Manager or their respective Manager Designee), and any Deferred Fees will accrue in the immediately succeeding period in which such amounts could, consistent with the Financing Documents, be paid, and will be paid in such succeeding period (in addition to such other amounts that would otherwise be payable at such time) in the manner set forth in Section 2.

4. Term. This Agreement will continue in full force and effect until the last day of the quarter in which the tenth anniversary of the consummation of the Merger occurs; provided that this Agreement shall be automatically extended each December 31 for an additional year unless the Managers (acting unanimously) or the Company provide written notice of their desire not to automatically extend the term of this Agreement to the other parties hereto at least ninety (90) days prior to such December 31; provided, further, that (x) this Agreement may be terminated at any time upon unanimous consent of the Managers and (y) this Agreement shall terminate automatically immediately prior to the earlier of (i) an Initial Public Offering (as defined in the Stockholders' Agreement) or (ii) a transfer or issuance of equity securities of the Company (including by way of a merger, consolidation, amalgamation, share exchange or other form of similar business combination), in a single or series of related transactions, resulting in a Person or Persons other than the existing stockholders owning, directly or indirectly, a majority of the voting power of the applicable Company, upon the consummation of such transfer or issuance, or the sale of all or substantially all of the assets of the Company (any such sale transaction, a "Sale"), in each case, unless otherwise agreed by both Managers, and without any further action by the Company or Apollo or TPG, (i) each of the Company, Apollo and TPG shall be released from any and all obligations and liabilities with respect to provision of the management, advisory and consulting services pursuant to this Agreement and payment of the Transaction Fee, the Monitoring Fee, the Subsequent Fee or any other fees pursuant to this Agreement (other than any unreimbursed expenses of Apollo or TPG owing and payable pursuant to Section 5(a)), and this Agreement, other than Section 4 through Section 14, shall have no further force or effect and (ii) in consideration of the termination provided in clause (i), the Company shall pay to each Manager (or their respective Manager Designees), via wire transfer of immediately available funds payable immediately prior to either of an Initial Public Offering or Sale, as the case may be, a lump-sum amount equal to the net present value of the remaining Transaction Fee, the Monitoring Fee, the Subsequent Fee or any other fees pursuant to this Agreement owing and payable by the Company to such Manager (or its Manager Designees) from the date of such Initial Public Offering or Sale, as the case may be, until the expiration of the term of this Agreement (which amount shall be determined using an annual discount rate equal to the then-current rate of interest on the Company's revolving credit facility, and assuming that EBITDA would have grown at a rate equal to the greater of (x) 6%, compounded annually and (y) the compounded annual EBITDA growth rate for the last two completed fiscal years). In the event of an Initial Public Offering or Sale that, in either case, includes non-cash consideration, each Manager may elect for it or its Manager Designees to receive all or any portion of any amounts payable pursuant to this Agreement as a result of such Initial Public Offering or Sale in the form of such non-cash consideration, valued at the sale price.

## 5. Expenses; Indemnification.

(a) Expenses. The Company will pay to the Managers (or their respective Manager Designees) on demand all Reimbursable Expenses whether incurred prior to or following the date of this Agreement. As used herein, “Reimbursable Expenses” means (i) all out-of-pocket expenses incurred following the consummation of the Merger relating to the services provided by the Managers, their respective affiliates, or the Manager Designees to the Company or any of its affiliates from time to time (including, without limitation, all air travel (by first class on a commercial airline or by charter, as determined by the Managers or the Manager Designees) and other travel related expenses), (ii) all out-of-pocket legal expenses incurred by the Managers, their respective affiliates or the Manager Designees in connection with the enforcement of rights or taking of actions under this Agreement, the Merger Agreement or any related documents or instruments, whether incurred prior to or following the date of this Agreement, and (iii) all expenses incurred by the Managers, their respective affiliates or the Manager Designees which are properly allocable to the Company, including in connection with their management and operations, whether incurred prior to or following the date of this Agreement.

(b) Indemnity and Liability. The Company will indemnify, exonerate and hold the Managers, the Manager Designees and each of their respective partners, shareholders, members, affiliates, associated investment funds, directors, officers, fiduciaries, managers, controlling persons, employees and agents and each of the partners, shareholders, members, affiliates, associated investment funds, directors, officers, fiduciaries, managers, controlling persons, employees and agents of each of the foregoing (collectively, the “Indemnitees”) free and harmless from and against any and all actions, causes of action, suits, claims, liabilities, losses, damages and costs and out-of-pocket expenses in connection therewith (including attorneys’ fees and expenses) incurred by the Indemnitees or any of them before or after the date of this Agreement (collectively, the “Indemnified Liabilities”), arising out of any action, cause of action, suit, arbitration, investigation or claim arising out of, or in any way relating to (i) this Agreement, the Merger Agreement, any transaction to which the Company is a party or any other circumstances with respect to the Company or (ii) operations of, or services provided by the Managers or the Manager Designees to, the Company, or any of their respective affiliates from time to time; provided that the foregoing indemnification rights will not be available to the extent that any such Indemnified Liabilities arose on account of such Indemnitee’s willful misconduct; and provided, further, that if and to the extent that the foregoing undertaking may be unavailable or unenforceable for any reason, the Company hereby agrees to make the maximum contribution to the payment and satisfaction of each of the Indemnified Liabilities which is permissible under applicable law. For purposes of this Section 5(b), none of the circumstances described in the limitations contained in the two provisos in the immediately preceding sentence will be deemed to apply absent a final non-appealable judgment of a court of competent jurisdiction to such effect, in which case to the extent any such limitation is so determined to apply to any Indemnitee as to any previously advanced indemnity payments made by the Company, then such payments will be promptly repaid by such Indemnitee to the Company without interest. The rights of any Indemnitee to indemnification hereunder will be in addition to any other rights any such person may have under any other agreement or instrument referenced above or any other agreement or instrument to which such Indemnitee is or becomes a party or is or otherwise becomes a beneficiary or under law or regulation.

6. Disclaimer and Limitation of Liability; Opportunities.

(a) Disclaimer; Standard of Care. None of the Managers nor any of their respective Manager Designee makes any representations or warranties, express or implied, in respect of the services to be provided by the Managers or the Manager Designees hereunder. In no event will the Managers, the Manager Designees or Indemnitees be liable to the Company or any of its affiliates for any act, alleged act, omission or alleged omission that does not constitute willful misconduct of the Managers or the Manager Designees as determined by a final, non-appealable determination of a court of competent jurisdiction.

(b) Freedom to Pursue Opportunities. In recognition that the Managers, the Manager Designees and their respective Indemnitees currently have, and will in the future have or will consider acquiring, investments in numerous companies with respect to which the Managers, the Manager Designees or their respective Indemnitees may serve as an advisor, a director or in some other capacity, and in recognition that each Manager, each Manager Designee and their respective Indemnitees have myriad duties to various investors and partners, and in anticipation that the Company on the one hand and each Manager and Manager Designee (or one or more of their respective Indemnitees or portfolio companies), on the other hand, may engage in the same or similar activities or lines of business and have an interest in the same areas of corporate opportunities, and in recognition of the benefits to be derived by the Company hereunder and in recognition of the difficulties which may confront any advisor who desires and endeavors fully to satisfy such advisor's duties in determining the full scope of such duties in any particular situation, the provisions of this Section 6(b) are set forth to regulate, define and guide the conduct of certain affairs of the Company as they may involve the Managers, the Manager Designees or their respective Indemnitees. Except as the Managers or the Manager Designees, may otherwise agree in writing after the date hereof:

- (i) The Managers, the Manager Designees and their respective Indemnitees will have the right: (A) to directly or indirectly engage in any business (including, without limitation, any business activities or lines of business that are the same as or similar to those pursued by, or competitive with, the Company and its subsidiaries), (B) to directly or indirectly do business with any client or customer of the Company or its subsidiaries, (C) to take any other action that a Manager or a Manager Designee believes in good faith is necessary to or appropriate to fulfill its obligations as described in the first sentence of this Section 6(b), (D) not to communicate or present potential transactions, matters or business opportunities to the Company or any of its subsidiaries, and to pursue, directly or indirectly, any such opportunity for itself, and to direct any such opportunity to another Person, and (E) to take any other action permitted pursuant to Section 6.02 of the Stockholders' Agreement or Article XII of the amended and restated certificate of incorporation of the Company.
- (ii) Except as provided in Section 6(a), none of the Managers, the Manager Designees nor any of their respective Indemnitees will be liable to the Company or any of its affiliates for breach of any duty (contractual or

otherwise) by reason of any activities or omissions of the types referred to in this Section 6(b) or of any such Person's participation therein.

(c) Limitation of Liability. In no event will a Manager, a Manager Designee or any of their respective Indemnitees be liable to the Company or any of its affiliates for any indirect, special, incidental or consequential damages, including, without limitation, lost profits or savings, whether or not such damages are foreseeable, or for any third party claims (whether based in contract, tort or otherwise), relating to the services to be provided by a Manager or a Manager Designee hereunder.

7. Assignment, etc. Except as provided below, none of the parties hereto will have the right to assign this Agreement without the prior written consent of each of the other parties. Notwithstanding the foregoing, (a) each Manager may assign all or part of its rights and obligations hereunder to any of its respective affiliates that provides services similar to those called for by this Agreement, in which event such Manager will no longer be entitled to any fees under Section 2 and reimbursement of expenses under Section 2(a) and Section 5(a) and will be released of all of its obligations hereunder and (b) the provisions hereof for the benefit of Indemnitees of the Managers will inure to the benefit of such Indemnitees and their successors and assigns.

