UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM 8-K

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

Date of Report (Date of earliest event reported): **November 16, 2009**

PENN NATIONAL GAMING, INC.

Commission file number **0-24206**

Incorporated Pursuant to the Laws of the Commonwealth of Pennsylvania

IRS Employer Identification No. **23-2234473**

825 Berkshire Blvd., Suite 200
Wyomissing, PA 19610
(610) 373-2400

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

o Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

o Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

o Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

o Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 8.01. Other Events.

On November 16, 2009, Nevada Gaming Ventures, Inc. ("NGVI"), an indirect subsidiary of Penn National Gaming, Inc. ("Penn"), entered into both (a) a "stalking horse" Asset Purchase Agreement (the "Stalking Horse Agreement") by and among Fontainebleau Las Vegas Holdings, LLC ("Resort Holdings"), Fontainebleau Las Vegas, LLC ("Resort"), Fontainebleau Las Vegas Capital Corp. ("Resort Capital" and, together with Resort Holdings and Resort, the "Resort Sellers"), Fontainebleau Las Vegas Retail Parent, LLC ("Retail Holdings"), Fontainebleau Las Vegas Retail Mezzanine, LLC ("Retail Mezzanine"), Fontainebleau Las Vegas Retail, LLC ("Retail" and, together with Retail Holdings and Retail Mezzanine, the "Retail Sellers," and, together with the Resort Sellers, the "Sellers") and NGVI, and (b) a Debtor-In-Possession Credit Agreement (the "DIP Credit Agreement") among Resort Holdings, Resort, Resort Capital, the Lenders party thereto and NGVI.

Each of the Resort Sellers is a debtor in a chapter 11 case before the United States Bankruptcy Court for the Southern District of Florida (the "Bankruptcy Court"), and each of the Retail Sellers has agreed to commence cases under chapter 11 of the Bankruptcy Code by filing voluntary petitions for relief with the Bankruptcy Court. Together, the Sellers own the assets comprising the unfinished hotel, resort and casino known as the Fontainebleau Las Vegas (the "Project").

The effectiveness of the Stalking Horse Agreement and DIP Credit Agreement are subject to the approval of the Bankruptcy Court. If the agreements are so approved, NGVI will be designated as the "stalking horse" bidder in an auction of the Project pursuant to Section 363 of the U.S. Bankruptcy Code. As the stalking horse bidder, NGVI's offer to purchase the Project, as set forth in the Stalking Horse Agreement, would be the standard by which any other bids to purchase the Project will be evaluated. Other interested bidders who submit qualifying offers would be permitted to participate in the auction of the Project. The Sellers have agreed to request that the Bankruptcy Court set January 15, 2010 as the deadline for other bids and schedule the auction for January 21, 2010.

Pursuant to the DIP Credit Agreement, if approved, NGVI will be committed to provide Resort with a revolving credit facility of approximately $51.5 million through February 9, 2010, subject to earlier termination upon the occurrence of certain events. The DIP Credit Agreement requires Resort to

spend any borrowings it makes under the DIP Credit Agreement to stabilize the unfinished buildings at the Project and on other budgeted expenses.

Pursuant to the Stalking Horse Agreement, if approved, NGVI will agree, absent any higher or otherwise better bid, to acquire the Project from the Sellers (the "Purchase") for (i) $50 million in cash (subject to reduction for certain remediation costs, among other adjustments), and (ii) the release of the Sellers, at the closing of the Purchase, from any outstanding obligations under the DIP Credit Agreement. Consummation of the Purchase would be subject to customary conditions to closing, including receipt of Bankruptcy Court approvals. If the Bankruptcy Court approves the Stalking Horse Agreement, then, upon termination of the agreement in certain circumstances — including the Bankruptcy Court's approval of a competing transaction, a default by the Sellers under specified provisions of the DIP Credit Agreement or the failure of the parties to meet certain procedural deadlines — the Sellers would be required to pay NGVI a termination fee equal to 3% of (a) $50 million plus (b) the amount of the Sellers' outstanding obligations under the DIP Credit Agreement at the time of termination.

The foregoing descriptions of the Stalking Horse Agreement and DIP Credit Agreement are qualified in their entirety by reference to the full text of the Stalking Horse Agreement and DIP Credit Agreement, which are filed as Exhibits 99.1 and 99.2 to this report, respectively, and are incorporated into this report by reference. The Stalking Horse Agreement and DIP Credit Agreement have been included to provide investors and security holders with information regarding their respective terms. They are not intended to provide any other factual information about NGVI, the Sellers or their respective subsidiaries

and affiliates. Each agreement contains representations and warranties by NGVI, on the one hand, and by certain Sellers, on the other hand, made solely for the benefit of the other. The assertions embodied in those representations and warranties are qualified by information in applicable disclosure schedules that the parties have exchanged in connection with signing the Stalking Horse Agreement and DIP Credit Agreement. These disclosure schedules contain information that modifies, qualifies and creates exceptions to the representations and warranties set forth in the Stalking Horse Agreement and DIP Credit Agreement. Moreover, certain representations and warranties in the Stalking Horse Agreement and DIP Credit Agreement were made as of a specified date, may be subject to a contractual standard of materiality different from what might be viewed as material to shareholders, or may have been used for the purpose of allocating risk between NGVI, on the one hand, and the Sellers, on the other hand. Accordingly, the representations and warranties in the Stalking Horse Agreement and DIP Credit Agreement are not necessarily characterizations of the actual state of facts about NGVI or the Sellers at the time they were made or otherwise and should only be read in conjunction with the other information that NGVI or the Sellers file with the Bankruptcy Court or that Penn makes publicly available in reports, statements and other documents filed with the Securities and Exchange Commission.

Forward-looking Statements

This Form 8-K contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995 related to the auction of the Project. Actual results may vary materially from expectations. These forward-looking statements are subject to risks and uncertainties that could cause actual results to differ from expectations including, but are not limited to, rulings of the Bankruptcy Court. Penn does not intend to update publicly any forward-looking statements except as required by law.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

99.1 Asset Purchase Agreement, dated as of November 16, 2009, by and among Fontainebleau Las Vegas Holdings, LLC, Fontainebleau Las Vegas, LLC, Fontainebleau Las Vegas Capital Corp., Fontainebleau Las Vegas Retail Parent, LLC, Fontainebleau Las Vegas Retail Mezzanine, LLC, Fontainebleau Las Vegas Retail, LLC and Nevada Gaming Ventures, Inc.

99.2 Debtor-In-Possession Credit Agreement, dated as of November 16, 2009, among Fontainebleau Las Vegas Holdings, LLC, Fontainebleau Las Vegas, LLC, Fontainebleau Las Vegas Capital Corp., the Lenders party thereto and Nevada Gaming Ventures, Inc.

* * *

SIGNATURES

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

Dated: November 17, 2009

PENN NATIONAL GAMING, INC.

By: /s/ Robert S. Ippolito
Name: Robert S. Ippolito
Title: Vice President, Secretary and Treasurer

ASSET PURCHASE AGREEMENT

BY AND AMONG

FONTAINEBLEAU LAS VEGAS HOLDINGS, LLC,

FONTAINEBLEAU LAS VEGAS, LLC,

FONTAINEBLEAU LAS VEGAS CAPITAL CORP.,

FONTAINEBLEAU LAS VEGAS RETAIL PARENT, LLC,

FONTAINEBLEAU LAS VEGAS RETAIL MEZZANINE, LLC and

FONTAINEBLEAU LAS VEGAS RETAIL, LLC

AS SELLERS

- and -

NEVADA GAMING VENTURES, INC.

AS PURCHASER

Dated as of November 16, 2009

TABLE OF CONTENTS

TABLE OF CONTINUED
(continued)

TABLE OF CONTENTS
(continued)

ASSET PURCHASE AGREEMENT

ASSET PURCHASE AGREEMENT (the "Agreement"), dated as of November 16, 2009, by and among FONTAINEBLEAU LAS VEGAS HOLDINGS, LLC, a Nevada limited liability company ("Resort Holdings"), FONTAINEBLEAU LAS VEGAS, LLC, a Nevada limited liability company ("Resort"), FONTAINEBLEAU LAS VEGAS CAPITAL CORP., a Delaware corporation ("Resort Capital" and, together with Resort Holdings and Resort, the "Resort Sellers"), FONTAINEBLEAU LAS VEGAS RETAIL PARENT, LLC, a Delaware limited liability company ("Retail Holdings"), FONTAINEBLEAU LAS VEGAS RETAIL MEZZANINE, LLC, a Delaware limited liability company ("Retail Mezzanine"), FONTAINEBLEAU LAS VEGAS RETAIL, LLC, a Delaware limited liability company ("Retail" and, together with Retail Holdings and Retail Mezzanine, the "Retail Sellers" and, together with the Resort Sellers, the "Sellers") and NEVADA GAMING VENTURES, INC., a Nevada corporation ("Purchaser") (collectively, the "Parties").

RECITALS:

A. Resort owns a fee interest in the Owned Real Property (as defined below); Retail owns the Retail Real Property (as defined below); and the Sellers, prior to June 9, 2009, were developing a proposed hotel, casino and entertainment resort at the Real Property (as defined below) (the "Project").

B. On June 9, 2009, the Resort Sellers commenced cases under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") by filing voluntary petitions for relief with the United States Bankruptcy Court for the Southern District of Florida (such court, and any successor United States Bankruptcy Court presiding over any one or more of the Seller Chapter 11 Cases (as defined below), the "Bankruptcy Court"); and on or prior to the date that is seven Business Days (as defined below) after the DIP Closing Date (as defined below), the Retail Sellers shall commence cases under chapter 11 of the Bankruptcy Code by filing voluntary petitions for relief with the Bankruptcy Court (the chapter 11 cases of the Sellers, collectively, the "Seller Chapter 11 Cases").

C. Concurrently with the entry of the Sale Procedures Order (as defined below), a debtor-in-possession credit agreement in the form attached as Exhibit C, by and among the Resort Sellers and Purchaser, as Administrative Agent, pursuant to which the DIP Facility Lenders (as defined below) will provide a secured super-priority debtor-in-possession revolving loan facility to Resort in an aggregate principal amount up to $51,503,734 (the "DIP Facility Amount"), shall have been entered into and become effective (the "DIP Facility").

D. The Sellers desire to sell to the Purchaser the Purchased Assets (as defined below) and have the Purchaser assume the Assumed Liabilities (as defined below), and the Purchaser desires to purchase from the Sellers the Purchased Assets and assume from the Sellers the Assumed Liabilities, in each case upon the terms and subject to the conditions contained in this Agreement, including obtaining an order of the Bankruptcy Court pursuant to Sections 105, 363 and 365 of the Bankruptcy Code authorizing the Transaction (as defined below).

NOW THEREFORE, in consideration of the foregoing and the representations, warranties, covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

ARTICLE I
DEFINITIONS

Section 1.1 **Recitals**. The recitals set forth above are incorporated by reference and are expressly made part of this Agreement.

Section 1.2 **Definitions**. The following definitions shall apply to and constitute part of this Agreement, the Disclosure Letter and all Exhibits attached hereto:

"**Affiliate**" shall mean, with respect to any Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with, such Person. For purposes of this definition, "control" (including, with correlative meaning, the terms "controlling" and "controlled") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities, by contract or otherwise.

"**Affiliate Assets**" shall have the meaning set forth in Section 4.1(u).

"**Affiliate Intellectual Property**" shall have the meaning set forth in Schedule 4.1(u) of the Disclosure Letter.

"**Agreed Budget**" shall have the meaning set forth in the DIP Facility.

"**Agreement**" shall have the meaning set forth in the preamble.

"**Allocation Schedule**" shall have the meaning set forth in Section 7.4(b).

"**Applicable Laws**" shall mean all statutes, laws (including common law), regulations, rules, ordinances, codes and other requirements of any Governmental Authority, including any Orders.

"**Assignment and Assumption Agreement**" shall mean an agreement providing for the assignment by the Sellers to the Purchaser of the Sellers' right, title and interest in and to the Purchased Assets, including the Assumed Contracts and Assumed Leases, and the assumption by the Purchaser from the Sellers of the Assumed Liabilities, such agreement to be in form and substance reasonably satisfactory to the Parties.

"**Assumed Contracts**" shall mean, collectively, the Contracts set forth in Schedule 1.2(a) of the Disclosure Letter (but excluding the Eliminated Agreements), which Contracts shall be assumed by the Sellers and assigned to the Purchaser pursuant to Section 365 of the Bankruptcy Code, the Sale Order or other order of the Bankruptcy Court and the Assignment and Assumption Agreement.

"**Assumed Leases**" shall mean, collectively, the Leases set forth in Schedule 1.2(b) of the Disclosure Letter (but excluding the Eliminated Agreements), which Leases shall be assumed by the Sellers and assigned to the Purchaser pursuant to Section 365 of the Bankruptcy Code, the Sale Order or other order of the Bankruptcy Court and the Assignment and Assumption Agreement.

"**Assumed Liabilities**" shall have the meaning set forth in Section 2.6(a).

"**Auction**" shall have the meaning set forth in the Sale Procedures Order.

"**Auction Deposit**" shall mean the "Deposit" (as defined in the Bidding Procedures).

"**Auditor**" shall have the meaning set forth in Section 2.10(d).

"**Auditor's Statement**" shall have the meaning set forth in Section 2.10(d).

"**Bankruptcy Code**" shall have the meaning set forth in the recitals.

"**Bankruptcy Court**" shall have the meaning set forth in the recitals.

"**Bidding Procedures**" shall have the meaning set forth in the Sale Procedures Order.

"**Books and Records**" shall mean all documents used by the Sellers in connection with, or relating to, the Purchased Assets, the Assumed Liabilities or the Project, including all files, data, reports, plans, mailing lists, supplier lists, price lists, marketing information and procedures, advertising and

promotional materials, Equipment maintenance records, warranty information, records of operations, standard forms of documents, manuals of operations or business procedures and other similar procedures (including all discs, tapes and other media-storage data containing such information).

"**Break-Up Fee**" shall mean an amount in cash equal to 3.0% of the sum of (x) $50,000,000 and (y) the aggregate amount of Obligations at the time of a termination of this Agreement described in Section 8.3(a).

"**Business Day**" shall mean any day other than a Saturday, Sunday, any other day on which commercial banks in New York City, New York are authorized or obligated to close under Applicable Laws or, for purposes of any provision of this Agreement requiring the filing of papers with the Bankruptcy Court or the entry of an Order by the Bankruptcy Court no later than a specified day, any other day on which the Bankruptcy Court is closed.

"**Claims**" shall mean claims, suits, proceedings, causes of action, Liabilities, losses, damages, penalties, judgments, settlements, costs, expenses, fines, disbursements, demands, reasonable costs, fees and expenses of counsel, including in respect of investigation, interest, demands and actions of any nature or any kind whatsoever.

"**Closing**" shall have the meaning set forth in Section 7.1.

"**Closing Cash Payment**" shall mean an amount equal to (i) $50,000,000, *less* (ii) the Cure Costs, provided that the Closing Cash Payment shall not be reduced pursuant to this clause (ii) by an amount in excess of $1,000,000, *less* (iii) the amount, if any, by which (A) the Remediation Amount exceeds (B) $2,000,000, provided that, subject to Section 2.5(b), the Closing Cash Payment shall not be reduced pursuant to this clause (iii) by an amount in excess of $10,000,000, *less* (iv) an amount equal to 50% of the Transfer Costs, *less* (v) the Auction Deposit, *plus* (vi) an amount equal to the amount of any cash that the Sellers have used to prepay any "Loans" (as defined in the DIP Facility) pursuant to Section 2.07 of the DIP Facility, provided that (A) such cash constitutes proceeds in respect of an Excluded Asset and (B) the Sellers have notified the Purchaser in writing on or prior to the date of such prepayment that such cash constitutes proceeds in respect of an Excluded Asset, *plus* (vii) in the event that the Sellers repay all of the Obligations and terminate all Commitments in connection with the entry into a Replacement DIP Facility, an amount equal to (A) the DIP Facility Amount, *less* (B) the amount, if any, by which (1) the amount that was contemplated to be spent on Stabilization pursuant the Stabilization Plan from and after such repayment exceeds (2) the amount contemplated to be spent on Stabilization pursuant to such Replacement DIP Facility from and after such repayment.

"**Closing Date**" shall have the meaning set forth in Section 7.1.

"**Closing Documents**" shall mean any agreements, instruments and other documents to be delivered at the Closing pursuant to Section 7.2 or Section 7.3.

"**Closing-Related Consideration**" shall mean the (i) the Auction Deposit, (ii) Closing Cash Payment, (iii) the release of the Sellers from the Obligations pursuant to Section 2.4(b)(iii) and (iv) the Post-Closing Remediation True-Up.

"**COBRA**" shall mean the provisions for the continuation of health care enacted by the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, as set forth in Section 4980B of the Code (and any predecessor or successor provisions, including Section 162(k) of the Code) and Sections 601 through 608 of ERISA, and any amendments thereto and successor provisions thereof, including any regulations promulgated under the applicable provisions of the IRC and ERISA, and any comparable provisions under Applicable Laws.

"**COBRA Beneficiaries**" shall have the meaning set forth in Section 5.9(c).

"**Commitments**" shall have the meaning set forth in the DIP Facility.

"**Competing Transaction**" shall mean any financing, refinancing, acquisition, divestiture, public offering, recapitalization, business combination or reorganization, whether in one transaction or a series of related transactions, of or involving (x) all or a material part of the Purchased Resort Assets or (y) all or a material part of the Purchased Retail Assets, in the case of either clause (x) or (y) other than any such transaction or series of related transactions with the Purchaser or an Affiliate thereof.

"**Completion Amount**" shall have the meaning set forth in Section 2.10(c).

"**Completion Amount Statement**" shall have the meaning set forth in Section 2.10(c).

"**Completion Cost Projection Date**" shall have the meaning set forth in Section 2.10(a).

"**Completion Cost Projections**" shall have the meaning set forth in Section 2.10(b).

"**Completion Costs**" shall mean all costs, fees and expenses, including allocated overhead, incurred by or on behalf of the Purchaser or its Affiliates on or before the Measurement Date or the Third-Party Sale Date, as applicable (or that are committed on or before the Measurement Date or the Third-Party Sale Date, as applicable, to be incurred by or on behalf of such Persons), including such costs incurred before the date of this Agreement, in connection with the completion or development of any portion of the Project, including (i) all costs, fees and expenses incurred in connection with the design, construction, inspection, remediation (environmental or otherwise), financing (including interest expense), advertising, promotion, pre-opening or opening of any portion of the Project, and (ii) (x) all costs, fees and expenses incurred in connection with the Transaction (including, for the avoidance of doubt, Taxes incurred in connection with the Transaction), including costs, fees and expenses of Representatives in connection with the due diligence, analysis, drafting, negotiation, prosecution, defense or implementation of the Transaction or the Transaction Documents, as well as the Closing-Related Consideration and (y) in the event of a Third-Party Sale, all costs, fees and expenses incurred in connection with the Third-Party Sale (including, for the avoidance of doubt, Taxes incurred in connection with the Third-Party Sale), including costs, fees and expenses of Representatives in connection with the due diligence, analysis, drafting, negotiation, prosecution, defense or implementation of the Third-Party Sale or the transaction documents executed in connection with the Third-Party Sale.

"**Confidentiality Agreement**" shall mean that certain letter agreement, dated as of June 30, 2009, by and between Penn Ventures, LLC and Fontainebleau Resorts, LLC.

"**Consent**" shall mean any consent, approval, waiver, grant, exemption, license, entitlement, suitability determination, franchise, development right, certificate, variance, registration, permit, order or other authorization of any Person.

"**Contingent Payment**" shall mean the amount, if any, payable pursuant to Section 2.10(e)(i) or (ii), as applicable.

"**Contracts**" shall mean any contracts, agreements, licenses and leases (other than the Leases) entered into by any Seller (whether oral or written) affecting or related to any of the Purchased Assets, the Assumed Liabilities or the Project or by which any Seller is bound.

"**COREA**" shall mean that certain Construction, Operation and Reciprocal Easement Agreement, dated as of June 6, 2007, by and among Resort, Old Resort II and Retail.

"**Cure Costs**" shall have the meaning set forth in Section 2.8(a).

"**Data Room**" shall mean that certain "Fontainebleau" virtual data room assembled by the Sellers, operated by RR Donnelly and made accessible to the Purchaser and its Representatives.

"**Deed**" shall mean a customary special warranty deed in form and substance reasonably satisfactory to the Purchaser.

"**Deeds of Trust**" shall mean (a) those certain Deeds of Trust referenced in items 48 and 49 of Schedule B-2 of the Title Report and (b) that certain Deed of Trust among Retail, as Trustor, Lawyers Title of Nevada, Inc., as Trustee, and Lehman Brothers Holdings, Inc., as Beneficiary, dated as of June 6, 2007.

"**Defect**" shall mean any structural or other physical defect, damage or deterioration, whether latent or otherwise, and whether or not existing as of the date hereof, on or in the Real Property.

"**Deposits**" shall have the meaning set forth in Section 2.1(e).

"**DIP Closing Date**" shall mean the "Closing Date" (as defined in the DIP Facility).

"**DIP Facility**" shall have the meaning set forth in the recitals.

"**DIP Facility Amount**" shall have the meaning set forth in the recitals.

"**DIP Facility Lenders**" shall mean the "Secured Parties" (as defined in the DIP Facility).

"**DIP Order**" shall have the meaning set forth in the DIP Facility.

"**Disclosure Letter**" shall have the meaning set forth in the first sentence of Section 4.1.

"**Dispute Notice**" shall have the meaning set forth in Section 2.10(c).

"**Disputed Costs**" shall have the meaning set forth in Section 2.10(c).

"**Disputed Remediation Costs**" shall have the meaning set forth in Section 2.5(c).

"**Eliminated Agreement**" shall mean any Contract or Lease (a) for which the Bankruptcy Court establishes Cure Costs that the Purchaser is not willing to pay as contemplated by paragraph 17(e) of the Sale Procedures Order, (b) that the Bankruptcy Court determines cannot be assumed and assigned, provided that such Contract or Lease (i) is set forth in Part II of Schedule 1.2(a) or Part II of Schedule 1.2(b), respectively, of the Disclosure Letter and (ii) is not, individually or in the aggregate with all other Contracts and Leases described in this clause (b), material to Purchaser, (c) that is a Specified Retail Agreement (in the event the Sellers make the Section 2.2(b) Election) or (d) that is eliminated from Part II of Schedule 1.2(a) or Part II of Schedule 1.2(b), respectively, of the Disclosure Letter pursuant to Section 2.9.

"**Employment Agreement**" shall mean any contract, offer letter or other individual employment or similar agreement of any Seller with or addressed to any Seller Employee or other individual who is rendering or has rendered services to any Seller as an employee or consultant under which any Seller now has, or could at any time have, any Liability.

"**Encumbrances**" shall mean all mortgages, pledges, charges, liens, debentures, trust deeds, claims, assignments by way of security or otherwise, security interests, conditional sales contracts or other title retention agreements or similar interests or instruments charging, or creating a security interest in the Purchased Assets or any part thereof or interest therein, and any agreements, leases, licenses, occupancy agreements, options, easements, rights of way, restrictions, executions or other encumbrances (including notices or other registrations in respect of any of the foregoing) affecting title to the Purchased Assets or any part thereof or interest therein.

"**Environmental Laws**" shall mean all Applicable Laws relating to pollution or protection of human health or the environment (including ambient air, water, surface water, groundwater, land surface, soil or subsurface) or natural resources, including Applicable Laws relating to the storage, transfer,

transportation, investigation, cleanup, treatment, or use of, or release or threatened release into the environment of, any Hazardous Substances.

"**Environmental Permits**" shall mean all Permits issued pursuant to Environmental Laws.

"**Environmental Reports**" shall mean accurate and complete copies of the reports, studies, analyses, evaluations, assessments or monitoring data set forth in Schedule 4.1(l) of the Disclosure Letter.

"**Equipment**" shall mean all machinery, equipment, furniture, fixtures, furnishings, vehicles, spare parts, leasehold improvements, artwork, desks, chairs, tables, computer and computer-related hardware and firmware, copiers, telephone lines and numbers, facsimile machines and other telecommunication equipment, cubicles and miscellaneous office furnishings and supplies, maintenance equipment, tools, signs and signage, cleaning supplies in unopened cases or bulk containers or packages, food processing and preparation and washing equipment, racks, trays, buffet tables, flatware, serving ware, utensils, crockery, plates, cutlery and other similar items, uniforms, napkins, linens and other tangible personal property.

"**ERISA**" shall mean the Employee Retirement Income Security Act of 1974, as amended, and the regulations and guidance promulgated thereunder.

"**ERISA Affiliate**" shall mean, with respect to any entity, trade or business, any other entity, trade or business that is, or was at the relevant time, a member of a group described in Section 414(b), (c), (m) or (o) of the IRC or Section 4001(b)(1) of ERISA that includes or included the first entity, trade or business, or that is, or was at the relevant time, a member of the same "controlled group" as the first entity, trade or business pursuant to Section 4001(a)(14) of ERISA.

"**Examiner**" shall mean Jeffrey R. Truitt, as examiner, pursuant to the Order Appointing Examiner to Examine, Negotiate and Supervise § 363 Sale of Assets, entered by the Bankruptcy Court in the Seller Chapter 11 Cases of the Resort Sellers on October 14, 2009 (Docket No. 770).

"**Excluded Agreements**" shall mean, collectively, the Contracts and Leases set forth in Schedule 1.2(c) of the Disclosure Letter, the Eliminated Agreements, any other Contracts that are

not Assumed Contracts, Specified Contracts or Specified Insurance Policies and any other Leases that are not Assumed Leases.

"**Excluded Assets**" shall have the meaning set forth in Section 2.2(a).

"**Excluded Books and Records**" shall have the meaning set forth in Section 2.2(a)(vi).

"**Excluded Deposit Counterparty**" shall have the meaning set forth in Section 2.2(c).

"**Excluded Deposits**" shall mean all Deposits set forth in Schedule 2.2(a)(viii) of the Disclosure Letter, including any Deposit to the extent added thereto pursuant to Section 2.2(d) or (e).

"**Excluded Employees**" shall mean all Seller Employees who do not become Transferred Employees.

"**Excluded Intellectual Property**" shall mean any Intellectual Property Rights of the Sellers under Excluded Agreements.

"**Excluded Liabilities**" shall have the meaning set forth in Section 2.7(a).

"**Existing Credit Facility**" shall have the meaning set forth in the DIP Facility.

"**final, non-appealable**" (including, with correlative meaning, the term "**final and non-appealable**") shall mean, with respect to any Order or other action of a Governmental Authority, an Order or other action (a) as to which no appeal, notice of appeal, motion to amend or make additional findings of fact, motion to alter or amend judgment, motion for rehearing or motion for new trial has been timely filed or, if any of the foregoing has been timely filed, it has been disposed of in a manner that upholds and affirms the subject order in all material respects without the possibility for further appeal or rehearing thereon; and (b) as to which the time for instituting or filing an appeal, motion for rehearing or motion for new trial shall have expired.

"**Final Completion Amount**" shall mean the amount of the Completion Costs, as finally determined pursuant to Section 2.10.

"**Final Remediation Amount**" shall mean the amount of the Remediation Costs, as finally determined pursuant to Section 2.5.

"**Final Remediation Determination Date**" shall have the meaning set forth in Section 2.5(d).

"**Final Remediation Purchase Price Adjustment**" shall mean the Remediation Purchase Price Adjustment, if any, *less* the Post-Closing Remediation True-Up, if any.

"**Finally Determined Cost Aggregate**" shall have the meaning set forth in Section 2.10(d).

"**Finally Determined Cost**" shall have the meaning set forth in Section 2.10(d).

"**Finally Determined Remediation Cost Aggregate**" shall have the meaning set forth in Section 2.5(c).

"**Finally Determined Remediation Cost**" shall have the meaning set forth in Section 2.5(c).

"**First Inspection**" shall have the meaning set forth in Section 2.5(a).

"**First Inspection Report**" shall have the meaning set forth in Section 2.5(a).

"**Fontainebleau Litigation**" shall have the meaning set forth in Section 6.1(f).

"**GBCI**" shall mean the Green Building Certification Institute.

"**Governmental Authority**" shall mean any domestic, foreign, federal, state, provincial or local authority, legislative body, court, government, regulatory agency, self-regulatory organization (including any securities exchange), commission, board, arbitral or other tribunal, or any political or other subdivision, department or branch of any of the foregoing.

"**Hazardous Substances**" shall mean any material, substance or waste defined or characterized as hazardous, toxic, a pollutant or a contaminant under Environmental Laws, including asbestos or any substance containing asbestos, polychlorinated biphenyls, lead paint, petroleum or petroleum products (including crude oil and any fraction thereof), radon, and mold, fungus, and microbial matters.

"**Hearing**" shall mean the hearing to be held by the Bankruptcy Court to consider the Sale Order and the approval of the Transaction.

"**Included Deposits**" shall mean all Deposits set forth in Schedule 2.1(e)(i) of the Disclosure Letter, excluding any Deposit to the extent eliminated therefrom pursuant to Section 2.2(d) or (e).

"**Inspections**" shall have the meaning set forth in Section 2.5(a).

"**Inspection Team**" shall have the meaning set forth in Schedule 2.5 of the Disclosure Letter.

"**Inspection Team Disputed Remediation Cost Calculation**" shall have the meaning set forth in Section 2.5(c).

"**Insurance Proceeds**" shall have the meaning set forth in Section 2.1(l).

"**Insured Amount**" shall mean, with respect to any costs, fees or expenses, an amount equal to the amount of Insurance Proceeds (i) that are actually received by Sellers prior to the Closing from a third-party insurer, (ii) that a third-party insurer confirms in writing that such insurer is obligated to pay or (iii) that counsel reasonably satisfactory to the Purchaser and the Sellers concludes, in a written opinion addressed to Purchaser in form and substance reasonably

satisfactory to Purchaser, that a third-party insurer is obligated to pay, in each case as compensation for such costs, fees or expenses.

"**Intellectual Property Rights**" shall mean all trade or brand names, business names, trade marks (including logos), trade mark registrations and applications, service marks, service mark registrations and applications, copyrights, copyright registrations and applications, internet domain names, issued patents and pending applications and other patent rights, industrial design registrations, pending applications and other industrial design rights, trade secrets, proprietary information and know how, equipment and parts lists and descriptions, instruction manuals, inventions, inventors' notes, research data, blue prints, drawings and designs, formulae, processes, computer software (including source code, executable code, firmware, data, databases and technical documentation) and technical manuals and documentation used in connection therewith, advertising, marketing and promotional materials and other printed or written materials, technology and other intellectual property, together with all rights under licenses, registered user agreements, technology transfer agreements, other agreements or instruments relating to any of the foregoing, and goodwill associated with any of the foregoing.

"**IRC**" or "**Code**" shall mean the Internal Revenue Code of 1986, as amended.

"**joint and several**" (including, with correlative meaning, the term "**jointly and severally**") shall mean (a) with respect to the Retail Sellers, the Retail Sellers shall solely be responsible, on a joint and several basis, for their pro-rata share (as such share is determined by the Bankruptcy Court) of any Liability of the Sellers pursuant to this Agreement; and (b) with respect to the Resort Sellers, the Resort Sellers shall solely be responsible, on a joint and several basis, for their pro-rata share (as such share is determined by the Bankruptcy Court) of any Liability of the Sellers pursuant to this Agreement (it being specified, for the avoidance of doubt, that the sum of the pro-rata shares of the Retail Sellers and the Resort Sellers shall equal 100%).

"**Knowledge**" shall mean, with respect to the Sellers, the actual knowledge (without any duty of inquiry) of (a) Jeffrey Soffer (for purposes of Sections 4.1(l), (n) (other than the first sentence thereof), (u) and (x) (other than clause (ii) thereof) only), (b) Albert E. Kotite and (c) Deven Kumar, Howard C. Karawan, Whitney Thier and Mark Lefever; provided, that such individual described in this clause (c) is employed by any Seller or an Affiliate of any Seller at the time a representation and warranty qualified by Knowledge is made or deemed made.

"**Labor Agreement**" shall have the meaning set forth in Section 4.1(w).

"**Leases**" shall mean any agreements to lease, leases, renewals of leases, subtenancy agreements and other rights (including licenses) granted by or on behalf of, or to, any Seller or any of its predecessors in title which (a) entitle any Person to possess or occupy any space on or within the Real Property or (b) entitle any Seller or any of its Affiliates to possess or occupy any space used in connection with the Project, in each case together with all security, guarantees and indemnities relating thereto.

"**LEED Certification**" shall mean certification of silver level or higher or equivalent in accordance with the Leadership in Energy and Environmental Design Green Building Rating

System New Construction Version 2.2 of the U.S. Green Building Council, as approved by the State of Nevada for pre-2007 projects.

"**Liability**" shall mean any debt, liability, commitment or other obligation (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or not yet due) and including all costs, fees and expenses relating thereto.

"**Licensed Intellectual Property**" shall mean all of the Intellectual Property Rights of the Sellers under (1) that certain License Agreement dated June 6, 2007, by and between Resort Properties II, on the one hand, and Resort Holdings, Resort and Old Resort II, on the other hand, and (2) that certain License Agreement dated June 6, 2007, by and between Resort Properties II and Retail.

"**Material Adverse Effect**" shall mean any change, effect, event, occurrence, state of facts or development that (i) is material and adverse to the Purchased Assets and the Assumed Liabilities, taken as a whole, or the Project, provided, however, that no change, effect, event, occurrence, state of facts or development to the extent resulting from any of the following shall constitute or be deemed to constitute a "Material Adverse Effect" for purposes of this clause (i): (A) the commencement or pendency of the Seller Chapter 11 Cases, (B) the announcement or court approval of this Agreement, (C) the construction of the Project having been suspended on June 9, 2009, (D) the existing condition of the Real Property as of the date hereof, (E) normal deterioration, wear and tear of the Purchased Assets (including the Real Property), (F) increases in energy, electricity, natural gas, oil, steel, aluminum or other raw materials or operating or transportation costs, (G) existing economic conditions, both nationally and in the locale of the Project, (H) the condition of the financial, banking or securities markets (including any disruption thereof or any decline in the price of securities or availability of credit generally or any market or index), (I) the breach by Purchaser of Section 5.6(a) or Section 5.11(a), (J) any action taken by Purchaser with respect to Governmental Authorities and (K) the failure of any DIP Facility Lender to comply with its funding obligations under the DIP Facility or (ii) prevents or materially impairs the ability of the Sellers to consummate the Transaction or to perform their obligations hereunder (it being specified, for the avoidance of doubt, that the making of the Section 2.2(b) Election shall not be deemed to constitute a Material Adverse Effect). Without limiting the generality of the foregoing (and without regard to whether any change, effect, event, occurrence, state of facts or development described in this sentence otherwise constitutes a "Material Adverse Effect" as defined in the preceding sentence), any of the following shall constitute a "Material Adverse Effect": (x) the Remediation Amount, *less* the Insured Amount of the costs, fees or expenses included in the Remediation Amount, exceeds $12,000,000, (y) the buildings and improvements on or in the Real Property or a material portion thereof collapse or (z) there exists or occurs any Defect (other than any Defect existing as of the date hereof to the extent neither structural nor latent) (1) that, individually or in the aggregate, presents a material risk of collapse of the buildings and improvements on or in the Real Property or a material portion thereof or (2) the costs, fees and expenses of remediation and repair of which, individually or in the aggregate, *less* the Insured Amount of such costs, fees or expenses, exceeds $75,000,000.

"**Measurement Date**" shall have the meaning set forth in Section 2.10(c).

"**Multiemployer Plan**" shall mean a "multiemployer plan" as defined in Section 3(37) of ERISA, 4001(a)(3) of ERISA or Section 414(f) of the IRC.

"**NDEP**" shall have the meaning set forth in Schedule 4.1(l) of the Disclosure Letter.