8. Amendments and Waivers. No amendment or waiver of any term, provision or condition of this Agreement will be effective, unless given in writing by both Managers and executed by the Company; provided that any Manager may waive any portion of any fee to which it is entitled pursuant to this Agreement, and, unless otherwise directed by the Manager, such waived portion will revert to the Company. No waiver on any one occasion will extend to or effect or be construed as a waiver of any right or remedy on any future occasion. No course of dealing of any person nor any delay or omission in exercising any right or remedy will constitute an amendment of this Agreement or a waiver of any right or remedy of any party hereto.

9. Governing Law; Jurisdiction. THIS AGREEMENT SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE, WITHOUT REGARD TO THE CONFLICTS OF LAW PRINCIPLES THEREOF. ANY ACTION OR PROCEEDING AGAINST THE PARTIES RELATING IN ANY WAY TO THIS AGREEMENT MAY BE BROUGHT AND ENFORCED EXCLUSIVELY IN THE COURTS OF THE STATE OF DELAWARE OR (TO THE EXTENT SUBJECT MATTER JURISDICTION EXISTS THEREFOR) THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK SITTING IN MANHATTAN, AND THE PARTIES IRREVOCABLY SUBMIT TO THE JURISDICTION OF BOTH SUCH COURTS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING.

10. WAIVER OF JURY TRIAL. BECAUSE DISPUTES ARISING IN CONNECTION WITH COMPLEX FINANCIAL TRANSACTIONS ARE MOST QUICKLY AND ECONOMICALLY RESOLVED BY AN EXPERIENCED AND EXPERT PERSON AND THE PARTIES WISH APPLICABLE STATE AND FEDERAL LAWS TO APPLY (RATHER THAN ARBITRATION RULES), THE PARTIES DESIRE THAT THEIR DISPUTES BE RESOLVED BY A JUDGE, APPLYING SUCH APPLICABLE LAWS. THEREFORE, TO ACHIEVE THE BEST COMBINATION OF THE BENEFITS OF THE JUDICIAL SYSTEM,

THE PARTIES HERETO WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT OR PROCEEDING BROUGHT TO ENFORCE OR DEFEND ANY RIGHT OR REMEDIES UNDER THIS AGREEMENT OR ANY DOCUMENTS ENTERED INTO IN CONNECTION WITH THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREIN. The Company or any Manager may file an original counterpart or a copy of this Section 10 with any court as written evidence of the consent of the parties to the waiver of their rights to trial by jury.

11. Entire Agreement. This Agreement contains the entire understanding of the parties with respect to the subject matter hereof and supersedes any prior communication or agreement with respect thereto.

12. Notice. Unless otherwise specified herein, all notices, consents, approvals, reports, designations, requests, waivers, elections and other communications authorized or required to be given pursuant to this Agreement shall be in writing and shall be given or made (and shall be deemed to have been duly given or made upon receipt) by personal hand-delivery, by facsimile transmission, by electronic mail, by mailing the same in a sealed envelope, registered first-class mail, postage prepaid, return receipt requested, or by air courier guaranteeing overnight delivery, sent to the Stockholders at the following addresses (or such other address as such Stockholders may specify by notice to the Company):

If to the Company (with a copy, which shall not constitute notice, to Apollo and TPG), to:

One Caesars Palace Drive  
Las Vegas, NV 89109  
Attention: Steve Brammell  
Telephone: 702-407-6393  
Fax: 702-407-6418

with a copy to each of (which shall not constitute notice):

Cleary Gottlieb Steen & Hamilton LLP  
One Liberty Plaza  
New York, NY 10006  
Attention: Paul J. Shim, Esq.  
Telephone: 212.225.2930  
Fax: 212.225.3999

and

Wachtell, Lipton, Rosen & Katz  
51 West 52nd Street  
New York, New York 10019  
Attention: Steven A. Cohen, Esq.  
Gregory E. Ostling, Esq.  
Telephone: 212.403.1000  
Facsimile: 212.403.2000

If to Apollo Management, to:

Apollo Management VI, L.P.  
9 West 57th Street  
New York, NY 10019  
Attention: Eric L. Press  
Facsimile: 212.515.3288

with a copy (which shall not constitute notice) to:

Wachtell, Lipton, Rosen & Katz  
51 West 52nd Street  
New York, NY 10019  
Attention: Steven A. Cohen  
Gregory E. Ostling  
Facsimile: 212.403-2364

If to Apollo Alternative, to:

Apollo Alternative Assets, L.P.  
c/o Apollo Management VI, L.P.  
9 West 57th Street  
New York, NY 10019  
Attention: Eric L. Press  
Facsimile: 212.515.3288

with a copy (which shall not constitute notice) to:

Wachtell, Lipton, Rosen & Katz  
51 West 52nd Street  
New York, NY 10019  
Attention: Steven A. Cohen  
Gregory E. Ostling  
Facsimile: 212.403-2364

If to TPG, to:

TPG Capital, L.P.  
301 Commerce Street  
Suite 3300  
Fort Worth, Texas 76102  
Attention: Clive D. Bode  
Facsimile: (817) 871-4088

with a copy (which shall not constitute notice) to:

Cleary Gottlieb Steen & Hamilton LLP  
One Liberty Plaza  
New York, NY 10006  
Attention: Paul J. Shim  
Facsimile: (212) 225-3999

13. Severability. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

14. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

*[Remainder of Page Intentionally Left Blank]*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

**HARRAH'S ENTERTAINMENT, INC.**

By: /s/ Anthony Civale

Name: Anthony Civale

Title: Director

**APOLLO MANAGEMENT VI, L.P.**

on behalf of affiliated investment funds

By: AIF VI Management, LLC,  
its general partner

By: /s/ Laurie Medley

Name: Laurie Medley

Title: Vice President

**APOLLO ALTERNATIVE ASSETS, L.P.**

By: Apollo Alternative Assets GP Limited,  
its general partner

By: /s/ Laurie Medley

Name: Laurie Medley

Title: Vice President

**TPG CAPITAL, L.P.**

**By:** Tarrant Capital, LLC, its general partner

By: /s/ Clive D. Bode

Name: Clive D. Bode

Title: Vice President

**EMPLOYMENT AGREEMENT**

THIS AGREEMENT, made as of January 28, 2008, between Harrah's Entertainment, Inc., with offices at One Caesars Palace Drive, Las Vegas, Nevada (the "Company"), and Gary W. Loveman ("Executive").

The Company and Executive agree as follows:

1. Introductory Statement. The Company desires to secure the services of Executive as Chief Executive Officer and President effective on the Closing Date of the merger (the "Effective Date") between Hamlet Merger Inc. and Harrah's Entertainment, Inc. (the "Merger"), as defined in the agreement and plan of merger (the "Merger Agreement") dated December 19, 2006, by and among Hamlet Holdings LLC, Hamlet Merger, Inc., and Harrah's Entertainment, Inc., and Executive is willing to execute this Agreement with respect to his employment. This Agreement supersedes the employment agreement between the Company and Executive dated September 4, 2002, as amended on October 31, 2005 (the "Prior Employment Agreement") and the Severance Agreement between the Company and Executive dated January 1, 2003 (the "Severance Agreement").

The Company hereby agrees to employ Executive, and Executive hereby agrees to be employed by the Company, subject to the terms and conditions of this Agreement, for a period beginning on the Effective Date and ending on the fifth anniversary thereof (the "Initial Term"); provided that, on the fifth anniversary and each anniversary of the Effective Date thereafter, the employment period shall be extended by one year unless at least sixty (60) days prior to such anniversary, the Company or Executive delivers a written notice (a "Notice of Non-Renewal") to the other party that the employment period shall not be so extended (the Initial Term as from time to time extended or renewed, the "Employment Term").

2. Agreement of Employment. Effective as of the Effective Date, the Company agrees to, and hereby does, employ Executive, and Executive agrees to, and hereby does accept, continued employment by the Company, in a full-time capacity as Chief Executive Officer and President pursuant to the provisions of this Agreement and of the bylaws of the Company, and subject to the control of the Board of Directors (the "Board"). It is understood that Executive's positions as Chief Executive Officer and President are subject to his yearly re-election to these positions by the Board. During the Employment Term, for so long as Executive remains Chief Executive Officer and President of the Company, the Company shall use its best efforts to cause the Board to appoint Executive as a member of the Board or cause Executive to be nominated for election to the Board by the shareholders of the Company, if applicable. (See Section 8 herein for Executive's rights if such re-election as Chief Executive Officer and President or appointment or election as a member of the Board does not occur during the term of this Agreement).

3. Executive's Obligations. During the period of his service under this Agreement, Executive shall devote substantially all of his time and energy during business hours, faithfully and to the best of his ability, to the supervision and conduct of the business and affairs of the Company and to the furtherance of its interests, and to such other duties as directed by the Board. (Executive may serve on the board of directors of other companies with Board approval (which

will not be unreasonably withheld), and may participate in civic and charitable endeavors of his choosing, in each case if such service or participation does not individually or in the aggregate substantially interfere with his primary duties or create a conflict of interest.)

#### 4. Compensation.

4.1 Base Salary. As compensation for all services performed by Executive under and during the Employment Term, the Company shall pay to Executive a base salary at the rate of \$2,000,000.00 per year, in equal bi-weekly installments in accordance with its customary payroll practices. The Compensation Committee of the Board (or any successor committee responsible for setting compensation levels for executives, the "Committee") shall, in good faith, review the salary of Executive, on an annual basis, with a view to consideration of appropriate merit increases (but not decreases) in such salary. Such base salary, as may be increased from time to time, is hereafter referred to as the "Base Salary". All payments will be subject to Executive's chosen benefit deductions and the deductions of payroll taxes and similar assessments as required by law.

4.2 Bonus. Executive will participate in the Company's annual incentive bonus program(s) applicable to Executive's position, in accordance with the terms of such program(s), shall have the opportunity to earn an annual bonus thereunder based on the achievement of performance objectives determined by the Board after consultation with Executive and shall include a minimum target bonus of at least 1.5 times Executive's annual Base Salary.

4.3 Aircraft. The Company shall provide Executive with the use of the Company's aircraft or charter aircraft for security purposes for himself and his family for business and personal travel (with standard charges for family members and for non-Company business usage consistent with past practice), including travel between Boston, Massachusetts and Las Vegas, Nevada or reimburse Executive for first class travel or charter aircraft travel expenses. The Company also will provide Executive, if he so chooses, with security arrangements at his residences in such a manner and at such levels as reasonably requested by Executive.

4.4 Accommodations. The Company shall make available accommodations for the exclusive use of Executive at one of the Company's properties in Las Vegas, Nevada, while Executive is in Las Vegas performing his normal duties. The parties recognize that the cost associated with providing Executive accommodations in Las Vegas may, under the governing tax laws, be deemed to be additional income to Executive. The Company agrees that should it be determined that the cost associated with providing Executive such accommodations amounts to additional income to Executive, the Company will (a) reimburse Executive for any additional tax Executive is required to pay; and (b) pay any additional taxes and costs incurred by Executive associated with such tax reimbursements. All reimbursements hereunder will be made no later than the end of Executive's taxable year next following Executive's taxable year in which the taxes (and any income or other related taxes or interest or penalties thereon) on such accommodations are remitted to the United States Internal Revenue Service or any other applicable taxing authority.

If Executive dies or resigns pursuant to this Agreement or pursuant to any other agreement between the Company and Executive providing for such resignation during the period of this Agreement, service for any part of the month in which any such event occurs shall be considered service for the entire month.

5. Equity Award. (a) As soon as reasonably practicable following the Effective Date and in no event later than fifteen business days following the Effective Date, the Company will grant Executive options (the "Options") to purchase shares of non-voting common stock of the Company (the "Option Shares") at an exercise price per Option Share equal to \$100.00 per share. The specific terms and conditions governing all aspects of the Options shall be provided in separate grant agreements and any relevant plan documents (collectively, the "New Option Plan"). The Options shall be comprised of the following two tranches: (i) twenty percent (20%) of the Options (the "Time Based Options") will vest and become exercisable in equal annual installments of twenty percent (20%) over a five-year period, subject to Executive's continued employment with the Company through the applicable vesting date and (ii) eighty percent (80%) of the Options (the "Performance Based Options") will vest and become exercisable only upon the achievement by the Company of certain performance targets in accordance with the New Option Plan.

(b) The New Option Plan shall represent a minimum of 8.64% of the fully-diluted shares of non-voting common stock of the Company immediately after consummation of the Merger, with 5.4% in the form of Time Based Options and 3.24% in the form of Performance Based Options, provided, that, such percentages may be increased on a one time basis in the good faith discretion of the Company to reflect the dividend rate on the Company's non-voting preferred stock, consistent with the methodology for such adjustments previously provided to the Executive. Executive shall be granted in accordance with the foregoing provisions a number of Time Based Options equal to 20% of the total number of Time Based Options and a number of Performance Based Options equal to 39.23% of the total number of Performance Based Options. As a condition to Executive's receipt of the Options pursuant to this Section 5, Executive shall execute an acknowledgment in form and substance reasonably acceptable to the Company that the Company has satisfied its obligations pursuant to this Section 5.

(c) Executive has been permitted, on a tax-free basis, to rollover existing Company stock outstanding prior to the Effective Date into shares of non-voting common stock and non-voting preferred stock of the Company following the Effective Date on the same basis and subject the same terms and conditions as other investors, including, without limitation, the Sponsors (as defined in the Management Investor Rights Agreement, dated as of January 28, 2008 among the Company, Employee and the other parties specified therein (the "MIRA"). Executive has entered into a rollover option agreement that provides for the conversion of options to purchase shares of the Company prior to the Effective Date into Options exercisable with respect to Option Shares following the Effective Date with such conversion preserving the intrinsic "spread value" of the converted option.

(d) Executive shall execute the MIRA and such other related agreements that are in forms reasonably acceptable to Executive and the Company (such agreements, together with the rollover option agreement, option grant and stock incentive plan, the "Equity Agreements").

6. Benefits. During the Employment Term, except as otherwise provided herein, Executive shall be entitled to participate in any and all incentive compensation and bonus arrangements maintained by the Company for its senior officers and to receive benefits and perquisites at least as favorable to Executive as those presently provided to Executive by the Company, and as may be enhanced for all senior officers.

6.1 Health Insurance. Executive will receive the regular group health plan coverage(s) provided to senior officers, which coverage(s) may be subject to generally applicable changes during the Employment Term, provided that such changes are generally applicable to senior officers. Executive will be required to contribute to the cost of the basic plan in the same manner as other senior officers. Executive will receive coverage under no less favorable a health plan than other senior officers.

6.2 Long Term Disability Benefits. Executive will be eligible to receive long term disability coverage paid by the Company as follows: group plan providing \$180,000 annual maximum benefit and a supplemental plan with an additional \$60,000 annual maximum benefit. Executive will also receive, subject to Executive being able to comply with the medical and physical eligibility requirement of the policy (insurability) chosen by the Company, an individual long term disability policy with a \$180,000 annual maximum benefit and an individual long term disability excess policy with an additional \$540,000 annual maximum benefit, both fully paid by the Company during the term of this Agreement.

6.3 Life Insurance. Executive will receive life insurance paid by the Company with a death benefit equal to at least three (3) times his then current Base Salary.

6.4 Retirement Plan. Executive will also be eligible during the Employment Term to participate in the Company's 401(k) Plan, as may be modified or changed, as well as its Executive Supplemental Savings Plan, as may be modified or changed from time to time, in the same manner as other senior officers of the Company.

6.5 Financial Counseling. During the Employment Term, Executive will also receive Fifty Thousand Dollars (\$50,000.00) per year for financial counseling. Any unused portion of the yearly financial counseling stipend will not carry over to the following year.

6.6 Vacation. Executive will receive five (5) weeks of paid vacation per calendar year of the Agreement.

6.7 280G Gross-Up. In the event that any payments or benefits paid or provided to Executive in connection with the Merger will be subject to the tax (the "Excise Tax") imposed by Section 4999 of the Internal Revenue Code of 1986, as amended (the "Code"), the Company will provide Executive with the additional payments set forth on Exhibit A no later than the end of Executive's taxable year in which the Excise Tax is required to be paid by Executive.

6.8 Reimbursement of Expenses. The Company shall pay or will reimburse Executive for reasonable business expenses incurred in the performance of Executive's duties hereunder in accordance with Company policy.

6.9 D&O Insurance. The Company shall provide Executive with Director's and Officer's indemnification insurance coverage in amount and scope that is customary for a company of the Company's size and nature.

6.10 Reimbursements; In-Kind Benefits To the extent that any amount eligible for reimbursement or any in-kind benefit provided under this Agreement is deferred compensation subject to the requirements of Section 409A of the Code, the following rules shall apply:

- (a) Payment of such reimbursements shall be made no later than the end of Executive's taxable year following the taxable year in which the expense is incurred;
- (b) All such amounts eligible for reimbursement or any in-kind benefit provided under this Agreement in one taxable year shall not affect the amount eligible for reimbursement or in-kind benefits to be provided in any other taxable year; and
- (c) The right to any such reimbursement or in-kind benefit hereunder shall not be subject to liquidation or exchange for any other benefit.

The parties intend that all reimbursements or in-kind benefits provided for hereunder will be made in a manner that makes such reimbursements and in-kind benefits consistent with or exempt from Section 409A of the Code.

7. Termination from Employment. After the date of Executive's termination from employment at any time, and for any reason or for no reason (including termination or resignation prior to the end of the Initial Term, if that should occur), Executive will be entitled to participate for his lifetime (the "Life Coverage Period") in the Company's group health insurance plans applicable to senior officers, including family coverage as applicable (medical, dental and vision coverage). Executive's group health insurance benefits after any termination of employment will not be less than those offered to the then-current senior officers of the Company, and Executive will be entitled to any later enhancements in such benefits (for the avoidance of doubt, any such amendment that adversely and disproportionately impacts inactive employees shall be null and void as to Executive). However, during the Life Coverage Period Executive shall pay twenty percent (20%) of the then applicable premium for current employees (revised annually) on an after-tax basis each quarter, and the Company shall pay eighty percent (80%) of said premium on an after-tax basis, which contribution will be imputed income to Executive to the extent required by the applicable provisions of the Code. As soon after the end of Executive's full-time active employment status and after Executive becomes eligible for Medicare coverage, the Company's group health insurance plan shall become secondary to Medicare. For the avoidance of doubt, the amount of health insurance benefits paid to Executive under this Section 7 shall be subject to the provisions of Section 6.10 herein.