"**Nevada Sales Tax Liabilities**" shall mean all Liabilities of the Sellers pursuant to (a) the Nevada Sales Tax MOUs and (b) Applicable Law of any state or local Governmental Authority in Nevada in respect of sales or use Taxes, including Nevada State Assembly Bill No.3 and Nevada State Assembly Bill No. 621.

"**Nevada Sales Tax MOUs**" shall mean (a) that certain Memorandum of Understanding entered into as of January 28, 2008 by and between Resort, its affiliates and subsidiaries, and the Nevada Department of Taxation and (b) that certain Memorandum of Understanding entered into as of April 16, 2007 by and between Resort and the Nevada Department of Taxation.

"**Notice**" shall mean any notice, request, consent, acceptance, waiver or other communication required or permitted to be given pursuant to this Agreement.

"**Obligations**" shall have the meaning set forth in the DIP Facility (including, for the avoidance of doubt, all principal, fees, interest and other obligations under the DIP Facility).

"**Offeree**" shall have the meaning set forth in Section 5.9(a).

"**Old Resort II**" shall mean Fontainebleau Las Vegas II, LLC, a Florida limited liability company that merged into Resort effective as of February 4, 2009.

"**Order**" shall mean any order, writ, judgment, injunction, decree, stipulation, determination, decision, verdict, ruling, or award entered by or with any Governmental Authority (whether temporary, preliminary or permanent).

"**Outside Date**" shall have the meaning set forth in Section 8.1(b).

"**Owned Real Property**" shall mean that certain real property located in Las Vegas, Nevada, consisting of approximately 24.4 acres, and more specifically described on Exhibit A hereto, together with any and all buildings, fixtures and improvements located on or in such property and any and all easements, tenements, rights of way, mineral rights, water rights, air rights, development rights and all other rights and interests appurtenant thereto.

"**Parties**" shall have the meaning set forth in the preamble.

"**Penn**" shall mean Penn National Gaming, Inc., a Pennsylvania corporation.

"**Permits**" shall mean any and all material Consents of Governmental Authorities relating to the Purchased Assets, the Assumed Liabilities or the Project; provided, that for purposes of Sections 2.1(i), 7.2(g) and 7.3(e), "Permits" shall mean any and all such Consents, whether or not material.

"**Permitted Encumbrances**" shall mean: (i) the Assumed Leases; (ii) minor discrepancies, conflicts in boundary lines, shortage in area, encroachments and any other state of facts shown on any accurate survey prepared by a professionally licensed land surveyor made available to the Purchaser and any easements, rights of way, covenants, conditions, limitations and restrictions of record that are shown on Schedule B-2 of the Title Report (provided, that any item set forth therein relating to any Tax, Excluded Agreement or "claim of lien" shall not be a Permitted Encumbrance from and after the entry of the Sale Order); (iii) laws, regulations, resolutions or ordinances, including building, zoning and environmental protection, as to the use, occupancy, subdivision, development, conversion or redevelopment of the Real Property imposed by any Governmental Authority, but only to the extent that such laws, regulations, resolutions or ordinances have not been violated in any material respect; (iv) liens for real estate and personal property Taxes not yet due and payable; (v) liens securing the Obligations; and (vi) Encumbrances to the extent released at or prior to the Closing, whether pursuant to the Sale Order or otherwise.

"**Person**" shall mean an individual, partnership, limited liability company, corporation, trust, joint venture, association, joint stock company, unincorporated organization, Governmental Authority or other entity, and the successors and assigns thereof or the heirs, executors, administrators or other legal representatives of an individual.

"**Post-Closing Remediation True-Up**" shall have the meaning set forth in Section 2.5(d).

"**Pre-Closing Tax Period**" shall have the meaning set forth in Section 7.4(c).

"**Project**" shall have the meaning set forth in the recitals.

"**Project Documents**" shall have the meaning set forth in Section 2.1(h).

"**Property Taxes**" shall have the meaning set forth in Section 2.1(e).

"**Purchased Assets**" shall mean, collectively, the assets, properties and rights to be purchased by the Purchaser from the Sellers pursuant to this Agreement and set forth in detail in Section 2.1, excluding, for the avoidance of doubt, the Excluded Assets.

"**Purchased Intellectual Property**" shall have the meaning set forth in Section 2.1(j).

"**Purchased Resort Assets**" shall mean, collectively, the Purchased Assets to be purchased by the Purchaser from the Resort Sellers.

"**Purchased Retail Assets**" shall mean, collectively, the Purchased Assets to be purchased by the Purchaser from the Retail Sellers.

"**Purchaser**" shall have the meaning set forth in the preamble.

"**Purchaser Broker Fee**" shall have the meaning set forth in Section 4.2(d).

"**Purchaser Contingent Payment Calculation**" shall have the meaning set forth in Section 2.10(c).

"**Purchaser Disputed Cost Calculation**" shall have the meaning set forth in Section 2.10(c).

"**Purchaser's Confidential Information**" shall mean all information relating to trade secrets and all information that is material, non-public, confidential and proprietary and relates to the Purchased Assets, the Assumed Liabilities or the Project, other than information that was or becomes available to the public other than as a result of a breach by a Seller or any of its Representatives of Section 5.11(b).

"**Real Property**" shall mean the Owned Real Property and the Retail Real Property.

"**Remediation Amount**" shall have the meaning set forth in Section 2.5(a).

"**Remediation Auditor**" shall have the meaning set forth in Section 2.5(c).

"**Remediation Auditor's Statement**" shall have the meaning set forth in Section 2.5(c).

"**Remediation Costs**" shall have the meaning set forth in Section 2.5(a).

"**Remediation Dispute Notice**" shall have the meaning set forth in Section 2.5(c).

"**Remediation Escrow Agent**" shall mean an escrow agent reasonably satisfactory to the Parties.

"**Remediation Escrow Agreement**" shall mean an escrow agreement in form and substance reasonably satisfactory to the Purchaser and the Sellers.

"**Remediation Escrow Fund**" shall have the meaning set forth in Section 2.4(b)(iv).

"**Remediation Material Adverse Effect**" shall have the meaning set forth in Section 2.5(b).

"**Remediation Termination Notice**" shall have the meaning set forth in Section 2.5(b).

"**Remediation Purchase Price Adjustment**" shall mean the amount, if any, by which the Closing Cash Payment is reduced pursuant to clause (iii) of the definition thereof.

"**Remedies Exercise Date**" shall have the meaning set forth in the DIP Order.

"**Remedies Exercise Notice**" shall have the meaning set forth in the DIP Order.

"**Replacement DIP Facility**" shall mean a debtor-in-possession facility that is entered into by any Seller in connection with a refinancing of the DIP Facility in accordance with its terms.

"**Representative**" shall mean, with respect to a particular Person, any director, officer, manager, partner, member, employee, agent, consultant, advisor or other representative of such Person, including legal counsel, accountants, and financial advisors.

"**Resort**" shall have the meaning set forth in the preamble.

"**Resort Capital**" shall have the meaning set forth in the preamble.

"**Resort Holdings**" shall have the meaning set forth in the preamble.

"**Resort Properties II**" shall mean Fontainebleau Resort Properties II, LLC, a Delaware limited liability company.

"**Resort Sellers**" shall have the meaning set forth in the preamble.

"**Retail**" shall have the meaning set forth in the preamble.

"**Retail Holdings**" shall have the meaning set forth in the preamble.

"**Retail Leaseback**" shall mean that certain Lease, dated as of June 6, 2007, by and between Retail, as lessor, and Resort, as lessee.

"**Retail Master Lease**" shall mean that certain Master Lease Agreement, dated as of June 6, 2007, by and between Resort and Old Resort II, as lessors, and Retail, as lessee.

"**Retail Mezzanine**" shall have the meaning set forth in the preamble.

"**Retail Real Property**" shall mean all of the property rights of each Retail Seller in any portion of the Owned Real Property, including (a) any rights of such Retail Seller as lessee under (including as holder of the leasehold interest under) the Retail Master Lease in an air rights parcel of approximately 286,500 square feet located within a portion of the Owned Real Property, and any right of such Retail Seller to convert such leasehold interest into fee simple title, and (b) all easements granted to such Retail Seller under the COREA.

"**Retail Sale Procedures Order**" shall have the meaning set forth in Section 8.1(h)(ii).

"**Retail Sellers**" shall have the meaning set forth in the preamble.

"**Review Period**" shall have the meaning set forth in Section 2.10(c).

"**Sale Order**" shall mean a final, non-appealable order of the Bankruptcy Court that has not been stayed, stayed pending appeal or vacated by a court of competent jurisdiction, in form and substance reasonably satisfactory to the Purchaser, authorizing the matters referred to in Section 3.3; provided, that for purposes of Sections 6.1(e), 6.2(d) and 8.1(j), "Sale Order" shall mean an order of the Bankruptcy Court, in form and substance reasonably satisfactory to the Purchaser, authorizing the matters referred to in Section 3.3.

"**Sale Procedures Motion**" shall have the meaning set forth in Section 3.2.

"**Sale Procedures Order**" shall mean a final, non-appealable order of the Bankruptcy Court that has not been stayed, vacated or stayed pending appeal, substantially in the form set forth in Exhibit B hereto; provided, that for purposes of Sections 8.1(g) and 8.1(i), "Sale Procedures Order" shall mean an order of the Bankruptcy Court substantially in the form set forth in Exhibit B hereto.

"**Second Inspection**" shall have the meaning set forth in Section 2.5(a).

"**Second Inspection Report**" shall have the meaning set forth in Section 2.5(a).

"**Section 2.2(b) Election**" shall have the meaning set forth in Section 2.2(b).

"**Seller Benefit Plan**" shall mean any "employee benefit plan" (as defined in Section 3(3) of ERISA), any employment, consulting, retention, or change in control or other employee benefit arrangement or payroll practice, including any bonus plan, any incentive, profit-sharing, stock option, stock ownership or other equity or equity-based compensation, any deferred compensation arrangement, any pension, retirement, excess benefit, supplemental unemployment termination or severance plan or arrangement, any stock purchase, sick leave, vacation pay, salary continuation for disability, hospitalization, medical insurance, disability insurance or life insurance plan or program, and any post-retirement medical or life insurance plan or program, in each case, whether written or unwritten, subject to ERISA or not, qualified or non-qualified, funded or unfunded, with respect to which (a) any Seller sponsors, maintains, contributes to or is required to contribute to for the benefit of any current or former Seller Employees or (b) any Seller is obligated to contribute or with respect to which any Seller now has, or could at any time have, any Liability.

"**Seller Broker Fee**" shall have the meaning set forth in Section 4.1(k).

"**Seller Chapter 11 Cases**" shall have the meaning set forth in the recitals.

"**Seller Closing Election Notice**" shall have the meaning set forth in Section 2.5(b).

"**Seller Contingent Payment Calculation**" shall have the meaning set forth in Section 2.10(c).

"**Seller Disputed Cost Calculation**" shall have the meaning set forth in Section 2.10(c).

"**Seller Disputed Remediation Cost Calculation**" shall have the meaning set forth in Section 2.5(c).

"**Seller Employee**" shall mean each individual who is, or has in the past been, classified, whether by any Seller or pursuant to Applicable Law, as an employee of any Seller with respect to the Project.

"**Seller Remediation Amount Estimate**" shall have the meaning set forth in Section 2.5(c).

"**Sellers**" shall have the meaning set forth in the preamble.

"**Sellers' Confidential Information**" shall mean all information that is material, non-public, confidential and proprietary and relates to the Purchased Assets, the Assumed Liabilities or the Project that has been furnished by the Sellers or their Representatives to Purchaser or any of its Affiliates or Representatives in connection with the Transaction, other than information that (x) was or becomes available to the public other than as a result of a breach by Purchaser or any of its Affiliates or Representatives of the Confidentiality Agreement or Section 5.11(a), (y) was or becomes available to Purchaser or any of its Affiliates or Representatives on a non-confidential basis from a source other than the Sellers or their Representatives, provided that such source is not known by Purchaser to be bound by a legal, fiduciary or contractual obligation of confidentiality to a Seller or (z) was within the possession of Purchaser or any of its Affiliates or Representatives prior to its being furnished by the Sellers or their Representatives to Purchaser or any of its Affiliates or Representatives.

"**Soil Removal**" shall have the meaning set forth in Schedule 4.1(l) of the Disclosure Letter.

"**Specified Contracts**" shall have the meaning set forth in Schedule 4.1(c) of the Disclosure Letter.

"**Specified DIP Event of Default**" shall mean an "Event of Default" (as defined in the DIP Facility) described in Section 7.01(b), 7.01(d) (but solely with respect to defaults under Section 5.14 of the DIP Facility), 7.01(e) (but solely with respect to defaults under Section 5.02, 5.03 (with respect to property taxes only) or 5.09 of the DIP Facility), 7.01(s) or 7.01(t) of the DIP Facility.

"**Specified Insurance Policies**" shall mean the insurance policies set forth on Schedule 2.1(l) of the Disclosure Letter, it being agreed that the Purchaser may, in its sole and absolute discretion, amend or revise Schedule 2.1(l) of the Disclosure Letter setting forth the Specified Insurance Policies in order to add thereto any OCIP Policy (as defined in Schedule 4.1(p) of the Disclosure Letter) at any time on or prior to the date that is five Business Days before the Auction.

"**Specified Retail Agreements**" shall mean the Retail Master Lease, the Retail Leaseback and the COREA.

"**Stabilization**" or "**Stabilize**" shall mean taking such actions as are commercially reasonable to preserve, protect and secure the Purchased Assets from physical deterioration, casualty, theft and vandalism, including sealing all or a portion of the Project in order to reasonably preserve the Project for future construction or development.

"**Stabilization Plan**" shall have the meaning set forth in the DIP Facility.

"**Straddle Period**" shall have the meaning set forth in Section 7.4(c).

"**Target Completion Amount**" shall have the meaning set forth in Section 2.10(e).

"**Tax**" or "**Taxes**" shall mean any federal, state, local or foreign net income, gross income, gross receipts, windfall profit, severance, property, production, sales, use, license,

excise, franchise, employment, unemployment, payroll, withholding, alternative or add on minimum, ad valorem, value added, transfer, stamp, or environmental tax, escheat payments or any other tax, custom, duty, impost, levy, governmental fee or other like assessment or charge (together with any and all interest, penalties, additions to tax and additional amounts imposed with respect thereto).

"**Tax Return**" or "**Tax Returns**" shall mean all returns, declarations of estimated tax payments, reports, estimates, information returns and statements, including any related or supporting information with respect to any of the foregoing, filed or required to be filed with any taxing authority.

"**Thalden Team**" shall have the meaning set forth in Schedule 2.5 of the Disclosure Letter.

"**Third-Party Sale**" shall have the meaning set forth in Section 2.10(c).

"**Third-Party Sale Amount**" shall have the meaning set forth in Section 2.10(e)(ii).

"**Third-Party Sale Date**" shall have the meaning set forth in Section 2.10(c).

"**Title Report**" shall mean that certain title report from First American Title Insurance Company, with a commitment date of October 1, 2009, provided by the Purchaser to the Sellers prior to the date hereof.

"**Transaction**" shall mean the transactions contemplated by this Agreement to be consummated at the Closing, including the purchase and sale of the Purchased Assets and the assumption of the Assumed Liabilities as provided for in this Agreement.

"**Transaction Documents**" shall mean this Agreement and any agreement, instrument or other document ancillary hereto, including the Closing Documents, other than the DIP Facility.

"**Transaction-Related Completion Costs**" shall mean the Completion Costs described in clause (ii) of the definition thereof.

"**Transfer Costs**" shall have the meaning set forth in Section 7.4(a).

"**Transfer Taxes**" shall mean any transfer, documentary, sales, use, stamp, registration and other such taxes, any conveyance fees, any recording charges and any other similar fees and charges (including penalties and interest in respect thereof).

"**Transferred Employee**" shall have the meaning set forth in Section 5.9(a).

"**TWC**" shall have the meaning set forth in Section 5.6(a).

"**TWC Counterparty**" shall have the meaning set forth in Section 2.2(d).

"**TWC Counterparty Products**" shall have the meaning set forth in Section 2.2(d).

"**TWC Deposits**" shall have the meaning set forth in Schedule 2.1(e)(i) of the Disclosure Letter.

"**Undisputed Completion Amount**" shall have the meaning set forth in Section 2.10(d).

"**Undisputed Remediation Amount**" shall have the meaning set forth in Section 2.5(c).

"**USGBC**" shall mean the United States Green Building Council.

"**UST#1**" shall have the meaning set forth in Schedule 4.1(l) of the Disclosure Letter.

"UST#2" shall have the meaning set forth in Schedule 4.1(l) of the Disclosure Letter.

"**UST#3**" shall have the meaning set forth in Schedule 4.1(l) of the Disclosure Letter.

"**UST#4**" shall have the meaning set forth in Schedule 4.1(l) of the Disclosure Letter.

"**WARN Act**" shall mean the federal Worker Adjustment and Retaining Notification Act, 29 U.S.C. § 2101, et seq. (1988) and any similar state or local "mass layoff" or "plant closing" laws.

Section 1.3 Other Terms. As used in this Agreement, any reference to any federal, state, local, or foreign law, including any Applicable Law, will be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise. The words "include", "includes", and "including" will be deemed to be followed by "without limitation". Pronouns in masculine, feminine, or neuter genders will be construed to include any other gender, and words in the singular form will be construed to include the plural and vice versa, unless the context otherwise requires. References to "this Agreement" shall include all Exhibits, Schedules and other agreements, instruments or other documents attached hereto, other than the DIP Facility. The words "herein", "hereof", "hereby", "hereunder", and words of similar import refer to this Agreement as a whole and not to any particular subdivision unless expressly so limited. References in this Agreement to Articles, sections, Schedules or Exhibits are to Articles or sections of, Schedules or Exhibits to, this Agreement, except to the extent otherwise specified herein. References to the consent or approval of any Party shall mean the written consent or approval of such Party, which may be withheld, conditioned or delayed in such Party's sole and absolute discretion, except to the extent otherwise specified herein. All terms defined in this Agreement shall have the defined meanings when used in any certificate or other document made or delivered pursuant hereto unless otherwise defined therein. Any agreement, instrument or statute defined or referred to herein shall mean such agreement, instrument or statute as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes and references to all attachments thereto and instruments incorporated therein. The headings of the sections, paragraphs and subsections of this Agreement are inserted for convenience only and are not part of this Agreement and do not in any way limit or modify the provisions of this Agreement and shall not affect the interpretation hereof. Unless otherwise specified herein, payments that are required to be made under this Agreement shall be paid by wire transfer of immediately available funds to an account designated in advance by the Party entitled to receive such payment. The statement that any information, document or other

material has been "made available" shall mean that such information, document or material was accessible prior to the date of this Agreement for review in the Data Room.

Section 1.4 **Interpretation**. The Parties have participated jointly in the negotiation and drafting of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by the Parties hereto and no presumption or burden of proof will arise favoring or disfavoring any Party hereto because of the authorship of any provision of this Agreement.

Section 1.5 **Time**. Time shall be of the essence of this Agreement. Except as expressly set out in this Agreement, the computation of any period of time referred to in this Agreement shall exclude the first day and include the last day of such period. If the time limited for the performance or completion of any matter under this Agreement expires or falls on a day that is not a Business Day, the time so limited shall extend to the next following Business Day. Whenever action must be taken (including the giving of notice, the delivery of documents or the funding of money) under this Agreement, prior to the expiration of, by no later than or on a particular date, unless otherwise expressly provided in this Agreement, such action must be completed by 5:00 p.m. on such date (except for the filing of papers with the Bankruptcy Court or the entry of any Order by the Bankruptcy Court, which must be completed on such date by the deadline set forth in the rules of the Bankruptcy Court). The time limited for performing or completing any matter under this Agreement may be extended or abridged by an agreement in writing by the Parties. All references herein to time are references to New York City time, unless otherwise specified herein.

ARTICLE II
AGREEMENT OF PURCHASE AND SALE

Section 2.1 **Purchase and Sale**. The Sellers hereby agree to sell, transfer, assign, convey and deliver to the Purchaser at the Closing, and the Purchaser hereby agrees to purchase, acquire, assume and accept delivery from the Sellers at the Closing, upon the terms and subject to the conditions of this Agreement, all right, title and interest of the Sellers of any nature whatsoever to and in the following Purchased Assets, free and clear of any and all Encumbrances of any and every kind, nature and description, other than Permitted Encumbrances:

(a) (i) if the Sellers do not make the Section 2.2(b) Election, the Real Property, or (ii) if the Sellers make the Section 2.2(b) Election, the Owned Real Property free and clear of the Retail Real Property (which shall be extinguished in its entirety pursuant to the Sale Order as of the Closing) and any Encumbrance arising from any Specified Retail Agreement, and in the case of either clause (i) or (ii) of this Section 2.1(a), free and clear of any and all other Encumbrances of any and every kind, nature and description, other than Permitted Encumbrances;

(b) all rights under the Assumed Leases, including all options to renew, purchase, expand or lease (including rights of first refusal, first negotiation and first offer), all credit for the prepaid rent associated therewith, and all security deposits and other deposits made in connection therewith;

(c) all Equipment used or held for use at the Project, including the Equipment set forth in Schedule 2.1(c) of the Disclosure Letter;

(d) all rights under the Assumed Contracts and all rights under the Specified Contracts;

(e) (i) all security, vendor, utility, and other deposits, credits, advances, prepayments or rebates in favor of the Sellers (collectively, "Deposits") (for the avoidance of doubt, other than the Excluded Deposits) paid with respect to the Purchased Assets or the Assumed Liabilities or in connection with the Project, including the Included Deposits and (ii) all prepaid real, personal and intangible property Taxes ("Property Taxes") not attributable to Pre-Closing Tax Periods paid with respect to the Purchased Assets or the Assumed Liabilities or in connection with the Project;

(f) all advertising, marketing and promotional materials and all other printed or written materials used in connection with the Real Property or the Project but only to the extent such materials do not include Excluded Intellectual Property or Affiliate Intellectual Property;

(g) all Books and Records other than the Excluded Books and Records (provided that the Sellers shall have the right to retain a copy of all Books and Records);

(h) all plans, specifications, drawings, renderings, environmental studies or reports, soil studies or reports, marketing studies or reports, traffic studies or reports, feasibility studies or reports, and other studies and reports (including all discs, tapes and other media-storage data containing such information) (the "Project Documents") in the possession or control of the Sellers (or the Sellers' general contractor) and relating to, or prepared in connection with, the Purchased Assets, the Assumed Liabilities or the Project;

(i) all transferable Permits (including all transferable deposits given by or on behalf of the Sellers, including all bonds and letters of credit relating thereto) and all prepaid amounts paid thereunder issued by any permitting, licensing, accrediting, certifying or planning and development agency or any other applicable Governmental Authority, including all development agreements, and the rights of the Sellers to all data and records held by such permitting, licensing, accrediting, certifying or planning and development agencies;

(j) all Intellectual Property Rights used at or in connection with the Real Property or the Project, including the Licensed Intellectual Property (the "Purchased Intellectual Property");

(k) all goodwill (if any) associated with the Project;

(l) (i) any and all insurance proceeds, condemnation awards or other compensation paid or payable to any Seller (including pursuant to any Specified Insurance Policy) in respect of loss or Defect (including compensation in respect of any costs, fees or expenses of remediation or repair of any such Defect) to any Purchased Asset to the extent such loss or Defect exists or occurs on or after the date hereof but prior to the Closing (collectively, the "Insurance Proceeds"), including all right and claim of the Sellers to any Insurance Proceeds

not received by the Closing and (ii) all rights under the Specified Insurance Policies (other than rights, if any, of Sellers to compensation pursuant thereto to the extent in respect of costs, fees or expenses incurred by Sellers in respect of Excluded Liabilities);

(m) all other assets, properties and rights primarily used or held for use by the Sellers in connection with the Project (for the avoidance of doubt, except as set forth in Section 2.2(a)(xiii));

(n) all rights, claims, actions, refunds, causes of action, choses in action, actions, suits or proceedings, rights of recovery, rights of set off, rights of recoupment, rights of indemnity or contribution and other similar rights (known and unknown, matured and unmatured, accrued or contingent, regardless of whether such rights are currently exercisable) against any Person, including all warranties, representations, guarantees, indemnities and other contractual claims (express, implied or otherwise) to the extent related to any fault, defect or other inadequacy in the condition, quality or workmanship of the Purchased Assets, including any Defect (for the avoidance of doubt, except as set forth in Sections 2.2(a)(x) and 2.2(a)(xiii); and

(o) any and all cash owned or held by (or on the account of) any Seller at the time of the Closing;

and excluding, for the avoidance of doubt, the Excluded Assets. For further avoidance of doubt, this Section 2.1 shall not require the Sellers to sell, transfer, assign, convey or deliver to the Purchaser any right, title or interest of any Person that is not a Seller to or in any asset, property or right.

Section 2.2 Excluded Assets.

(a) Nothing herein contained shall be deemed to sell, transfer, assign, convey or deliver the Excluded Assets to the Purchaser, and the Sellers are not selling, transferring, assigning, conveying or delivering and shall retain all of their right, title and interest to and in the Excluded Assets and the Purchaser shall have no Liability therefor. "Excluded Assets" shall mean all right, title and interest of the Sellers of any nature whatsoever to and in the following assets, properties and rights:

(i) any and all rights, interests and benefits of the Sellers arising under this Agreement and the other Transaction Documents and all consideration deliverable or payable to or for the benefit of the Sellers pursuant to the provisions hereof;

(ii) all preference or avoidance claims and actions of the Sellers, including any such claims and actions arising under Sections 544, 547, 548, 549, and 550 of the Bankruptcy Code;

(iii) subject to Sections 2.1(e)(i) and 2.1(n), the Excluded Agreements and any and all rights thereunder;

(iv) any Seller Benefit Plan and any assets of any Seller Benefit Plan or any right, title or interest in any of the assets thereof or relating thereto;

(v) all Labor Agreements;

(vi) (A) any documents (including Books and Records) that the Sellers are required (or reasonably believe to be required) by Applicable Law to retain, (B) minute books and other corporate books and records to the extent relating to the organization and existence of and actions by the Sellers, (C) books, records, information, files, data and plans (whether written, electronic or in any other medium), advertising and promotional materials and similar items to the extent (x) including any Excluded Intellectual Property or Affiliate Intellectual Property or (y) relating to any Excluded Assets or Excluded Liabilities, (D) any Books and Records, disclosure of which would violate any Applicable Law, and (E) all applications to the Nevada Gaming Board by current or former employees of the Sellers and their Affiliates (collectively, the "Excluded Books and Records"), provided, however, the Sellers shall, to the extent permitted by Applicable Law, provide a copy of all Excluded Books and Records used by the Sellers in connection with, or relating to, the Purchased Assets, the Assumed Liabilities or the Project (other than those described in the foregoing clause (B), (D) or (E)), redacted to the extent necessary to remove information relating to any Excluded Assets or Excluded Liabilities;

(vii) subject to Section 2.1(l), all of the Sellers' insurance policies;

(viii) all Excluded Deposits;

(ix) any prepaid Property Tax attributable to Pre-Closing Tax Periods, and any refund of Taxes that are Excluded Liabilities;

(x) all rights, claims, actions, refunds, causes of action, choses in action, actions, suits or proceedings, rights of recovery, rights of set off, rights of recoupment, rights of indemnity or contribution and other similar rights (known and unknown, matured and unmatured, accrued or contingent, regardless of whether such rights are currently exercisable) against any Person, including all warranties, representations, guarantees, indemnities and other contractual claims (express, implied or otherwise) to the extent (A) not related to any fault, defect or other inadequacy in the condition, quality or workmanship of the Purchased Assets, including any Defect, and arising prior to the Closing (subject to clauses (a) through (l) and clause (o) of Section 2.1) or (B) arising out of completion guarantees or title insurance in favor of the Sellers;

(xi) any capital stock or other equity interests in any Seller or any other Person, and any securities convertible into or exchangeable or exercisable for any capital stock or other equity interests in any Seller or any other Person;

(xii) in the event Sellers make the Section 2.2(b) Election, the Retail Real Property;

(xiii) all Claims, assets, properties and rights set forth on Schedule 2.2(a)(xiii) of the Disclosure Letter;

(xiv) any and all cash borrowed by a Seller under the DIP Facility pursuant to the Agreed Budget to satisfy Liabilities that (A) are bona fide expenses contemplated by the Agreed Budget that (1) are incurred prior to the Closing by the Sellers but not paid prior to the Closing by the Sellers, or (2) are to be incurred after the Closing by the Sellers, and (B) are Excluded Liabilities;

(xv) the "Unused Cash Collateral" (as defined in the DIP Order); and

(xvi) any cash in the "Completion Guaranty Proceeds Account" (as defined in that certain Master Disbursement Agreement, dated as of June 6, 2007, by and among Resort Holdings, Resort Capital, Retail, Resort, Old Resort II, Bank of America, N.A., as the initial Bank Agent, Wells Fargo Bank, N.A., as the initial Trustee, Lehman Brothers Holdings Inc., as the initial Retail Agent and Bank of America, N.A, as the initial Disbursement Agent).

(b) Notwithstanding anything in this Agreement to the contrary, the Sellers may, in their sole and absolute discretion, at any time on or prior to the date that is five Business Days before the Closing Date elect not to sell the Retail Real Property, in which event the Retail Real Property shall be extinguished in its entirety pursuant to the Sale Order as of the Closing (it being specified, for the avoidance of doubt, that from and after such event the Specified Retail Agreements shall be Eliminated Agreements and the Retail Real Property shall be an Excluded Asset) (the election described in this Section 2.2(b), the "Section 2.2(b) Election").

(c) The Parties acknowledge that Purchaser and its Affiliates and its and their respective Representatives may engage in discussions with Persons to whom Excluded Deposits previously have been paid or with whom Excluded Deposits have otherwise been made (such Persons, "Excluded Deposit Counterparties"), for purposes of obtaining services or products or materials from such Persons in connection with the completion of the Project. Purchaser shall not, and shall cause its Affiliates and its and their respective Representatives not to, assert or affirmatively suggest to any Excluded Deposit Counterparty in any such discussions that Purchaser or such Excluded Deposit Counterparty is entitled to payment of or credit for all or any portion of such Excluded Deposit. Notwithstanding anything in this Agreement to the contrary, Purchaser shall not have any Liability in connection with any Seller's inability to obtain a refund of, or otherwise obtain any value from (whether as a set-off or defense to a Claim by an Excluded Deposit Counterparty or otherwise), any Excluded Deposit (it being specified, for the avoidance of doubt, that this sentence shall not relieve Purchaser of its obligations under the preceding sentence).

(d) The Parties shall reasonably cooperate to determine as promptly as practicable whether any Person to whom a TWC Deposit previously has been paid or with whom a TWC Deposit has otherwise been made (any such Person, a "TWC Counterparty") owns any products or materials intended for use at or in connection with the Project, whether held at the Project site or otherwise (any such products or materials, "TWC Counterparty Products"). The Sellers shall, if and to the extent so directed by Purchaser, use commercially reasonable efforts to apply each TWC Deposit to purchase TWC Counterparty Products from the applicable TWC Counterparty in the name of the Sellers, whereupon such TWC Counterparty Products shall become Purchased Assets. On the date that is five Business Days before the Closing Date, the

Parties shall (i) revise Schedule 2.1(e)(i) of the Disclosure Letter to eliminate therefrom (w) any TWC Deposit to the extent that such TWC Deposit has been applied as of such date to purchase TWC Counterparty Products, (x) if any TWC Deposit has been applied as of such date to purchase all of the TWC Counterparty Products owned by the applicable TWC Counterparty, any portion of such TWC Deposit that remains after such purchase, (y) any TWC Deposit made with a TWC Counterparty that does not own any TWC Counterparty Products and (z) any TWC Deposit to the extent that, on or prior to such date, the Purchaser has consented in writing to the elimination of such TWC Deposit or portion thereof from Schedule 2.1(e)(i) of the Disclosure Letter and (ii) revise Schedule 2.2(a)(viii) of the Disclosure Letter to add thereto any TWC Deposit to the extent eliminated from Schedule 2.1(e)(i) of the Disclosure Letter in accordance with clause (i)(x), (i)(y) or (i)(z) of this sentence, whereupon such TWC Deposit shall (to the extent so added) become an Excluded Deposit for all purposes of this Agreement.

(e) On the date that is five Business Days before the Closing Date, the Parties shall (i) revise Schedule 2.1(e)(i) of the Disclosure Letter to eliminate therefrom any Deposit listed therein that was made pursuant to an Eliminated Agreement and (ii) revise Schedule 2.2(a)(viii) of the Disclosure Letter to add thereto any such Deposit, whereupon such Deposit shall become an Excluded Deposit for all purposes of this Agreement.

Section 2.3 **Condition of Conveyance**. Without limiting the provisions of this Agreement relating to the Assignment and Assumption Agreement or any other provisions of this Agreement relating to the sale, transfer, assignment, conveyance or delivery of the Purchased Assets, the Purchased Assets shall be sold, transferred, assigned, conveyed and delivered by the Sellers to the Purchaser by appropriate instruments of transfer, bills of sale, endorsements, assignments and deeds, in recordable form as appropriate, and otherwise all in form and substance reasonably satisfactory to the Purchaser and the Sellers, and free and clear of any and all Encumbrances of any and every kind, nature and description, other than Permitted Encumbrances.

Section 2.4 **Purchase Price; Remediation Escrow Fund**. In consideration for the Purchased Assets, and upon the terms and subject to the conditions of this Agreement:

(a) the Purchaser shall deposit the Auction Deposit into a segregated bank account upon the terms and subject to the conditions of the Bid Procedures and of this Agreement, if and when required;

(b) at the Closing the Purchaser shall:

(i) assume the Assumed Liabilities,

(ii) pay to the Sellers an amount equal to the Closing Cash Payment,

(iii) release the Sellers from any Obligations to the Purchaser and cause the release of the Sellers from any Obligations to any other DIP Facility Lender, if any, and

(iv) if a Remediation Dispute Notice has been delivered in accordance with Section 2.5, deposit with the Remediation Escrow Agent an amount in cash equal to (x) the Remediation Amount, *less* (y) the greater of (1) the Seller Remediation Amount

Estimate and (2) $2,000,000 (such deposited amount, together with all interest thereon, the "Remediation Escrow Fund") upon the terms and subject to the conditions of the Remediation Escrow Agreement and of this Agreement, which Remediation Escrow Fund shall be distributed in accordance with Section 2.5 of this Agreement and the Remediation Escrow Agreement; and

(c) the Purchaser shall pay to the Sellers the Contingent Payment, if and when due, in accordance with Section 2.10.

Section 2.5 Remediation Amount.

(a) The Inspection Team (i) (x) shall begin, no later than three Business Days after being so directed by the Purchaser and in any event no later than one Business Day after the date on which the Sale Procedures Order is entered (and Purchaser shall notify the Sellers and the Examiner promptly after the First Inspection begins), an inspection of the Real Property (the "First Inspection") for the purpose of determining the physical condition thereof, and (y) shall provide a reasonably detailed written report regarding the results of the First Inspection (the "First Inspection Report") to the Parties and the Examiner within fifteen Business Days of the date on which the First Inspection begins and no later than January 8, 2010, and (ii) (x) shall begin, no later than three Business Days after being so directed by the Purchaser (and Purchaser shall notify the Sellers and the Examiner promptly after the Second Inspection begins), a second inspection of the Real Property (the "Second Inspection" and, together with the First Inspection, the "Inspections") for the purpose of determining the physical condition thereof and estimating the costs, fees and expenses of remediation and repair of any damage or deterioration that may occur to the Purchased Assets during the period beginning on (and including) the date hereof and ending on (and including) the date on which the Second Inspection Report is delivered (such costs, fees and expenses, the "Remediation Costs", and the Inspection Team's calculation of the aggregate amount thereof, the "Remediation Amount"), and (y) shall provide a reasonably detailed written report regarding the results of the Second Inspection, including the calculation of the Remediation Costs and of the Remediation Amount (the "Second Inspection Report"), to the Parties and the Examiner within fifteen Business Days of the date on which the Second Inspection begins and no later than five Business Days before the Closing Date. The Thalden Team shall lead the Inspection Team for all purposes of this Agreement. In the event of any dispute amongst members of the Inspection Team as to any matter in connection with the Inspections, including the calculation of the Remediation Amount or any part thereof (but other than in respect of the non-reliance letter referred to below), the decision of the Thalden Team shall control and shall constitute the decision of the Inspection Team. The Inspections shall be performed utilizing the inspection methods and procedures set forth in Schedule 2.5 of the Disclosure Letter. The Sellers shall pay and shall be responsible for all of the costs, fees and expenses of the Inspection Team (including the Thalden Team). The First Inspection Report shall be provided to each "Qualified Bidder" (as defined in the Bidding Procedures), for informational purposes only, upon execution by such Qualified Bidder of a non-reliance letter in favor of the Parties and the Inspection Team in form and substance satisfactory to each of the Parties and each member of the Inspection Team.