8. Termination Without Cause or Resignation for Good Reason.

8.1 The Board reserves the right to terminate the Employment Term and Executive from his then current position without Cause at any time upon at least thirty (30) days

prior written notice. The failure of the Board to elect Executive as Chief Executive Officer during the annual election of officers shall also be deemed termination without Cause for purposes of this Agreement unless, before the election, the Board has sent written notice initiating termination for Cause as provided in Section 13.1 hereof, and Executive is thereafter terminated for Cause. Executive reserves the right to terminate the Employment Term and resign his position for Good Reason (as defined in Section 13.2 herein) by giving the Company thirty (30) days written notice which states the basis for such Good Reason.

8.2 Upon Executive's termination without Cause or resignation from his position for Good Reason as described in Section 8.1 above:

(a) The Company shall pay Executive, within thirty (30) days following his termination of employment, Executive's accrued but unused vacation, unreimbursed business expenses and Base Salary through the date of termination (to the extent not theretofore paid) (the "Accrued Benefits");

(b) Subject to Executive executing and not revoking the release attached hereto as Exhibit B, the Company will pay Executive in approximately equal installments during the twenty-four (24) month period following such termination (the "Severance Period"), a cash severance payment in an amount equal to two (2) multiplied by the sum of (i) his Base Salary and (ii) target bonus as in effect on the date of termination (the "Severance Payment"). If applicable, Executive will be entitled to receive the benefits set forth on Exhibit C hereto during the Severance Period. The installments of the Severance Payment will be paid to Executive in accordance with the Company's customary payroll practices, and will commence on the first payroll date following the termination of Executive's employment; provided, that, if, as of the date of termination, Executive is a "specified employee" as defined in subsection (a)(2)(B)(i) of Section 409A of the Code ("Specified Employee"), such payments will not commence until the first business day after the date that is six months following Executive's "separation from service" within the meaning of subsection (a)(2)(A)(i) of Section 409A of the Code (the "Delayed Payment Date") and, on the Delayed Payment Date, the Company will pay to Executive a lump sum equal to all amounts that would have been paid during the period of the delay if the delay were not required plus interest on such amount at a rate equal to the short-term applicable federal rate then in effect, and will thereafter continue to make payments in installments in accordance with this Section 8.2(b);

(c) The Company will pay Executive in cash, at the time of such termination an amount equal to his target bonus for the year pro rated based on the number of days in the applicable bonus period preceding the date of Executive's termination of employment; provided, however, that if, as of the date of termination pursuant to this Section 8.2, Executive is a Specified Employee, such amount shall be paid on the Delayed Payment Date (plus interest on such amount from the date of termination through the date of payment at a rate equal to the short-term applicable federal rate then in effect).

(d) Executive's Escrow Agreement (if then in force) and Indemnification Agreement will continue in force (subject to amendment or termination in accordance with their terms); and

(e) Executive's Stock Options and Option Shares will be treated in accordance with the terms of the Equity Agreements.

Except as otherwise provided in this Agreement, and except for any vested benefits under any tax qualified pension plans of the Company and vested deferred compensation under any applicable deferred compensation plans, and continuation of health insurance benefits on the terms and to the extent required by Section 4980B of the Code and Section 601 of the Employee Retirement Income Security Act of 1974, as amended (which provisions are commonly known as "COBRA"), neither the Company nor Executive shall have any additional obligations under this Agreement.

**9. Termination for Cause or Resignation Without Good Reason.**

9.1 The Board will have the right to terminate the Employment Term and Executive's employment with the Company at any time from his then-current positions for Cause (as defined in Section 13.1 herein). Executive shall resign from the Board promptly after the Company's request, in the event Executive is so terminated or Executive resigns with or without Good Reason. A resignation by Executive without Good Reason shall not be a breach of this Agreement.

If the Employment Term and Executive's employment is terminated for Cause, or if he resigns his position without Good Reason, then: (a) Executive's employment shall be deemed terminated on the date of such termination or resignation; (b) he shall be entitled to receive all Accrued Benefits from the Company within thirty (30) days following such termination; (c) his rights with respect to his Stock Options and Option Shares will be as set forth in the Equity Agreements; (d) his Indemnification Agreement will continue in force; (e) the Escrow Agreement, if then in force, will continue in force, unless such agreement is thereafter amended or terminated pursuant to its terms; and (f) he will be entitled to the lifetime group insurance benefits described in Section 7 above, except that any future amendments to such benefits shall apply to him in the same manner as such amendments apply to active senior officers (for the avoidance of doubt, any such amendment that adversely and disproportionately impacts inactive employees shall be null and void). Except as otherwise provided in this Agreement, and except for any vested benefits under any tax qualified pension plans of the Company and vested deferred compensation under any applicable deferred compensation plans, and continuation of health insurance benefits on the terms and to the extent required by COBRA, neither the Company nor Executive shall have any additional obligations under this Agreement.

10. **Death.** In the event the Employment Term and Executive's employment is terminated due to his death, his right to receive his Base Salary and benefits under this Agreement will terminate (except with respect to Accrued Benefits), and his estate and beneficiary(ies) will receive the benefits they are entitled to receive under the terms of the Company's benefit plans and programs by reason of a participant's death during active employment. Executive's estate shall be entitled to receive (a) all Accrued Benefits from the Company within thirty (30) days following such termination and (b) Executive's surviving family and spouse will be entitled to payment for the cost of twelve (12) months of COBRA coverage, or if longer, continuation of coverage under any applicable law. Executive's Stock Options and Option Shares will be treated in accordance with the terms of the Equity

Agreements. The Escrow Agreement, if then in force, will continue in force (subject to its amendment or termination in accordance with its terms) for the benefit of Executive's beneficiaries until his deferred compensation accounts are paid in full, and Executive's Indemnification Agreement will continue in force for the benefit of his estate. For the avoidance of doubt, Executive's estate shall be an express third party beneficiary of this provision, with the right to enforce the provision for and on behalf of his beneficiaries.

If Executive dies during the Severance Period, all of the provisions of Section 8.2 (if applicable) will apply, except that any remaining Severance Payments will be paid in a lump sum to his estate.

Except as otherwise provided in this Agreement, and except for any vested benefits under any tax qualified pension plans of the Company and vested deferred compensation under any applicable deferred compensation plans, and continuation of health insurance benefits on the terms and to the extent required by COBRA, neither the Company nor Executive shall have any additional obligations under this Agreement.

11. Disability. If the Employment Term and Executive's employment are terminated by reason of Executive's disability (as defined below), he will be entitled to apply, at his option, for the Company's long-term disability benefits. If he is accepted for such benefits, then Executive's Stock Options and Option Shares will be treated in accordance with the terms of the Equity Agreements, and the terms and provisions of the Company's benefit plans and programs that are applicable in the event of such disability of an employee shall apply in lieu of the salary and benefits under this Agreement, except that:

(a) the Escrow Agreement (if then in force) and his Indemnification Agreement will continue in force (subject to amendment or termination in accordance with their terms);

(b) Executive will be entitled to the lifetime group insurance benefits described in Section 7;

(c) Executive will be paid his Accrued Benefits within thirty (30) days of termination; and

(d) Executive will receive two (2) years of Base Salary continuation ("Salary Continuation Payment"), offset by any long term disability benefits to which he is entitled during such period of salary continuation. In addition to payment of his Base Salary, Executive will be entitled to the benefits set forth on Exhibit C, if applicable, during the salary continuation period. Notwithstanding the foregoing, if, as of the date of termination pursuant to this Section 11, Executive is a Specified Employee, installments of the Salary Continuation Payment will not commence until the Delayed Payment Date and, on the Delayed Payment Date, the Company will pay to Executive a lump sum equal to all amounts that would have been paid during the period of the delay if the delay were not required plus interest on such amount at a rate equal to the short-term applicable federal rate then in effect, and will thereafter continue to pay Executive the Salary Continuation Payment in installments in accordance with this Section.

If Executive is disabled so that he cannot perform his duties, then the Board may terminate his duties under this Agreement after giving Executive thirty (30) days notice of such termination (during which period Executive shall not have returned to full time performance of his duties). For purposes of this Agreement, disability will be the inability of Executive, with or without a reasonable accommodation, to perform the essential functions of his job for one hundred and eighty (180) days during any three hundred and sixty five (365) consecutive calendar day period as reasonably determined by the Committee (excluding Executive) based on independent medical advice from a physician who has examined Executive (such physician to be selected by the Company and reasonably acceptable to Executive).

Except as otherwise provided in this Agreement, and except for any vested benefits under any tax qualified pension plans of the Company and vested deferred compensation under any applicable deferred compensation plans, and continuation of health insurance benefits on the terms and to the extent required by COBRA, neither the Company nor Executive shall have any additional obligations under this Agreement.

12. Enhanced Benefits in Connection with a Change in Control after the Effective Date.

(a) If a Change in Control, as defined in the New Option Plan, occurs after the Effective Date and (i) during the two (2) year period following such Change in Control, the Employment Term and Executive's employment are terminated by the Company without Cause or by Executive for Good Reason, or (ii) the Employment Term and Executive's employment are terminated by the Company without Cause within six months prior to the Change in Control and such termination was by reason of the request of the person or persons (or their representatives) who subsequently acquire control of the Company in the Change in Control transaction (such a termination of employment pursuant to this Section 12(a)(ii), an "Anticipatory Termination"), then in either case, subject to Executive executing and not revoking the release attached hereto as Exhibit B, Executive will be entitled to receive the payments and benefits set forth in Section 8.2, except that (A) the multiplier in Section 8.2(b) for determining the amount of the Severance Payments will be increased from two (2) to three (3) and (B) the Severance Payment shall be paid in a lump sum on the eighth day following execution (and non-revocation) of the release attached hereto as Exhibit B rather than in installments over a twenty four (24) month period.

(b) Notwithstanding any provision in this Agreement to the contrary, in the event of an Anticipatory Termination, any payments that are deferred compensation within the meaning of Section 409A of the Code that the Company shall be required to pay pursuant to Section 12 of this Agreement shall be paid as follows: (i) if such Change in Control is a "change in control event" within the meaning of Section 409A of the Code and the provisions of Treas. Reg. §1.409A-3(i)(5)(i), (A) except as provided in clause (i)(B), on the date of such Change in Control, or (B) if Executive is a Specified Employee and the Delayed Payment Date is later than the Change in Control, on the Delayed Payment Date, and (ii) if such Change in Control is not a "change in control event" within the meaning of Section 409A of the Code and the provisions of Treas. Reg. §1.409A-3(i)(5)(i), on the first business day following the 6-month anniversary of the date of such Anticipatory Termination (plus interest on such amount at a rate equal to the short-term applicable federal rate then in effect). In the event of an Anticipatory Termination,

any payments or benefits that are not deferred compensation within the meaning of Section 409A of the Code that the Company shall be required to pay or provide pursuant to Section 12 of this Agreement shall be paid or shall commence being provided on the date of the Change in Control.

(c) If after the Effective Date, there occurs a transaction that constitutes a “change of control” under regulation 1.280G of the Code and, immediately prior to the change of control transaction:

(i) the stock of the Company is not publicly traded and the exemption described in Section 280G(b)(5) of the Code would apply to payments by the Company to Executive in connection with a change in control (as defined in Section 280G of the Code), Executive shall consider whether he is willing to waive his rights to receive excess parachute payments in connection with the transaction in that amount that would cause excise taxes under Section 4999 of the Code to apply. If Executive advises the Company that he will waive his rights to receive excess parachute payments in connection with the transaction in that amount that would cause excise taxes under Section 4999 of the Code to apply, following such waiver the Company shall use reasonable best efforts to obtain the requisite shareholder approval of any such excess parachute payments. In the event such shareholder approval is obtained, Executive acknowledges and agrees that he is not entitled to share in any tax savings resulting from the Company’s deduction of the excess parachute payments.

(ii) the stock of the Company is publicly traded, Executive shall be entitled to a Gross Up Payment in accordance with Exhibit A.

(d) If Section 12 of this Agreement applies to any termination of employment, the provisions of Section 8.2 will not be applicable.

### 13. Definitions of Cause and Good Reason.

13.1 For purposes of this Agreement, “Cause” shall mean:

(a) the willful failure of Executive to substantially perform Executive’s duties with the Company (as described in Section 3) or to follow a lawful reasonable directive from the Board (other than any such failure resulting from incapacity due to physical or mental illness), after a written demand for substantial performance is delivered to Executive by the Board which specifically identifies the manner in which the Board believes that Executive has willfully not substantially performed Executive’s duties or has willfully failed to follow a lawful reasonable directive and Executive is given a reasonable opportunity (not to exceed thirty (30) days) to cure any such failure, if curable.

(b) (i) any willful act of fraud, or embezzlement or theft by Executive, in each case, in connection with Executive’s duties hereunder or in the course of Executive’s employment hereunder or (ii) Executive’s admission in any court, or conviction of, or plea of *nolo contendere* to, a felony that could reasonably be expected to result in damage to the business or reputation of the Company.

(c) Executive being found unsuitable for or having a gaming license denied or revoked by the gaming regulatory authorities in Arizona, California, Colorado, Illinois,

(d) (i) Executive's willful and material violation of, or noncompliance with, any securities laws or stock exchange listing rules, including, without limitation, the Sarbanes-Oxley Act of 2002, provided that such violation or noncompliance resulted in material economic harm to the Company, or (ii) a final judicial order or determination prohibiting Executive from service as an officer pursuant to the Securities and Exchange Act of 1934 or the rules of the New York Stock Exchange.

For purposes of this Section 13.1, no act or failure to act, on the part of Executive, shall be considered "willful" unless it is done, or omitted to be done, by Executive in bad faith and without reasonable belief that Executive's action or omission was in the best interests of the Company. Any act, or failure to act, based upon authority given pursuant to a resolution duly adopted by the Board or based upon the advice of counsel for the Company shall be conclusively presumed to be done, or omitted to be done, by Executive in good faith and in the best interests of the Company. The cessation of employment of Executive shall not be deemed to be for Cause unless and until there shall have been delivered to Executive a copy of a resolution duly adopted by the affirmative vote of not less than three-quarters of the entire membership of the Board at a meeting of the Board called and held for such purpose (after reasonable notice is provided to Executive and Executive is given an opportunity, together with counsel for Executive, to be heard before the Board), finding that, in the good faith opinion of the Board, Executive is guilty of the conduct described in Section 13.1(a) through (d) of this definition, and specifying the particulars thereof in detail; provided, that if Executive is a member of the Board, Executive shall not vote on such resolution nor shall Executive be counted in determining the "entire membership" of the Board.

13.2 Good Reason. "Good Reason" shall mean, without Executive's express written consent, the occurrence of any of the following circumstances unless, in the case of paragraphs (a), (d), (e), (f), or (g) such circumstances are fully corrected prior to the date of termination specified in the written notice given by Executive notifying the Company of his resignation for Good Reason:

(a) The assignment to Executive of any duties materially inconsistent with his status as Chief Executive Officer of the Company or a material adverse alteration in the nature or status of his responsibilities, duties or authority;

(b) The requirement that Executive report to anyone other than the Board;

(c) The failure of Executive to be elected/re-elected as a member of the Board;

(d) A reduction by the Company in Executive's annual base salary of Two Million Dollars (\$2,000,000.00), as the same may be increased from time to time pursuant to Section 4 hereof;

(e) The relocation of the Company's principal executive offices from Las Vegas, Nevada, to a location more than fifty (50) miles from such offices, or the Company's requiring Executive either: (i) to be based anywhere other than the location of the Company's principal offices in Las Vegas (except for required travel on the Company's business to an extent substantially consistent with Executive's present business travel obligations); or (ii) to relocate his primary residence from Boston to Las Vegas;

(f) The failure by the Company to pay to Executive any material portion of his current compensation, except pursuant to a compensation deferral elected by Executive, or deferral compensation required by this Agreement, or to pay to Executive any material portion of an installment of deferred compensation under any deferred compensation program of the Company within thirty (30) days of the date such compensation is due;

(g) Except as permitted by this Agreement or as agreed by Executive, the failure by the Company to continue in effect compensation plans (and Executive's participation in such compensation plans) which provide benefits on an aggregate basis that are not materially less favorable, both in terms of the amount of benefits provided and the level of Executive's participation relative to other participants at Executive's grade level, to those in which Executive is participating on the date of this Agreement;

(h) The failure by the Company to continue to provide Executive with benefits substantially similar to those enjoyed by him under the Savings and Retirement Plan and the life insurance, medical, health and accident, and disability plans in which Executive is participating on the date of this Agreement, the taking of any action by the Company which would directly or indirectly materially reduce any of such benefits or deprive Executive of any material fringe benefit enjoyed by Executive on the date of this Agreement, except as permitted by this Agreement;

(i) Delivery of a written Notice of Non-Renewal by the Company to Executive; or

(j) The failure of the Company to obtain a satisfactory agreement from any successor to assume and agree to perform this Agreement, as contemplated in Section 19 hereof.

#### 14. Non-Competition Agreement.

14.1 During the Employment Term (so long as Executive remains employed by the Company or its affiliates) and for a period of two (2) years following the termination of Executive's employment with the Company and its affiliates, he will not, directly or indirectly, engage in any activity, including development activity, whether as an employee, consultant, director, investor, contractor, or otherwise, directly or indirectly, in the casino business (or any hotel or resort that operates a casino business) in the United States, Canada or Mexico, except with the prior specific written approval of the Company. Notwithstanding anything herein to the contrary, this Section 14.1 shall not prevent Executive from: (a) acquiring securities representing not more than 1% of the outstanding voting securities of any entity the securities of which are traded on a national securities exchange or in the over the counter market; or (b) obtaining

employment in the hotel/resort industry for an entity that does not engage in the casino business or for a division, subsidiary or affiliate of a hotel or resort that engages in the casino business, provided that (i) the casino business represents less than 20% of the revenues of any such entity on a consolidated basis, and (ii) Executive does not provide services (other than de minimis services) to, or have any responsibilities regarding, the division, subsidiary or affiliate that engages in the casino business.

Executive acknowledges that the restrictions are reasonable as to both time and geographic scope, as the Company competes for customers with all gaming establishments in these areas.

14.2 If Executive breaches any of the covenants in Section 14.1, then the Company may terminate any of his rights under this Agreement upon thirty (30) days written notice, whereupon all of the Company's obligations under this Agreement shall terminate (including, without limitation, the right to lifetime group insurance) without further obligation to him except for obligations that have been paid (except as otherwise provided in Section 14.6), accrued or are vested as of or prior to such termination date. In addition, the Company shall be entitled to seek to enforce any such covenants, including obtaining monetary damages, specific performance and injunctive relief. Executive's Stock Options and Option Shares will be treated in accordance with the terms of the Equity Agreements.