(b) If there exists a Material Adverse Effect described in clause (x) of the second sentence of the definition thereof (a "Remediation Material Adverse Effect"), the

Purchaser may deliver a written notice to the Sellers at any time on or prior to the date that is two Business Days after the delivery of the Second Inspection Report stating that Purchaser is terminating this Agreement pursuant to Section 8.1(c) as a result of such Remediation Material Adverse Effect (a "Remediation Termination Notice"). If, following the delivery of a Remediation Termination Notice, the Sellers believe in good faith that there is not a Material Adverse Effect described in clause (x) of the second sentence of the definition thereof (substituting for this purpose only "Seller Remediation Amount Estimate" for "Remediation Amount" in such clause (x)), the Sellers may deliver a written notice to the Purchaser at any time on or prior to the date that is two Business Days after the delivery of the Remediation Termination Notice stating that the Sellers elect to require the Purchaser to consummate the Closing (a "Seller Closing Election Notice"), in which case (i) the Parties shall be deemed to have agreed to the withdrawal of the Remediation Termination Notice, (ii) the Remediation Material Adverse Effect shall be deemed not to give rise to an inaccuracy in the representations and warranties set forth in Section 4.1(t), and accordingly such Remediation Material Adverse Effect shall not give rise to a failure of the condition set forth in Section 6.1(b)(i) or to a termination right under Section 8.1(c), (iii) the Parties shall consummate the Closing on the Closing Date unless there is a failure of one or more of the conditions set forth in Section 6.1 (other than a failure arising from a Remediation Material Adverse Effect) or the Purchaser terminates this Agreement pursuant to Section 8.1 (for a reason other than the existence of a Remediation Material Adverse Effect), (iv) the Parties' dispute with respect to Remediation Costs shall be resolved in accordance with Section 2.5(c) and (v) the $10,000,000 limit in the proviso to clause (iii) of the definition of "Closing Cash Payment" shall not apply. If the Sellers do not deliver a Seller Closing Election Notice on or prior to the date that is two Business Days after the delivery of the Remediation Termination Notice, this Agreement shall be deemed terminated pursuant to Section 8.1(c) on the date that is three Business Days after the delivery of the Remediation Termination Notice.

(c) As promptly as practicable after the date of delivery of the Second Inspection Report, but in no event later than two Business Days before the Closing Date, the Sellers shall (for the avoidance of doubt, whether or not a Remediation Material Adverse Effect exists) deliver to the Purchaser a written statement (a "Remediation Dispute Notice") setting forth their good faith objections, if any, to the calculation of the Remediation Amount, including, for the avoidance of doubt, any objection that any of the costs, fees or expenses included therein do not constitute Remediation Costs as defined in this Agreement because they relate to the remediation or repair of damage or deterioration that occurred prior to the date hereof (such disputed costs, fees or expenses included in the Remediation Amount, the "Disputed Remediation Costs", and the Inspection Team's calculation of each Disputed Remediation Cost, an "Inspection Team Disputed Remediation Cost Calculation"). The Remediation Dispute Notice shall set forth in reasonable detail the basis of any such objection, including the Sellers' assertion as to the correct calculation of each such Disputed Remediation Cost and of the aggregate amount of the Remediation Costs (a "Seller Disputed Remediation Cost Calculation" and the "Seller Remediation Amount Estimate", respectively). The Sellers may not deliver a Remediation Dispute Notice unless the Remediation Amount is more than $2,000,000. If the Sellers do not deliver a Remediation Dispute Notice on or prior to the day that is two Business Days before the Closing Date, the Remediation Amount shall be the "Final Remediation Amount" and shall be deemed final and binding on the Sellers and the Purchaser for all purposes of this Agreement. If the Sellers deliver a Remediation Dispute Notice to the Purchaser on or

prior to the day that is two Business Days before the Closing Date, then any calculation of Remediation Costs set forth in the Second Inspection Report to which the Sellers do not object in the Remediation Dispute Notice shall be deemed final and binding on the Sellers and the Purchaser for all purposes of this Agreement (the aggregate amount of the Remediation Costs set forth in the Second Inspection Report not disputed in a Remediation Dispute Notice, the "Undisputed Remediation Amount"), and the Sellers and the Purchaser shall use commercially reasonable efforts to reach agreement on the amount of the Disputed Remediation Costs. If the Sellers and the Purchaser are unable to reach agreement on any such Disputed Remediation Costs within thirty days after

the delivery of the Remediation Dispute Notice, the Sellers and the Purchaser shall refer any such dispute to a nationally recognized construction consulting firm reasonably satisfactory to the Purchaser and the Sellers (the "Remediation Auditor") for resolution and (A) each of the Purchaser and the Sellers shall have a reasonable opportunity to meet with the Remediation Auditor to provide their views to the Remediation Auditor with respect to such Disputed Remediation Costs, (B) each of the Purchaser, on the one hand, and the Sellers, on the other hand, shall provide the other with copies of any information provided to the Remediation Auditor and shall not meet or communicate with the Remediation Auditor except in the presence of a Representative of the other and (C) the Remediation Auditor shall be instructed to deliver to the Purchaser and the Sellers within 30 days of such referral a written statement (the "Remediation Auditor's Statement") setting forth the Remediation Auditor's calculation in accordance with this Agreement of the amount of each Disputed Remediation Cost (the Remediation Auditor's calculation of each Disputed Remediation Cost, a "Finally Determined Remediation Cost"). In calculating the Finally Determined Remediation Costs (the aggregate amount thereof, the "Finally Determined Remediation Cost Aggregate"), (x) the Auditor shall be limited to addressing the Disputed Remediation Costs referred to in the Remediation Dispute Notice and (y) any Finally Determined Remediation Cost shall be no less than the applicable Seller Disputed Remediation Cost Calculation and no more than the applicable Inspection Team Disputed Remediation Cost Calculation. The Finally Determined Remediation Costs shall be deemed final and binding on the Sellers and the Purchaser for all purposes of this Agreement and the "Final Remediation Amount" shall be an amount equal to the Undisputed Remediation Amount *plus* the Finally Determined Remediation Cost Aggregate. The Purchaser will be responsible for and will pay a percentage of the costs, fees and expenses of the Remediation Auditor equal to (1) the Post-Closing Remediation True-Up (as defined below) *divided by* (2) the amount of the Remediation Escrow Fund immediately prior to the release thereof pursuant to Section 2.5(d), and the Sellers will be responsible for and will pay all remaining costs, fees and expenses of the Remediation Auditor. For the avoidance of doubt, except as provided in Section 2.5(b), the pendency of a dispute with respect to Remediation Costs shall not affect the conditions to Closing set forth in Article VI or the provisions of Article VIII. The provisions of Section 2.5(b) and (c) shall be the sole remedy of the Parties with respect to any dispute in connection with the Final Remediation Purchase Price Adjustment or a Remediation Material Adverse Effect.

(d) Promptly after the date on which the Final Remediation Amount is determined pursuant to this Section 2.5 (the "Final Remediation Determination Date"), and in any event within two Business Days of the Final Remediation Determination Date, the Purchaser and the Sellers shall deliver a joint written instruction to the Remediation Escrow Agent pursuant to the Remediation Escrow Agreement directing the release from the Remediation Escrow Fund (i) to the Sellers of an amount (the "Post-Closing Remediation True-Up") equal to the amount, if

any, by which (x) the Remediation Amount exceeds (y) the greater of (A) the Final Remediation Amount and (B) $2,000,000, together with interest thereon accrued pursuant to the Remediation Escrow Agreement and (ii) to the Purchaser the remainder of the Remediation Escrow Fund.

(e) Notwithstanding anything in this Agreement to the contrary, in the event that (i) the Purchaser or any of its Affiliates receives hereunder as Purchased Assets, whether at or after the Closing, any Insurance Proceeds from a third-party insurer as compensation for any costs, fees or expenses included in the Final Remediation Amount, and (ii) the amount of such Insurance Proceeds *plus* the Final Remediation Purchase Price Adjustment exceeds the Final Remediation Amount, the Purchaser shall hold in trust for the benefit of the Sellers, and pay to the Sellers promptly after the later of the receipt of such Insurance Proceeds and the Final Remediation Determination Date, an amount equal to such excess; provided, that the Purchaser shall not be required to hold in trust, or to pay to the Sellers, an amount in excess of the Final Remediation Purchase Price Adjustment.

Section 2.6 Assumption of Liabilities.

(a) Pursuant to the Sale Order and to the extent permitted by Applicable Law, the Purchaser hereby agrees to assume at the Closing, and agrees to pay, perform and discharge when due from and after the Closing, the Assumed Liabilities, in each case upon the terms and subject to the conditions of this Agreement, and from and after the Closing the Sellers (and each of them) shall have no Liability therefor or in connection therewith. For purposes of this Agreement, "Assumed Liabilities" shall mean only the following Liabilities (to the extent not paid at or prior to the Closing):

(i) any Liabilities with respect to the Project and the Purchased Assets only to the extent such Liabilities relate to the development of the Project and the ownership of the Purchased Assets from and after the Closing or the operation of the Project from and after the completion thereof, but, in each case, only to the extent such Liabilities arise from and after the Closing;

(ii) the Liabilities of the Sellers arising under the Assumed Contracts, the Specified Contracts, the Assumed Leases, the Specified Insurance Policies and the Real Property, but, in each case, only to the extent such Liabilities arise from and after the Closing (it being specified, for the avoidance of doubt, that the Cure Costs shall be Assumed Liabilities pursuant to Section 2.6(a)(iii) regardless of when such Cure Costs arise);

(iii) all Transfer Costs and Cure Costs; and

(iv) all Liabilities arising out of the environmental matters described on Schedule 4.1(l) of the Disclosure Letter;

and excluding, for the avoidance of doubt, the Excluded Liabilities. For further avoidance of doubt, this Section 2.6 shall not require the Purchaser to assume any Liability of any Person that is not a Seller.

(b) From and after the Closing, the Purchaser shall indemnify, defend and hold harmless each Seller and such Seller's Affiliates and the Representatives of each Seller and such Seller's Affiliates from and against any Claims resulting or arising from any Assumed Liabilities.

Section 2.7 Excluded Liabilities.

(a) Notwithstanding anything in this Agreement to the contrary, the Purchaser shall not assume, and shall be deemed not to have assumed, any Liabilities of the Sellers other than the Assumed Liabilities (all such other Liabilities, the "Excluded Liabilities"), and the Purchaser shall have no Liability therefor or in connection therewith. For the avoidance of doubt, the Excluded Liabilities shall include, but shall not be limited to, the following:

(i) all Liabilities arising out of Excluded Assets, including the Excluded Agreements;

(ii) (A) Taxes imposed with respect to the Project, the Purchased Assets or the Assumed Liabilities for any taxable period (or portion thereof) that ends on or prior to the Closing Date, (B) Taxes imposed with respect to the Excluded Assets or the Excluded Liabilities for any taxable period, (C) except for (x) Transfer Taxes imposed with respect to the transfer of the Real Property and other Purchased Assets pursuant to this Agreement, the allocation of which shall be governed by Section 7.4(a), and (y) Property Taxes for Straddle Periods, the allocation of which shall be governed by Section 7.4(c), Taxes imposed on or payable by the Sellers or any of their respective Affiliates for any taxable period, (D) any Liability of the Sellers or any of their respective Affiliates for Taxes of any other Person by reason of contract, assumption, transferee liability, operation of law, or otherwise and (E) the Nevada Sales Tax Liabilities;

(iii) all Liabilities of any Seller arising under this Agreement or any other Transaction Document;

(iv) without limiting paragraph (i) above all Liabilities arising out of, relating to, or with respect to any Seller Benefit Plan (including any Seller Benefit Plan which is an "employee pension benefit plan" (as defined in Section 3(2) of ERISA), any Employment Agreement (other than any Employment Agreement that is an Assumed Contract, if any) and any Labor Agreement;

(v) other than Liabilities arising after the Closing (A) under the Assumed Contracts transferred to and assumed by the Purchaser at the Closing or (B) related to any Transferred Employee in respect of services from and after the commencement of such Transferred Employee's employment with the Purchaser, all Liabilities or Claims arising out of, relating to or with respect to the employment or performance of services for, or termination of employment or services for, or potential employment or engagement for the performance of services for, any Seller or any Seller's Affiliates, or any predecessor thereof or any individual Person or any Person acting as a professional employer organization, employee leasing company or providing similar services at or prior to the Closing (including as a result of the transactions contemplated by this Agreement),

including in respect of wages, other remuneration, holiday or vacation pay, bonus, severance (statutory or otherwise), separation, termination or notice pay or benefits (including under COBRA), commissions, post-employment medical or life obligations, pension contributions, insurance premiums, Taxes, Liabilities or Claims for workers' compensation, Claims under the WARN Act, or any other form of accrued or contingent compensation (including vacation, sick days, personal days or other leave entitlements), irrespective of whether such Liabilities or Claims are paid or made, as applicable, on, before or after Closing;

(vi) all Liabilities of the Sellers with respect to any Excluded Employee with respect to any period;

(vii) except for Assumed Liabilities set forth in Section 2.6(a)(ii), any Liability (A) of a Seller or (B) which relates to or encumbers any Purchased Assets or the Project, in each case that is owed to any Affiliate of a Seller;

(viii) any Liability of a Seller relating to the Purchased Assets or the Project related to facts or actions occurring or accruing prior to the Closing that is not expressly included among the Assumed Liabilities;

(ix) all Liabilities of the Sellers for indebtedness for borrowed money, under conditional sale or title retention agreements, capitalized lease obligations (except for any capitalized lease obligations that are or are pursuant to Assumed Leases, if any), under interest rate, currency or other hedging transactions and all guarantees and arrangements having the economic effect of a guarantee of any of the foregoing of any other Person;

(x) except for Assumed Liabilities set forth in Section 2.6(a)(iv), all Liabilities attributable to, relating to or arising from the period prior to the Closing relating to the Purchased Assets or the Project arising (i) under Environmental Laws, or (ii) from any Contract or other arrangement for disposal or treatment of Hazardous Substances, or for the transportation of Hazardous Substances for disposal or treatment, in each case including those Liabilities arising from acts or omissions occurring or conditions in existence prior to the Closing;

(xi) the "Mechanics' Liens" (as defined in the DIP Facility);

(xii) any Liability with respect to any Seller Broker Fee; and

(xiii) any Liability of a Seller not expressly included among the Assumed Liabilities or otherwise expressly assumed by Purchaser under this Agreement.

(b) From and after the Closing, the Sellers shall jointly and severally (as defined herein) indemnify, defend and hold harmless the Purchaser and the Purchaser's Affiliates and the Representatives of the Purchaser and the Purchaser's Affiliates from and against any Claims resulting or arising from any Excluded Liabilities.

Section 2.8 Procedures for Assumption of Agreements; Delayed Transfer of Assets.

(a) At the Closing, the Sellers shall assume and assign to Purchaser the Assumed Contracts and Assumed Leases, in each case pursuant to Section 365 of the Bankruptcy Code and the Sale Order, subject to Purchaser's provision of adequate assurance as may be required under Section 365 of the Bankruptcy Code. In connection with such assumption and assignment, the Purchaser shall, on the Closing Date, cure all defaults under such Assumed Contracts and Assumed Leases to the extent required by Section 365(b) of the Bankruptcy Code (the amounts required to effect such cure, "Cure Costs") and otherwise satisfy all requirements imposed by Section 365(b) of the Bankruptcy Code with respect to each Assumed Contract and Assumed Lease.

(b) Nothing herein shall be deemed to require the transfer, assignment, conveyance or delivery of any Purchased Asset that by operation of Applicable Law or by failure to obtain a required Consent cannot be transferred, assigned, conveyed, delivered or assumed. Notwithstanding anything in this Agreement to the contrary, to the extent that the sale, transfer, assignment, conveyance or delivery or attempted sale, transfer, assignment,

conveyance or delivery to the Purchaser of any asset, property or right that would be a Purchased Asset or any claim or right or any benefit arising thereunder or resulting therefrom is prohibited by any Applicable Law or would require any Consent from any Governmental Authority or any other third party and such Consents shall not have been obtained prior to the Closing, the Closing shall proceed without the sale, transfer, assignment, conveyance or delivery of such asset, property or right unless there is a failure of one or more of the conditions set forth in Article VI, in which event the Closing shall proceed only if each such failed condition is waived by the Party entitled to the benefit thereof. In the event that there is not a failure of any condition set forth in Article VI or any failed condition is waived and the Closing proceeds without the transfer or assignment of any such asset, property or right as provided in this Agreement, then following the Closing, the Purchaser and the Sellers shall use their respective commercially reasonable efforts, and cooperate with each other, to obtain promptly such Consent. Pending such Consent, the Parties shall reasonably cooperate with each other in any mutually agreeable arrangement designed to provide Purchaser with all of the benefits of use of such asset, property or right and to the Sellers the benefits, including any indemnities, that they would have obtained had the asset, property or right been conveyed to Purchaser at the Closing. Once Consent for the sale, transfer, assignment, conveyance or delivery of any such asset, property or right not sold, transferred, assigned, conveyed or delivered at the Closing is obtained, the Sellers shall promptly transfer, assign, convey and deliver such asset, property or right to Purchaser at no additional cost. To the extent that any such asset, property or right cannot be transferred or the full benefits or use of any such asset, property or right cannot be provided to Purchaser following the Closing pursuant to this Section 2.8(b), then the Purchaser and the Sellers shall enter into commercially reasonable arrangements (including subleasing, sublicensing or subcontracting) to provide to the Parties hereto the economic (taking into account Tax costs and benefits) and functional equivalent, to the extent permitted, of obtaining such Consent. The Sellers shall hold in trust for, and pay to Purchaser promptly upon receipt thereof, all income, proceeds and other monies received by the Sellers derived from their use of any asset, property or right that would be a Purchased Asset in connection with the arrangements under this Section 2.8(b).

(c) Nothing herein shall be deemed to require the assumption of any Assumed Liability that by operation of Applicable Law or by failure to obtain a required Consent cannot be assumed. Notwithstanding anything in this Agreement to the contrary, to the extent that the

assumption or attempted assumption by the Purchaser (and/or the related indemnification or release of any Seller) of any Liability that would be an Assumed Liability or any claim or obligation arising thereunder or resulting therefrom is prohibited by any Applicable Law or would require any Consent from any Governmental Authority or any other third party and such Consent shall not have been obtained prior to the Closing, the Closing shall proceed without the assumption of such Liability unless there is a failure of one or more of the conditions set forth in Article VI, in which event the Closing shall proceed only if each such failed condition is waived by the Party entitled to the benefit thereof. In the event that there is not a failure of any condition set forth in Article VI or any failed condition is waived and the Closing proceeds without the assumption of any such Liability as provided in this Agreement, then following the Closing, the Purchaser and the Sellers shall use their respective commercially reasonable efforts, and cooperate with each other, to obtain promptly such Consent. Pending such Consent, the Parties shall reasonably cooperate with each other in any mutually agreeable arrangement designed to provide Sellers with all of the benefits, and the Purchaser with all of the obligations, of such Liabilities, including any releases and/or indemnities, that they would have obtained had the Liability been assumed by the Purchaser at the Closing. Once Consent for the assumption of such Liability not assumed at the Closing is obtained, the Purchaser shall promptly assume such Liability at no additional cost. To the extent that any such Liability cannot be assumed by the Purchaser or the full obligations of the Purchaser and benefits to the Sellers in connection with such assumption of Liability cannot be provided following the Closing pursuant to this Section 2.8(c), then the Purchaser and the Sellers shall enter into commercially reasonable arrangements (including release, indemnity and/or subcontracting) to provide to the Parties hereto the economic (taking into account Tax costs and benefits) and functional equivalent, to the extent permitted, of obtaining such Consent.

(d) If following the Closing, a Seller receives or becomes aware that it holds any asset, property or right which constitutes a Purchased Asset then such Seller shall transfer such asset, property or right to the Purchaser as promptly as practicable for no additional consideration.

(e) If following the Closing, the Purchaser receives or becomes aware that it holds any asset, property or right which constitutes an Excluded Asset, then the Purchaser shall transfer such asset, property or right to the Sellers as promptly as practicable for no additional consideration.

Section 2.9 Eliminated Assumed Contracts and Assumed Leases. Notwithstanding anything in this Agreement to the contrary, the Purchaser may, in its sole and absolute discretion, amend or revise Schedule 1.2(a) or Schedule 1.2(b) of the Disclosure Letter setting forth the Assumed Contracts and the Assumed Leases in order to eliminate any Contract or Lease set forth therein (other than any Contract or Lease set forth in Part I of Schedule 1.2(a) or Part I of Schedule 1.2(b), respectively, of the Disclosure Letter, which may not be eliminated from Schedule 1.2(a) or Schedule 1.2(b), respectively, pursuant to this Section 2.9) at any time on or prior to the date that is five Business Days before the Auction. Automatically upon the deletion of any Contract or Lease from Schedule 1.2(a) or Schedule 1.2(b) of the Disclosure Letter, as applicable, in accordance with this Section 2.9, it shall be an Eliminated Agreement for all purposes of this Agreement.

Section 2.10 Contingent Payment.

(a) Notwithstanding anything to the contrary in this Agreement, (i) the Completion Costs shall be expended and the Project shall be completed and developed in Purchaser's sole and absolute discretion, which discretion shall not be bound by the Completion Cost Projections in any way, and none of the Sellers, any lender to or creditor or direct or indirect equityholder of any Seller, or any other Person, shall have any right to control, approve, oversee or otherwise have any input into any expenditure of Completion Costs or any aspect of the completion or development of the Project, whether as to quality of materials or otherwise (it being specified, for the avoidance of doubt, that this Section 2.10(a)(i) shall not prevent Sellers from exercising their rights to dispute the Purchaser's calculation of the Completion Amount in accordance with Sections 2.10(c) and (d)), (ii) the Purchaser shall have no obligation to complete or develop the Project and (iii) no Contingent Payment shall be due (x) if a hotel, casino and entertainment resort is not built at the Real Property or (y) if all or a material part of the Purchased Assets are sold or otherwise transferred to any Person or Persons (other than Affiliates of Purchaser) (except for a Contingent Payment payable in connection with a Third-Party Sale pursuant to Section 2.10(e)(ii), if due).

(b) No later than 60 days after the date on which the Purchaser has prepared a preliminary budget for the completion and development of the Project (the "Completion Cost Projection Date"), the Purchaser shall deliver to the Sellers a written statement (the "Completion Cost Projections") setting forth (i) in reasonable detail (x) the Purchaser's calculation of the amount of the Completion Costs incurred through the Completion Cost Projection Date and (y) a projection of the estimated Completion Costs expected to be incurred after the Completion Cost Projection Date and (ii) the date on

which (or range of dates within which) Purchaser anticipates that the Project will open for business to the general public. Until the Completion Amount Statement is delivered, the Purchaser shall deliver to the Sellers, no later than 60 days after the end of each fiscal quarter of Penn that begins after the delivery of the Completion Cost Projections, an update of the Completion Cost Projections as of the end of such fiscal quarter. The Completion Cost Projections and any update thereof (x) need not set forth any projected Completion Costs that are not reasonably estimable at the time the Completion Cost Projections or update thereof is being prepared or any Transaction-Related Completion Costs (it being specified, for the avoidance of doubt, that the Completion Costs described in this clause (x) shall constitute Completion Costs whether or not set forth in the Completion Cost Projections or in any update thereof) and (y) shall be for informational purposes only and shall not in any way affect the other provisions of this Section 2.10 (it being agreed, without limiting the generality of the foregoing, that the failure to include any Completion Costs in the Completion Cost Projections or any update thereof shall not preclude Purchaser from including such Completion Costs in the Completion Amount).

(c) No later than 60 days after the earlier to occur of (x) the third anniversary of the date on which the Project opens for business to the general public (such third anniversary, the "Measurement Date") and (y) the date on which the Purchaser consummates a sale of all of the Real Property and all or substantially all of the other Purchased Assets to any Person or group of affiliated Persons (other than Affiliates of Purchaser), provided that such transaction is consummated prior to the first anniversary of the Closing Date (such transaction consummated prior to the first anniversary of the Closing Date, a "Third-Party Sale", and the date on which the

Third-Party Sale is consummated, the "Third-Party Sale Date"), as applicable, the Purchaser shall deliver to the Sellers a written statement (the "Completion Amount Statement") setting forth in reasonable detail the Purchaser's calculation of the amount of the Completion Costs and of the Contingent Payment (the "Completion Amount" and the "Purchaser Contingent Payment Calculation", respectively). From the date of delivery of the Completion Amount Statement until the earlier of the date that is 30 days thereafter (such 30-day period, the "Review Period") and the date on which a Dispute Notice is delivered, the Purchaser shall provide the Sellers or their Representatives with reasonable access to the books, records and employees of the Purchaser, upon reasonable notice and during regular business hours, solely for the purpose of enabling the Sellers to review the Purchaser's calculation of the Completion Amount, provided that the Sellers shall promptly reimburse the Purchaser for any costs, fees or expenses incurred in connection with such access. As promptly as practicable after the date of delivery of the Completion Amount Statement, but in no event later than the last day of the Review Period, the Sellers shall deliver to the Purchaser a written statement (a "Dispute Notice") setting forth their good faith objections, if any, to the calculation of the Completion Amount, it being agreed that the sole bases on which the Sellers may object to the calculation of the Completion Amount shall be that (i) any of the costs, fees or expenses included therein do not constitute Completion Costs as defined in this Agreement, (ii) the calculation of Completion Costs included therein is incorrect or (iii) any Completion Cost paid by Purchaser or an Affiliate thereof to Purchaser or an Affiliate thereof is not on arm's-length terms (such disputed costs, fees or expenses included in the Completion Amount, the "Disputed Costs", and the Purchaser's calculation of each Disputed Cost, a "Purchaser Disputed Cost Calculation"). The Dispute Notice shall set forth in reasonable detail the basis of any such objection, including the Sellers' assertion as to the correct calculation of each such Disputed Cost and of the Contingent Payment (a "Seller Disputed Cost Calculation" and the "Seller Contingent Payment Calculation", respectively). The Sellers may not deliver a Dispute Notice unless the Seller Contingent Payment Calculation is at least $10,000,000 greater than the Purchaser Contingent Payment Calculation. For purposes of illustration only, the Sellers may dispute a $50,000 fee paid to a third-party architect included in the Completion Amount on the grounds that it was paid for architectural services unrelated to the development or completion of the Project and therefore was not a Completion Cost as defined in this Agreement (i.e., that the Sellers' calculation of this Disputed Cost was zero), or that such fee was in fact $40,000, but the Sellers may not dispute the fee on the grounds that such architectural services were unnecessary to complete or develop the Project, that similar services could have been obtained for a lower fee, that such fee was not included in the Completion Cost Projections or on any other basis.

(d) If the Sellers do not deliver a Dispute Notice on or prior to the last day of the Review Period, the Completion Amount shall be the "Final Completion Amount" and shall be deemed final and binding on the Sellers and the Purchaser for all purposes of this Agreement. If the Sellers deliver a Dispute Notice to the Purchaser on or prior to the last day of the Review Period, then any calculation of Completion Costs set forth in the Completion Amount Statement to which the Sellers do not object in the Dispute Notice shall be deemed final and binding on the Sellers and the Purchaser for all purposes of this Agreement (the aggregate amount of the Completion Costs set forth in the Completion Amount Statement not disputed in a Dispute Notice, the "Undisputed Completion Amount"), and the Sellers and the Purchaser shall use commercially reasonable efforts to reach agreement on the amount of the Disputed Costs. If the Sellers and the Purchaser are unable to reach agreement on any such Disputed Costs within thirty

days after the delivery of the Dispute Notice, the Sellers and the Purchaser shall refer (i) any such dispute with respect to Disputed Costs that are not Transaction-Related Completion Costs to a nationally recognized construction consulting firm reasonably satisfactory to the Purchaser and the Sellers and (ii) any such dispute with respect to Disputed Costs that are Transaction-Related Completion Costs to a nationally recognized accounting firm reasonably satisfactory to the Purchaser and the Sellers (such construction consulting firm and such accounting firm, together, the "Auditor") for resolution and (A) each of the Purchaser and the Sellers shall have a reasonable opportunity to meet with the Auditor to provide their views to the Auditor with respect to such Disputed Costs, (B) each of the Purchaser, on the one hand, and the Sellers, on the other hand, shall provide the other with copies of any information provided to the Auditor and shall not meet or communicate with the Auditor except in the presence of a Representative of the other and (C) the Auditor shall be instructed to deliver to the Purchaser and the Sellers within 30 days of such referral a written statement (the "Auditor's Statement") setting forth the Auditor's calculation in accordance with this Agreement of the amount of each Disputed Cost (the Auditor's calculation of each Disputed Cost, a "Finally Determined Cost"). In calculating the Finally Determined Costs (the aggregate amount thereof, the "Finally Determined Cost Aggregate"), (x) the Auditor shall be limited to addressing the Disputed Costs referred to in the Dispute Notice and (y) any Finally Determined Cost shall be no less than the applicable Seller Disputed Cost Calculation and no more than the applicable Purchaser Disputed Cost Calculation. The Finally Determined Costs shall be deemed final and binding on the Sellers and the Purchaser for all purposes of this Agreement and the "Final Completion Amount" shall be an amount equal to the Undisputed Completion Amount *plus* the Finally Determined Cost Aggregate. The Purchaser will be responsible for and will pay the lesser of one half of all costs, fees and expenses of the Auditor and $50,000, and the Sellers will be responsible for and will pay all remaining costs, fees and expenses of the Auditor. The provisions of Sections 2.10(c) and (d) shall be the sole remedy of the Parties with respect to any dispute in connection with the Contingent Payment.

(e) The Contingent Payment, if due, shall be paid as follows:

(i) If the Measurement Date occurs and (x) the Final Completion Amount is less than $1,460,000,000 (the "Target Completion Amount"), the Purchaser shall pay to the Sellers, within 30 days of the date on which the Final Completion Amount is finally determined in

accordance with this Section 2.10, an amount equal to 50% of the amount by which the Target Completion Amount exceeds the Final Completion Amount or (y) the Final Completion Amount is equal to or greater than the Target Completion Amount, no Contingent Payment shall be due.

(ii) If the Third-Party Sale Date occurs and (x) the Final Completion Amount is less than the amount of cash received by Purchaser at the consummation of the Third-Party Sale (the "Third-Party Sale Amount"), the Purchaser shall pay to the Sellers, within 30 days of the date on which the Final Completion Amount is finally determined in accordance with this Section 2.10, an amount equal to 33.33% of the amount by which the Third-Party Sale Amount exceeds the Final Completion Amount or (y) the Final Completion Amount is equal to or greater than the Third-Party Sale Amount, no Contingent Payment shall be due.

ARTICLE III
COURT APPROVAL

Section 3.1 **Bid Protections**. Purchaser and the Sellers acknowledge that the Sellers must take reasonable steps to demonstrate that they have sought to obtain the highest or best offer for the Purchased Assets, including giving notice thereof to the creditors of the Sellers and other interested parties, providing information about the Purchased Assets to prospective bidders (subject to confidentiality agreements no less restrictive in the aggregate than the Confidentiality Agreement), entertaining higher or better qualified offers from such prospective bidders, and, in the event that additional qualified prospective bidders desire to bid for the Purchased Assets, conducting the Auction. As a result, the Parties agree to the Bidding Procedures. The Sellers and the Purchaser agree, and the Sale Order shall reflect the fact that, the provisions of this Agreement, including this Article III and Section 8.3, are reasonable, were a material inducement to Purchaser to enter into this Agreement and are designed to achieve the highest or best offer for the Purchased Assets.

Section 3.2 **The Sale Procedures Motion and Order**. The Sellers shall file a motion with the Bankruptcy Court in the form of Exhibit D hereto seeking the entry of the Sale Procedures Order within two Business Days of the date of this Agreement (the "Sale Procedures Motion"). The Sellers will use their reasonable best efforts to cause the Bankruptcy Court to enter the Sale Procedures Order as soon as practicable after the filing of the Sale Procedures Motion.

Section 3.3 **The Hearing and the Sale Order**. The Sellers shall use their reasonable best efforts to have the Hearing scheduled no later than January 27, 2010. At the Hearing, if the Purchaser is the successful bidder in the Auction, the Sellers shall seek the entry of the Sale Order. The Sale Order shall, among other matters:

(a) approve this Agreement and the consummation of the Transaction upon the terms and subject to the conditions of this Agreement;

(b) find that, as of the Closing Date, the transactions contemplated by this Agreement effect a legal, valid, enforceable and effective sale and transfer of the Purchased Assets to and the assumption of the Assumed Liabilities by the Purchaser and shall vest the Purchaser with title to the Purchased Assets free and clear of all Encumbrances (including, if the Sellers make the Section 2.2(b) Election, any Encumbrance arising from any Specified Retail Agreement), other than Permitted Encumbrances, and that the Retail Real Property is extinguished in its entirety as of the Closing;

(c) find that the consideration provided by the Purchaser pursuant to this Agreement constitutes reasonably equivalent value and fair consideration for the Purchased Assets;

(d) (i) authorize the Sellers to assume and assign to the Purchaser each of the Assumed Contracts and Assumed Leases and (ii) find that, as of the Closing Date, the Contracts and Leases to be assumed by the Sellers and assigned to the Purchaser pursuant to this

Agreement will have been duly assigned to the Purchaser in accordance with Section 365 of the Bankruptcy Code;

(e) find that the Purchaser is a good faith purchaser of the Purchased Assets pursuant to Section 363(m) of the Bankruptcy Code;

(f) find that the Purchaser did not engage in any conduct that would cause or permit this Agreement or the consummation of the Transaction to be avoided, or costs or damages to be imposed, under Section 363(n) of the Bankruptcy Code;

(g) order that the Assumed Contracts and Assumed Leases will be transferred to, and remain in full force and effect for the benefit of, the Purchaser, notwithstanding any provision in any such Contract or Lease or any requirement of Applicable Law (including those described in Sections 365(b)(2) and (f) of the Bankruptcy Code) that prohibits, restricts or limits in any way such assignment or transfer;

(h) approve any other agreement to the extent provided by this Agreement;

(i) find that the Sellers gave due and proper notice of the Transaction to each party entitled thereto;

(j) find that the Purchaser has satisfied all requirements under Sections 365(b)(1) and 365(f)(2) of the Bankruptcy Code to provide adequate assurance of future performance of the Assumed Contracts and Assumed Leases and that the Purchaser has guaranteed the obligations of any assign which has assumed each Assumed Contract and Assumed Lease;

(k) enjoin and forever bar the non-debtor party or parties to each Assumed Contract or Assumed Lease from asserting against the Purchaser or any of the Purchased Assets: (a) any default, Claim, Liability or other cause of action existing as of the Closing Date whether asserted or not and (b) any objection to the assumption and assignment of such non-debtor party's Assumed Contract or Assumed Lease;

(l) find that, to the extent permitted by Applicable Law, the Purchaser is not a successor to any Seller or its bankruptcy estate by reason of any theory of law or equity, and the Purchaser shall not assume or in any way be responsible for any Liability of a Seller and/or its bankruptcy estate, except as otherwise expressly provided in this Agreement;

(m) made expressly binding (based upon language satisfactory to the Purchaser) upon any United States bankruptcy court or trustee in the event of conversion of any of the Seller Chapter 11 Cases to chapter 7, appointment of a chapter 11 trustee in any Seller Chapter 11 Case, or transfer of venue of any Seller Chapter 11 Case to a bankruptcy court other than the Bankruptcy Court; and

(n) order that, notwithstanding the provisions of Federal Rules of Bankruptcy Procedure 6004(h) and 6006(d), the Sale Order is not stayed and is effective immediately upon entry.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES

Section 4.1 **Representations and Warranties of the Sellers**. Except as set forth in the correspondingly numbered Schedule of the Disclosure Letter delivered as of the date hereof by the Sellers to Purchaser (the "Disclosure Letter"), the Sellers hereby represent and warrant to the Purchaser as follows (and, as applicable in subsections (j) and (k) below, also covenants and agrees with the Purchaser):

(a) Each of the Sellers is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization and has all requisite corporate or limited liability company power and authority to own, lease, develop and operate the Purchased Assets and to carry on its business as now being conducted. Each of the Sellers is duly licensed or qualified to do business in each jurisdiction in which the properties owned or leased by it or the operation of its business makes such licensing or qualification necessary, except for such failures to be duly licensed or qualified as have not had and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. Each of Resort and Resort Capital is a direct wholly owned subsidiary of Resort Holdings. Retail is a direct wholly owned subsidiary of Retail Mezzanine, and Retail Mezzanine is a direct wholly owned subsidiary of Retail Holdings. None of the Sellers (i) owns, directly or indirectly, any capital stock or other equity interests in any Person that is not a Seller, or any securities convertible into or exchangeable or exercisable for any capital stock or other equity interests in any Person, (ii) has any obligation to acquire any capital stock or other equity interests in any Person, or any securities convertible into or exchangeable or exercisable for any capital stock or other equity interests of any Person, or to make any investment in any Person, (iii) is a party to any partnership, limited liability company, joint venture or similar agreement, other than, in the case of any Seller other than Resort Capital, the limited liability company agreement of such Seller or the limited liability company agreement of another Seller or (iv) has at any time conducted any business or operations other than in connection with the Project.