14.3 During the Employment Term (so long as Executive remains employed by the Company or its affiliates) and for a period of two (2) years following the termination of Executive's employment with the Company and its affiliates, Executive will not, directly or indirectly hire, induce, persuade or attempt to induce or persuade, any salary grade m50 or higher employee of the Company or its subsidiaries, to leave or abandon employment with the Company, its subsidiaries or affiliates, for any reason whatsoever (other than Executive's personal secretary and/or assistants).

14.4 During the Employment Term (so long as Executive remains employed by the Company or its affiliates) and for a period of two (2) years following the termination of Executive's employment with the Company and its affiliates, Executive will not communicate with employees, customers, or suppliers of the Company, or any subsidiaries or affiliates of the Company or any principals or employee thereof, or any person or organization in any manner whatsoever that is detrimental to the business interests of the Company, its subsidiaries or affiliates. Executive further agrees from the end of Executive's full-time employment with the Company and its affiliates not to make statements to the press or general public with respect to the Company or its subsidiaries or affiliates that are detrimental to the Company, its subsidiaries, affiliates or employees without the express written prior authorization of the Company, and the Company agrees that it will not make statements to the press or general public with respect to Executive that are detrimental to him without the express written prior authorization of Executive. Notwithstanding the foregoing, Executive shall not be prohibited at the expiration of the non-competition period from pursuing his own business interests that may conflict with the interests of the Company.

14.5 Each of Executive and the Company intends and agrees that if, in any action before any court, agency or arbitration tribunal, legally empowered to enforce the

covenants in this Section 14, any term, restriction, covenant or promise contained in this Section 14 is found to be unreasonable and, accordingly, unenforceable, then such terms, restriction, covenant or promise shall be deemed modified to the extent necessary to make it enforceable by such court, agency or arbitral tribunal.

14.6 Should any court, agency or arbitral tribunal legally empowered to enforce the covenants contained in this Section 14 find that Executive has breached the terms, restrictions covenants or promises herein in any material respect (except if it has been modified to make it enforceable): (a) the Company will not be obligated to continue to pay Executive the salary or benefits provided for under the severance provisions contained in the Agreement (including all required benefits under benefit plans), and (b) Executive will also reimburse the Company any severance benefits received after the date of termination as well as any reasonable costs and attorney fees necessary to secure such repayments. For the avoidance of doubt, the Company shall be entitled to money damages and/or injunctive relief due to Executive's breach of the terms, restrictions covenants or promises contained in this Section 14 without regard to whether or not such breach is material, it being understood that the limiting effect of the phrase "in any material respect" in the immediately preceding sentence shall operate solely with respect to the remedies available pursuant to this Section 14.6.

14.7 For the avoidance of doubt, for purposes of this Section 14, "Executive's employment" shall not include any period of salary continuation hereunder.

#### 15. Confidentiality.

15.1 Executive's position with the Company will or has resulted in his exposure and access to confidential and proprietary information which he did not have access to prior to holding the position, which information is of great value to the Company and the disclosure of which by him, directly or indirectly, would be irreparably injurious and detrimental to the Company. During his term of employment and without limitation thereafter, Executive agrees to use his best efforts and to observe the utmost diligence to guard and protect all confidential or proprietary information relating to the Company from disclosure to third parties. Executive shall not at any time during and after the end of his full-time active employment, make available, either directly or indirectly, to any competitor or potential competitor of the Company or any of its subsidiaries, or their affiliates or divulge, disclose, communicate to any firm, corporation or other business entity in any manner whatsoever, any confidential or proprietary information covered or contemplated by this Agreement, unless expressly authorized to do so by the Company in writing. Notwithstanding the above, Executive may provide such Confidential Information if ordered by a federal or state court, arbitrator or any governmental authority, pursuant to subpoena, or as necessary to secure legal and financial counsel from third party professionals or to enforce his rights under this Agreement. In such cases, Executive will use his reasonable best efforts to notify the Company at least five (5) business days prior to providing such information, and the nature of the information required to be provided.

15.2 For the purpose of this Agreement, "Confidential Information" shall mean all information of the Company, its subsidiaries and affiliates, relating to or useful in connection with the business of the Company, its subsidiaries, affiliates, whether or not a "trade secret" within the meaning of applicable law, which is not generally known to the general public and

which has been or is from time to time disclosed to or developed by Executive as a result of his employment with the Company. Confidential Information includes, but is not limited to the Company's product development and marketing programs, data, future plans, formula, food and beverage procedures, recipes, finances, financial management systems, player identification systems (Total Rewards), pricing systems, client and customer lists, organizational charts, salary and benefit programs, training programs, computer software, business records, files, drawings, prints, prototyping models, letters, notes, notebooks, reports, and copies thereof, whether prepared by him or others, and any other information or documents which Executive is told or reasonably ought to know that the Company regards as confidential.

15.3 Executive agrees that upon separation from employment for any reason whatsoever, he shall promptly deliver to the Company all Confidential Information, including but not limited to, documents, reports, correspondences, computer printouts, work papers, files, computer lists, telephone and address books, rolodex cards, computer tapes, disks, and any and all records in his possession (and all copies thereof) containing any such Confidential Information created in whole or in part by Executive within the scope of his employment, even if the items do not contain Confidential Information.

15.4 Executive shall also be required to sign a non-disclosure or confidentiality agreement in the Company's customary form for senior executives (or in the customary form executed by senior executives of Harrah's Operating Company, Inc.) if Executive is not currently a party to such an agreement with the Company. Such an agreement shall also remain in full force and effect, provided that, in the event of any conflict between any such agreement(s) and this Agreement, this Agreement shall control.

15.5 This Section and any of its provisions will survive Executive's separation of employment for any reason.

16. Injunctive Relief. Executive acknowledges and agrees that the terms provided in Sections 14 and 15 are the minimum necessary to protect the Company, its affiliates and subsidiaries, its successors and assigns in the use and enjoyment of the Confidential Information and the good will of the business of the Company. Executive further agrees that damages cannot fully and adequately compensate the Company in the event of a breach or violation of the restrictive covenants (Confidential Information and Non-Competition) and that without limiting the right of the Company to pursue all other legal and equitable remedies available to it, the Company shall be entitled to seek injunctive relief, including but not limited to a temporary restraining order, preliminary injunction and permanent injunction, to prevent any such violations or any continuation of such violations for the protection of the Company. The granting of injunctive relief will not act as a waiver by the Company of its right to pursue any and all additional remedies.

17. Post Employment Cooperation. Executive agrees that upon separation for any reason from the Company, Executive will cooperate in assuring an orderly transition of all matters being handled by him. Upon the Company providing reasonable notice to him, he will also appear as a witness at the Company's request and/or assist the Company in any litigation, bankruptcy or similar matter in which the Company or any affiliate thereof is a party or otherwise involved. The Company will defray any reasonable out-of-pocket expenses incurred

by Executive in connection with any such appearance. In connection therewith, the Company agrees to indemnify Executive as prescribed in Article Tenth of the Certificate of Incorporation, as amended, of the Company.

18. Release. Upon the termination of Executive's active full-time employment, and in consideration of and as a condition to the actual receipt of all compensation and benefits described in this Agreement (including without limitation any severance payments set forth in Section 8 or Section 12), except for claims arising from the covenants, agreements, and undertakings of the Company as set forth herein and except as prohibited by statutory language, Executive and the Company will enter into an agreement which forever and unconditionally mutually waives, and releases Harrah's Entertainment, Inc., Harrah's Operating Company, Inc., their subsidiaries and affiliates, and their officers, directors, agents, benefit plan trustees, and employees, on the one hand, and Executive and his heirs and estate (and the beneficiaries thereof), on the other hand, from any and all claims, whether known or unknown, and regardless of type, cause or nature, including but not limited to claims arising under all salary, vacation, insurance, bonus, stock, and all other benefit plans, and all state and federal anti-discrimination, civil rights and human rights laws, ordinances and statutes, including Title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act, concerning his employment with Harrah's Entertainment, Inc., its subsidiaries and affiliates, the cessation of that employment and his service as a stockholder, an employee, officer and director of the Company and its subsidiaries. The form of mutual release is set forth in Exhibit B.

19. Assumption of Agreement on Merger, Consolidation or Sale of Assets. In the event the Company agrees to (a) enter into any merger or consolidation with another company in which the Company is not the surviving company; or (b) sell or dispose of all or substantially all of its assets, and the company which is to survive fails to make a written agreement with Executive to either: (i) assume the Company's financial obligations to Executive under this Agreement; or (ii) make such other provision for Executive as is satisfactory to Executive, then Executive shall have the right to resign For Good Reason as defined under this Agreement.

20. Assurances on Liquidation. The Company agrees that until the termination of this Agreement as above provided, it will not voluntarily liquidate or dissolve without first making a full settlement or, at the discretion of Executive, a written agreement with Executive satisfactory to and approved by him in writing, in fulfillment of or in lieu of its obligations to him under this Agreement.

21. Amendments; Entire Agreement. This Agreement may not be amended or modified orally, and no provision hereof may be waived, except in a writing signed by the parties hereto. This Agreement and the Equity Agreements contain the entire agreement between the parties concerning the subject matter hereof and supersede all prior agreements and understandings, written and oral, between the parties with respect to the subject matter of this Agreement and the Equity Agreements, including without limitation the Prior Employment Agreement and the Severance Agreement.

22. Assignment.

22.1 Except as otherwise provided in Section 22.2, this Agreement cannot be assigned by either party hereto, except with the written consent of the other. Any assignment of this Agreement by either party shall not relieve such party of its or his obligations hereunder.

22.2 The Company may elect to perform any or all of its obligations under this Agreement through its wholly-owned subsidiary, Harrah's Operating Company, Inc., or another subsidiary, and if the Company so elects, Executive will be an employee of Harrah's Operating Company, Inc., or such other subsidiary. Notwithstanding any such election, the Company's obligations to Executive under this Agreement will continue in full force and effect as obligations of the Company, and the Company shall retain primary liability for their performance.

23. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the personal representatives and successors in interest of the Company.

24. Governing Law. This Agreement shall be governed by the laws of the State of Nevada as to all matters, including but not limited to matters of validity, construction, effect and performance.

25. Jurisdiction. Any judicial proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement or any agreement identified herein may be brought only in state or federal courts of the State of Nevada, and by the execution and delivery of this Agreement, each of the parties hereto accepts for themselves the exclusive jurisdiction of the aforesaid courts and irrevocably consents to the jurisdiction of such courts (and the appropriate appellate courts) in any such proceedings, waives any objection to venue laid therein and agrees to be bound by the judgment rendered thereby in connection with this Agreement or any agreement identified herein. The Company shall pay Executive all reasonable legal fees and expenses incurred by Executive in connection with any proceeding relating to the interpretation or enforcement of this Agreement instituted by Executive in good faith and in which Executive prevails on a material claim that is part of such proceeding.

26. Notices. Any notice to be given hereunder by either party to the other may be effected by personal delivery, in writing, or by mail, registered or certified, postage prepaid with return receipt requested. Mailed notices shall be addressed to the parties at the addresses set forth below, but each party may change his or its address by written notice in accordance with this Section 26. Notices shall be deemed communicated as of the actual receipt or refusal of receipt.

If to Executive: Gary W. Loveman  
At the address listed in his employment file

If to Company: Harrah's Entertainment, Inc.  
One Caesars Palace Drive  
Las Vegas, Nevada 89109  
Attn: General Counsel

27. Construction. This Agreement is to be construed as a whole, according to its fair meaning, and not strictly for or against any of the parties.

28. Severability. If any provision of this Agreement shall be determined by a court to be invalid or unenforceable, the remaining provisions of this Agreement shall not be affected thereby, shall remain in full force and effect, and shall be enforceable to the fullest extent permitted by applicable law.

29. Withholding Taxes. Any payments or benefits to be made or provided to Executive pursuant to this Agreement shall be subject to any withholding tax (including social security contributions and federal income taxes) as shall be required by federal, state, and local withholding tax laws.

30. Counterparts. This Agreement may be executed by the parties in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same agreement.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, Executive has hereunto set his hand and the Company has caused this Agreement to be executed in its name and on its behalf and its corporate seal to be hereunto affixed and attested by its corporate officers thereunto duly authorized.

/s/ Gary W. Loveman

Gary W. Loveman

Harrah's Entertainment, Inc.

/s/ Stephen H. Brammell

By: Stephen H. Brammell

Its: Senior Vice President and General Counsel

**ROLLOVER OPTION AGREEMENT**

This Rollover Option Agreement (this "Agreement") is made effective as of January 27, 2008 (hereinafter referred to as the "Date of Grant"), between Harrah's Entertainment, Inc. (the "Company") and Gary W. Loveman ("Participant").

**RECITALS:**

**WHEREAS**, pursuant to the Agreement and Plan of Merger, dated as of December 19, 2006, among Hamlet Holdings LLC, Hamlet Merger Inc. ("Merger Sub") and the Company (the "Merger Agreement"), at the Effective Time (as defined in the Merger Agreement), Merger Sub will merge with and into the Company and the Company will be the surviving entity in the Merger (as defined in the Merger Agreement);

**WHEREAS**, Participant is employed by the Company (the terms and conditions of which are governed by the employment agreement by and between Participant and the Company, dated as of the Date of Grant (the "Employment Agreement")) and, through such employment, provides services to the Company and its Affiliates;

**WHEREAS**, in resolutions duly adopted by the board of directors of the Company on November 6, 2007 in connection with the Merger, the board of directors resolved that securities held by Participant could be converted into the right to receive shares of or the right to shares of Harrah's Entertainment, Inc.;

**WHEREAS**, the Company intends to adopt a new stock option plan, the Harrah's Entertainment, Inc. Management Equity Incentive Plan (the "Plan"), substantially in the form attached hereto as Exhibit A, and to issue options to purchase shares of non-voting common stock, par value \$0.01 per share of the Company ("Non-Voting Shares");

**WHEREAS**, in connection with the Merger, immediately prior to the Effective Time, the option to purchase common stock of the Company (the "Prior Option"), which is set forth on Schedule A to this Agreement, will be converted into the option (the "Rollover Option") to purchase Non-Voting Shares pursuant to the terms of this Agreement.

**NOW, THEREFORE, IT IS AGREED**, by and between the Company and Participant as follows:

1. **Option Conversion and Exercise Price.** As a result of the transactions contemplated by the Merger Agreement, if the Prior Option were outstanding immediately prior to the Effective Time, absent an election to roll over the Prior Option, Participant would be entitled to receive, on or as soon as practicable following the Effective Time, an amount in cash equal to the product of (a) the total number of Shares (as defined in the Merger Agreement) subject to the Prior Option and (b) the difference between the Merger Consideration (as defined in the Merger Agreement) and the per Share exercise price of the Prior Option, less any applicable withholding taxes (such amount, the "Prior Option Merger Consideration"). By executing this Agreement, the Company agrees that at the Effective Time (i) the Prior Option will not be converted into an amount equal to the

Prior Option Merger Consideration in accordance with the terms of the Merger Agreement and (ii) subject to the terms of this Agreement and the occurrence of the Effective Time, the Prior Option will be converted into the Rollover Option exercisable with respect to 133,133 Non-Voting Shares. By executing this Agreement, Participant agrees that (x) Participant will not, prior to the Effective Time, exercise the Prior Option and (y) immediately prior to the Effective Time, Participant will cease to have any rights with respect to the Prior Option. Subject to the terms of this Agreement (which preserve the intrinsic aggregate "spread value" of the Prior Option in respect of which the Rollover Option is issued) and to the occurrence of the Effective Time, the Prior Option shall be converted, effective as of the Effective Time, into a Rollover Option with respect to 133,133 Non-Voting Shares. The exercise price per Non-Voting Share underlying the Rollover Option shall be \$25.00.

2. Definitions. Except where the context clearly implies or indicates the contrary, any term used in this Agreement but not defined herein shall have the meaning given such term in the Plan.
3. Vesting. The Rollover Option granted hereby is immediately exercisable upon the Date of Grant with respect to 100% of the Non-Voting Shares subject to such Rollover Option.
4. Expiration Date. The Rollover Option shall expire on the "Expiration Date", which shall be the earliest to occur of (a) June 17, 2012, (b) 10 days after the Participant's Employment is terminated for Cause; (c) one year following the termination of the Participant's Employment by reason of the Participant's death; (d) 180 days following the termination of the Participant's Employment by reason of the Participant's Disability or Retirement; (e) 120 days after the date the Participant's Employment is terminated (i) by the Company for any reason other than Cause, death or Disability or (ii) by the Participant for Good Reason; and (f) 60 days following the termination of the Participant's Employment by the Participant without Good Reason.
5. Effective Time Deadline. If the Effective Time does not occur on or before February 29, 2008 (the "Effective Time Deadline"), this Agreement will be canceled and Participant will have no rights with respect hereto; provided, that if the Company determines on or before the Effective Time Deadline and in good faith that the Effective Time is likely to occur on or before March 15, 2008, the Effective Time Deadline shall automatically be extended to March 15, 2008.
6. Representations; Acknowledgements of Participant. By signing below, Participant hereby represents and warrants to the Company that:
  - (a) Participant has the requisite power, authority and capacity to execute this Agreement, to perform Participant's obligations under this Agreement and to consummate the transactions contemplated hereby;
  - (b) this Agreement has been duly and validly executed and delivered by Participant and constitutes Participant's legal, valid and binding obligation, enforceable against Participant in accordance with its terms, except to the extent that such

validly binding effect and enforceability may be limited by applicable bankruptcy, reorganization, insolvency, moratorium and other laws relating to or affecting creditors' rights generally;

- (c) Participant is the sole record and beneficial owner of the Rollover Option and Participant has good, valid and marketable title to the Rollover Option, free and clear of any charge, mortgage, pledge, lien, option, equity, power of sale, hypothecation, retention of title, right of pre-emption, right of first refusal or other third-party rights or security interest of any kind or an agreement, arrangement or obligation to create any of the foregoing (other than such restrictions contained in the agreement granting the Prior Option and the equity plan pursuant to which the Prior Option was granted);
- (d) the Rollover Option is being acquired for Participant's own account, for investment purposes only and not with a view to or in connection with any distribution, reoffer, resale, public offering or other disposition thereof not in compliance with the Securities Act of 1933, as amended (the "Securities Act"), as may be amended from time to time, or any applicable United States federal or state securities laws or regulations;
- (e) Participant understands that the Non-Voting Shares underlying the Rollover Option have not been registered under the Securities Act, and that this transaction may be made in reliance on one or more exemptions for private offerings or offerings outside the United States or to non-U.S. persons;
- (f) Participant possesses such expertise, knowledge, and sophistication in financial and business matters generally, and in the type of transaction in which the Company proposes to engage in particular to evaluate the merits and risks of this investment opportunity;
- (g) Participant understands and has carefully considered the risks relating to the Company and this investment opportunity including that (i) an investment in the Rollover Option involves a high degree of risk, and Participant may lose the entire amount of Participant's investment, (ii) the Company does not expect to pay dividends for the foreseeable future, (iii) the Non-Voting Shares underlying the Rollover Option are illiquid, and Participant must bear the economic risk of an investment in the Rollover Option for an indefinite period of time unless the Non-Voting Shares underlying the Rollover Option are subsequently registered under the Securities Act or an exemption from such registration is available, (iv) there is no existing public or other market for the Non-Voting Shares underlying the Rollover Option, and there can be no assurance as to when, or whether, any such market will develop, or that Participant will be able to sell or dispose of the Non-Voting Shares underlying the Rollover Option;
- (h) Participant (i) has adequate means of providing for Participant's current needs and possible contingencies, and Participant has no need for liquidity in Participant's

investment in the Company, and (ii) can bear the economic risk of losing Participant's entire investment in the Company;