(b) Each of the Sellers has all requisite corporate or limited liability company power and authority to execute and deliver this Agreement and the Transaction Documents to which it is (or will become) a party and to perform its obligations hereunder and thereunder (subject to the entry of the Sale Procedures Order and, in the case of the obligation to consummate the Transaction, to the entry of the Sale Order). The execution, delivery and performance by each of the Sellers of this Agreement and the Transaction Documents to which it is (or will become) a party and the consummation of the transactions contemplated hereby and thereby have been duly and validly authorized by all requisite corporate or limited liability company action on the part of each such Seller and no other corporate or limited liability company action on the part of each such Seller is necessary to authorize this Agreement and such Transaction Documents and to consummate the transactions contemplated hereby and thereby (subject, in the case of the obligation to consummate the Transaction, to the entry of the Sale Order). This Agreement and the Transaction Documents to which each of the Sellers is (or will become) party have been (or will be) duly and validly executed and delivered by each such Seller and (assuming the due authorization, execution and delivery by all parties hereto and thereto, other than such Seller) constitute (or will constitute) valid and binding obligations of each such Seller enforceable against each such Seller in accordance with their terms (subject to the entry of

the Sale Procedures Order and, in the case of the obligation to consummate the Transaction, to the entry of the Sale Order).

(c) The execution, delivery and performance by each Seller of this Agreement and the Transaction Documents to which it is (or will become) party do not, and the consummation by them of the transactions contemplated hereby and thereby will not, (i) conflict with or result in the breach of any provision of the organizational documents of any Seller (subject, in the case of each Retail Seller's obligation to consummate the Transaction, to the entry of the Sale Order), (ii) conflict with, violate or result in the breach by any Seller of any Applicable Law, (iii) require any Seller to make any filing with or give notice to, or obtain any Consent from, any Governmental Authority, other than the filing of the Seller Chapter 11 Cases by the Retail Sellers, the entry of the Sale Procedures Order and, in the case of the performance of the obligation to consummate the Transaction, the entry of the Sale Order, (iv) conflict with, violate, result in the breach or termination of or the loss of a benefit under, or constitute (with or without notice or lapse of time or both) a default (or give rise to any right of termination, cancellation, payment or acceleration) or adverse modification of any terms or rights under, any Assumed Contract, material Contract, Specified Contract, Assumed Lease, material Lease, Specified Insurance Policy or Permit (subject, in the case of the assumption and assignment to Purchaser of any Assumed Contract or Assumed Lease that by its terms requires consent to assignment, to the entry of the Sale Order) or (v) result in any Encumbrance (other than Permitted Encumbrances) on any of the Purchased Assets, except, in the case of clauses (ii) and (iii), as have not had and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(d) Except for all Claims or pending motions that have been asserted or filed prior to the date hereof by third parties against the Sellers in the Seller Chapter 11 Cases, including any adversary proceedings in connection therewith, there is not pending or, to the Knowledge of the Sellers, threatened, any action, suit, proceeding, claim, investigation, application or complaint (whether or not purportedly on behalf of a Seller) against or affecting a Seller which in any way could materially and adversely affect the Purchased Assets, the Assumed Liabilities or the Project, in law or in equity, or which could affect the validity of this Agreement.

(e) Except as provided in (i) this Agreement, (ii) the Retail Master Lease (provided that the Section 2.2(b) Election has not been made), (iii) as of the date hereof, the Deeds of Trust and (iv) any bids made by any Person in connection with the Auction, no Person has any written or oral agreement or option, right of first refusal, right of first offer, right of first negotiation or similar right for the purchase, sale or other disposition of all or any of the Purchased Assets.

(f) Resort (i) has good and marketable fee simple title to, and, subject to the Retail Master Lease and the COREA (provided that the Section 2.2(b) Election has not been made), the exclusive right to possess, use and occupy, the Owned Real Property, and (ii) owns, or has a valid leasehold

interest in, the tangible personal property constituting Purchased Resort Assets, in each case free any clear of Encumbrances other than Permitted Encumbrances. The Owned Real Property constitutes all of the owned real property of the Resort Sellers, and there is no real property used in connection with the Project which is not a Purchased Asset. The Retail

Real Property consists of valid property interests owned by Retail (provided that the Section 2.2(b) Election has not been made), and Retail owns, or has a valid leasehold interest in, the tangible personal property constituting Purchased Retail Assets in each case free any clear of Encumbrances other than Permitted Encumbrances.

(g) The Books and Records have been maintained in material compliance with all applicable material legal requirements and fairly reflect, in all material respects, all dealings and transactions in respect of the Purchased Assets, the Assumed Liabilities or the Project.

(h) Attached as Schedule 4.1(h) of the Disclosure Letter is a complete and accurate schedule of all Permits currently required for the construction and development of the Project in accordance with the specifications and the most recent set of plans released by the Project's architects, Bergman Walls & Associates, Ltd., which specifications and plans have been provided to the Purchaser prior to the date hereof. To the Knowledge of the Sellers, each Permit is in full force and effect, the Sellers are in compliance in all material respects with their terms and conditions, all required renewal applications have been timely filed and no proceeding is pending or threatened to revoke or limit any Permit.

(i) To the Knowledge of the Sellers, the Sellers and the Project are and have been in material compliance with all Applicable Laws (but excluding any Environmental Laws). The Sellers have not received a written notice of any investigation or review by any Governmental Authority with respect to the Real Property or the Project that is pending, and, to the Knowledge of the Sellers, no investigation or review is threatened, nor has any Governmental Authority indicated any intention to conduct the same.

(j) Schedule 4.1(j) of the Disclosure Letter sets forth a complete and accurate list of the material Contracts and the material Leases. No Person that is not a Seller has any right to possess the Real Property except pursuant to a Lease listed on Schedule 4.1(j) or any right to use or occupy the Real Property except pursuant to a Lease or Contract listed on Schedule 4.1(j). Except for any breach or default that results from the insolvency of a Seller or the commencement of the Seller Chapter 11 Cases and any breach or default to be cured through the payment of the Cure Costs, (i) no Seller is in material breach or default under any Assumed Contract, Specified Contract or Assumed Lease and (ii) there is not and, to the Knowledge of the Sellers, there has not been claimed or alleged by any Person any existing event or condition which (with or without notice or lapse of time or both) would result in a material breach or default by any Seller under any Assumed Contract, Specified Contract or Assumed Lease. To the Knowledge of the Sellers, (i) no other party to any Assumed Contract, Specified Contract or Assumed Lease is in material breach or default thereunder and (ii) there is not and there has not been claimed or alleged by any Person any existing event or condition which (with or without notice or lapse of time or both) would result in a material breach or default by any other party under any Assumed Contract, Specified Contract or Assumed Lease. Each of the Assumed Contracts, Specified Contracts and Assumed Leases is in full force and effect and is valid and binding on the Seller party thereto (except for any breach or default that results from the insolvency of a Seller or the commencement of the Seller Chapter 11 Cases and any breach or default to be cured through the payment of the Cure Costs), and, to the Knowledge of the Sellers, each other party thereto, subject to applicable bankruptcy, insolvency, moratorium or other similar laws relating to creditors' rights and general principles of equity. The Sellers have made

available to the Purchaser complete and accurate copies of each of the Assumed Contracts (other than any "Purchase Order Contracts" referenced in item 1 of Part II of Schedule 1.2(a), provided that the Sellers represent, warrant, covenant and agree that they shall have provided to the Purchaser, at least 10 Business Days prior to the date of the Auction, a complete and accurate copy of any such Purchase Order Contract that has not as of such time been eliminated from Part II of Schedule 1.2(a) pursuant to Section 2.9), Specified Contracts and Assumed Leases.

(k) Except for any fee approved by the Bankruptcy Court payable to a financial advisor of the Sellers upon consummation of the Transaction, the Sellers have incurred no Liability for brokerage or finders' fees or agents' commissions or other similar payment in connection with the transactions contemplated by this Agreement (a "Seller Broker Fee"). The Sellers represent, warrant, covenant and agree that none of the Purchaser or any of its Affiliates will have any Liability in connection with any Seller Broker Fee.

(l) To the Knowledge of the Sellers, the Real Property and the use thereof are and have been in material compliance with all Environmental Laws, except as specifically disclosed in Environmental Reports made available to the Purchaser or which would not reasonably be expected, individually or in the aggregate, to result in the owner or operator of the Real Property incurring future material Liability under Environmental Laws. Except as disclosed in Environmental Reports made available to the Purchaser: (i) to the Knowledge of the Sellers, the Sellers and the Real Property are and have been in compliance with Environmental Laws, including any Environmental Permits, except for such non-compliance that in each case or in the aggregate would not reasonably be expected, individually or in the aggregate, to result in future material Liability; (ii) no Seller is subject to any pending Claim or, to the Knowledge of the Sellers, threatened Claim alleging either or both that a Seller or any aspect of the Project may be in violation of any Environmental Law or Environmental Permit, or may have any Liability under Environmental Law, except for such Claims that have not had and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect; and (iii) to the Knowledge of the Sellers, no Hazardous Substances have been, stored, treated, disposed of, arranged for disposal or treatment of, transported, handled, manufactured, distributed, or released on, under or from the Real Property, except in compliance with Environmental Laws. The Sellers have received a "no further action" letter from the NDEP with respect to UST#1; to the Knowledge of the Sellers, no leakage or soil or groundwater contamination was caused by or resulted from UST#2, UST#2 was removed from the Real Property and properly disposed of offsite in accordance with applicable Environmental Laws and to the satisfaction of NDEP, and the Sellers have not received written notice from NDEP or any other Person that any further action is required or recommended with respect to UST#2; and Sellers have not received written notice from NDEP or any other Person that there are any requirements for obtaining a "no further action" letter with respect to UST#3 and UST#4 other than completion of the Soil Removal in accordance with the letter from NDEP dated April 24, 2008. Except as disclosed in Environmental Reports made available to the Purchaser, the groundwater treatment system for the dewatering system on the Real Property has been approved by NDEP, such groundwater treatment system and dewatering system have been operated in material compliance with all NDEP requirements, applicable Permits, and Environmental Laws, and the applicable discharge limits and standards set forth in the discharge Permit have not been exceeded since July 16, 2009. To the Knowledge of the Sellers, no correspondence, complaint or other notice has been

received by the Sellers pertaining to violations of or Liability under Environmental Laws relating to the Real Property.

(m) The Sellers have not received any written notice of any, and, to the Knowledge of the Sellers, there is no threatened or pending, eminent domain, condemnation or rezoning proceedings, or any sale or other disposition in lieu of eminent domain or condemnation, with respect to the Real Property or any part of the Real Property or for the relocation in the immediate vicinity of the Real Property of roadways or streets providing access to or egress from the Owned Real Property.

(n) The Agreed Budget includes, to the Knowledge of the Sellers, a reasonable projection of the costs, fees and expenses in connection with the Stabilization of the Project for the period set forth in the Agreed Budget. All buildings, fixtures and improvements located on or in the Real Property (x) to the Knowledge of the Sellers, are free from any material Defect, normal deterioration, wear and tear excepted and (y) are in material compliance with all Applicable Laws, including building, zoning and other applicable land use laws, ordinances, codes and regulations. No Seller (or, to the Knowledge of the Sellers, any Affiliate thereof) has received written notice from any insurance company, bonding company, contractor, Governmental Authority or other Person of any material Defect or inadequacy in any part of the Real Property.

(o) The Sellers own, or have the right to use, all of the Purchased Intellectual Property. To the Knowledge of the Sellers, Sellers own all Purchased Intellectual Property that Seller Employees have created while in the scope of their employment, including copyrights in works made for hire and patents. There is no registered Purchased Intellectual Property or material Contract with respect to Purchased Intellectual Property pursuant to which the Sellers have granted any Person the right to reproduce, distribute, market or exploit the Purchased Intellectual Property Rights (other than Licensed Intellectual Property), excluding instances where Sellers have granted a third party the right to use the Purchased Intellectual Property strictly in the marketing materials or professional portfolios of such third party, which materials or portfolios reference such third party's work in connection with the Project. There is no action pending, or to the Knowledge of the Sellers, threatened that challenges the validity of ownership or use of any Purchased Intellectual Property. To the Knowledge of the Sellers, no third party's operations or products infringe on the Purchased Intellectual Property (other than the Licensed Intellectual Property) in any material respect, and to the Knowledge of the Sellers, no third party's operations or products infringe on the Licensed Intellectual Property within the State of Nevada. To the Knowledge of the Sellers, the Sellers' use of the Purchased Intellectual Property does not infringe in any material respect on the Intellectual Property Rights of any other Person. Neither the Sellers nor, to the Knowledge of the Sellers, any of their Affiliates have received during the preceding two years any written claim of infringement with respect to any Purchased Intellectual Property.

(p) Schedule 4.1(p) of the Disclosure Letter sets forth a complete and accurate list of all material insurance policies, including the Specified Insurance Policies, with respect to which a Seller is a party, a named insured or otherwise the beneficiary of coverage with respect to any of the Purchased Assets, the Assumed Liabilities or the Project. There is no material claim by a Seller pending under any such policies which has been denied or disputed by the

insurer. To the Knowledge of the Sellers, all such insurance policies are in full force and effect, all premiums due and payable thereon have been paid, and no written notice of cancellation or termination has been received by the Sellers with respect to any such policy which is not replaceable by the Sellers on substantially similar terms prior to the date of such cancellation. To the Knowledge of the Sellers, as of the date hereof no insurer of any policy listed on Schedule 4.1(p) of the Disclosure Letter has been declared insolvent or placed in receivership, conservatorship or liquidation.

(q) (i) All material Tax Returns required to be filed by or on behalf of each Seller with respect to the Project, the Purchased Assets or the Assumed Liabilities have been timely filed (taking into account extensions), (ii) all such Tax Returns were correct and complete, and (iii) all Taxes shown as due on such Tax Returns have been paid. During the last three years, no claim has been made by any taxing authority in a jurisdiction where a Seller does not file Tax Returns that such Seller is or may be subject to taxation by that jurisdiction with respect to the Project, the Purchased Assets or the Assumed Liabilities. All amounts required to be withheld and paid to the relevant taxing authority in connection with amounts paid or owing to any employee, independent contractor, creditor, stockholder or other third party, in each case relating to the Sellers, the Project, the Purchased Assets or the Assumed Liabilities, have been, in all material respects, withheld and paid by or on behalf of each Seller. No audit, administrative proceeding or judicial proceeding, that involves a material amount of Tax and relates to the Project, the Purchased Assets or the Assumed Liabilities is pending or threatened in writing. None of the Purchased Assets are (A) tax exempt use property under Section 168(h) of the Code, (B) tax-exempt bond financed property under Section 168(g) of the Code, (C) in the case of Purchased Assets with respect to which a Seller is a lessor, limited use property within the meaning of Revenue Procedure 2001-28, or (D) treated as owned by any other Person for purposes of Section 168 of the Code.

(r) Subject to the entry of the Sale Order and any order approving the assumption and assignment of the Assumed Contracts and Assumed Leases and the payment of the Cure Costs, if applicable, the Sellers have complied with all requirements of the Bankruptcy Code and Federal Rules of Bankruptcy Procedure in connection with obtaining approval of the sale of the Purchased Assets (including the assumption and assignment to Purchaser of any Assumed Contracts and Assumed Leases) to, and the assumption of the Assumed Liabilities by, the Purchaser pursuant to this Agreement.

(s) Schedule 4.1(s) of the Disclosure Letter sets forth a complete and accurate list of the material Equipment owned by the Sellers and primarily used or intended to be used in connection with the Project.

(t) Since the date of this Agreement, there has not been any change, effect, event, occurrence, state of facts or development that has had or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(u) After giving effect to the Closing, none of the Sellers or, to the Knowledge of the Sellers, their Affiliates will own or have the right to use any assets, properties or rights that are or are intended to be used primarily in the Project (other than the assets, properties and rights of Affiliates of the Sellers (other than the Sellers) set forth on Schedule 4.1(u) of the Disclosure

Letter ("Affiliate Assets") and any asset, property or right of the Sellers' general contractor in its capacity as such). None of the Sellers has any right, title or interest to or in any Affiliate Asset.

(v) Sellers have made available to Purchaser complete and accurate copies of (i) all Seller Benefit Plans (or a description thereof) in which current Seller Employees are eligible to participate and (ii) all Employment Agreements with any current Seller Employee, and Schedule 4.1(v) of the Disclosure Letter sets forth a complete and accurate list of the Seller Benefit Plans and Employment Agreements. Neither the Sellers nor any of their respective ERISA Affiliates has, within the six year period prior to the date of this Agreement, maintained, established, sponsored, participated in, or contributed to, any Seller Benefit Plan or any other benefit or compensation arrangement that is an "employee pension benefit plan" within the meaning of Section 3(2) of ERISA and subject to Title IV of ERISA or Section 412 of the Code, including any Multiemployer Plan.

(w) No Seller is a party to any labor or collective bargaining agreement with a union, works council, trade union or other employee organization (a "Labor Agreement"). With respect to the Project, (A) no labor organization or group of employees of the Sellers has made a pending demand for recognition or certification, and there are and have been no representation or certification proceedings or petitions seeking a representation proceeding, with the National Labor Relations Board or any other labor relations tribunal or authority, nor have any such demands, proceedings or petitions been brought or filed or threatened to be brought or filed within the past five years, and (B) the Sellers are in compliance in all material respects with all Applicable Laws respecting employment and employment practices, terms and conditions of employment, wages and hours and occupational safety and health.

(x) (i) Until suspension of construction of the Project on June 9, 2009, the Sellers planned, designed and constructed the Project in a manner calculated to attain LEED Certification of the Project; (ii) to the Knowledge of Sellers and based upon their calculations, the methods of construction used at the Project prior to the suspension of construction on June 9, 2009 and the materials submitted by Sellers and their Representatives to the GBCI, each of the four components of the Project (as described in the application for LEED Certification submitted to GBCI by the Sellers) would achieve LEED Certification if the Project was completed in accordance with such calculations, methods and materials and the Sellers' plans and designs for the Project; (iii) the Project qualifies as a "Pre-2007 LEED project" under the applicable Nevada Revised Statutes and regulations; (iv) the Sellers have preserved all material correspondence, applications, agreements, certifications, affidavits, documents, files, studies, reports, materials, and information in the possession or control of the Sellers that is related to LEED Certification or to any federal, state, local or utility benefits or incentives relating to LEED Certification, including all documents, materials and information submitted or required to be submitted by any Seller or any of its Representatives to the USGBC, GBCI, the Nevada Office of Energy, or the Nevada Department of Taxation; and (v) to the Knowledge of Sellers, none of the USGBC, GBCI, the Nevada Office of Energy, or the Nevada Department of Taxation has taken or failed to take any action that would materially and adversely affect the ability to achieve LEED Certification of the Project or to maintain the Tax benefits associated therewith or the Project's designation as a "Pre-2007 LEED project" under the applicable Nevada Revised Statutes and regulations.

Section 4.2 **Representations and Warranties of the Purchaser**. The Purchaser represents and warrants to the Sellers (and, as applicable in subsection (d) below, also covenants and agrees with the Sellers) as follows:

(a) The Purchaser is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization and has all requisite corporate power and authority to own, lease and operate its properties and to carry on its business as now being conducted. The Purchaser is an indirect wholly owned subsidiary of Penn.

(b) The Purchaser has all requisite corporate power and authority to execute and deliver this Agreement and the Transaction Documents to which it is (or will become) a party and to perform its obligations hereunder and thereunder (subject, in the case of the obligation to consummate the Transaction, to the entry of the Sale Order). The execution, delivery and performance by the Purchaser of this Agreement and the Transaction Documents to which it is (or will become) a party and the consummation of the transactions contemplated hereby and thereby have been duly and validly authorized by all requisite corporate action on the part of the Purchaser, and no other corporate proceeding on the part of the Purchaser is necessary to authorize this Agreement and such Transaction Documents and to consummate the transactions contemplated hereby and thereby. This Agreement and the Transaction Documents to which the Purchaser is (or will become) a party have been (or in the case of Transaction Documents to be executed and delivered after the date hereof, will be) duly and validly executed and delivered by the Purchaser and (assuming the due authorization, execution and delivery by all parties hereto and thereto other than the Purchaser) constitutes (or will constitute) valid and binding obligations of the Purchaser, enforceable against the Purchaser in accordance with their terms (subject, in the case of the obligation to consummate the Transaction, to the entry of the Sale Order).

(c) The execution, delivery and performance by the Purchaser of this Agreement and the Transaction Documents to which it is (or will become) party do not, and the consummation by the Purchaser of the transactions contemplated hereby and thereby will not, (i) conflict with or result in the breach of any provision of the organizational documents of the Purchaser, (ii) conflict with, violate or result in the breach by the Purchaser of any Applicable Law, or (iii) require the Purchaser to make any filing with or give notice to, or obtain any Consent from, any Governmental Authority, other than the Sale Order, except, in the case of clauses (ii) and (iii), as would not prevent or materially impair the ability of the Purchaser to consummate the Transaction or to perform its obligations hereunder.

(d) The Purchaser has incurred no Liability for brokerage or finders' fees or agents' commissions or other similar payment in connection with the transactions contemplated by this Agreement (a "Purchaser Broker Fee"). The Purchaser represents, warrants, covenants and agrees that none of the Sellers or any of their Affiliates will have any Liability in connection with any Purchaser Broker Fee.

(e) The Purchaser (i) as of the date that is five Business Days after the date hereof will have at least $107,503,734 in cash, and at the Closing will have at least $53,500,000 in cash (in each case, without giving effect to any available borrowings under revolving commitments of the Purchaser or Penn and its subsidiaries), and (ii) has not incurred any

obligation, commitment, restriction or liability of any kind that would materially impair the Purchaser's ability to use such funds to satisfy its payment and funding obligations under this Agreement and the DIP Facility contemplated to be performed at or prior to the Closing.

ARTICLE V
COVENANTS

Section 5.1 **Interim Covenants of the Sellers**. Between the date hereof and the Closing Date, except (x) as required or expressly permitted pursuant to this Agreement, (y) with the prior written consent of Purchaser, or (z) as may be required by order of the Bankruptcy Court, provided that no Seller petitioned, sought, requested or moved for such order of the Bankruptcy Court or authorized, supported or directed any other Person to petition, seek, request or move for such order of the Bankruptcy Court, the Sellers (and, as applicable, each Seller) shall:

(a) Stabilize the Project in accordance with the Stabilization Plan, provided, that the failure to so Stabilize the Project shall not be deemed to be a breach of this Section 5.1(a) to the extent such failure is caused by Purchaser's failure to comply with its funding obligations under the DIP Facility in accordance with its terms,

(b) comply with Articles V, VI and VIA of the DIP Facility as if fully set forth herein,

(c) use commercially reasonable efforts to maintain the Permits (it being acknowledged and agreed that no Seller shall be obligated to proceed with any construction or development activities in connection with such efforts to maintain Permits),

(d) use commercially reasonable efforts to preserve the goodwill, if any, and business relationships, if any, in connection with the Project,

(e) (i) perform in all material respects all of its obligations under the Assumed Contracts, the Specified Contracts, the Assumed Leases and the Specified Insurance Policies (other than, in the case of any Assumed Contract or Assumed Lease, any payment obligation thereunder that, to the extent not performed, will be cured through payment of the Cure Costs), except as otherwise specified in Schedule 5.1(e)(i) of the Disclosure Letter, (ii) not grant any material Consent under any Assumed Contract, Specified Contract, Assumed Lease or Specified Insurance Policy, (iii) not modify, amend or terminate in any material respect any Lease, Specified Contract, Specified Insurance Policy or material Contract, or enter into any Lease or material Contract and (iv) reasonably cooperate with Purchaser in connection with Purchaser's efforts to seek the assignment of the Specified Insurance Policies to Purchaser or its designee,

(f) comply with all Applicable Laws in all material respects,

(g) maintain its Books and Records,

(h) not sell, pledge, assign, lease, license, or cause, permit or suffer the imposition of any Encumbrance (other than Permitted Encumbrances) on, or otherwise dispose of, any of the Purchased Assets,

(i) not enter into a plan of consolidation, merger, share exchange or reorganization with any Person or adopt a plan of complete or partial liquidation,

(j) not incur any material Liabilities that are Assumed Liabilities,

(k) not waive, release or assign any material rights or claims that would otherwise constitute a Purchased Asset,

(l) not enter into any Contract the effect of which would be to grant to a third party any license to use any Purchased Intellectual Property,

(m) not enter in any settlement, consent decree or other agreement or arrangement with a third party or Government Authority that would materially limit or materially and adversely impact the way the Project may be Stabilized, developed or operated after the Closing or would require the payment by the Purchaser or any Affiliate thereof of any material funds after the Closing,

(n) not expend any Insurance Proceeds (except for any Insurance Proceeds paid to Purchaser as required pursuant to the DIP Facility),

(o) not take any action, nor permit any action to be taken, which could reasonably be expected to materially adversely affect the current zoning or land use entitlements of future development of any Real Property or the present or future use of any Real Property,

(p) deliver to the Purchaser and its counsel, prior to the filing thereof, all pleadings, motions and other documents to be filed by or on behalf of any Seller and relating directly to the Transaction, it being understood that this Section 5.1(p) shall not require the Sellers to deliver to the Purchaser any such information about a bidder for the Purchased Assets other than Purchaser or a bid other than Purchaser's bid prior to the dates described in the Bidding Procedures,

(q) preserve all material reports, data, documents, and cost information relating to the Soil Removal, and provide copies thereof to Purchaser promptly upon their receipt or preparation by Sellers, and

(r) not enter into any agreement (whether written or oral) to do any of the foregoing, or authorize or publicly announce an intention to do any of the foregoing.

Section 5.2 **Closing Documents**. The Parties shall proceed diligently and in good faith to attempt to settle, at or before the Closing or such earlier date as may be expressly set forth herein, the contents of all Closing Documents to be executed and delivered by the Sellers and the Purchaser; provided, however, that, in the case of any Closing Documents (if any) to be executed and delivered in the forms attached hereto as Exhibits, such forms shall not be subject to further negotiations and the Sellers, on the one hand, and the Purchaser, on the other hand, shall provide all details and/or information necessary to complete such documents, subject to the other's approval of the accuracy of such details and information, such approval not to be unreasonably withheld, conditioned or delayed.

Section 5.3 Notice of Default.

(a) The Sellers shall, promptly and in any event within five Business Days of receipt or sending thereof, as applicable, provide to the Purchaser: (i) a copy of any written notices of any material breach or default that any Seller receives in respect of any material Contract related to the Project or any Assumed Contract, Specified Contract, Assumed Lease or Specified Insurance Policy and any written notices of breach or default under any such Contract, Assumed Lease or Specified Insurance Policy that it sends to another Person, in either case after the date of this Agreement, and (ii) any state or federal environmental Orders that would reasonably be expected to result in a material Liability issued by any Governmental Authorities having jurisdiction and relating to the Real Property. In addition, the Sellers shall use commercially reasonable efforts to promptly provide to the Purchaser a copy of any written notices of any material breach or default of which Sellers become aware that any Affiliate of a Seller receives in respect of any material Contract related to the Project or any Assumed Contract, Specified Contract, Assumed Lease or Specified Insurance Policy and any written notices of breach or default under any such Contract, Assumed Lease or Specified Insurance Policy that any such Affiliate sends to another Person, in either case after the date of this Agreement.

(b) The Sellers, on the one hand, and the Purchaser, on the other hand, shall promptly notify the other of:

(i) any notice or other communication received by such Party from any Person alleging that the Consent of such Person is or may be required in connection with the transactions contemplated by this Agreement;

(ii) any inaccuracy of any representation or warranty of such Party contained in this Agreement at any time that would make such representation or warranty false in any material respect; and

(iii) any breach of any covenant or agreement of such Party contained in this Agreement at any time.

(c) Notwithstanding anything to the contrary in this Agreement, delivery of any notice pursuant to Section 5.3(b) and any access to or provision of information (including pursuant to Section 5.4) shall not modify any of the representations, warranties, covenants or agreements of the Parties (or rights or remedies with respect thereto) or the conditions to the obligations of the Parties under this Agreement.

Section 5.4 Access to Information.

(a) The Sellers agree that prior to the Closing, the Purchaser shall be entitled, through its Representatives (including its legal advisors and accountants), to make such investigation of the Project, the Purchased Assets and the Assumed Liabilities and such examination of the Books and Records (other than the Excluded Books and Records to the extent the Sellers are not required to provide a copy thereof pursuant to the proviso to Section 2.2(a)(vi)) and the Project Documents as it reasonably requests and to make extracts and copies of such Books and Records and Project Documents at Purchaser's sole cost and expense.

Purchaser shall also have the right to perform or conduct, at its sole cost and expense and without the consent of the Sellers, physical and environmental inspections, sampling and testing (including Phase I and Phase II examinations), zoning and land use investigations and surveys of the Real Property, and any investigations that Purchaser determines to be necessary or useful to evaluate matters relating to LEED Certification (provided, however, that (a) Purchaser shall indemnify, defend and hold harmless the Sellers and their Affiliates from and against any Claims resulting or arising from damage caused by such inspections, sampling, testing, investigations and surveys, and (b) the costs, fees and expenses of remediation or repair of any such damage shall not be Remediation Costs or otherwise included in the Remediation Amount). Any such investigation and examination shall be conducted during regular business hours upon reasonable advance notice and in a manner that minimizes disruption to the activities of any Seller conducted at the Project site. The Sellers shall each cause their respective Representatives to cooperate with Purchaser and its Representatives in connection with such investigation and examination. In connection with the Purchaser and/or its Representatives' access to the offices and other facilities of the Sellers, the Purchaser and/or its Representatives shall be accompanied at all times by a Representative of the Sellers unless the Sellers otherwise agree, shall not materially interfere with the use and operation of such offices and other facilities, and shall comply with all reasonable safety and security rules and regulations for such offices and other facilities. Notwithstanding anything to the contrary set forth in this Section 5.4(a), (x) no access to, or examination of, any information or other investigation by the Purchaser and/or its Representatives shall be permitted to the extent that it would require disclosure of information subject to attorney-client or other privilege and (y) the Sellers shall as soon as reasonably practicable provide Purchaser with access to any information provided during the period from the date hereof through the date of the Sale Order to any prospective purchasers of all or any part of the Purchased Assets not previously provided to Purchaser.

(b) From and after the Closing until the date that is 24 months after the Closing Date, the Purchaser agrees to provide the Sellers with reasonable access to Books and Records (and allow the Sellers to make extracts and copies of such Books and Records during such access) in connection with the Seller Chapter 11 Cases or any other proceeding or action relating thereto at the Sellers' sole cost and expense; provided, that the Purchaser will not be required to provide any such access in connection with any Claim by or against Purchaser or any of its Affiliates or any of their respective Representatives. Any such access shall be during regular business hours upon reasonable advance notice and in a manner that minimizes disruption to the business, operations and activities of the Purchaser and its Affiliates. In connection with the Sellers' access to the Books and Records, the Sellers shall be accompanied at all times by a Representative of the Purchaser unless the Purchaser otherwise agrees, shall not materially interfere with the use and operation of the offices and other facilities of the Purchaser and its Affiliates, and shall comply with all reasonable safety and security rules and regulations for such offices and other facilities. Notwithstanding anything to the contrary set forth in this Section 5.4(b), (x) no access to, or examination of, any information or other investigation by the Sellers shall be permitted to the extent that it would require disclosure of information subject to attorney-client or other privilege and (y) the Purchaser will not be required to preserve or otherwise retain any Books and Records. For the avoidance of doubt, nothing in this Section 5.4(b) (i) shall require the Purchaser or any other Person to provide any testimony or evidence or (ii) shall modify or otherwise affect the Sellers' obligations under Section 5.11(b).

Section 5.5 **Assets Held by Affiliates of Sellers; Joint and Several Obligations**.

(a) To the extent that any Person that is an Affiliate of any Seller (other than the Sellers) holds at or prior to the Closing any material asset, property or right related to the Project that would be a Purchased Asset (disregarding for this purpose Section 2.1(o)) if a Seller held such asset, property or right (other than the Affiliate Assets and any asset, property or right of the Sellers' general contractor in its capacity as such), the Sellers shall use commercially reasonable efforts to cause such Person to promptly transfer such asset, property or right to a Resort Seller, and upon such transfer such asset, property or right shall be deemed to be a Purchased Asset under this Agreement, it being agreed that the Sellers' obligations under this Section 5.5(a) shall continue after the Closing in respect of any such asset, property or right that is not transferred to a Resort Seller pursuant to this Section 5.5(a) at or prior to the Closing.

(b) All of the Liabilities of the Sellers under this Agreement are joint and several Liabilities.

Section 5.6 **Required Approvals**.

(a) The Sellers and the Purchaser shall reasonably cooperate with each other with respect to (i) all filings with, notices to and Consents from Governmental Authorities and other Persons that Purchaser elects to make or obtain or, pursuant to Applicable Law, shall be required to make or obtain, or that are otherwise necessary or useful, and (ii) any discussions or other communications with Governmental Authorities or other Persons, in each case in connection with (A) the transactions contemplated by this Agreement, (B) the transfer of each of the Permits to Purchaser or its designee in connection with the Closing, (C) LEED Certification, or (D) the development of the Project or the ownership of the Purchased Assets from and after the Closing. Without limiting the generality of the foregoing, the Sellers shall (1) promptly provide to the Purchaser a copy of any written notice or other communication in respect of any Permit that is received or sent by or on behalf of (x) any Seller or (y) any contractor or subcontractor that is or was performing work for the Project, a copy of which is obtained by any Seller and (2) otherwise keep the Purchaser informed on a reasonably current basis of the status of each of the Permits. Prior to the revocation of the Nevada general contractor license of the Sellers' current general contractor, Turnberry West Construction, Inc. ("TWC"), the Sellers shall use commercially reasonable efforts to cause TWC to transfer the Permits issued to TWC to a general contractor reasonably satisfactory to the Purchaser and the Sellers and to obtain all Consents from Governmental Authorities required in connection therewith, and shall reasonably cooperate with Purchaser in connection with the foregoing.

(b) The Purchaser, on the one hand, and the Sellers, on the other hand, shall use their respective commercially reasonable efforts to consummate the Transaction as promptly as practicable upon the terms and subject to the conditions contained in this Agreement and to refrain from any action that is reasonably likely to materially delay, impede or frustrate the satisfaction of any condition in Section 6.1 or 6.2, respectively.

(c) The Purchaser will use its best efforts to, and to cause its Affiliates to, take all reasonable steps as may be necessary to obtain an approval from, or to avoid an action or proceeding by, any Governmental Authority, whether by judicial or administrative action,

challenging this Agreement or the consummation of the transactions contemplated hereby or the performance of obligations hereunder under any antitrust law. The Purchaser will, and will cause its Affiliates to, commit to and effect, by consent decree, hold separate orders, trust, and otherwise, the divestiture of any Purchased Assets and permit and suffer to be imposed on it any other restrictions on any of its activities or any Purchased Assets as may be necessary to avoid the entry of, or to effect the dissolution of or vacate or lift, any Order relating to any antitrust challenge by any Governmental Authority that would otherwise have the effect of preventing or materially delaying the consummation of the transactions contemplated hereby.

Section 5.7 **No Acquisition of Revolving Commitments**. The Purchaser shall not, and shall cause its Affiliates not to, acquire any revolving commitments under the Existing Credit Facility.

Section 5.8 **Publicity**. Except as required by Applicable Law (including any Order by the Bankruptcy Court) or for any filings by the Sellers with the Bankruptcy Court, the Sellers shall not issue any press release or make any public statement or comment concerning this Agreement or the Transaction without the Purchaser's consent, provided, that the Sellers may issue any such press release or make any such public statement in connection with the Auction following the reasonable prior review thereof and comment thereon by Purchaser (which comments shall be reasonably considered by the Sellers).

Section 5.9 **Employee Matters**.

(a) Prior to the Closing, the Purchaser may offer to employ each current Seller Employee that Purchaser selects in its sole discretion to become an employee of Purchaser commencing as of the Closing. Offers of employment to Seller Employees who are not subject to, or otherwise covered by, a Labor Agreement, shall be on an "at-will" basis; provided, that, any such "at-will" employment offers will (i) be contingent on the Closing occurring; (ii) be subject to and in compliance with the Purchaser's standard human resources, ethics and compliance policies and procedures; (iii) supersede any prior employment agreements and (iv) be contingent on each Seller Employee (A) completing, in a manner reasonably satisfactory to the Purchaser, an employment application (including work status verification), (B) passing a standard background check of the Purchaser, and (C) signing such covenants and other contractual provisions as the Purchaser may in its discretion require in the ordinary course of its business; provided, further, that nothing in this Section 5.9(a) requires the Purchaser to employ any Seller Employee for any period of time after the Closing. For purposes of this Agreement, each Seller Employee who receives such an offer of employment shall be referred to as an "Offeree". Each Offeree who accepts such offer prior to the Closing shall be referred to herein as a "Transferred Employee". The Sellers hereby agree to waive any condition or restriction that they may have the contractual right to impose on the hiring and employment by Purchaser of any Seller Employee, effective as of the Closing Date (other than any such covenants not to disclose confidential information of any Seller to any Person other than Purchaser or any Affiliate thereof). Following the date of this Agreement, the Sellers shall allow the Purchaser reasonable access upon reasonable advance notice to meet with and interview Seller Employees, whom Purchaser has identified as potential Offerees, during normal business hours; provided, however, that such access shall not unduly interfere with the conduct of the Auction or the maintenance or Stabilization of the Purchased Assets or the Project prior to the Closing.

(b) Sellers shall be responsible for providing any notice to all Seller Employees required pursuant to the WARN Act with respect to any layoff or plant closing that occurs prior to or on the Closing Date and to each Excluded Employee required pursuant to the WARN Act with respect to any layoff or plant closing that occurs after the Closing Date, and Sellers shall be solely liable for all Liabilities with respect to the WARN Act or the failure to provide any such notice in a timely manner.

(c) Sellers agree and acknowledge that the Sellers shall continue to offer or otherwise ensure access to coverage under a U.S. group health plan to any Seller Employee, or their qualified beneficiaries under COBRA ("COBRA Beneficiaries"), after the Closing Date and for any period necessary in order to fulfill Seller's health care continuation coverage obligations, if any, under COBRA. Sellers shall ensure none of Purchaser or its Affiliates, nor their respective Seller Benefits Plans, are required to provide such COBRA continuation coverage or any alternative coverage, nor have any Liability under COBRA, arising on or before the Closing Date, with respect to any COBRA Beneficiary subsequently covered or required to be covered under a U.S. group health plan maintained by Purchaser. Sellers shall be solely responsible for providing COBRA continuation coverage, including to those individuals who are M&A qualified beneficiaries (as defined in Treasury Regulation Section 54.4980B-9, Q&A-4(a)) with respect to the transactions contemplated by this Agreement, in accordance with Applicable Law, regardless of when their qualifying event occurs, for the duration of the period during which such individuals are eligible for such coverage, or otherwise providing alternative coverage as permitted under Applicable Law in lieu of such COBRA continuation coverage.

(d) Nothing in this Agreement shall affect the Purchaser's right to terminate the employment of its employees. Nothing in this Agreement shall be construed to grant any employee of any Seller a right to continued employment by, or to receive any payment or benefits from, any Seller or Purchaser or through any Seller Benefit Plan or other benefit plan. This Agreement shall not limit Purchaser's or its Affiliates' ability or right to amend or terminate any benefit or compensation plan or program of Purchaser or its Affiliates and nothing contained herein shall be construed as an amendment to or modification of any such plan. Nothing contained in this Section 5.9, express or implied, shall constitute an amendment to any Seller Benefit Plan or other plan, create any third party beneficiary rights or inure to the benefit of or be enforceable by any employee of the Purchaser or of any Seller, or any Person representing the interest of any employees.

Section 5.10 Purchaser's Net Worth. At all times between the date that is five Business Days after the date of this Agreement and the earlier of the Closing and the termination of this Agreement, the Purchaser shall maintain a net worth (without giving effect to any of Purchaser's payment or funding obligations under this Agreement or the DIP Facility) at least equal to (a) the Closing Cash Payment (calculated as of such time), *plus* (b) the Available Unused Commitment (as defined in the DIP Facility) of the Purchaser (calculated as of such time), *plus* (c) $6,000,000. The Purchaser agrees to have, on the day on which the Contingent Payment, if any, is to be paid pursuant to Section 2.10(e)(i) or (ii), as applicable, sufficient internal funds (without giving effect to any available borrowings under revolving commitments of the Purchaser or Penn and its subsidiaries) available to pay the Contingent Payment, if any.

Section 5.11 Confidentiality.

(a) The Purchaser shall, and shall cause its Affiliates and Representatives to, until the Closing: (i) treat and hold as confidential all (and not disclose or provide any third party access to any) Sellers' Confidential Information, (ii) in the event that the Purchaser or any of its Affiliates or Representatives is requested or required (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or other process) to disclose any Sellers' Confidential Information, provide Sellers with prompt written notice of such request or requirement (to the extent legally permissible) so that Sellers may seek a protective order or other remedy and reasonably cooperate with the Sellers and their Representatives in connection therewith and (iii) in the event that such protective order or other remedy is not obtained, (x) furnish only that portion of such Sellers' Confidential Information that is legally required to be furnished, (y) promptly notify Sellers of the nature, scope and contents of such disclosure and (z) reasonably cooperate with Sellers to obtain assurances that confidential treatment will be accorded such Sellers' Confidential Information; provided, that this Agreement shall not prohibit or otherwise restrict Purchaser or any of its Affiliates or Representatives (A) from disclosing any information to any Person to whom Penn Ventures, LLC was permitted to disclose information pursuant to that certain Consent granted by Fontainebleau Resorts, LLC under the Confidentiality Agreement on October 5, 2009, it being agreed that any such Person to whom Sellers' Confidential Information is disclosed pursuant to this clause (A) shall be deemed a "Representative" of Purchaser for purposes of this Section 5.11(a) or (B) from disclosing any information that relates to environmental matters or LEED Certification to any Governmental Authority, USGBC, GBCI or any insurer.

(b) The Sellers shall, and shall cause their Representatives to, from and after the Closing: (i) treat and hold as confidential all (and not disclose or provide any third party access to any) Purchaser's Confidential Information, (ii) in the event that any of the Sellers or any of their Representatives is requested or required (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or other process) to disclose any Purchaser's Confidential Information, provide Purchaser with prompt written notice of such request or requirement (to the extent legally permissible) so that Purchaser may seek a protective order or other remedy and reasonably cooperate with Purchaser and its Affiliates and Representatives in connection therewith and (iii) in the event that such protective order or other remedy is not obtained, (x) furnish only that portion of such Purchaser's Confidential Information that is legally required to be furnished, (y) promptly notify Purchaser of the nature, scope and contents of such disclosure and (z) reasonably cooperate with Purchaser to obtain assurances that confidential treatment will be accorded such Purchaser's Confidential Information.

ARTICLE VI
CONDITIONS TO CLOSING

Section 6.1 Conditions for the Purchaser. The obligations of the Purchaser to consummate the Closing are subject to the satisfaction or waiver in writing by the Purchaser, at or before the Closing, of each of the following conditions:

(a) All of the covenants and agreements in this Agreement to be complied with or performed by the Sellers on or before the Closing Date shall have been complied with and performed in all material respects.

(b) The representations and warranties of the Sellers (i) set forth in Sections 4.1(a), (b), (k) and (t) shall be true and correct in all respects (subject to Section 2.5(b)), (ii) set forth in Section 4.1 (other than those described in clause (i)) (x) qualified as to materiality, Material Adverse

Effect or another similar qualifier shall be true and correct in all respects, and (y) those not so qualified shall be true and correct in all material respects, in the case of each of clauses (i), (ii)(x) and (ii)(y), as of the date of this Agreement and at and as of the Closing as though made at and as of the Closing (in each case, except to the extent expressly made as of another date, in which case as of such date as if made at and as of such date).

(c) No Governmental Authority of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any Applicable Law (including any Order) which is in effect and has the effect of making the Transaction illegal or otherwise restraining or prohibiting consummation of the Transaction and which is not satisfied or resolved or preempted by the Sale Order.

(d) (i) All Consents required in connection with the consummation of the Transaction shall have been obtained in form and substance reasonably satisfactory to Purchaser and shall be in full force and effect, and (ii) (A) the Sellers shall have sent a letter to the Clark County Department of Development Services in the form of Exhibit E with such changes thereto as are reasonably satisfactory to the Purchaser and the Sellers, and (B) the Clark County Department of Development Services shall have provided the confirmations requested in such letter (or substantially similar confirmations) in form and substance reasonably satisfactory to Purchaser.

(e) After notice and a hearing as defined in Section 102(1) of the Bankruptcy Code, the Bankruptcy Court shall have entered the Sale Order, and such Sale Order (i) shall have become final and non-appealable, (ii) shall not have been stayed, stayed pending appeal or vacated and (iii) shall not have been amended, supplemented or otherwise modified in a manner that results in such Sale Order no longer being an order of the Bankruptcy Court, in form and substance reasonably satisfactory to the Purchaser, authorizing the matters referred to in Section 3.3.

(f) None of the Purchaser or any of its Affiliates shall have been named as a defendant or third-party defendant in any proceeding in any of the Seller Chapter 11 Cases or any ancillary or adversary proceedings related thereto (any of the foregoing, the "Fontainebleau Litigation") or in any action or proceeding based upon the same set of facts or alleging similar claims as set forth in any Fontainebleau Litigation, other than (i) in an action against the Purchaser or such Affiliate based upon a breach by such Person of its obligations under the DIP Facility or this Agreement, (ii) as a result of the acquisition by Purchaser or such Affiliate of revolving commitments under the Existing Credit Facility or (iii) as a result of any agreement entered into by the Purchaser or such Affiliate with any Affiliate of a Seller (other than the Sellers).

(g) (i) There shall not have occurred any Specified DIP Event of Default, (ii) a Remedies Exercise Notice shall not have been delivered, provided, that for purposes of this clause (ii), a Remedies Exercise Notice will be deemed not to have been delivered if, following such delivery, the Sellers repay all of the Obligations and terminate all Commitments in connection with the entry into a Replacement DIP Facility and (iii) the DIP Facility Lenders shall not have acquired all or a material part of the Purchased Assets as a result of the exercise of remedies under the DIP Facility (it being specified, for the avoidance of doubt, that such acquisition may only occur in accordance with the last proviso to paragraph 16 of the DIP Order).

(h) The Sellers shall have assumed and assigned to Purchaser the Assumed Contracts and Assumed Leases, in each case pursuant to Section 365 of the Bankruptcy Code and the Sale Order, subject to Purchaser's provision of adequate assurance as may be required under Section 365 of the Bankruptcy Code.

(i) All Consents required for the assignment of each of the Specified Contracts to Purchaser or its designee at the Closing without any material modification in the terms of any such Specified Contract shall have been obtained and shall be in full force and effect.

(j) If a Remediation Dispute Notice has been delivered in accordance with Section 2.5, the Sellers and the Remediation Escrow Agent shall have executed and delivered the Remediation Escrow Agreement.

(k) The deliveries described in Section 7.2 shall have been made.

Section 6.2 Conditions for the Sellers. The obligations of the Sellers to consummate the Closing are subject to the satisfaction or waiver in writing by the Sellers, at or before the Closing, of each of the following conditions:

(a) All of the covenants and agreements in this Agreement to be complied with or performed by the Purchaser on or before the Closing Date shall have been complied with and performed in all material respects.

(b) The representations and warranties of the Purchaser set forth in Section 4.2 qualified as to materiality or another similar qualifier shall be true and correct in all respects, and those not so qualified shall be true and correct in all material respects, in each case, as of the date of this Agreement and at and as of the Closing as though made at and as of the Closing (in each case, except to the extent expressly made as of another date, in which case as of such date as if made at and as of such date).

(c) No Governmental Authority of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any Applicable Law (including any Order) which is in effect and has the effect of making the Transaction illegal or otherwise restraining or prohibiting consummation of the Transaction and which is not satisfied or resolved or preempted by the Sale Order.

(d) After notice and a hearing as defined in Section 102(1) of the Bankruptcy Code, the Bankruptcy Court shall have entered the Sale Order, and such Sale Order (i) shall have become final and non-appealable, (ii) shall not have been stayed, stayed pending appeal or vacated and (iii) shall not have been amended, supplemented or otherwise modified in a manner that results in such Sale Order no longer being an order of the Bankruptcy Court, in form and substance reasonably satisfactory to the Purchaser, authorizing the matters referred to in Section 3.3.

(e) The DIP Closing Date shall have occurred and the Purchaser shall have theretofore complied fully with its funding obligations under the DIP Facility in accordance with its terms.

(f) If a Remediation Dispute Notice has been delivered in accordance with Section 2.5, the Purchaser and the Remediation Escrow Agent shall have executed and delivered the Remediation Escrow Agreement.

(g) The deliveries described in Section 7.3 shall have been made.

ARTICLE VII
CLOSING

Section 7.1 **Closing Arrangements**. The consummation of the Transaction (the "Closing") shall take place at 10:00 a.m. on the third Business Day following the date on which all of the conditions set forth in Article VI have been satisfied or waived (other than any conditions that can only be satisfied as of the Closing, but subject to the satisfaction or waiver of such conditions) (the "Closing Date"), at the offices of Wachtell, Lipton, Rosen & Katz, 51 West 52nd Street, New York, NY 10019, or at such other time or place as may be mutually agreed to by the Parties.

Section 7.2 **Sellers' Deliveries**. At or before the Closing, the Sellers shall deliver or cause to be delivered the following items and documents to the Purchaser, with each such document to be effective as of the Closing:

(a) a certificate executed on behalf of each of the Sellers representing and certifying that the conditions set forth in Section 6.1 have been fulfilled;

(b) evidence that each Seller has obtained the approval of its Board of Directors, Board of Managers or managing member, as applicable, and its equityholders in respect of the transactions contemplated by this Agreement, in each case to the extent such approval is required;

(c) a Deed for the Owned Real Property in favor of the Purchaser, duly executed by Resort;

(d) an assignment and assumption of the Retail Master Lease and the Retail Leaseback to and by the Purchaser, duly executed by Retail (unless the Sellers make the Section 2.2(b) Election);

(e) a bill of sale to transfer the Purchased Assets to the Purchaser (or its permitted assign(s)) free and clear of all Encumbrances, other than Permitted Encumbrances, or evidence of such transfer on the public records, duly executed by the Sellers;

(f) an assignment of intangible property to transfer the Purchased Assets which are intangible property to the Purchaser (or its permitted assign(s)) free and clear of all Encumbrances, other than Permitted Encumbrances, duly executed by the Sellers;

(g) an assignment of each of the transferable Permits in favor of the Purchaser or its designee, duly executed by the Sellers, together with any other additional documents or instruments required to effect, record or consummate such transfer of each such Permit;

(h) the Assignment and Assumption Agreement, duly executed by the Sellers;

(i) a certificate of non-foreign status, substantially in the form of the sample certification contained in Treasury Regulation Section 1.1445-2(b)(2)(iv), duly executed by each Seller (or if a Seller is a "disregarded entity" for U.S. federal income tax purposes, by the Person that is treated as the owner of such Seller for U.S. federal income tax purposes);

(j) such notices as the Purchaser may reasonably require be given to the parties to the Assumed Contracts and Assumed Leases of their assignment to the Purchaser, together with directions relating to the payment of amounts under the Assumed Contracts and Assumed Leases, all executed by the Sellers in such form as the Purchaser and the Sellers may reasonably agree;

(k) three certified copies of the Sale Order;

(l) a direction of the Sellers as to the payment of the Closing Cash Payment pursuant to Section 2.4(b)(ii), including wire transfer instructions, and the name of the payee(s) (if other than the Sellers), which direction shall be delivered at least two Business Days before the Closing Date;

(m) a receipt for payment of the Closing Cash Payment pursuant to Section 2.4(b)(ii);

(n) estoppel letters or certificates from the Sellers reasonably requested by and in form and substance reasonably satisfactory to Purchaser with respect to the Assumed Contracts, Specified Contracts and Assumed Leases and consistent with Sellers' representations and warranties in this Agreement;

(o) a certificate of good standing of each of the Sellers; and

(p) all other deeds, conveyances, memoranda of lease, assignments, satisfactions, releases and other documents (acknowledged and in recordable form, as appropriate) which are required or which the Purchaser has reasonably requested before the Closing to give effect to the transactions contemplated by this Agreement, including the proper transfer, assignment, conveyance and delivery of the Purchased Assets by the Sellers to the Purchaser, free and clear of all Encumbrances except the Permitted Encumbrances.

Section 7.3 **Purchaser's Deliveries**. At or before the Closing, the Purchaser shall deliver or cause to be delivered the following items and documents to the Sellers, with each such document to be effective as of the Closing:

(a) a certificate executed on behalf of the Purchaser representing and certifying that the conditions set forth in Section 6.2 have been fulfilled;

(b) an assignment and assumption of the Retail Master Lease and the Retail Leaseback to and by the Purchaser, duly executed by the Purchaser (unless the Sellers make the Section 2.2(b) Election);

(c) the Assignment and Assumption Agreement, duly executed by the Purchaser;

(d) an assignment of intangible property to transfer the Purchased Assets which are intangible property to the Purchaser (or its permitted assign(s)) free and clear of all Encumbrances, other than Permitted Encumbrances, duly executed by the Purchaser;

(e) an assignment of each of the transferable Permits in favor of the Purchaser or its designee, duly executed by the Purchaser, together with any other additional documents or instruments required to effect, record or consummate such transfer of each such Permit;

(f) the Closing Cash Payment pursuant to Section 2.4(b)(ii), by wire transfer of immediately available funds, to one or more bank accounts designated in the direction delivered pursuant to Section 7.2(l);

(g) evidence that the Purchaser has obtained the approval of its Board of Directors (or similar governing body) and of its equityholders in respect of the transactions contemplated by this Agreement, in each case to the extent such approval required;

(h) a letter from Purchaser, in its capacity as "Administrative Agent" (as defined in the DIP Facility), confirming that the Sellers have been released from the Obligations as contemplated by Section 2.4(b)(iii); and

(i) all other documents which are required or which the Sellers have reasonably requested before the Closing to give effect to the transactions contemplated by this Agreement, including the proper assumption of the Assumed Liabilities by the Purchaser.

Section 7.4 Tax Matters.

(a) (i) Solely to the extent not exempt in accordance with Section 1146 of the Bankruptcy Code, the Purchaser shall pay and shall be responsible for all state and local Transfer Taxes, if any, occasioned by the conveyance of the Real Property and the Purchased Assets from the Sellers to the Purchaser and the assumption of the Assumed Liabilities by the Purchaser, including those payable in connection with the recording of the Deed, as well as any notarial fees incurred in connection therewith; provided, however, that the Parties shall reasonably cooperate in availing themselves of any available exemptions from any such Transfer Taxes, including a request that the Sellers' sale of the Purchased Assets be exempted from Transfer Taxes pursuant

to Section 1146 of the Bankruptcy Code and (ii) the Purchaser shall pay and shall be responsible for all other costs, fees and expenses associated with the recordings of the Deeds (the Transfer Taxes, notarial fees and other costs, fees and expenses described in this sentence, "Transfer Costs"). The Party responsible under Applicable Law shall be responsible for the preparation and filing of all Tax Returns relating to Transfer Taxes.

(b) Within 90 days following the Final Remediation Determination Date, the Purchaser shall provide the Sellers with a proposed allocation of the Closing-Related Consideration and the Assumed Liabilities among the Purchased Assets for Tax purposes. If the Sellers do not deliver a written notice disagreeing with Purchaser's proposed allocation within 30 days following Sellers' receipt thereof, the proposed allocation shall be final and binding on the Sellers and the Purchaser for all purposes of this Agreement. If the Sellers deliver a written notice disagreeing with the Purchaser's proposed allocation within 30 days following Sellers' receipt thereof, the Parties shall use commercially reasonable efforts to resolve such dispute within thirty days following the date of the dispute notice. If Sellers and Purchaser are unable to resolve such dispute within such 30-day period, they shall refer such dispute to an independent accounting firm or appraisal firm jointly selected by the Parties, whose determination shall be final and binding on Sellers and Purchaser for all purposes of this Agreement. The Sellers shall pay and shall be responsible for all of the costs, fees and expenses of such independent accounting firm or appraisal firm. The final allocation of the Closing-Related Consideration and the Assumed Liabilities among the Purchased Assets for Tax purposes, determined in accordance with this Section 7.4(b), shall be set forth on a written schedule (the "Allocation Schedule"). The allocation of the Contingent Payment, if any, for Tax purposes shall be consistent with the Allocation Schedule. The Sellers and the Purchaser agree to timely file, or to cause to be timely filed, Internal Revenue Service Form 8594 (or any comparable form under state, local, or foreign Tax law) and any required attachments thereto in accordance with the Allocation Schedule. Except to the extent otherwise required pursuant to a "determination" within the meaning of IRC Section 1313(a) (or any comparable provision of state, local or foreign law) and resulting from an adjustment to a tax return initiated by the Internal Revenue Service (or any state, local or foreign taxing authority), neither the Sellers nor the Purchaser shall take, or shall permit any of its Affiliates to take, a Tax position (whether on a Tax Return or otherwise) that is inconsistent with the allocation reflected in the Allocation Schedule.

(c) The Sellers shall be responsible for any Property Taxes (including any special or supplemental assessments) with respect to any Purchased Asset allocable to any taxable period or portion thereof ending prior to or on the Closing Date (the "Pre-Closing Tax Period") (without regard to when such Taxes are assessed or payable). The Purchaser shall be responsible for any Property Taxes (including any special or supplemental assessments) with respect to any Purchased Asset for Tax periods beginning after the Closing Date (without regard to when such Taxes are assessed or payable). In either case, the amount of Property Tax allocable to a Pre-Closing Tax Period of a taxable period that commences prior to and includes (but does not end on) the Closing Date (a "Straddle Period") shall be deemed to be the amount of such Tax for the entire Straddle Period multiplied by a fraction, the numerator of which is the number of days in the portion of the Straddle Period preceding and including the Closing Date and the denominator of which is the number of days in the Straddle Period. If, following the Closing, one Party remits to the appropriate Governmental Authority payment for Property Taxes which are subject to this Section 7.4(c) and such payment includes the other Party's share

of such Taxes, such other Party shall promptly reimburse the remitting Party for its share of such Taxes upon written notice from such paying Party; provided, that Purchaser shall not be required to make any payment with respect to prepaid Property Taxes described in Section 2.1(e)(ii). Any refund of Property Taxes which are subject to this Section 7.4(c) shall be allocated between the Sellers and the Purchaser in a manner consistent with the foregoing.

(d) The Purchaser and the Sellers shall use commercially reasonable efforts to furnish or to cause to be furnished to each other, as promptly as reasonably practicable, such information in their possession and assistance relating to the Project, the Purchased Assets and the Assumed Liabilities (other than the Excluded Books and Records) as is reasonably necessary for the preparation and filing of any Tax Return, claim for refund or other filings relating to Tax matters, or in connection with any Tax audit or other Tax proceeding. The Sellers shall either (i) retain in their possession all Tax Returns and Tax records relating to the Purchased Assets and the Assumed Liabilities until the relevant statute of limitations has expired or, with respect to any then pending Tax audit or judicial or administrative proceeding until final resolution thereof (taking into account any extensions thereof), after which time the Sellers may dispose of such materials; provided that prior to such disposition the Sellers shall give the Purchaser a reasonable opportunity to take possession of such materials or (ii) provide such materials to the Purchaser.

ARTICLE VIII
TERMINATION OF AGREEMENT

Section 8.1 **Termination**. This Agreement may be terminated at any time prior to the Closing:

(a) by mutual written consent of the Sellers and the Purchaser;

(b) by the Purchaser, if the Closing has not occurred on or prior to February 9, 2010 (the "Outside Date"); provided, that if, on February 9, 2010, all of the conditions set forth in Section 6.1 other than the condition set forth in Section 6.1(g)(ii) shall have been satisfied, the "Outside Date" shall be the later of (i) February 9, 2010 and (ii) the date that is 10 days after the Remedies Exercise Date;

(c) by the Purchaser, subject to Section 2.5(b), in the event of any inaccuracy in any of the Sellers' representations or warranties contained in this Agreement or any other Transaction Document or any breach of any of the Sellers' covenants or agreements contained in this Agreement or any other Transaction Document which, individually or in the aggregate with all other such inaccuracies and breaches, (i) would result in a failure of a condition set forth in Section 6.1, and (ii) is either incapable of being cured or, if capable of being cured, is not cured in all material respects within the earlier of (x) thirty (30) calendar days after written notice thereof and (y) the Outside Date; provided, that Purchaser shall not have the right to terminate this Agreement under this Section 8.1(c) at a time when the Sellers have (or would have after the passage of time) the right to terminate this Agreement under Section 8.1(d);

(d) by the Sellers, in the event of any inaccuracy in any of the Purchaser's representations or warranties contained in this Agreement or any other Transaction Document or any breach of any of the Purchaser's covenants or agreements contained in this Agreement or

any other Transaction Document which, individually or in the aggregate with all other such inaccuracies and breaches, (i) would result in a failure of a condition set forth in Section 6.2, and (ii) is either incapable of being cured or, if capable of being cured, is not cured in all material respects within the earlier of (x) thirty (30) calendar days after written notice thereof and (y) the Outside Date; provided, that the Sellers shall not have the right to terminate this Agreement under this Section 8.1(d) at a time when the Purchaser has (or would have after the passage of time) the right to terminate this Agreement under Section 8.1(c);

(e) by either the Sellers or the Purchaser, if the Bankruptcy Court approves a Competing Transaction;

(f) by the Purchaser, if the Sellers shall fail to file the Sale Procedures Motion within two Business Days of the date of this Agreement;

(g) by the Purchaser, if (i) the Bankruptcy Court shall fail to enter the Sale Procedures Order on or before the seventh Business Day following the filing of the Sales Procedures Motion or (ii) an order of any court shall be entered in any of the Seller Chapter 11 Cases of the Resort Sellers (A) staying for a period in excess of 10 days, vacating or reversing the Sale Procedures Order or (B) amending, supplementing or otherwise modifying the Sale Procedures Order in a manner that results in the Sale Procedures Order no longer being substantially in the form set forth in Exhibit B hereto;

(h) by the Purchaser, if (i) the Seller Chapter 11 Cases of the Retail Sellers shall not have been commenced on or before the seventh Business Day following the DIP Closing Date, (ii) the Bankruptcy Court shall fail to enter an order substantially in the form of the Sale Procedures Order in the Seller Chapter 11 Cases of the Retail Sellers on or before the seventh Business Day following the DIP Closing Date (the "Retail Sale Procedures Order") or (iii) an order of any court shall be entered in any of the Seller Chapter 11 Cases of the Retail Sellers (A) staying for a period in excess of 10 days, vacating or reversing the Retail Sale Procedures Order or (B) amending, supplementing or otherwise modifying the Retail Sale Procedures Order in a manner that results in the Retail Sale Procedures Order no longer being substantially in the form of the Sale Procedures Order;

(i) by the Purchaser, if the Bankruptcy Court shall fail to enter the "Interim DIP Order" (as defined in the DIP Facility) on the same day as it enters the Sale Procedures Order;

(j) by the Purchaser, if the Bankruptcy Court shall fail to enter the Sale Order on or before January 29, 2010 or shall have stated unconditionally that it will not enter the Sale Order;

(k) by the Purchaser, if (i) any Specified DIP Event of Default shall occur or (ii) the DIP Facility Lenders acquire all or a material part of the Purchased Assets as a result of the exercise of remedies under the DIP Facility (it being specified, for the avoidance of doubt, that such acquisition may only occur in accordance with the last proviso to paragraph 16 of the DIP Order); or

(l) by either the Sellers or the Purchaser, if a Governmental Authority of competent jurisdiction shall have issued a final, non-appealable Order or taken any other final, non-appealable action, in each case, having the effect of permanently making the Transaction illegal or otherwise permanently restraining or prohibiting consummation of the Transaction.

Section 8.2 **Effect of Termination**. In the event of any termination of this Agreement pursuant to a right of termination under Section 8.1, this Agreement (other than the provisions set forth in Section 5.8, this Section 8.2, Section 8.3 and Article IX) shall forthwith become null and void and be deemed of no further force and effect, and the transactions contemplated hereunder shall be abandoned, it being agreed that such termination shall not relieve any Party hereto from liability for any breach of this Agreement prior to such termination.

Section 8.3 **Break-Up Fee**.

(a) In the event that (x) the condition set forth in Section 6.2(e) has been satisfied or waived and (y) this Agreement is terminated under (i) Section 8.1(b) or (l), provided, that a breach by the Purchaser of any term or provision of this Agreement or the DIP Facility was not a material cause of or a material contributing factor to the event giving rise to the right of termination thereunder, provided, further, in the case of a termination under Section 8.1(b), that the failure of the Closing to have occurred on or prior to the Outside Date did not result solely from the failure of the condition set forth in Section 6.1(d)(ii)(B) to be satisfied, (ii) Section 8.1(c), provided, that such termination is not based on an inaccuracy in the representations and warranties set forth in Section 4.1(t) arising from a Material Adverse Effect described in clause (z)(2) of the second sentence of the definition thereof or (iii) Section 8.1(e), (f), (g), (h), (i), (j) or (k), the Sellers shall pay the Break-Up Fee to the Purchaser not later than three Business Days following such termination.

(b) The Sellers' obligation to make any payment on account of the Break-Up Fee shall have super-priority administrative expense status, senior to all other administrative expense claims (other than Sellers' obligations pursuant to the DIP Facility and the DIP Order, which obligations shall be pari passu with the Sellers' obligation to pay the Break-Up Fee), under Section 364(c)(1) of the Bankruptcy Code, until such payment is made.

ARTICLE IX
MISCELLANEOUS

Section 9.1 **Survival**. The representations and warranties of the Parties in this Agreement shall not survive the Closing. Any Liability for breach of the representations and warranties contained in this Agreement, or for the breach of any covenant contained in this Agreement to the extent such breach occurs prior to (and not at or after) the Closing, shall terminate absolutely and be deemed fully waived, released and forever discharged as of the Closing, if the Closing occurs.

Section 9.2 **No Recording**. The Sellers acknowledge and agree that they shall not record, or cause to be recorded, this Agreement, or any part thereof, or any instrument, agreement or other document evidencing this Agreement, against title to the Real Property (or

any part thereof) unless so instructed by the Purchaser, provided the Purchaser shall pay all costs and expenses in connection therewith.

Section 9.3 **Relationship of the Parties**. Nothing in this Agreement shall be construed so as to make the Purchaser a partner of any Seller and nothing in this Agreement shall be construed so as to make the Purchaser an owner of any Real Property for any purpose until the Closing.

Section 9.4 **Amendment of Agreement**. This Agreement may not be supplemented, modified or amended except by a written agreement executed by each Party.

Section 9.5 **Notices**. Any Notice shall be in writing and shall be deemed to have been duly given or made when personally delivered or when mailed by registered or certified mail, postage prepaid, return receipt requested, addressed as follows, or to such other addresses as may be furnished hereafter by notice, in writing, to the other Party on at least three Business Days' prior notice, to the following Parties:

(a) If to the Purchaser, to:

Nevada Gaming Ventures, Inc.
825 Berkshire Boulevard, Suite 200
Wyomissing, Pennsylvania 19610
Attention: President
Telecopy: (610) 373-4710

with a copy (which shall not constitute notice) given in like manner to:

Penn National Gaming, Inc.
825 Berkshire Boulevard, Suite 200
Wyomissing, Pennsylvania 19610
Attention: General Counsel
Telecopy: (610) 373-4710

with a copy (which shall not constitute notice) given in like manner to:

Wachtell, Lipton, Rosen & Katz
New York, New York 10019
Attention: Richard G. Mason, Esq.
Victor Goldfeld, Esq.
Telecopy: (212) 403-1000

and

Stutman Treister & Glatt P.C.
1901 Avenue of the Stars, 12th Floor
Los Angeles, California 90067

Attention: Eve H. Karasik, counsel to the Examiner

Telecopy: 310-228-5788

(b) If to the Sellers, to:

Fontainebleau Las Vegas Holdings, LLC
19950 West Country Club Drive
Aventura, Florida 33180
Attention: Howard C. Karawan, Chief Restructuring Officer
Telecopy: (305) 682-4141

with a copy (which shall not constitute notice) given in like manner to:

Bilzin Sumberg Baena Price & Axelrod LLP
200 South Biscayne Boulevard, Suite 2500
Miami, Florida 33131
Attention: Scott L. Baena
Telecopy: (305) 351-2203

and

Stutman Treister & Glatt P.C.
1901 Avenue of the Stars, 12th Floor
Los Angeles, California 90067
Attention: Eve H. Karasik, counsel to the Examiner
Telecopy: 310-228-5788

Any Notice which is delivered by mail or is sent by telecopy to the proper Party at the proper address or telecopy number shall be deemed to have been validly and effectively given and received on the date it is delivered or sent, unless it is delivered or sent after 5:00 p.m. on any given day or on a day which is not a Business Day, in which case it shall be deemed to have been validly and effectively given and received on the Business Day next following the day it was delivered or sent, provided that, in the case of a Notice sent by telecopy, it shall not be deemed to have been sent unless there has been confirmation of transmission.