- (i) prior to making Participant's investment decision Participant (i) has had access to all of the information and individuals with respect to the Non-Voting Shares underlying the Rollover Option and Participant's investment that Participant deems necessary to make a complete evaluation thereof, and (ii) has been afforded the opportunity to ask such questions as Participant deemed necessary, and to receive answers from, representatives of the Company concerning the merits and risks of investing in the Rollover Option, including, without limitation, the restrictive and other provisions of the Management Investor Rights Agreement among the Company and the parties thereto (the "MIRA");
- (j) no representations or warranties, oral or otherwise, have been made to Participant or any party acting on Participant's behalf that are inconsistent with the written materials which have been supplied to Participant by the Company;
- (k) Participant has had an opportunity to consult an independent tax and legal advisor and Participant's decision to acquire the Rollover Option for investment has been based solely upon Participant's evaluation;
- (l) Participant is aware that the Internal Revenue Service ("IRS") or other relevant taxing authority may take a position regarding the rollover contemplated in this Agreement and/or the tax classification of the Company and the Rollover Option contrary to that intended by the Company as provided in this Agreement and Participant shall be solely responsible for any and all tax or other liabilities that may result from the IRS's or other relevant taxing authority's position; and
- (m) Participant is aware that the MIRA provides significant restrictions on Participant's ability to dispose of the Non-Voting Shares underlying the Rollover Option.

Participant further represents and warrants to the Company that Participant is an "accredited investor" as defined in Rule 501(a) under the Securities Act because Participant is either:

1. A person whose individual net worth, or joint net worth with Participant's spouse, exceeds \$1,000,000; OR
2. A person whose income exceeded \$200,000 in each of the two most recent years, or joint income with Participant's spouse exceeded \$300,000 in each of those years, and Participant has a reasonable expectation of reaching the same income level in this year.

**By electing to not exercise Participant's Prior Option pursuant to this Agreement, Participant acknowledges that Participant is instructing the Company and its Affiliates to distribute to Participant, following the Effective Time, the Rollover Option instead of cash, as described above, and Participant hereby acknowledge that Participant does not have, and will not assert that Participant has, any claim against the Company, the Majority**

**Holders (as defined below) or their respective Affiliates to receive the Prior Option Merger Consideration or any other payment in exchange for the Prior Option, except as contemplated herein.**

The “Majority Holders” shall mean, collectively or individually as the context requires, Apollo Management VI, L.P., TPG Capital, L.P. and their respective Affiliates and the Majority Holders shall be third-party beneficiaries for purposes of enforcing the immediately preceding paragraph of this Agreement.

7. Representations; Acknowledgements of the Company. By providing this Agreement to Participant, the Company hereby represents and warrants to Participant that:
  - (a) The Company is duly organized, validly existing and in good standing under the laws of the State of Delaware and has the requisite power and authority to carry on its business as is now being conducted and as proposed to be conducted immediately after the Merger and to deliver or cause to be delivered this Agreement and the MIRA and to consummate the transaction contemplated hereby;
  - (b) The Company has or prior to the Merger will have taken all corporate action required to authorize the execution and delivery of this Agreement and the MIRA and to authorize the issuance of the Rollover Option and the Non-Voting Shares underlying the Rollover Option;
  - (c) The Non-Voting Shares issued upon exercise of the Rollover Option and upon delivery of the exercise price therefor, will be duly authorized, validly issued, fully paid and non-assessable, and issued free and clear of restrictions on transfer, other than those set forth in the MIRA and applicable federal and state securities laws.
8. Other Company Interests. Participant acknowledges that any other equity or equity-based interests that Participant holds in the Company that Participant does not elect to roll over will be treated in accordance with the Merger Agreement.
9. Construction of Agreement. Any provision of this Agreement (or portion thereof) which is deemed invalid, illegal or unenforceable in any jurisdiction shall, as to that jurisdiction and subject to this section, be ineffective to the extent of such invalidity, illegality or unenforceability, without affecting in any way the remaining provisions thereof in such jurisdiction or rendering that or any other provisions of this Agreement invalid, illegal, or unenforceable in any other jurisdiction. If any covenant should be deemed invalid, illegal or unenforceable because its scope is considered excessive, such covenant shall be modified so that the scope of the covenant is reduced only to the minimum extent necessary to render the modified covenant valid, legal and enforceable. No waiver of any provision or violation of this Agreement by the Company shall be implied by the Company’s forbearance or failure to take action. This Agreement is intended to comply with Section 409A of the Code and any guidance issued thereunder and shall be interpreted, operated and administered accordingly.
10. Delays or Omissions. No delay or omission to exercise any right, power or remedy accruing to any party hereto upon any breach or default of any party under this Agreement, shall impair any such right, power or remedy of such party nor shall it be

construed to be a waiver of any such breach or default, or an acquiescence therein, or of or in any similar breach or default thereafter occurring nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of any party of any breach or default under this Agreement, or any waiver on the part of any party or any provisions or conditions of this Agreement, shall be in writing and shall be effective only to the extent specifically set forth in such writing.

11. Limitation on Transfer. The Rollover Option shall be exercisable only by Participant or Participant's Permitted Transferee(s), as determined in accordance with the terms of the Plan (including without limitation the requirement that the Participant obtain the prior written approval by the Committee of any proposed Transfer to a Permitted Transferee during the lifetime of the Participant). Each Permitted Transferee shall be subject to all the restrictions, obligations, and responsibilities as apply to Participant under the Plan and this Agreement and shall be entitled to all the rights of Participant under the Plan, provided that in respect of any Permitted Transferee which is a trust or custodianship, the Rollover Option shall become exercisable and/or expire based on the Employment and termination of Employment of Participant. All Non-Voting Shares obtained pursuant to the Rollover Option granted herein shall not be transferred except as provided in the Plan and, where applicable, the Management Investor Rights Agreement.
12. No Special Employment Rights. Nothing contained in the Plan shall confer upon Participant any right with respect to the continuation of Employment or interfere in any way with the right of the Company or an Affiliate, subject to the terms of the Employment Agreement to the contrary, at any time to terminate such Employment or to increase or decrease Participant's compensation from the rate in existence at the time of the grant of the Rollover Option, subject to the terms of the Employment Agreement.
13. For purposes of the MIRA, Non-Voting Shares acquired upon the exercise of the Rollover Option shall be treated as "Rollover Shares" as defined in the MIRA.
14. Participant's Undertaking and Consents. The Participant hereby agrees to take whatever additional actions and execute whatever additional documents the Company may in its reasonable judgment deem necessary or advisable in order to carry out or effect one or more of the obligations or restrictions imposed on the Participant pursuant to the express provisions of this Agreement and the Plan. The Participant hereby consents to the collection, retention, use, processing and transfer of the Participant's personal data by the Company and any of its Affiliates, any administrator of the Plan, the Company's registrars or brokers for the purposes of implementing and operating the Plan.
15. Integration. This Agreement, and the other documents referred to herein or delivered pursuant hereto which form a part hereof contain the entire understanding of the parties with respect to its subject matter. There are no restrictions, agreements, promises, representations, warranties, covenants or undertakings with respect to the subject matter hereof other than those expressly set forth herein and in the Plan. This Agreement, including without limitation the Plan, supersedes all prior agreements and understandings

between the parties with respect to its subject matter, except to the extent of any conflict between the provisions hereof and the Employment Agreement.

16. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.
17. Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Delaware without regard to the provisions governing conflict of laws.
18. Participant Acknowledgment. The Participant hereby acknowledges receipt of a copy of the Plan. The Participant hereby acknowledges that all decisions, determinations and interpretations of the Committee in respect of the Plan, this Agreement and the Rollover Option shall be final and conclusive. The Participant further acknowledges that, prior to the occurrence of an Initial Public Offering, no exercise of the Option or any portion thereof shall be effective unless and until the Participant has executed the Management Investor Rights Agreement and the Participant hereby agrees to be bound thereby with respect to any Non-Voting Shares that the Participant acquires upon exercise of the Rollover Option.

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IN WITNESS WHEREOF, the Company has caused this Agreement to be duly executed by its duly authorized officer and Gary W. Loveman has hereunto signed this Agreement on his own behalf, thereby representing that he has carefully read and understands this Agreement, the Plan and the Management Investor Rights Agreement as of the day and year first written above.

Harrah's Entertainment, Inc.

/s/ Stephen H. Brammell

By: Stephen H. Brammell

Title: Senior Vice President and General Counsel

GARY W. LOVEMAN

/s/ Gary W. Loveman