Section 9.6 **Fees and Expenses**. If any Party hereto brings an action against any other Party hereto based upon a breach by such other Party hereto of this Agreement, the prevailing Party shall be entitled to reimbursement of all reasonable costs, fees and expenses incurred in connection with such action, including reasonable costs, fees and expenses of counsel, from the non-prevailing Party. The Parties agree that, except as otherwise expressly provided in this Agreement, each Party shall bear and pay all costs, fees and expenses that it incurs, or which may be incurred on its behalf, in connection with this Agreement and the transactions contemplated by this Agreement.

Section 9.7 **Governing Law; Jurisdiction; Service of Process**. This Agreement shall be governed by and construed in accordance with federal bankruptcy law, to the extent applicable, and, where state law is implicated, the internal laws of the State of New York, without giving effect to any principles of conflicts of law. By its execution and delivery of this

Agreement, each of the Parties hereto irrevocably and unconditionally agrees that any action, suit or proceeding between any of the Sellers, on the one hand, and the Purchaser, on the other hand, with respect to any matter under or arising out of or in connection with this Agreement or for recognition or enforcement of any judgment rendered in any such action, suit or proceeding, shall be brought in the Bankruptcy Court for that purpose only, and, by execution and delivery of this Agreement, each hereby irrevocably accepts and submits itself to the jurisdiction of such court, generally and unconditionally, with respect to any such action, suit or proceeding. In the event any such action, suit or proceeding is commenced, the Parties hereby agree and consent that service of process may be made, and personal jurisdiction over any Party hereto in any such action, suit or proceeding may be obtained, by service of a copy of the summons, complaint and other pleadings required to commence such action, suit or proceeding upon the Party at the address of such Party set forth in Section 9.5 hereof, unless another address has been designated by such Party in a notice given to the other Parties in accordance with the provisions of Section 9.5 hereof.

Section 9.8 **Further Assurances**. Subject to the other provisions of this Agreement, each of the Parties hereto agrees to execute, acknowledge, deliver, file and record such further certificates, amendments, instruments and documents, and to do or cause to be done all such other acts and things, as may be reasonably requested by any other Party in order to carry out the intent and purpose of this Agreement and to consummate the transactions contemplated by this Agreement on the terms and subject to the conditions set forth in this Agreement, at the sole cost and expense of the requesting Party, provided that this Section 9.8 shall not require any Party to take any action that is commercially unreasonable or that would result in any Liability of such Party or any of its Affiliates.

Section 9.9 **Entire Agreement**. This Agreement, the other Transaction Documents and the DIP Facility constitute the full and entire agreement between the Parties hereto pertaining to the transactions contemplated by this Agreement and by the Transaction Documents and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, with respect thereto made by any Party.

Section 9.10 **Waiver**. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision (whether or not similar) nor shall any waiver constitute a continuing waiver unless otherwise expressed or provided. All waivers hereunder must be in writing to be effective.

Section 9.11 **Assignment**. None of the Sellers or the Purchaser may assign or otherwise transfer their respective rights and/or obligations hereunder (or agree to do so) without the prior written consent of the other Parties; provided, that Purchaser may, without the consent of any Seller, assign or transfer any or all of its rights and/or obligations hereunder to one or more of its Affiliates (in any or all of which cases described in this proviso Purchaser nonetheless shall remain liable for the performance of all of Purchaser's obligations hereunder to the extent not performed by the assignee). Purchaser shall give prompt written notice to Sellers of any such assignment. Any assignment or other transfer not permitted under this Section 9.11 shall be null and void ab initio.

Section 9.12 **Successors and Assigns**. Subject to Section 9.11, this Agreement shall bind and inure to the benefit of the Parties hereto and their respective successors and permitted assigns, including, in the case of any Seller, (a) any trust created upon the consummation of a plan of reorganization in such Seller's Seller Chapter 11 Case, (b) a liquidating or litigation trustee appointed in such Seller's Seller Chapter 11 Case or (c) a plan administrator appointed in such Seller's Seller Chapter 11 Case.

Section 9.13 **No Third Party Beneficiaries**. Nothing in this Agreement is intended to, or shall, confer any third party beneficiary or other rights or remedies upon any Person other than the Parties hereto.

Section 9.14 **Severability of Provisions**. Any provision of this Agreement which is determined by a court of competent jurisdiction to be invalid or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining provisions of this Agreement or affecting the validity or enforceability of any of the provisions of this Agreement in any other jurisdiction, and if any provision of this Agreement is determined to be so broad as to be unenforceable, such provision shall be interpreted to be only so broad as is enforceable, provided in all cases that neither the economic nor legal substance of this Agreement is affected by the operation of this sentence in any manner materially adverse to any Party. Upon any such determination that any provision of this Agreement is invalid or unenforceable, the Parties shall negotiate in good faith in an effort to agree upon a suitable and equitable substitute provision to effect the original intent of the Parties.

Section 9.15 **Specific Performance**.

(a) Purchaser acknowledges that Sellers would be damaged irreparably in the event that the terms of this Agreement are not performed by Purchaser in accordance with its specific terms or otherwise breached or Purchaser fails to consummate the Closing and that, in addition to any other remedy that Sellers may have under law or equity, Sellers shall be entitled to seek injunctive relief to prevent breaches of the terms of this Agreement and to seek to enforce specifically the terms and provisions hereof that are required to be performed by Purchaser.

(b) Sellers acknowledge that Purchaser would be damaged irreparably in the event that the terms of this Agreement are not performed by Sellers in accordance with its specific terms or otherwise breached or Sellers fail to consummate the Closing and that, in addition to any other remedy that Purchaser may have under law or equity, Purchaser shall be entitled to seek injunctive relief to prevent breaches of the terms of this Agreement and to seek to enforce specifically the terms and provisions hereof that are required to be performed by Sellers.

Section 9.16 **Counterparts**. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original hereof, and all of which shall constitute a single agreement effective as of the date hereof. Any delivery of an executed counterpart of this Agreement by facsimile or electronic mail shall be as effective as delivery of a manually executed counterpart of this Agreement.

Section 9.17 **Payments to Sellers**. Notwithstanding anything in this Agreement to the contrary, any payment required to be made by the Purchaser (or from the Remediation Escrow Fund) to any Seller pursuant to this Agreement shall, if so directed by the Bankruptcy Court, be deposited into an escrow account for the benefit of the estates of all of the Sellers in lieu of being paid to such Seller.

IN WITNESS WHEREOF, the Parties hereto have caused this Asset Purchase Agreement to be executed as of the day and year first above written.

SELLERS:

FONTAINEBLEAU LAS VEGAS HOLDINGS, LLC

By: Howard C. Karawan
Name: Howard C. Karawan
Title: Authorized Person

FONTAINEBLEAU LAS VEGAS, LLC

By: Howard C. Karawan
Name: Howard C. Karawan
Title: Authorized Person

FONTAINEBLEAU LAS VEGAS CAPITAL CORP.

By: Howard C. Karawan

PURCHASER:

NEVADA GAMING VENTURES, INC.

By: Robert S. Ippolito
Name: Robert S. Ippolito
Title: Secretary / Treasurer

Name: Howard C. Karawan
Title: Authorized Person

FONTAINEBLEAU LAS VEGAS RETAIL PARENT, LLC

By: Howard C. Karawan
Name: Howard C. Karawan
Title: Authorized Person

FONTAINEBLEAU LAS VEGAS RETAIL MEZZANINE, LLC

By: Howard C. Karawan
Name: Howard C. Karawan
Title: Authorized Person

FONTAINEBLEAU LAS VEGAS RETAIL, LLC

By: Howard C. Karawan
Name: Howard C. Karawan
Title: Authorized Person

$51,503,734.00

DEBTOR-IN-POSSESSION CREDIT AGREEMENT

Dated as of November 16, 2009,

Among

FONTAINEBLEAU LAS VEGAS, LLC,
debtor and debtor-in-possession, as Borrower,

FONTAINEBLEAU LAS VEGAS HOLDINGS, LLC
debtor and debtor-in-possession, as Guarantor,

FONTAINEBLEAU LAS VEGAS CAPITAL CORP.,
debtor and debtor-in-possession, as Guarantor,

THE LENDERS PARTY HERETO,

and

NEVADA GAMING VENTURES, INC.,
as Administrative Agent, Collateral Agent and Arranger

TABLE OF CONTENTS

DEBTOR-IN-POSSESSION CREDIT AGREEMENT dated as of November 16, 2009 (as amended, supplemented or otherwise modified from time to time, this "Agreement"), among FONTAINEBLEAU LAS VEGAS, LLC., a Nevada limited liability company ("Borrower"), FONTAINEBLEAU LAS VEGAS HOLDINGS, LLC, a Nevada limited liability company ("Holdings"), FONTAINEBLEAU LAS VEGAS CAPITAL CORP., a Delaware corporation ("Capital Corp."), the SUBSIDIARIES AND AFFILIATES of Holdings party hereto from time to time, the LENDERS party hereto from time to time and NEVADA GAMING VENTURES, INC., a Nevada corporation, as administrative agent, collateral agent and arranger (in such capacities, the "Administrative Agent").

W I T N E S S E T H:

WHEREAS, on June 9, 2009 (the "Petition Date"), Holdings, the Borrower and Capital Corp. filed, with the United States Bankruptcy Court for the Southern District of Florida, a voluntary petition for relief (collectively, the "Cases") under Chapter 11 of the Bankruptcy Code;

WHEREAS, Holdings, the Borrower and Capital Corp. are continuing to operate their respective businesses and manage their respective properties as debtors-in-possession under Sections 1107(a) and 1108 of the Bankruptcy Code;

WHEREAS, the Borrower has requested that the Lenders provide a secured super-priority debtor-in-possession revolving loan facility to the Borrower in an aggregate principal amount up to $51,503,734.00;

WHEREAS, each of Holdings and Capital Corp. has agreed to guarantee the obligations of the Borrower hereunder and each of Holdings and Capital Corp. has agreed to secure its obligations to the Lenders hereunder with, inter alia, security interests in, and liens on, all of its property and assets, whether real or personal, tangible or intangible, now existing or hereafter acquired or arising, all as more fully provided herein;

WHEREAS, the Lenders are willing, on the terms and conditions hereinafter set forth, to make available to the Borrower such debtor-in-possession revolving loan facility;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereto hereby agree as follows:

ARTICLE I

DEFINITIONS

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

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

"Administrative Agent-Related Persons" shall have the meaning assigned to such term in Section 8.03.

"Administrative Questionnaire" shall mean an Administrative Questionnaire in the form of Exhibit A.

"Affiliate" shall mean, when used with respect to a specified person, another person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the person specified or is a spouse, former spouse, other immediate family member, successor, executor, administrator, heir, legatee or distributee of any of the foregoing; provided, however, no Agent or Lender shall be deemed to be an Affiliate of any Loan Party by virtue of its execution of this Agreement.

"Agreed Budget" shall mean an operating budget setting forth the projected financial operations of the Loan Parties for the period beginning with the week ending November 29, 2009 through the week ending February 7, 2010, which shall be in form and substance reasonably satisfactory to the Administrative Agent, which operating budget is attached hereto as Exhibit B; provided, that (i) as provided in clause (ii) of Section 6.10, the projected

aggregate principal amount of the Loans outstanding set forth in the Agreed Budget shall be deemed reduced by the amount of any Loans repaid prior to such date, (ii) the Agreed Budget shall be deemed amended, with respect to the period between the date of the Auction and the Stated Maturity Date, by the Budget Amendment (as defined in the Bidding Procedures attached to the Sale Procedures Order), and (iii) the Agreed Budget shall not include any fees or expenses incurred for any purpose that, with respect to cash collateral of the Prepetition Secured Parties, is as of the date of this Agreement or at anytime after the date of this Agreement prohibited under paragraph 4(d) of the Fourth Order, except (a) in furtherance of the transactions for the benefit of the DIP Secured Parties or the Purchaser and as described in or as contemplated by the DIP Order, the Loan Documents, the Asset Purchase Agreement, the Sale Procedures Order or the Sale Order and (b) that a sum not to exceed $50,000 of the Carve-Out may be used by the Official Committee of Unsecured Creditors in the Cases to investigate (but not to commence or prosecute an action with respect to) Claims and Defenses (as such terms are defined in paragraph 19(a) of the Fourth Order) that may exist against the Released Parties (as defined in paragraph 19(a) of the Fourth Order).

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

"Anti-Terrorism Law" shall have the meaning assigned to such term in Section 3.21(a).

"APA Material Adverse Effect" shall mean a "Material Adverse Effect", as defined in the Asset Purchase Agreement as in effect on the date hereof.

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

"Asset Purchase Agreement" shall mean the Asset Purchase Agreement, dated as of November 16, 2009, by and between Penn and the Loan Parties.

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

"Assignment and Acceptance" shall mean an assignment and acceptance entered into by a Lender and an assignee, and accepted by the Administrative Agent and the Borrower (if required by such assignment and acceptance), in the form of Exhibit C or such other form as shall be approved by the Administrative Agent.

"Auction" shall have the meaning assigned to such term in the Sale Procedures Order.

"Availability Period" shall mean the period from and including the Closing Date to but excluding the earlier of the Termination Date and the date of termination of the Revolving Facility Commitments.

"Available Unused Commitment" shall mean, with respect to a Lender at any time, an amount equal to the amount by which (a) the Commitment of such Lender at such time exceeds (b) the aggregate principal amount of the Loans of such Lender outstanding at such time.

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

"Bankruptcy Court" shall mean the United States Bankruptcy Court for the Southern District of Florida.

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

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

"Borrowing" shall mean a group of Loans made on a single date.

"Borrowing Minimum" shall mean $1,000,000.

"Borrowing Multiple" shall mean $500,000.

"Borrowing Request" shall mean a request by the Borrower in accordance with the terms of Section 2.03 and substantially in the form of Exhibit D.

"Business Day" shall mean any day that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to remain closed.

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

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

"Carve-Out" shall mean (x) the allowed and unpaid professional fees and disbursements incurred by the Loan Parties, the Examiner and, solely with respect to the amount described in clause (b) of the proviso below, any statutory committees appointed in the Cases in an aggregate amount not in excess of $550,000 incurred after the first business day following delivery of a Carve-Out Trigger Notice plus all unpaid professional fees and disbursements incurred prior to the delivery of a Carve-Out Trigger Notice in an amount of no greater than that set forth in the Agreed Budget (as adjusted to reflect accrued and unpaid fees and expenses) and allowed by the Bankruptcy Court and (y) the payment of fees pursuant

to 28 U.S.C. § 1930; provided, that the Carve-Out shall not include any fees or expenses incurred for any purpose that, with respect to cash collateral of the Prepetition Secured Parties, is as of the date of this Agreement or at anytime after the date of this Agreement prohibited under paragraph 4(d) of the Fourth Order, except (a) in furtherance of the transactions for the benefit of the DIP Secured Parties or the Purchaser and described in or contemplated by the DIP Order, the Loan Documents, the Asset Purchase Agreement, the Sale Procedures Order or the Sale Order and (b) that a sum not to exceed $50,000 of the Carve-Out may be used by the Official Committee of Unsecured Creditors in the Cases to investigate (but not to commence or prosecute an action with respect to) Claims and Defenses (as such terms are defined in paragraph 19(a) of the Fourth Order) that may exist against the Released Parties (as defined in paragraph 19(a) of the Fourth Order).

"Carve-Out Expenses" shall mean, (i) if an Event of Default shall not have occurred and be continuing or if an Event of Default shall have occurred and be continuing but a Carve-Out Trigger Notice shall not have been delivered in respect thereof, compensation and reimbursement of expenses allowed and payable under 11 U.S.C. § 327, § 328, § 330, § 331 or § 1103 and by the official committee of unsecured creditor appointed in the Cases pursuant to 11 U.S.C. §1102 as the same may be due and payable, in accordance with and in amounts not exceeding those set forth in the Agreed Budget and the payment of fees pursuant to 28 U.S.C. § 1930; or (ii) if an Event of Default has occurred and is continuing and a Carve-Out Trigger Notice has been delivered, the Carve-Out.

"Carve-Out Trigger Notice" shall mean a written notice delivered by the Administrative Agent to the Borrower and its counsel, the Examiner and its counsel, the U.S. Trustee and counsel to any official committee appointed in the Cases, which notice may be delivered following the occurrence and during the continuation of an Event of Default, expressly stating that the Carve-Out has been invoked.

"Cases" shall have the meaning assigned to such term in the recitals to this Agreement, together with the Retail Entity Cases, once filed.

"Cash Management Order" shall mean that certain Final Order Granting In Part and Denying in Part Emergency Motion by Debtors for Entry of an Order (A) Authorizing the Debtors to Maintain Their Existing Cash Management System, Bank Accounts, and Business Forms, (b) Granting Administrative Expense Priority to Postpetition Intercompany Arrangements and Historical Practices; and (C) Waiving Investment and Deposit Requirements (Docket No. 227), entered by the Bankruptcy Court on June 30, 2009.

A "Change in Control" shall mean (a) the acquisition of record ownership by any person other than Holdings of any Equity Interests in the Borrower or Capital Corp., the acquisition of record ownership by any person other than Retail Holdings of any Equity Interests in Retail Mezzanine, or the acquisition by any person other than Retail Mezzanine of any Equity Interests in Retail, LLC or (b) the failure by the Sponsor to beneficially own, directly or indirectly, Equity Interests in Holdings and Retail Holdings representing at least a majority of the aggregate voting power represented by the issued and outstanding Equity Interests in Holdings and Retail Holdings, respectively.

"Change in Law" shall mean (a) the adoption of any law, rule or regulation after the Closing Date, (b) any change in law, rule or regulation or in the interpretation or application thereof by any Governmental Authority after the Closing Date or (c) compliance by any Lender (or, for purposes of Section 2.10(b), by any Lending Office of such Lender or by such Lender's holding company, if any) with any written request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the Closing Date.

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

"Closing Date" shall mean the first date on which all the conditions precedent as set forth in Section 4.01 are satisfied or waived in accordance with Section 9.08.

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

"Collateral" shall mean the "DIP Collateral" as defined in the DIP Order.

"Commitment" shall mean, with respect to each Lender, the commitment of such Lender to make Loans as set forth in Section 2.01. The initial amount of each Lender's Commitment is set forth on Schedule 2.01, or in the Assignment and Acceptance pursuant to which such Lender shall have assumed its Commitment, as applicable. The aggregate amount of the Commitments on the Closing Date is $51,503,734.00.

"Commitment Fee Rate" shall mean a rate equal to 0.50% per annum.

"Communications" shall have the meaning assigned to such term in Section 9.16(a).

"Conduit Lender" shall mean any special purpose corporation organized and administered by any Lender for the purpose of making Loans otherwise required to be made by such Lender and designated by such Lender in a written instrument; provided that the designation by any Lender of a Conduit Lender shall not relieve the designating Lender of any of its obligations to fund a Loan under this Agreement if, for any reason, its Conduit Lender fails to fund any such Loan, and the designating Lender (and not the Conduit Lender) shall have the sole right and responsibility to deliver all consents and waivers required or requested under this Agreement with respect to its Conduit Lender, and provided, further, that no Conduit Lender shall be entitled to receive any greater amount pursuant to Section 2.10, 2.11 or 9.05 than the designating Lender would have been entitled to receive in respect of the extensions of credit made by such Conduit Lender.

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

"Deeds of Trust" shall mean (i) the Deed of Trust among Borrower and Fontainebleau Las Vegas II, LLC, as Trustor, Nevada Title Company, as Trustee, and Bank of America, N.A., as Beneficiary, recorded on June 6, 2007, (ii) the Deed of Trust among Borrower and Fontainebleau Las Vegas, LLC, as Trustor, Nevada Title Company, as Trustee, and Wells Fargo Bank, National Association, as Beneficiary, recorded on June 6, 2007 and (iii) the Deed of Trust among Retail LLC, as Trustor, Lawyers Title of Nevada, Inc., as Trustee, and Lehman Brothers Holdings, Inc., as Beneficiary, dated as of June 6, 2007.

"Default" shall mean any event or condition that upon notice, lapse of time or both would constitute an Event of Default.

"Designated Entity" shall mean each Affiliate of the Borrower and each Person identified to the Administrative Agent by the Borrower on the Closing Date as a Revolving Lender.

"DIP Order" shall mean (x) prior to the entry of the Final DIP Order, the Interim DIP Order and (y) at all times after the entry of the Final DIP Order, the Final DIP Order.

"DIP Orders" shall mean collectively, the Interim DIP Order and Final DIP Order.

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

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

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

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

"Equity Interests" of any person shall mean any and all shares, interests, rights to purchase, warrants, options, participation or other equivalents of or interests in (however designated) equity of such person, including any preferred stock, any limited or general partnership interest and any limited liability company membership interest.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as the same may be amended from time to time.

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

"ERISA Event" shall mean (a) any Reportable Event; (b) the existence with respect to any ERISA Plan of an "accumulated funding deficiency" (as defined in Section 412 of the Code or Section 302 of ERISA), whether or not waived; (c) the filing pursuant to Section 412(d) of the Code or Section 303(d) of ERISA of an application for a waiver of the minimum funding standard with respect to any ERISA Plan, the failure to make by its due date a required installment under Section 412(m) of the Code with respect to any ERISA Plan or the failure to make any required contribution to a Multiemployer Plan; (d) the incurrence by any Loan Party or any ERISA Affiliate of any liability under Title IV of ERISA with respect to the termination of any ERISA Plan; (e) the receipt by Holdings, the Borrower, a Subsidiary or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any ERISA Plan or to appoint a trustee to administer any ERISA Plan under Section 4042 of ERISA; (f) the incurrence by any Loan Party or any ERISA Affiliate of any liability with respect to the withdrawal or partial withdrawal from any ERISA Plan or Multiemployer Plan; or (g) the receipt by any Loan Party or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from any Loan Party or any ERISA Affiliate of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA.

"ERISA Plan" shall mean any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code and in respect of which any Loan Party or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA.

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

"Examiner" shall mean Jeffrey R. Truitt, as examiner, pursuant to the Order Appointing Examiner to Examine, Negotiate and Supervise § 363 Sale of Assets, entered by the Bankruptcy Court in the Cases on October 14, 2009 (Docket No. 770).

"Excluded Indebtedness" shall mean all Indebtedness permitted to be incurred under Section 6.01.

"Excluded Taxes" shall mean, with respect to the Administrative Agent, any Lender or any other recipient of any payment to be made by or on account of any obligation of the Borrower hereunder, (a) income taxes imposed on (or measured by) its net income (or franchise taxes imposed in lieu of net income taxes) by the United States of America (or any state thereof) or the jurisdiction under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable Lending Office is located, (b) any branch profits tax imposed by the United States of America or any similar tax imposed by any other jurisdiction in which the Borrower is located and (c) in the case of a Lender making a Loan to the Borrower, any withholding tax imposed by the United States that (x) is in effect and would apply to amounts payable hereunder to such Lender at the time such Lender becomes a party to such Loan to the Borrower (or designates a new Lending Office) except to the extent that such Lender (or its assignor, if any) was entitled, immediately prior to the time of designation of a new Lending Office (or assignment), to receive additional amounts from a Loan Party with respect to any withholding tax pursuant to Section 2.11(a) or Section 2.11(c) or (y) is attributable to such Lender's failure to comply with Section 2.11(e) or (f) with respect to such Loan.

"Executive Order" shall have the meaning assigned to such term in Section 3.21(a).

"Existing Credit Facility" shall mean the Credit Agreement, dated as of June 6, 2007 among the Borrower, the lenders party thereto, Bank of America, N.A., as administrative agent and the other parties thereto.

"Existing Credit Facility Agent" shall have the meaning assigned to such term in the DIP Order.

"Existing Credit Facility Lenders" shall mean the lenders party to the Existing Credit Facility.

"Existing Facilities" shall mean, collectively, the Existing Credit Facility, the Existing Retail Facility, the Existing Retail Mezzanine Facility and the Existing Mortgage Notes.

"Existing Investors" shall mean Sponsor and any Affiliate of Sponsor.

"Existing Mortgage Notes" shall mean 10¼% Second Mortgage Notes due 2015 issued by Capital Corp. and Holdings on June 6, 2007.

"Existing Noteholders" shall mean the holders of the Existing Mortgage Notes.

"Existing Retail Facility" shall mean the Loan Agreement, dated as of June 6, 2007, by and between Fontainebleau Las Vegas Retail, LLC, the lenders party thereto and Lehman Brothers Holdings Inc., as administrative agent

"Existing Retail Facility Lenders" shall mean the lenders party to the Existing Retail Facility.

"Existing Retail Mezzanine Facility" shall mean the Mezzanine Loan Agreement, dated as of June 6, 2007, by and between Retail Holdings, Retail Mezzanine, the lenders party thereto and Lehman Brothers Holdings Inc., as administrative agent,

"Existing Retail Mezzanine Facility Lenders" shall mean the lenders party to the Existing Retail Mezzanine Facility.

"Exit Fee Percentage" shall mean 5.0%.

"Extraordinary Receipts" shall mean any Cash or Permitted Investments received by or paid to or for the account of the any Loan Party not in the ordinary course of business, including purchase price adjustments, Tax refunds, judgments and litigation settlements, pension plan reversions, proceeds of insurance, returns of payments of debt or other obligations and indemnity payments.

"Facility" shall mean the Loans made hereunder by the Lenders.

"Fees" shall mean the Upfront Fee, the Commitment Fee and the Exit Fee.

"Final DIP Order" shall mean a final order of the Bankruptcy Court in each of the Cases containing substantially the same provisions as the Interim DIP Order and otherwise in form and substance reasonably acceptable to the Required Lenders, and as to which no stay has been entered and which has not been reversed, modified, vacated or overturned.

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

"Financial Performance Covenants" shall mean the covenants of the Borrower set forth in Sections 6.10 and 6.11.

"Foreign Lender" shall mean any Lender that is organized under the laws of a jurisdiction other than the United States of America. For purposes of this definition, the United States of America, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

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

"Fourth Order" shall mean Fourth Interim Order (i) Authorizing Use of Cash Collateral Pursuant to Section 363 of the Bankruptcy Code, (ii) Providing Adequate Protection to Prepetition Secured Parties Pursuant to Sections 361, 362, 363, and 364 of the Bankruptcy Code and (iii) Scheduling

Final Hearing, entered by the Court in the Cases of Holdings and its Subsidiaries on August 27, 2009 (Docket No. 454).

"GAAP" shall mean generally accepted accounting principles in effect from time to time in the United States, applied on a consistent basis, subject to the provisions of Section 1.02.

"Gaming Authorities" shall mean any Governmental Authorities that hold regulatory, licensing or permitting authority over gambling, gaming or casino activities conducted by the Loan Parties within its jurisdiction, or before which an application for licensing to conduct such activities is pending.

"Gaming Law" shall mean all laws, regulations, orders, resolutions, decisions or other rules or rulings pursuant to which any Gaming Authority possesses regulatory, licensing or permit authority over gambling, gaming or casino activities to be conducted or conducted by the Loan Parties, and all regulations promulgated under such laws, including but limited to those applicable during the construction of the Project and the applicant process in connection therewith.

"Governing Documents" shall mean, collectively, as to any Person, the articles or certificate of incorporation, organization or formation and bylaws, limited liability company or operating agreement, partnership agreement or other formation or constituent documents of such Person.

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

"Guarantee" of or by any person (the "guarantor") shall mean (a) any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other person (the "primary obligor") in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation (whether arising by virtue of partnership arrangements, by agreement to keep well, to purchase assets, goods, securities or services, to take-or-pay or otherwise) or to purchase (or to advance or supply funds for the purchase of) any security for the payment of such Indebtedness or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation, (iv) entered into for the purpose of assuring in any other manner the holders of such Indebtedness or other obligation of the payment thereof or to protect such holders against loss in respect thereof (in whole or in part) or (v) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or other obligation, or (b) any Lien on any assets of the guarantor securing any Indebtedness (or any existing right, contingent or otherwise, of the holder of Indebtedness to be secured by such a Lien) of any other person, whether or not such Indebtedness or other obligation is assumed by the guarantor; provided, however, that the term "Guarantee" shall not include endorsements for collection or deposit, in either case in the ordinary course of business, or customary and reasonable indemnity obligations in effect on the Closing Date or entered into in connection with any acquisition or disposition of assets permitted under this Agreement.

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

"Guarantor" shall mean each of Holdings, Capital Corp., each other Subsidiary of Holdings (other than the Borrower), and, upon and following the Retail Entities Guarantee Date, the Retail Entities and any Subsidiary thereof.

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

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

"Improvements" shall mean all buildings, structures and improvements (including fixtures) now or hereafter located in or on the Land.

"Indebtedness" of any person shall mean, without duplication, (a) all obligations of such person for borrowed money, (b) all obligations of such person evidenced by bonds, debentures, notes or similar instruments to the extent the same would appear as a liability on a balance sheet prepared in accordance with GAAP, (c) all obligations of such person under conditional sale or other title retention agreements relating to property or assets purchased by such person, (d) all obligations of such person issued or assumed as the deferred purchase price of property or services (other than current trade liabilities and current intercompany liabilities (but not any refinancings, extensions, renewals or replacements thereof) incurred in the ordinary course of business and maturing within 365 days after the incurrence thereof), to the extent that the same would be required to be shown as a long term liability on a balance sheet prepared in accordance with GAAP, (e) all Guarantees by such person of Indebtedness of others, (f) all Capital Lease Obligations of such person, (g) all payments that such person would have to make in the event of an early termination, on the date Indebtedness of such person is being determined, in respect of outstanding Swap Agreements, (h) the principal component of all obligations, contingent or otherwise, of such person as an account party in respect of letters of credit and (i) the principal component of all obligations of such person in respect of bankers' acceptances. The Indebtedness of any person shall include the Indebtedness of any partnership in which such person is a general partner, other than to the extent that the instrument or agreement evidencing such Indebtedness expressly limits the liability of such person in respect thereof.

"Indemnified Liabilities" shall have the meaning assigned to such term in Section 9.05(b).

"Indemnified Taxes" shall mean all Taxes other than Excluded Taxes.

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

"Insurance Requirements" shall mean all material terms of any insurance policy maintained by any Loan Party as of the Closing Date.

"Interest Payment Date" shall mean the last Business Day of each calendar month.

"Interim DIP Order" shall mean shall mean an interim order of the Bankruptcy Court entered in each of the Cases pursuant to Section 364 of the Bankruptcy Code, approving this Agreement and

the other Loan Documents and authorizing the incurrence by the Loan Parties of post-petition secured and super-priority debtor-in-possession Indebtedness in accordance with this Agreement, and as to which no stay has been entered and which has not been reversed, modified, vacated or overturned, and which is substantially in the form attached hereto as Exhibit E and otherwise in form and substance reasonably acceptable to the Administrative Agent. For the avoidance of doubt, on and after the Retail Entities Guarantee Date, the "Interim DIP Order" shall be a collective reference to the Interim DIP Orders entered in the Cases of the Retail Entities and the Loan Parties other than the Retail Entities.

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

"Joinder Agreement" shall mean an agreement, substantially in the form of Exhibit F hereto.

"Land" shall mean the real property more particularly described in Exhibit G to this Agreement and including all appurtenant rights (including "air rights") with respect thereto.

"Lender" shall mean Penn, as well as any person that becomes a "Lender" hereunder pursuant to Section 9.04, in such capacity.

"Lender Group Expenses" shall have the meaning assigned to such term in Section 9.05(a).

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

"Lien" shall mean, with respect to any asset, (a) any mortgage, deed of trust, lien, hypothecation, pledge, encumbrance, charge or security interest in or on such asset, (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset and (c) in the case of securities (other than securities representing an interest in a joint venture that is not a Subsidiary), any purchase option, call or similar right of a third party with respect to such securities to the extent that any such right is intended to have an effect equivalent to that of a security interest in such securities.

"Liquidity" shall mean the aggregate balance of Unencumbered cash of the Loan Parties and Unencumbered Permitted Investments of the Loan Parties.

"Loan Documents" shall mean this Agreement, the DIP Orders, any Note issued under Section 2.09(e) and any security agreements, mortgages and other instruments and documents executed and delivered pursuant to any of the foregoing. For the avoidance of doubt, such term does not include the Sale Order, the Sale Procedures Order, the Asset Purchase Agreement or any documents, motions or orders relating directly thereto.

"Loan Parties" shall mean the Borrower and the Guarantor Loan Parties.

"Loans" shall mean the revolving loans made by each Lender to the Borrower pursuant to Section 2.01.

"Local Time" shall mean New York City time.

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

"Material Adverse Effect" means (a) a material adverse change in, or a material adverse effect upon, the assets of the Loan Parties, taken as a whole (other than the commencement of the Cases and the consequences that customarily result therefrom) or (b) a material impairment of the legality, validity, binding effect or enforceability against any Loan Party of any Loan Document or of the rights and remedies, taken as a whole, of the Administrative Agent, the Collateral Agent or any Lender under any Loan Document, or of the ability of the Loan Parties, taken as a whole, to perform their obligations under the Loan Documents.

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

"Mechanics' Liens" shall mean all mechanics' and materialmens' liens against the property or assets of the Loan Parties.

"Mechanics Lienholders" shall mean the holders of the Mechanics' Liens.

"Moody's" shall mean Moody's Investors Service, Inc.

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

"Net Proceeds" shall mean:

(a) 100% of the cash proceeds actually received by any Loan Party (including any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or purchase price adjustment receivable or otherwise and including casualty insurance settlements and condemnation awards, but only as and when received) from any loss, damage, destruction or condemnation of, or any sale, transfer or other disposition (including any sale and leaseback of assets and any mortgage or lease of real property) to any person of, any asset or assets of any Loan Party (other than those pursuant to Section 6.05(a)(ii)), net of (i) attorneys' fees, accountants' fees, investment banking fees, survey costs, title insurance premiums, and related search and recording charges, transfer taxes, deed or mortgage recording taxes, required debt payments and required payments of other obligations relating to the applicable asset (other than pursuant hereto or pursuant to the documents governing the Primed Debt), other customary expenses and brokerage, consultant and other customary fees actually incurred in connection therewith and (ii) Taxes paid or payable by or on behalf of the Loan Parties as a result thereof;

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

(c) 100% of the cash proceeds from the issuance or sale of Equity Interests in any Loan Party or any capital contribution to any Loan Party, net of, in the case of an issuance or sale

of Equity Interests, underwriting discounts and commissions and other reasonable costs and expenses incurred by or on behalf of the Loan Parties in connection therewith; and

(d) 100% of Extraordinary Receipts.

For purposes of calculating the amount of Net Proceeds, fees, commissions and other costs and expenses payable to any Loan Party or any Affiliate of any of them shall be disregarded.

"NGV" shall mean Nevada Gaming Ventures, Inc., a Nevada corporation.

"Obligations" shall mean (a) the due and punctual payment by the Borrower of (i) the unpaid principal of and interest (including interest accruing during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding) on the Loans made to the Borrower, when and as due, whether at maturity, by acceleration, upon one or more dates set for prepayment or otherwise and (ii) all other monetary obligations of the Borrower to any of the Secured Parties under this Agreement and each of the other Loan Documents, including obligations to pay fees, expense and reimbursement obligations and indemnification obligations, whether primary, secondary, direct, contingent, fixed or otherwise (including monetary obligations incurred during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding), (b) the due and punctual performance of all other obligations of the Borrower under or pursuant to this Agreement and each of the other Loan Documents and (c) the due and punctual payment and performance of all the obligations of each other Loan Party under or pursuant to this Agreement and each of the other Loan Documents.

"OFAC" shall have the meaning assigned to such term in Section 3.21(b).

"Official Committee of Unsecured Creditors" shall mean the official statutory committee of unsecured creditors appointed in the Cases pursuant to Section 1102 of the Bankruptcy Code.

"Other Taxes" shall mean any and all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or from the execution, delivery or enforcement of, or otherwise with respect to, the Loan Documents, and any and all interest and penalties related thereto.

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

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

"Permits" shall mean the collective reference to any and all consents, orders, franchises, licenses, leases, permits, approvals, notifications, certifications, registrations, regulatory filings or notices, authorizations, exemptions, variances, qualifications, easements, rights of way, Liens and other rights, privileges and approvals required under any Requirement of Law.

"Permitted Investments" shall mean:

(a) direct obligations of the United States of America or any member of the European Union or any agency thereof or obligations guaranteed by the United States of America or

any member of the European Union or any agency thereof, in each case with maturities not exceeding one year from the date of acquisition thereof;

(b) time deposit accounts, certificates of deposit and money market deposits maturing within 180 days of the date of acquisition thereof issued by a bank or trust company that is organized under the laws of the United States of America, any state thereof or any foreign country recognized by the United States of America having capital, surplus and undivided profits in excess of $250,000,000 and whose long-term debt, or whose parent holding company's long-term debt, is rated A (or such similar equivalent rating or higher by at least one nationally recognized statistical rating organization (as defined in Rule 436 under the Securities Act);

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

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

(e) securities with maturities of one year or less from the date of acquisition issued or fully guaranteed by any State, commonwealth or territory of the United States of America, or by any political subdivision or taxing authority thereof, and rated at least A by S&P or A by Moody's;

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

(g) money market funds that (i) comply with the criteria set forth in Rule 2a-7 under the Investment Company Act of 1940, (ii) are rated AAA by S&P and Aaa by Moody's and (iii) have portfolio assets of at least $5,000,000,000; and

(h) time deposit accounts, certificates of deposit and money market deposits in an aggregate face amount not in excess of 1/2 of 1% of the total assets of the Borrower and its Subsidiaries, on a consolidated basis, as of the end of the Borrower's most recently completed fiscal year.

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

"Petition Date" shall have the meaning assigned to such term in the recitals to this Agreement.

"Platform" shall have the meaning assigned to such term in Section 9.16(b).

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

"Prepetition Secured Parties" shall have the meaning assigned to such term in the DIP Order.

"Primed Debt" shall have the meaning assigned to such term in the DIP Order.

"Project" shall mean the proposed hotel, casino and entertainment resort to be developed on the Land. The Project shall include the Land and the Improvements.

"Purchased Assets" shall have the meaning assigned to such term in the Asset Purchase Agreement, as in effect on the date hereof.

"Purchaser" shall have the meaning assigned to such term in the Asset Purchase Agreement, as in effect on the date hereof.

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

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

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

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

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

"Reportable Event" shall mean any reportable event as defined in Section 4043(c) of ERISA or the regulations issued thereunder, other than those events as to which the 30-day notice period referred to in Section 4043(c) of ERISA has been waived, with respect to an ERISA Plan (other than an ERISA Plan maintained by an ERISA Affiliate that is considered an ERISA Affiliate only pursuant to subsection (m) or (o) of Section 414 of the Code).

"Required Lenders" shall mean, at any time Lenders having Loans and Commitments outstanding, that taken together, represent more than 50% of the sum of all Loans outstanding.

"Requirements of Law" shall mean (i) as to any Person, the Governing Documents of such Person, and any law, treaty, order, rule or regulation or determination of an arbitrator or a court or other Governmental Authority (including zoning and subdivision ordinances, building codes and Environmental Laws and Gaming Laws), in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject; and (ii) as to the Project, and all federal, state and local laws, ordinances, regulations, and rules relating to the construction, development and design of the Project, and all building, zoning, planning, subdivision, fire, traffic, safety, health, disability, labor, discrimination, environmental, air quality, wetlands, shoreline, and flood plain laws, ordinances, regulations and rules relating to the Project.

"Responsible Officer" of any person shall mean any executive officer or Financial Officer of such person and any other officer or similar official thereof responsible for the administration of the obligations of such person in respect of this Agreement. For the avoidance of doubt, the Examiner shall not be deemed to be a Responsible Officer.

"Retail Entities" shall mean Retail Holdings, Retail Mezzanine, Retail LLC, and any other subsidiaries of Retail Holdings.

"Retail Entities Guarantee Date" shall mean the later to occur of (a) the date upon which Retail Holdings, Retail Mezzanine and Retail LLC become parties hereto by executing one or more Joinder Agreements and (b) the date upon which the Bankruptcy Court enters the Interim DIP Order in the Cases of Retail Holdings, Retail Mezzanine and Retail LLC.

"Retail Entity Cases" shall mean the cases of the Retail Entities under Chapter 11 of the Bankruptcy Code.

"Retail Holdings" shall mean Fontainebleau Las Vegas Retail Parent, LLC, a limited liability company organized under the laws of Delaware.

"Retail LLC" shall mean Fontainebleau Las Vegas Retail, LLC, a limited liability company organized under the laws of Delaware.

"Retail Master Lease" shall mean that certain Master Lease Agreement, dated as of June 6, 2007, by and between Borrower and Fontainebleau Las Vegas II, LLC, as lessors, and Retail LLC, as lessee.

"Retail Mezzanine" shall mean Fontainebleau Las Vegas Retail Mezzanine, LLC, a limited liability company organized under the laws of Delaware.

"Revolving Lender" shall mean a "Revolving Lender" as defined in the Existing Credit Facility, as in effect on the date hereof.

"S&P" shall mean Standard & Poor's Ratings Group, Inc.

"Sale" shall mean the sale of the assets of the Loan Parties on the terms set forth in the Asset Purchase Agreement.

"Sale Effective Date" shall mean the consummation of the sale of the assets of the Loan Parties, which sale is undertaken pursuant to the Sale Procedures Order.

"Sale Order" shall mean an order of the Bankruptcy Court in the Cases confirming the winning bid in the auction held pursuant to the Sale Procedures Order and approving the sale of the assets of the Loan Parties to that bidder.

"Sale Procedures Motion" shall mean a motion in form and substance reasonably acceptable to NGV, to be filed by the Loan Parties in their Cases, seeking an order of the Bankruptcy Court approving NGV as a stalking horse and the bidding protections and sale procedures for a sale of the assets of the Loan Parties under Section 363 of the Bankruptcy Code, as set forth in the Asset Purchase Agreement.

"Sale Procedures Order" shall mean an order of the Bankruptcy Court in the Cases, in form and substance reasonably acceptable to NGV, approving NGV as a stalking horse and the bidding protections and sale procedures for a sale of the assets of the Loan Parties under Section 363 of the Bankruptcy Code, as set forth in the Asset Purchase Agreement.

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

"Secured Parties" shall mean (a) the Lenders (and any Affiliate of a Lender), (b) the Administrative Agent, (c) the beneficiaries of each indemnification obligation undertaken by any Loan Party under any Loan Document and (d) the successors and permitted assigns of each of the foregoing.

"Securities Act" shall mean the Securities Act of 1933, as amended.

"Social Security Act" shall mean the Social Security Act of 1965 as set forth in Title 42 of the United States Code, as amended, and any successor statute thereto, as interpreted by the rules and regulations issued thereunder, in each case as in effect from time to time. References to sections of the Social Security Act shall be construed to refer to any successor sections.

"Sellers" shall have the meaning assigned to such term in the Asset Purchase Agreement.

"Specified APA Material Adverse Effect" shall mean an APA Material Adverse Effect of the type described in clause (z)(2) of the definition of Material Adverse Effect in the Asset Purchase Agreement as in effect on the date hereof.

"Sponsor" shall mean Jeffrey Soffer.

"Stabilization Plan" shall have the meaning assigned to such term in Section 5.14.

"Stated Maturity Date" shall mean February 9, 2010.

"Statutory Reserves" shall mean, with respect to any currency, any reserve, liquid asset or similar requirements established by any Governmental Authority of the United States of America or of the jurisdiction of such currency or any jurisdiction in which Loans in such currency are made to which banks in such jurisdiction are subject for any category of deposits or liabilities customarily used to fund loans in such currency or by reference to which interest rates applicable to Loans in such currency are determined.

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

"Successful Bidder" shall have meaning assigned to such term in the Bidding Procedures attached to the Sale Procedures Order as entered on the date hereof.

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

"Taxes" shall mean any and all present or future taxes, levies, imposts, duties (including stamp duties), deductions, charges (including ad valorem charges) or withholdings imposed by any Governmental Authority, together with any and all interest, penalties, additions to tax and additional

amounts imposed with respect thereto.

"Term Lenders" shall have the meaning assigned to such term in the Existing Credit Facility, as in effect on the date hereof.

"Termination Date" shall mean the earliest to occur of (i) the Stated Maturity Date, (ii) (a) the closing date of a sale pursuant to Section 363 of the Bankruptcy Code or otherwise of all or substantially all of the of the Loan Parties' assets or (b) the sale of any Purchased Assets with a value in excess of $100,000 in the aggregate since the Closing Date, (iii) the date that is fifteen (15) Business Days after the date of entry of the Interim DIP Order in the Borrower's Case if the Bankruptcy Court shall not have entered the Final DIP Order in each of the Cases on or before such date and (iv) the acceleration of the Loans upon the occurrence or the continuance of an Event of Default.

"Title Policy Exceptions" shall mean (i) minor discrepancies, conflicts in boundary lines, shortage in area and encroachments which in each case do not affect the value, use or utility of the Land, (ii) any state of facts shown on any accurate survey prepared by a professionally licensed land surveyor and made available to the Administrative Agent prior to the date hereof, and (iii) any easements, rights of way, covenants, conditions, limitations and restrictions of record that are shown on Schedule B-2 of that certain current title report from First American Title Insurance Company, with a commitment date of October 1, 2009, provided to the Administrative Agent prior to the date hereof

"Unencumbered" shall mean, with respect to any property, that such property is not subject to any Liens or other contractual restrictions and that the owner of such property is not restricted in exercising its rights with respect to such property other than Liens pursuant to Section 6.02(b).

"Unused Cash Collateral" shall have the meaning assigned to such term in the DIP Order.

"Upfront Fee" shall have the meaning assigned to such term in Section 2.08(a).

"Used Cash Collateral" shall have the meaning assigned to such term in the DIP Order.

"Variance Report" shall mean a report prepared by the Borrower for the weekly period ending on the Friday preceding the delivery of such Variance Report and on a cumulative basis for the period from the Closing Date to the date of such report, comparing on a weekly line-by-line basis actual cash receipts and disbursements to the corresponding amounts projected in the Agreed Budget, which report shall be in form and substance reasonably satisfactory to the Administrative Agent.

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

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

SECTION 1.02. Terms Generally. The definitions set forth or referred to in Section 1.01 shall apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." All references herein to Articles, Sections, Exhibits and Schedules shall be deemed references to Articles and Sections of, and Exhibits and Schedules to, this Agreement unless the context shall otherwise require. Except as otherwise expressly provided herein, any reference in this Agreement to any Loan Document shall mean such document as amended, restated, supplemented or otherwise modified from time to time.

ARTICLE II

THE CREDITS

SECTION 2.01. Commitments. Each Lender agrees to make Loans to the Borrower from time to time during the Availability Period in an aggregate principal amount that will not result in (i) the aggregate principal amount of such Lender's Loans outstanding at such time exceeding such Lender's Commitment at such time, (ii) the aggregate principal amount of all Loans outstanding at such time exceeding the total Commitments at such time; provided that the aggregate principal amount of Loans made on and from the Closing Date and prior to the Retail Entities Guarantee Date shall not exceed $6,815,129.00 million, and the aggregate principal amount of the Loans made prior to the date upon which the Final DIP Order is entered in each of the Cases shall not exceed $26,721,674.00 million or (iii) a default in the observance or performance of Section 6.10 hereof. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrower may borrow, prepay and reborrow Loans.

SECTION 2.02. Loans and Borrowings.

(a) Each Loan shall be made as part of a single Borrowing consisting of Loans made by the Lenders ratably in accordance with their respective Commitments. The failure of any Lender to make any Loan required to be made by it shall not relieve any other Lender of its obligations hereunder; provided that the Commitments of the Lenders are several and no Lender shall be responsible for any other Lender's failure to make Loans as required.

(b) Each Lender at its option may make any Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; provided that any exercise of such option shall not affect the obligation of the Borrower to repay such Loan in accordance with the terms of this Agreement and such Lender shall not be entitled to any amounts payable under Section 2.10 or 2.11 solely in respect of increased costs resulting from such exercise and existing at the time of such exercise.

SECTION 2.03. Requests for Borrowings. To request a Borrowing, the Borrower shall notify the Administrative Agent of such request by telephone not later than 12:00 noon, Local Time, two Business Days before the date of the proposed Borrowing. Each such telephonic Borrowing Request shall be irrevocable and shall be confirmed promptly by hand delivery or telecopy to the Administrative Agent of a written Borrowing Request in a form approved by the Administrative Agent and signed by the Borrower. Each such telephonic and written Borrowing Request shall specify the following information in compliance with Section 2.02:

(i) the aggregate amount of the requested Borrowing;

(ii) the date of such Borrowing, which shall be a Business Day; and

(iii) the location and number of the Borrower's account to which funds are to be disbursed.

Promptly following receipt of a Borrowing Request in accordance with this Section 2.03, the Administrative Agent shall advise each Lender of the details thereof and of the amount of such Lender's Loan to be made as part of the requested Borrowing.

SECTION 2.04. Funding of Borrowings.

(a) Each Lender shall make the Loans to be made by it hereunder on the dates set forth above in Section 2.01 by wire transfer of immediately available funds by 12:00 noon, Local Time, to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Lenders. The Administrative Agent will make such Loans available to the Borrower by promptly wiring the amounts received, in like funds, to an account of the Borrower previously provided to the Administrative Agent.

(b) Unless the Administrative Agent shall have received notice from a Lender prior to 10:00 a.m., Local Time, on the dates set forth above in Section 2.01 that such Lender will not make available to the Administrative Agent such Lender's share of the applicable Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with paragraph (a) of this Section and may, in reliance upon such assumption, wire to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand (without duplication) such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (i) in the case of such Lender, the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation or (ii) in the case of the Borrower, the interest rate applicable to the Loans. If such Lender pays such amount to the Administrative Agent, then such amount shall constitute such Lender's Loan.

SECTION 2.05. Termination and Reduction of Commitments.

(a) Unless previously terminated, the Commitments shall terminate on the Termination Date.

(b) The Borrower may at any time terminate, or from time to time reduce, the Commitments; provided that (i) the Borrower shall pay the Exit Fee in respect of the amount of Commitments so reduced or terminated at the time of such reduction or termination, (ii) each reduction of the Commitments shall be in an amount that is an integral multiple of $1 million and not less than $5 million (or, if less, the remaining amount of the Commitments) and (iii) the Borrower shall not terminate or reduce the Commitments if, after giving effect to any concurrent prepayment of the Loans in accordance with Section 2.07, the aggregate principal amount of the Loans then outstanding at such time would exceed the total Revolving Facility Commitments at such time.

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

SECTION 2.06. Repayment of Loans; Evidence of Debt.

(a) The Borrower hereby unconditionally promises to pay to the Administrative Agent for the account of each Lender the then unpaid principal amount of its respective Loans on the Termination Date.

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

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

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

SECTION 2.07. Prepayment of Loans.

(a) The Borrower shall have the right at any time and from time to time to prepay any Borrowing in whole or in part, without premium or penalty (but subject to paragraph (c) of this Section), in an aggregate principal amount that is an integral multiple of the Borrowing Multiple and not less

than the Borrowing Minimum or, if less, the aggregate amount of Loans then outstanding, subject to prior notice in accordance with paragraph (c) of this Section.

(b) The Loan Parties shall apply all Net Proceeds promptly upon receipt thereof to prepay Borrowings in accordance with paragraph (c) of this Section; provided that no prior notice shall be required for prepayments made pursuant to this paragraph (b). Upon such prepayment, the Borrower shall provide notice to the Administrative Agent of the amount of Net Proceeds and the nature thereof and that such prepayment is with Net Proceeds.

(c) Prior to any prepayment of any Borrowing hereunder (other than a prepayment with Net Proceeds pursuant to Section 2.07(b) hereof or a prepayment on the closing date of a Sale pursuant to the Sale Procedures Order and the Sale Order), the Borrower shall notify the Administrative Agent by telephone (confirmed by telecopy) of such prepayment (and whether such prepayment is being made with proceeds of Excluded Assets (as defined in the Asset Purchase Agreement)) not later than 2:00 p.m., Local Time, one Business Days before the scheduled date of such prepayment. Each prepayment shall be applied ratably to the Loans and shall be accompanied by accrued interest on the amount repaid.

SECTION 2.08. Fees.

(a) The Borrower agrees to pay to the Administrative Agent, for the ratable benefit of the Lenders, an upfront fee (an "Upfront Fee") in an amount equal to 2.00% of the aggregate amount of the Commitments, which Upfront Fee shall be fully earned and payable on the Closing Date. The Upfront Fee shall be automatically paid, without any further act of any Person, by increasing the outstanding principal amount of the Loans by the amount the Upfront Fee on the Closing Date.

(b) The Borrower agrees to pay to each Lender (other than any Defaulting Lender), through the Administrative Agent, on the last Business Day of each month (by increasing the outstanding principal amount of the Loans by the amount of such fee), and on the date on which the Commitments of all the Lenders shall be terminated as provided herein (in immediately available funds), a commitment fee (a "Commitment Fee") on the daily amount of the Available Unused Commitment of such Lender during the preceding month (or other period commencing with the Closing Date or ending with the date on which the last of the Commitments of such Lender shall be terminated) at the Commitment Fee Rate. All Commitment Fees shall be computed on the basis of the actual number of days elapsed in a year of 360 days. The Commitment Fee due to each Lender shall commence to accrue on the Closing Date and shall cease to accrue on the date on which the last of the Commitments of such Lender shall be terminated as provided herein.

(c) The Borrower agrees to pay to the Administrative Agent, for the ratable benefit of the Lenders, a fee (the "Exit Fee") equal to the Exit Fee Percentage of the total Commitments, as the same may be reduced from time to time, payable in immediately available funds at (a) the Termination Date, in an amount equal to the Exit Fee Percentage of the Commitments outstanding as of such date and (b) each date upon which the Commitments are reduced or any Lender terminates Commitments pursuant to the terms of this Agreement, in an amount equal to the Exit Fee Percentage of the Commitments so reduced or terminated. For the avoidance of doubt, the Exit Fee is not provided for under the Agreed Budget and no Loans shall be made to pay the Exit Fee.

(d) All Fees shall be paid on the dates due. If, pursuant to this Section 2.08, such Fees are to be paid in immediately available funds, they shall be paid to the Administrative Agent for distribution, if and as appropriate, among the Lenders. If, pursuant to this Section 2.08, such Fees are to be

paid by increasing the outstanding principal amount of such Loans by the amount of such Fee, then the outstanding principal amount of the Loans shall automatically be increased on the due date therefor, without any further action by any Person. Once paid, none of the Fees shall be refundable under any circumstances.

(e) The fees and expenses of NGV (including reasonable fees, charges and disbursements of Wachtell, Lipton, Rosen & Katz and any local counsel) contemplated pursuant to the Agreed Budget to be paid by the Loan Parties on the Closing Date shall be automatically added, without any further action of any Person, to the outstanding principal amount of the Loans immediately upon the occurrence of the Closing Date.

SECTION 2.09. Interest.

(a) The Loans shall bear interest at a rate per annum equal to 10%.

(b) Notwithstanding the foregoing, any overdue amounts hereunder shall bear interest, after as well as before judgment, at a rate per annum equal to 12.00%.

(c) Accrued interest on each Loan shall be payable in arrears (x) on each Interest Payment Date for such Loan by increasing the outstanding principal amount of the Loans by the amount of interest accrued prior to such Interest Payment Date and (y) in cash on the Termination Date; provided that (i) interest accrued pursuant to paragraph (b) of this Section shall be payable on demand and (ii) in the event of any repayment or prepayment of any Loan, accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment. If interest is required to be paid pursuant to this Section 2.09(c) by increasing the outstanding principal amount of the Loans, the outstanding principal amount of the Loans shall automatically be increased by the amount of interest due on the due date therefor, without any further action by any Person.

(d) All interest hereunder shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

SECTION 2.10. Reports of Fees and Interest. As soon as reasonably practicable following the request of the Borrower (but no more often than once per calendar month), the Administrative Agent shall deliver to the Borrower a statement of outstanding Loans, Fees and Interest, which statement shall be conclusive absent manifest error.

SECTION 2.11. Taxes.

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

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

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

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

(e) Any Lender that is entitled to an exemption from or reduction of withholding Tax under the law of the jurisdiction in which the Borrower is located, or any treaty to which such jurisdiction is a party, with respect to payments under this Agreement shall deliver to the Borrower (with a copy to the Administrative Agent), to the extent such Lender is legally entitled to do so, at the time or times prescribed by applicable law, such properly completed and executed documentation prescribed by applicable law as may reasonably be requested by the Borrower to permit such payments to be made without such withholding tax or at a reduced rate; provided that no Lender shall have any obligation under this paragraph (e) with respect to any withholding Tax imposed by any jurisdiction other than the United States if in the reasonable judgment of such Lender such compliance would subject such Lender to any material unreimbursed cost or expense or would otherwise be prejudicial to such Lender in any material respect.

(f) Each Foreign Lender shall deliver to the Borrower and the Administrative Agent (in such number of copies as shall be reasonably requested by the recipient) on the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable: (i) duly completed copies of Internal Revenue Service Form W-8BEN (or any subsequent versions thereof or successors thereto), claiming eligibility for benefits of an income tax treaty to which the United States of America is a party, (ii) duly completed copies of Internal Revenue Service Form W-8ECI (or any subsequent versions thereof or successors thereto), (iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 871(h) or 881(c) of the Code, (x) a certificate to the effect that such Foreign Lender is not (A) a "bank" within the meaning of Section 881(c)(3)(A) of the Code, (B) a "10 percent shareholder" of the Borrower within the meaning of Section 871(h)(3) or 881(c)(3)(B) of the Code, or (C) a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code and (y) duly completed copies of Internal Revenue Service Form W-8BEN (or any subsequent versions thereof or successors thereto) or (iv) any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in United States federal withholding tax duly completed together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower to determine the withholding or deduction required to be made. In addition, each Lender that is not a Foreign Lender shall deliver to the Borrower and the Administrative Agent two copies of Internal Revenue Service Form W-9 (or any subsequent versions thereof or successors thereto) on or before the date such Lender becomes a party and upon the expiration of any form previously delivered by such Lender.

Notwithstanding any other provision of this paragraph, a Lender shall not be required to deliver any form pursuant to this paragraph that such Lender is not legally able to deliver.

(g) If the Administrative Agent or a Lender determines, in its sole discretion, that it has received a refund of any Indemnified Taxes or Other Taxes as to which it has been indemnified by a Loan Party or with respect to which such Loan Party has paid additional amounts pursuant to this Section 2.11, it shall pay over such refund to such Loan Party (but only to the extent of indemnity payments made, or additional amounts paid, by such Loan Party under this Section 2.11 with respect to the Indemnified Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses of the Administrative Agent or such Lender (including any Taxes imposed with respect to such refund) as is determined by the Administrative Agent or Lender in its sole discretion, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided that such Loan Party, upon the request of the Administrative Agent or such Lender, agrees to repay as soon as reasonably practicable the amount paid over to such Loan Party (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent or such Lender in the event the Administrative Agent or such Lender is required to repay such refund to such Governmental Authority. This Section 2.11(g) shall not be construed to require the Administrative Agent or any Lender to make available its Tax returns (or any other information relating to its Taxes which it deems confidential) to the Loan Parties or any other person. Notwithstanding anything to the contrary, in no event will any Lender be required to pay any amount to any Loan Party the payment of which would place such Lender in a less favorable net after-tax position than such Lender would have been in if the additional amounts giving rise to such refund of any Indemnified Taxes or Other Taxes had never been paid.

SECTION 2.12. Payments Generally; Pro Rata Treatment; Sharing of Set-offs.

(a) Unless otherwise specified, the Borrower shall make each payment required to be made by it hereunder (whether of principal, interest or fees, or of amounts payable under Section 2.10, 2.11 or otherwise) prior to 2:00 p.m., Local Time, on the date when due, in immediately available funds, without condition or deduction for any defense, recoupment, set-off or counterclaim. Any amounts received after such time on any date shall be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent to the applicable account designated to the Borrower by the Administrative Agent, except that payments pursuant to Sections 2.10, 2.11 and 9.05 shall be made directly to the persons entitled thereto. The Administrative Agent shall distribute any such payments received by it for the account of any other person to the appropriate recipient promptly following receipt thereof. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments hereunder shall be made in Dollars. Any payment required to be made by the Administrative Agent hereunder shall be deemed to have been made by the time required if the Administrative Agent shall, at or before such time, have taken the necessary steps to make such payment in accordance with the regulations or operating procedures of the clearing or settlement system used by the Administrative Agent to make such payment.

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

the Borrower hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal then due to such parties.

(c) If any Lender shall, by exercising any right of set-off or counterclaim or otherwise, obtain payment in respect of any principal of or interest on its Loans resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Loans and accrued interest thereon than the proportion received by any other Lender, then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the Loans of other Lenders to the extent necessary so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans; provided that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this paragraph (c) shall not be construed to apply to any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in its Loan to any assignee or participant, other than to the Borrower or any Subsidiary or any Affiliate of the Borrower (as to which the provisions of this paragraph (c) shall apply). The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

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

(e) Prior to an Event of Default, if any Lender shall fail to make any payment required to be made by it pursuant to Section 2.04(b) or 2.12(d), then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender's obligations under such Sections until all such unsatisfied obligations are fully paid.

SECTION 2.13. Mitigation Obligations. If the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.11, then such Lender shall use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or Affiliates, if, in the reasonable judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 2.11, as applicable, in the future and (ii) would not subject such Lender to any material unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender in any material respect. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

SECTION 2.14. Illegality. If any Lender reasonably determines that any change in law has made it unlawful, or that any Governmental Authority has asserted after the Closing Date that it is unlawful, for any Lender or its applicable Lending Office to make or maintain any Loans, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, any obligations of such Lender to maintain its Loan shall be terminated. Upon receipt of such notice, the Borrower shall upon demand from such Lender (with a copy to the Administrative Agent), immediately prepay such Lender's Loan. Upon any such prepayment, the Borrower shall also pay accrued interest on the amount so prepaid..

SECTION 2.15. Waiver of Any Priming Rights. Upon the Closing Date, and on behalf of themselves and their estates, and for so long as any Obligations shall be outstanding, the Loan Parties hereby irrevocably waive any right, pursuant to Section 364(c) or 364(d) of the Bankruptcy Code or otherwise, to grant any Lien on any of the Collateral having priority senior to or pari passu with the Liens securing the Obligations, without the prior consent of the Administrative Agent.

ARTICLE III

REPRESENTATIONS AND WARRANTIES

Each of the Loan Parties represents and warrants to each of the Lenders that (it being understood that for the purposes of this Article III, any of the following representations and warranties that are made as to the Loan Parties shall be deemed made as to the Loan Parties (including the Retail Entities) notwithstanding the fact that as of the date that such representation and warranty is made, the Retail Entities may not yet be Loan Parties), as of the Closing Date and as of the date of any Borrowing:

SECTION 3.01. Organization; Powers. Except as set forth on Schedule 3.01, each of the Loan Parties (a) is a limited liability company or corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, (b) subject to the approval of the Bankruptcy Court, has all requisite power and authority to own its property and assets and to carry on its business as now conducted, (c) is qualified to do business in each jurisdiction where such qualification is required, except where the failure so to qualify could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, and (d) subject to the entry of the DIP Order by the Bankruptcy Court, has the power and authority to execute, deliver and perform its obligations under each of the Loan Documents and each other agreement or instrument contemplated thereby to which it is or will be a party and, in the case of the Borrower, to borrow hereunder.

SECTION 3.02. Authorization. The execution, delivery and performance by each of the Loan Parties of each of the Loan Documents to which it is a party, and the borrowings hereunder (a) subject to the entry of the DIP Order by the Bankruptcy Court, have been duly authorized by all corporate, stockholder or limited liability company action required to be obtained by such Loan Party and (b) will not (i) violate (A) subject to the entry of the DIP Order by the Bankruptcy Court, any provision of law, statute, rule or regulation, or of the certificate or articles of incorporation or other constitutive documents or by-laws of such Loan Party, (B) subject to the entry of the DIP Order by the Bankruptcy Court, any applicable order of any court or any rule, regulation or order of any Governmental Authority or (C) any provision of any post-petition indenture, certificate of designation for preferred stock, agreement or other instrument to which such Loan Party is a party or by which any of the Loan Parties or any of their property is or may be bound, (ii) be in conflict with, result in a breach of or constitute (alone or with notice or lapse of time or both) a default under, give rise to a right of or result in any cancellation or acceleration of any right or obligation (including any payment) or to a loss of a material benefit under any such post-petition indenture, certificate of designation for preferred stock, agreement or other instrument,

where any such post-petition conflict, violation, breach or default referred to in clause (i) or (ii) of this Section 3.02, could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, or (iii) result in the creation or imposition of any Lien upon or with respect to any property or assets now owned or hereafter acquired by the Loan Parties, other than the Liens created by the Loan Documents and Liens permitted by Section 6.02.

SECTION 3.03. Enforceability. This Agreement has been duly executed and delivered by each Loan Party and constitutes, and each other Loan Document when executed and delivered by each Loan Party that is party thereto will constitute, subject to the entry of the DIP Order by the Bankruptcy Court, a legal, valid and binding obligation of such Loan Party enforceable against each such Loan Party in accordance with its terms and the terms of the DIP Order.

SECTION 3.04. Governmental Approvals. No action, consent or approval of, registration or filing with or any other action by any Governmental Authority is or will be required in connection with the transactions contemplated hereby, except for (a) the entry of the DIP Orders by the Bankruptcy Court, (b) such as have been made or obtained and are in full force and effect, (c) such actions, consents and approvals the failure to be obtained or made which could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, (d) the filing of the Retail Entity Cases and (e) filings or other actions listed on Schedule 3.04.

SECTION 3.05. [Reserved].

SECTION 3.06. No Material Adverse Change or Material Adverse Effect. Since the Closing Date, there has been no event, circumstance or condition that has or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

SECTION 3.07. Title to Properties; Possession Under Leases.

(a) The Borrower has fee simple title to the Land, subject to the Title Policy Exceptions. Each Loan Party has fee simple title to, or valid leasehold interests in, or easements or other limited property interests in, all its real properties (other than the Land, which is addressed by the first sentence of this Section 3.07(a)) and has good and marketable title to its personal property and assets, in each case, except for defects in title that do not interfere with such Loan Party's ability to utilize such properties and assets for their intended purposes and except where the failure to have such title could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. All such properties and assets are free and clear of Liens, other than Liens expressly permitted by Section 6.02.

(b) Except as set forth on Schedule 3.07(b) and except for the filing of the Cases, each Loan Party has complied with all obligations under all leases to which it is a party, except where the failure to comply would not have Material Adverse Effect, and all such leases are in full force and effect, except leases in respect of which the failure to be in full force and effect could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. Each Loan Party enjoys peaceful and undisturbed possession under all such leases, other than leases in respect of which the failure to enjoy peaceful and undisturbed possession could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(c) Each Loan Party owns or possesses, or is licensed to use, all patents, trademarks, service marks, trade names and copyrights and all licenses and rights with respect to the foregoing, necessary for the present conduct of its business, without any conflict (of which any Loan Party has been notified

in writing) with the rights of others, and free from any burdensome restrictions on the present conduct of the Borrower, except where such conflicts and restrictions could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect or except as set forth on Schedule 3.07(c).

(d) None of the Loan Parties is obligated on the Closing Date under any right of first refusal, option or other contractual right to sell, assign or otherwise dispose of any of its owned real property or any interest therein, except as permitted under Section 6.02 or 6.05 or pursuant to the Retail

Master Lease, the Asset Purchase Agreement, the Sale Procedures Order or the Deeds of Trust.

SECTION 3.08. Subsidiaries.

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

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

SECTION 3.09. Litigation; Compliance with Laws.

(a) Except as set forth on Schedule 3.09(a) and other than the Cases, there are no actions, suits, investigations or proceedings at law or in equity or by or on behalf of any Governmental Authority or in arbitration now pending, or, to the knowledge of any of the Loan Parties, threatened in writing against or affecting any of the Loan Parties or any business, property or rights of any such person (i) that involve any Loan Document or (ii) would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(b) Except as set forth on Schedule 3.09(b) and except for the filing of the Cases, none of the Loan Parties or any of their respective material properties or assets is in violation of (nor will the continued operation of their material properties and assets as currently conducted violate) any law, rule or regulation (including any zoning, building, ordinance, code or approval or any building permit, but excluding any Environmental Laws, which are subject to Section 3.16) or any restriction of record or agreement affecting any of its owned real property, or is in default with respect to any judgment, writ, injunction or decree of any Governmental Authority, where such violation or default could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

SECTION 3.10. Federal Reserve Regulations.

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

(b) No part of the proceeds of any Loan will be used, whether directly or indirectly, and whether immediately, incidentally or ultimately, (i) to purchase or carry Margin Stock or to extend credit to others for the purpose of purchasing or carrying Margin Stock or to refund indebtedness originally

incurred for such purpose, or (ii) for any purpose that entails a violation of, or that is inconsistent with, the provisions of the Regulations of the Board, including Regulation U or Regulation X.

SECTION 3.11. Investment Company Act. None of the Loan Parties is an "investment company" as defined in, or subject to regulation under, the Investment Company Act of 1940, as amended.

SECTION 3.12. Use of Proceeds. The Borrower will use the proceeds of the Loans solely: (a) to fund (by way of one or more intercompany loans) the costs and expenses related to the restructuring of the Retail Entities in accordance with and up to the amount set forth therefor in the Agreed Budget, (b) to pay the costs and expenses related to the restructuring of Holdings and its subsidiaries in accordance with and up to the amount set forth therefor in the Agreed Budget, (c) to fund the stabilization of the Project in accordance with and up to the amount set forth therefor in the Agreed Budget and the Stabilization Plan, (d) for the working capital needs and other general corporate purposes of the Loan Parties in accordance with and up to the amount set forth therefor the Agreed Budget, (e) within two Business Days after the Retail Entities Guarantee Date, to indefeasibly pay in full in cash the Used Cash Collateral, (f) to pay Fees and expenses related to the Facility when, as and to the extent provided for herein and (g) to pay all present and future costs and expenses of the Administrative Agent and the Lenders, including all reasonable fees and expenses of consultants, advisors and attorneys paid or incurred at any time in connection with the financing transactions when, as and to the extent provided for in herein.

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

(a) Each Loan Party has filed or caused to be filed all material federal, state, local and non-U.S. Tax returns and reports required to have been filed by it, and each such Tax return is true and correct in all material respects;

(b) Each Loan Party has timely paid or caused to be timely paid all Taxes required to be paid by or with respect to it, except (i) for Taxes that are being contested in good faith by appropriate proceedings in accordance with Section 5.03 or (ii) to the extent failure to do so could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect; and

(c) Except as could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, there are no claims being asserted in writing with respect to any Taxes payable by or with respect to any of the Loan Parties.

SECTION 3.14. No Material Misstatements. The information (other than estimates and information of a general economic nature) (the "Information") concerning the Land, Improvements, any Loan Party or any transactions contemplated hereby (including, without limitation, with respect to liabilities of the Loan Parties) prepared by or on behalf of the foregoing or their representatives and made available to any Lenders or the Administrative Agent in connection with the transactions contemplated hereby did not contain any intentionally untrue statement of a material fact as of the date such Information was furnished or intentionally omit to state a material fact necessary in order to make the statements contained therein not misleading in light of the circumstances under which such statements were made.

SECTION 3.15. [Reserved].

SECTION 3.16. Environmental Matters. Except as disclosed on Schedule 3.16 and except as to matters that could not reasonably be expected to have, individually or in the aggregate, a Material

Adverse Effect: (i) no written notice, request for information, claim, demand, order, complaint or penalty has been received by any of the Loan Parties, and there are no judicial, administrative or other actions, suits or proceedings pending or, to the Borrower's knowledge, threatened which allege a violation of or liability under any Environmental Laws, in each case relating to any Loan Party, (ii) each Loan Party has all authorizations and permits necessary for its operations to comply with all applicable Environmental Laws and is, and during the term of all applicable statutes of limitation, has been, in compliance with the terms of such permits and with all other applicable Environmental Laws, and (iii) no Hazardous Material is located at, in, or under any property currently or formerly owned, operated or leased by any Loan Party that could reasonably be expected to give rise to any liability or obligation of any Loan Party under any Environmental Laws, and no Hazardous Material has been generated, owned or controlled by the Borrower or any Subsidiary and has been transported to or released at any location in a manner that would reasonably be expected to give rise to any liability or obligation of any Loan Party under any Environmental Laws.

SECTION 3.17. Location of Real Property and Leased Premises.

(a) Schedule 3.17 lists completely and correctly, as of the Closing Date, all material real property owned by any Loan Party and the addresses thereof. As of the Closing Date, the Loan Parties own in fee all the real property set forth as being owned by them on such Schedule.

(b) Schedule 3.17 lists completely and correctly, as of the Closing Date, all material real property leased by the Loan Parties and the addresses thereof. The Loan Parties have valid leases in all the real property set forth as being leased by them on such Schedule.

SECTION 3.18. Agreed Budget. The Agreed Budget includes and contains all fees, costs and expenses that are projected in the Loan Parties' commercially reasonable judgment to be payable by the Loan Parties during the period covered by such Agreed Budget (it being understood that the Unused Cash Collateral shall be repaid as described in the DIP Order using Unused Cash Collateral, which repayment is not described in the Agreed Budget).

SECTION 3.19. Labor Matters. Except (i) as, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect, (ii) for claims giving rise to the Mechanics' Liens, and (iii) as set forth on Schedule 3.19: (a) there are no strikes or other labor disputes pending or threatened against any of the Loan Parties; (b) the hours worked and payments made to employees of each Loan Party have not been in violation of the Fair Labor Standards Act or any other applicable law dealing with such matters; and (c) all payments due from each Loan Party or for which any claim may be made against any of the Loan Parties, on account of wages and employee health and welfare insurance and other benefits have been paid. Except as, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect, the consummation of the transactions contemplated hereby will not give rise to a right of termination or right of renegotiation on the part of any union under any material collective bargaining agreement to which any Loan Party (or any predecessor of any Loan Party) is a party or by which any Loan Party (or any predecessor of any Loan Party) is bound.

SECTION 3.20. Insurance. Schedule 3.20 sets forth a true, complete and correct description of all material insurance maintained by or on behalf of any Loan Party as of the Closing Date. As of such date, such insurance is in full force and effect. Except as set forth on Schedule 3.20, Borrower believes that the insurance maintained by or on behalf of the Loan Parties is adequate in light of the current status of the Project.

SECTION 3.21. Anti-Terrorism Law.

(a) No Loan Party and, to the knowledge of the Loan Parties, none of its Affiliates is in violation of any Requirement of Law relating to terrorism or money laundering ("Anti-Terrorism Laws"), including Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 (the "Executive Order"), and the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56.

(b) To the knowledge of the Loan Parties, no Loan Party and no Affiliate or broker or other agent of any Loan Party acting or benefiting in any capacity in connection with the Loans is any of the following:

(i) a person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;

(ii) a person owned or controlled by, or acting for or on behalf of, any person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;

(iii) a person with which any Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law;

(iv) a person that commits, threatens or conspires to commit or supports "terrorism" as defined in the Executive Order; or

(v) a person that is named as a "specially designated national and blocked person" on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control ("OFAC") at its official website or any replacement website or other replacement official publication of such list.

(c) To the knowledge of the Loan Parties, no Loan Party and no broker or other agent of any Loan Party acting in any capacity in connection with the Loans (i) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any person described in paragraph (b) above, (ii) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order, or (iii) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.

SECTION 3.22. Licensing and Permits. The Borrower and each Loan Party has, to the extent applicable and subject to the exceptions set forth on Schedule 3.22, obtained and maintained, or has had obtained and maintained on its behalf, in good standing all required material licenses, permits, certificates, registrations, authorizations and approvals necessary for the operation of the Project as currently conducted. To the knowledge of the Borrower, all such required material licenses, permits, certificates, registrations, authorizations and approvals are in full force and effect on the Closing Date and have not been revoked or suspended or otherwise limited.

SECTION 3.23. Certain Real Estate Matters.

(a) Except as set forth on Schedule 3.23(a), the Land and the Improvements and the current use thereof and the activities being conducted thereon comply with all applicable Requirements of

Law (including building and zoning ordinances and codes, but excluding any Environmental Laws, with are the subject of Section 3.16) and with all Insurance Requirements, except where noncompliance or any non-conforming use could not, individually or collectively, reasonably be expected to have a Material Adverse Effect. Except as set forth on Schedule 3.23(a), no Loan Party has received a written notice of any violation or potential violation of the Requirements of Law which has not been remedied or satisfied except to the extent that such violation could not reasonably be expected to have a Material Adverse Effect.

(b) No condemnation and/or exercise of eminent domain, or any sale or other disposition in lieu of condemnation or eminent domain, has been commenced or, to the knowledge of the Loan Parties, is contemplated with respect to all or any portion of the Land or for the relocation of roadways or streets providing access to or egress from the Land.

(c) Except as set forth on Schedule 3.23(c), the use being made of the Land and the Improvements and the activities being conducted thereon are in conformity with such material Permits for such Land and the Improvements and any other reciprocal easement agreements, restrictions, covenants or conditions affecting such Land and the Improvements except, in each case, to the extent any non-conformity therewith could not reasonably be expected to result in a Material Adverse Effect.

(d) Except as set forth on Schedule 3.23(d), the Improvements that have been constructed have been built in accordance with the specifications and the most recent set of plans released by the Project's architects, Bergman Walls & Associates, Ltd., and made available to the Administrative Agent, except to the extent that any such deviation would not in any material respect impair the suitability of such Improvement for use in its intended purpose.

SECTION 3.24. Reorganization Matters.

(a) Proper notice for (i) the motion seeking approval of the Loan Documents and the DIP Order and (ii) the hearing for the approval of the DIP Order has been given.

(b) The Loan Parties have given (and shall give), on a timely basis as specified in the DIP Order, all notices required to be given to all parties specified in the DIP Order.

(c) After the entry of the DIP Order and to the extent provided therein, the Obligations will constitute allowed super-priority administrative expense claims in the Cases having priority over all administrative expense claims and unsecured claims against the Loan Parties now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expense claims of the kind specified in Section 105, 326, 328, 330, 331, 363, 364, 503, 507, 546, 726, 1113, 1114 or any other provision of the Bankruptcy Code or otherwise, as provided under Section 364(c)(1) of the Bankruptcy Code, subject, as to priority only, to the Carve-Out Expenses to the extent set forth in the DIP Order and to the adequate protection claims previously granted in respect of the Used Cash Collateral, which adequate protection claims shall be automatically deemed satisfied and paid in full without any action by any person upon the repayment to the Existing Credit Facility Agent for the benefit of the Prepetition Secured Parties of the Used Cash Collateral, as set forth in the DIP Order.

(d) After the entry of the DIP Order and pursuant to and to the extent provided therein, the Obligations will be secured by a valid, legal and perfected Lien on and security interest in all of the Collateral of the Loan Parties having the priority afforded by Sections 364(c)(1), 364(c)(2) and 364(d)(1), as set forth in the DIP Order.

(e) The DIP Order, with respect to the period on and after entry of the DIP Order, is in full force and effect and has not been modified or amended without the consent of the Required Lenders, or reversed or stayed.

ARTICLE IV

CONDITIONS PRECEDENT

SECTION 4.01. Conditions Precedent to Closing Date. The Closing Date shall not occur until the following conditions have been met or waived by the Administrative Agent:

(a) The Borrower shall have delivered a certificate of a Responsible Officer certifying that (x) the representations and warranties set forth in Article III shall be true and correct in all material respects on the Closing Date with the same effect as though made on and as of such date (unless such representations and warranties relate to an earlier time, in which case as of such earlier time) and (y) as of the Closing Date (after giving effect to the execution of the Loan Documents), no Event of Default or Default shall have occurred and be continuing.

(b) The Administrative Agent (or its counsel) shall have received from each party hereto either (i) a counterpart of this Agreement signed on behalf of such party or (ii) written evidence satisfactory to the Administrative Agent (which may include telecopy transmission of, or an e-mail containing a "pdf" of, a signed signature page of this Agreement) that such party has signed a counterpart of this Agreement.

(c) The Lenders shall have received the Agreed Budget.

(d) The Administrative Agent shall have received a copy of the Interim DIP Order, which Interim DIP Order (i) shall be in form and substance reasonably satisfactory to the Administrative Agent and (ii) shall have been entered by the Bankruptcy Court and shall be in full force and effect and shall not have been vacated, stayed, reversed, modified or amended in any respect; and, if the Interim DIP Order is the subject of a pending appeal in any respect, neither the making of the Loans, nor the performance by the Loan Parties of any of their respective obligations hereunder, under the other Loan Documents or under any other instrument or agreement referred to herein shall be the subject of a presently effective stay pending appeal.

(e) The Bankruptcy Court shall have entered the Sale Procedures Order in each of the Cases of the Loan Parties.

(f) The holders of at least a majority in aggregate principal amount of obligations under the Existing Credit Facility shall have, subject to the terms of paragraph 32 of the DIP Order, consented to the Subject Transactions (as defined in the DIP Order). For the avoidance of doubt, such consent shall not be deemed to be a waiver of any Prepetition Secured Party's right to provide the Loan Parties the funds necessary to repay the Obligations in full in cash pursuant to the terms hereof.

(g) At the time of and immediately after giving effect to the execution of the Loan Documents, (x) the representations and warranties set forth in the Loan Documents shall be true and correct in all material respects as of such date, with the same effect as though made on and as of such date (unless such representations and warranties relate to an earlier time, in which case as of such earlier time) and (y) no Event of Default or Default shall have occurred and be continuing.

SECTION 4.02. Conditions Precedent to each Borrowing. The obligations of the Lenders to make Loans are subject to the satisfaction of the following conditions:

(a) The Administrative Agent shall have received a Borrowing Request as required by Section 2.03 hereof.

(b) At the time of and immediately after such Borrowing, (x) the representations and warranties set forth in the Loan Documents shall be true and correct in all material respects as of such date, with the same effect as though made on and as of such date (unless such representations and warranties relate to an earlier time, in which case as of such earlier time) and (y) no Event of Default or Default shall have occurred and be continuing.

(c) (i) In respect of any Borrowing to be made at any time prior to the date that is 15 Business Days after the Bankruptcy Court enters the Interim DIP Order in the Case of the Borrower, the Interim DIP Order shall have been entered by the Bankruptcy Court and shall be in full force and effect and shall not have been vacated, stayed, reversed, modified or amended in any respect; and, if the Interim DIP Order is the subject of a pending appeal in any respect, neither the making of the Loans, nor the performance by the Loan Parties of any of their respective obligations hereunder, under the other Loan Documents or under any other instrument or agreement referred to herein shall be the subject of a presently effective stay pending appeal; and (ii) in respect of any Borrowing to be made at any time on or after the date that is 15 Business Days after the Bankruptcy Court enters the Interim DIP Order in the Case of the Borrower, the Administrative Agent shall have received a copy of the Final DIP Order, which Final DIP Order (x) shall be in form and substance reasonably satisfactory to the Administrative Agent and (y) shall be in full force and effect and shall not have been vacated, stayed, reversed, modified or amended in any respect; and, if the Final DIP Order is the subject of a pending appeal in any respect, neither the making of the Loans, nor the performance by the Loan Parties of any of their respective obligations hereunder, under the other Loan Documents or under any other instrument or agreement referred to herein shall be the subject of a presently effective stay pending appeal.

(d) Each of the Loan Parties shall have taken all requisite company or corporate action, as applicable, to approve the sale of the assets of the Loan Parties on the terms described in the Asset Purchase Agreement, such approval shall be in full force and effect, and the Loan Parties shall be diligently pursuing the prosecution of the sale of all or substantially all of the Purchased Assets on the terms described in the Sale Procedures Order.

ARTICLE V

AFFIRMATIVE COVENANTS

Each of the Loan Parties covenants and agrees with each Lender that so long as this Agreement shall remain in effect and until the Commitments have been terminated and the principal of and interest on each Loan, all Fees and all other expenses or amounts payable under any Loan Document shall have been paid in full, unless the Required Lenders shall otherwise consent in writing, each of the Loan Parties will:

SECTION 5.01. Existence; Businesses and Properties.

(a) Do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence, except, in the case of the Retail Entities or any Subsidiary of the Borrower where the failure to do so would not reasonably be expected to have a Material Adverse Effect.

(b) Except where failure to do so would not reasonably be expected to have a Material Adverse Effect, do or cause to be done all things necessary to (i) lawfully obtain, preserve, renew, extend and keep in full force and effect the permits, franchises, authorizations, patents, trademarks, service marks, trade names, copyrights, licenses and rights with respect thereto necessary to the normal conduct of its business, and (ii) at all times maintain and preserve the Project and all other property of the Loan Parties in its current condition (in each case except as expressly permitted by the Loan Documents); provided that, in the event that (a) the costs to the Loan Parties of the compliance with this clause (ii) exceed the amounts allocated therefor in the Agreed Budget (after giving effect to the 5.0% variance provided in Section 6.10), (b) the Loan Parties notify the Administrative Agent of such shortfall

and additional amounts necessary to allow the Loan Parties to comply with clause (ii), and (c) the Lenders refuse to provide additional amounts as are necessary (in the reasonable judgment of the Administrative Agent) to allow the Loan Parties to comply with this clause (ii), then there shall not be a default under this clause (ii) on account of the Loan Parties' failure to comply therewith on account of the amounts set forth therefor in the Agreed Budget being insufficient to allow such compliance; provided further, however, that in the event that the Lenders agree, within five Business Days of any such request, to provide such amounts as are necessary (in the reasonable judgment of the Administrative Agent) to allow the Loan Parties to comply with this clause (ii) and to amend the Agreed Budget to so reflect, it shall be a default under this clause (ii) if the Loan Parties do not, within three (3) Business Days of receiving such consent, (x) obtain approval from the Bankruptcy Court to borrow such additional amounts hereunder and so amend the Agreed Budget and (y) promptly borrow and begin to apply such amounts for use in their intended purpose).

SECTION 5.02. Insurance.

(a) Maintain, with financially sound and reputable insurance companies, insurance in such amounts and against such risks as are customarily maintained by similarly situated companies engaged in the same or similar businesses operating in the same or similar locations and cause the Administrative Agent to be listed as a co-loss payee on property and casualty policies and as an additional insured on liability policies, with any proceeds of such policies related to any Loan Party or any assets of any Loan Party to be paid first to the Administrative Agent, for the benefit of the Secured Parties, subject to the terms of this Agreement and the Asset Purchase Agreement. In addition:

(i) All insurance policies of the Loan Parties covering real property shall include a standard non-contributing mortgagee clause in favor of Administrative Agent. All insurance covering personal property not attached to a building or structure (such as construction materials and furniture, fixtures and equipment on- or off-site) shall include a standard long form lender's loss payable clause in favor of Administrative Agent.

(ii) All insurance policies of the Loan Parties shall provide that with respect to the interest of Administrative Agent, such insurance policy shall not be invalidated by and shall insure the Administrative Agent, for the benefit of the Secured Parties, regardless of (i) any act, failure to act or negligence of or violation of warranties, declarations or conditions contained in such policy by any named insured, (ii) the occupancy or use of the premises for purposes more hazardous

than permitted by the terms thereof, or (iii) any foreclosure or other action or proceeding taken by Administrative Agent (for the benefit of any Secured Party) pursuant to any provision of the Loan Documents.

(iii) All policies of liability insurance of the Loan Parties shall be endorsed as follows: (i) to name the applicable Loan Party and its respective officers and employees as named insureds, and (except with respect to the workers compensation policy) to name the Administrative Agent and its respective officers and employees as additional insureds: (ii) to provide a severability of insurers and cross liability clause; and (iii) to provide that the insurance shall be primary and not excess to or contributing with any insurance or self-insurance maintained by Administrative Agent or any Secured Party.

(b) If at any time the area in which any of the real property owned by any of the Loan Parties is located is designated a "flood hazard area" in any Flood Insurance Rate Map published by the Federal Emergency Management Agency (or any successor agency), obtain flood insurance in such total amount as the Administrative Agent may from time to time reasonably require, and otherwise comply with the National Flood Insurance Program as set forth in the Flood Disaster Protection Act of 1973, as it may be amended from time to time.

(c) Each of the Loan Parties hereby waives any and every claim for recovery from the Administrative Agent and each Secured Party for any and all loss or damage covered by any of the insurance policies required to be maintained by any Loan Party under this Agreement. Inasmuch as the foregoing waiver will preclude the assignment of any such claim to the extent of such recovery, by subrogation (or otherwise), to an insurance company (or other Person), the applicable Loan Party shall give written notice of the terms of such waiver to each insurance company that has issued or that may issue in the future any such policy of insurance (if such notice is required by the insurance policy) and shall cause each such insurance policy to be properly endorsed by the issuer thereof to, or to otherwise contain one or more provisions that, prevent the invalidation of the insurance coverage provided thereby by reason of such waiver.

SECTION 5.03. Taxes. Pay and discharge promptly when due all material Taxes imposed upon it or upon its income or profits or in respect of its property before the same shall become delinquent or in default, as well as all lawful claims which, if unpaid, might give rise to a Lien upon such properties or any part thereof that would be senior to or pari passu with the Liens on the assets of the Loan Parties securing the Obligations; provided, however, that such payment and discharge shall not be required with respect to any such Tax or claim so long as the validity or amount thereof shall be contested in good faith by appropriate proceedings.

SECTION 5.04. Financial Statements, Reports, etc. Furnish to the Administrative Agent (which will promptly furnish such information to the Lenders):

(a) With in one Business Day after such report is filed with the court, a copy of the monthly operating reports any Loan Party files in any of the Cases;

(b) [Reserved].

(c) concurrently with any delivery of the reports under paragraph (a) above, a certificate of a Financial Officer of the Borrower (i) certifying that no Event of Default or Default has occurred or, if such an Event of Default or Default has occurred, specifying the nature and extent thereof and any

corrective action taken or proposed to be taken with respect thereto and (ii) setting forth computations in reasonable detail satisfactory to the Administrative Agent demonstrating compliance with the Financial Performance Covenants;

(d) promptly after the same become publicly available, copies of all periodic and other publicly available reports, proxy statements and, to the extent requested by the Administrative Agent, other materials filed by any Loan Party with the SEC;

(e) as soon as available and in any event not later than the Wednesday of each week, (i) the Variance Report for the week ending the preceding Friday, and (ii) a report of the Liquidity as of the close of business of each day during the previous calendar week;

(f) promptly, a copy of all reports submitted to the board of directors (or any committee thereof) of any Loan Party in connection with any material interim or special audit that solely affects any one or more of the Loan Parties and is made by independent accountants of the books of any Loan Party (excluding any reports which have been identified as confidential or privileged work product);

(g) promptly following a request therefor, all documentation and other information that the Administrative Agent reasonably requests on its own behalf or on behalf of any Lender in order to comply with ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the USA Patriot Act; and

(h) promptly, from time to time, such other information regarding the Project or the financial condition of any Loan Party, or compliance with the terms of any Loan Document, or such consolidated financial statements, as in each case the Administrative Agent may reasonably request on its own behalf or on behalf of any Lender.

SECTION 5.05. Litigation and Other Notices. Furnish to the Administrative Agent written notice of the following promptly after any Responsible Officer of any Loan Party obtains actual knowledge thereof:

(a) any Event of Default or Default, specifying the nature and extent thereof and the corrective action (if any) proposed to be taken with respect thereto;

(b) the filing or commencement of, or any written threat or notice of intention of any person to file or commence, any action, suit or proceeding, whether at law or in equity or by or before any Governmental Authority or in arbitration, against any Loan Party as to which an adverse determination is reasonably probable and which, if adversely determined, could reasonably be expected to have a Material Adverse Effect;

(c) any other development specific to any Loan Party that is not a matter of general public knowledge and that has had, or could reasonably be expected to have, a Material Adverse Effect; and

(d) the occurrence of any ERISA Event that, together with all other ERISA Events that have occurred, could reasonably be expected to have a Material Adverse Effect.

SECTION 5.06. Compliance with Laws. Comply in all material respects with all laws (including, without limitation, the Bankruptcy Code), rules, regulations and orders of any Governmental

Authority applicable to it or its property, including, without limitation, all orders and rulings of the Bankruptcy Court; provided that this Section 5.06 shall not apply to Environmental Laws, which are the subject of Section 5.09, or to laws related to Taxes, which are the subject of Section 5.03.

SECTION 5.07. Maintaining Records; Access to Properties and Inspections. Permit any persons designated by the Administrative Agent or, upon the occurrence and during the continuance of an Event of Default, any Lender to visit and inspect the financial records and the properties of any of the Loan Parties at reasonable times, upon reasonable prior notice to the Borrower, and as often as reasonably requested and to make extracts from and copies of such financial records, and permit any persons designated by the Administrative Agent or, upon the occurrence and during the continuance of an Event of Default, any Lender upon reasonable prior notice to Borrower to discuss the affairs, finances and condition of any of the Loan Parties with the officers thereof and independent accountants therefor (subject to reasonable requirements of confidentiality, including requirements imposed by law or by contract).

SECTION 5.08. Use of Proceeds. Use the proceeds of the Loans solely for the purposes set forth in Section 3.12.

SECTION 5.09. Compliance with Environmental Laws. Except as set forth on Schedule 5.09, comply, and make reasonable efforts to cause all lessees and other persons occupying its properties to comply, with all Environmental Laws applicable to its operations and properties; and obtain and renew all material authorizations and permits required pursuant to Environmental Law for its operations and properties, in each case in accordance with Environmental Laws, except, in each case with respect to this Section 5.09, to the extent the failure to do so could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

SECTION 5.10. Further Assurances.

(a) Execute any and all further documents, mortgages, financing statements, agreements and instruments, and take all such further actions (including the filing and recording of financing statements, fixture filings, mortgages and other documents and recordings of Liens in stock registries), that may be required under any applicable law, or that the Administrative Agent may reasonably request, to effect the transactions contemplated by the Loan Documents or to grant, preserve, protect or perfect the Liens created or intended to be created by the Loan Documents, all at the expense of the Loan Parties and provide to the Administrative Agent, from time to time upon reasonable request, evidence reasonably satisfactory to the Administrative Agent as to the perfection and priority of the Liens created or intended to be created by the Loan Documents.

(b) If any additional direct or indirect Subsidiary of Holdings or Retail Holdings is formed or acquired after the Closing Date, on the date such Subsidiary is formed or acquired, notify the Administrative Agent thereof and cause such Subsidiary to promptly (i) become a party to this Agreement pursuant to a Joinder Agreement and (ii) take such actions as may be required by law or reasonably requested by the Administrative Agent to grant and perfect the Liens intended to be created by the Loan Documents and Guarantee the Obligations of the Borrower incurred hereunder.

SECTION 5.11. Fiscal Year; Accounting. Cause its fiscal year to end on December 31.

SECTION 5.12. Cash Management. Maintain its cash management systems pursuant to the Cash Management Order.

SECTION 5.13. Reorganization Matters. Deliver to the Administrative Agent, the Lenders and their respective counsel, prior to the filing thereof, all pleadings, motions and other documents to be filed by or on behalf of any Loan Party and relating directly to the Facility; it being understood that this Section 5.13 shall not require the Loan Parties to deliver to the Administrative Agent any such information about a bidder for the Purchased Assets other than the Purchaser or a bid other than Purchaser's bid prior to the dates described in the Bidding Procedures attached to the Sale Procedures Order.

SECTION 5.14. Maintenance of Property. The Loan Parties shall stabilize the Land and Improvements in material compliance with the timeframe and otherwise materially in accordance with the plans set forth on Schedule 5.14 hereof (such plans, the "Stabilization Plan"); for the purposes of this sentence, materiality shall be measured in relation to the budget devoted to the Stabilization Plan, the timeframe and description thereof as set forth in the Stabilization Plan and the consequences thereof. The Loan Parties shall maintain security, utilities and fire inspection and prevention at the Project, shall make repairs to the Project and shall perform under and utilize service contracts for preventative maintenance of the Project to the maximum extent possible given the funds provided therefor in the Agreed Budget.ARTICLE VI

NEGATIVE COVENANTS

Each of the Loan Parties covenants and agrees with each Lender that, so long as this Agreement shall remain in effect and until the Commitments have been terminated and the principal of and interest on each Loan, all Fees and all other expenses or amounts payable under any Loan Document have been paid in full, unless the Required Lenders shall otherwise consent in writing, the Loan Parties will not:

SECTION 6.01. Indebtedness. Incur, create, assume or permit to exist any Indebtedness, except:

(a) Indebtedness existing on the Closing Date and either (i) set forth on Schedule 6.01 hereto or (ii) pursuant to the Existing Facilities;

(b) Indebtedness created hereunder and under the other Loan Documents;

(c) Indebtedness of the Borrower to any Guarantor and of any Guarantor to the Borrower or any other Guarantor;

(d) all premium (if any), interest, fees, expenses, charges and additional or contingent interest on obligations described in paragraphs (a) through (c) above.

SECTION 6.02. Liens. Create, incur, assume or permit to exist any Lien on any property or assets (including stock or other securities of any person, including each Loan Party) at the time owned by it or on any income or revenues or rights in respect of any thereof, except:

(a) Liens on property or assets of the Loan Parties existing on the Closing Date and either (i) arising pursuant to the Existing Facilities or (ii) set forth on Schedule 6.02 hereof; provided in each case that such Liens shall secure only those obligations that they secure on the Closing Date and shall not subsequently apply to any other property or assets of any Loan Party;

(b) any Lien created under the Loan Documents, including the DIP Orders;

(c) Liens for Taxes, assessments or other governmental charges or levies not yet delinquent or that are being contested in good faith by appropriate proceedings;

(d) mechanics', materialmen's, repairmen's, or construction Liens arising in the ordinary course of business in connection with work completed prior to or after the Petition Date, but solely to the extent that such Liens are junior to the Liens granted to the Secured Parties to secure the Obligations pursuant hereto and the DIP Order;

(e) [Reserved];

(f) [Reserved];

(g) Liens pursuant to Sections 546 and 362(b)(18) of the Bankruptcy Code;

(h) Liens that are contractual rights of set-off (i) relating to the establishment in the ordinary course of business of depository relations with banks not given in connection with the issuance or incurrence of Indebtedness or (ii) relating to pooled deposit or sweep accounts of the Loan Parties to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Loan Parties;

(i) Liens arising solely by virtue of any statutory or common law provision relating to banker's liens, rights of set-off or similar rights;

(j) Liens arising from precautionary UCC financing statements regarding operating leases entered into in the ordinary course of business and necessary to the work contemplated by the Agreed Budget.

SECTION 6.03. Sale and Lease-Back Transactions. Enter into any arrangement, directly or indirectly, with any person whereby it shall sell or transfer any property, real or personal, used or useful in its business, whether now owned or hereafter acquired, and thereafter rent or lease such property or other property that it intends to use for substantially the same purpose or purposes as the property being sold or transferred.

SECTION 6.04. Investments, Loans and Advances. Purchase, hold or acquire any Equity Interests, evidences of Indebtedness or other securities of, make or permit to exist any loans or advances to or Guarantees of the obligations of, or make or permit to exist any investment or any other interest in (each, an "Investment"), in any other person, except:

(a) intercompany loans from the Borrower to the Retail Entities to fund the costs and expenses related to the restructuring of the Retail Entities in accordance with and up to the amount set forth in the Agreed Budget;

(b) Permitted Investments;

(c) accounts receivable, security deposits and prepayments arising and trade credit granted in the ordinary course of business, consistent with the practices of Persons of established reputation engaged in similar businesses, and any assets or securities received in satisfaction or partial satisfaction thereof from financially troubled account debtors to the extent reasonably necessary in order to prevent

or limit loss and any prepayments and other credits to suppliers made in the ordinary course of business, consistent with the practices of Persons of established reputation engaged in similar businesses;

(d) Investments existing on the Closing Date.

SECTION 6.05. Mergers, Consolidations, Sales of Assets and Acquisitions. Merge into or consolidate with any other person, or permit any other person to merge into or consolidate with it, or sell, transfer, lease or otherwise dispose of (in one transaction or in a series of transactions) all or any part of its assets (whether now owned or hereafter acquired), or issue, sell, transfer or otherwise dispose of the Equity Interests any Loan Party (other than Holdings or Retail Holdings), or purchase, lease or otherwise acquire (in one transaction or a series of transactions) all or any substantial part of the assets of any other person, except that this Section 6.05 shall not prohibit:

(a) (i) the purchase of building supplies in the ordinary course of business by any Loan Party (other any Retail Entity) in amounts and in a manner consistent with the expenditures therefor in the Agreed Budget or (ii) the sale of Permitted Investments in the ordinary course of business; and

(b) Investments permitted by Section 6.04, Liens permitted by Section 6.02 and Dividends permitted by Section 6.06

Notwithstanding anything to the contrary contained in this Section 6.05 above, (i) no sale, transfer or other disposition of assets shall be permitted by this Section 6.05 unless such disposition is for fair market value and (ii) no sale, transfer or other disposition of assets shall be permitted by paragraph (a) of this Section 6.05 unless such disposition is for 100% cash consideration.

Notwithstanding the foregoing, this covenant shall not prohibit the sale of substantially all of the Purchased Assets pursuant to the Bidding Procedures attached to the Sale Procedures Order provided that all of the Obligations are repaid prior to or simultaneously with the consummation of such sale.

SECTION 6.06. Dividends, Distributions and Repayments of Debt. Declare or pay, directly or indirectly, any dividend or make any other distribution (by reduction of capital or otherwise), whether in cash, property, securities or a combination thereof, with respect to any of its Equity Interests or directly or indirectly redeem, purchase, retire or otherwise acquire for value (or permit any subsidiary to purchase or acquire) any of its Equity Interests or set aside any amount for any such purpose, or make any payment or prepayment of principal of, premium, if any, or interest on, or redemption, purchase, retirement, defeasance, sinking fund or similar payment with respect to any Indebtedness other than (a) the Obligations and (b) the payment of the Used Cash Collateral and the payment of the Unused Cash Collateral, in each case to the Existing Credit Facility Agent (as defined in the DIP Order) for the account of the Prepetition Secured Parties in each case pursuant to the terms hereof and of the DIP Order; provided, however, that any Loan Party that is a subsidiary of Holdings may declare and pay dividends to or make other distributions to the Holdings, the Borrower or any other Loan Party that is a subsidiary of Holdings, and any subsidiary of Retail Holdings may declare and pay dividends to or make other distributions to Retail Holdings or any other Loan Party that is a subsidiary of Retail Holdings.

SECTION 6.07. Transactions with Affiliates and Certain Bonus Payments.

(a) Sell or transfer any property or assets to, or purchase or acquire any property or assets from, or otherwise engage in any other transaction with, any of its Affiliates or any direct or indirect holder of 10% or more of any class of capital stock of Holdings or Retail Holdings, unless such transaction

is (i) otherwise permitted (or required) under this Agreement, (ii) pursuant to an agreement between a Loan Party and a third party in effect as of October 1, 2009, to the extent the payment in respect thereof is contemplated in the Agreed Budget or (iii) upon terms no less favorable to such Loan Party than would be obtained in a comparable arm's-length transaction with a person that is not an Affiliate.

(b) The foregoing paragraph (a) shall not prohibit, to the extent not otherwise prohibited under the Loan Documents,

(i) (x) transactions among the Retail Entities otherwise permitted by this Agreement and (y) transactions among Loan Parties (other than Retail Entities) otherwise permitted by this Agreement;

(ii) any employee compensation, benefit plan or arrangement, any health, disability or similar insurance plan which is in effect on the date hereof and which covers employees, and any reasonable employment contract and transactions pursuant thereto; provided that such employment agreements shall not provide for the payment of any bonus to any executive officer of any Loan Party unless the amount of such bonus is acceptable to the Required Lenders or is set forth in the Agreed Budget; and

(iii) dividends permitted under Section 6.06,

(c) Make any payment to any Existing Investor, including any payment of or on account of monitoring, management, transaction or similar fees payable to any Existing Investor.

(d) Make, commit to make, or permit to be made any bonus payments to any executive officers of any of the Loan Parties other than as acceptable to the Required Lenders or as set forth in the Agreed Budget.

SECTION 6.08. Business of the Loan Parties. Notwithstanding any other provisions hereof, engage at any time in any business or business activity other than any business or business activity contemplated by the Agreed Budget.

SECTION 6.09. Limitation on Prepayments of Indebtedness; Modifications of Certificate of Incorporation, By-Laws and Certain Other Agreements; etc.

(a) Amend or modify in any manner materially adverse to the Lenders, or grant any waiver or release under or terminate in any manner (if such granting or termination shall be materially adverse to the Lenders), the articles or certificate of incorporation or by-laws or limited liability company operating agreement of the Loan Parties.

(b) Make, or agree or offer to pay or make, directly or indirectly, any payment or other distribution (whether in cash, securities or other property) of or in respect of any Indebtedness or any other liability of any kind or nature, in each case relating to the period prior to the Petition Date (including by way of payment of administrative expense claims arising under section 503(b)(9) of the Bankruptcy Code), other than (i) pursuant to the following orders in the Cases as in effect on the date hereof: (a) that certain Second Order Granting, in Part, Emergency Motion by Debtors for Entry of an Order Authorizing the Debtors to Pay Certain Prepetition Critical Vendor Claims in the Ordinary Course of Business (Docket No. 225); (b) that certain Order Granting in Part Emergency Motion to Pay Prepetition Critical Vendor Claims in the Ordinary Course of Business and Scheduling Further Hearing on Motion

(Docket No. 203); (c) that certain Order Granting Debtors' Emergency Motion for an Order (I) Authorizing, But Not Requiring, the Debtors to (A) Continue Their Existing Insurance Programs and (B) Pay Certain Prepetition Obligations in Respect Thereof, and (II) Authorizing Financial Institutions to Honor and Process Checks and Transfers Related to Such Obligations (Docket No. 51); and (d) that certain Order (I) Authorizing the Debtors to Pay (A) Prepetition Wages, Salaries, and Employee Benefits, and (B) Prepetition Withholding Obligations, and (II) Authorizing Continuation of Employment Benefit Plans and Programs Postpetition, and (III) Directing All Banks to Honor Payments of Prepetition Employee Obligations (Docket No. 48); (ii) the repayment of the Used Cash Collateral and the return of the Unused Cash Collateral, in each case pursuant to the terms hereof and of the DIP Order, or (iii) with the prior written consent of the Administrative Agent (upon the direction of the Required Lenders acting in their sole discretion).

(c) Enter into any agreement that prohibits, restricts or imposes any condition upon (i) the ability of any Loan Party to create, incur or permit to exist any Lien upon any of its property or assets, (ii) the ability of any subsidiary of the Borrower to pay dividends or other distributions with respect to any shares of its capital stock, or (iii) the ability of any Loan Party to repay loans or advances to the Borrower or any other Loan Party or to guarantee Indebtedness of the Borrower or any other Loan Party, provided that the foregoing shall not apply to restrictions and conditions imposed by law or any Loan Document.

SECTION 6.10. Maximum Budget Variance. Permit (i) the actual cumulative cash disbursements of the Loan Parties in respect of any line item in the Agreed Budget (from the period beginning with the Closing Date) as of the end of any week, beginning with the fourth calendar week to occur after the Closing Date, to be greater than the product of (x) 105% (or, at any time after the occurrence of the Auction, 100%) and (y) the projected amount of cumulative cash disbursements in respect of such line item set forth in the Agreed Budget (as amended, following the Auction, by the Budget Amendment) for such period; or (ii) the cumulative principal amount of outstanding Loans as of the close of business on Friday of each week to exceed the product of (x) 105% (or, at any time after the occurrence of the Auction, 100%) and (y) the projected cumulative principal amount of Loans outstanding set forth in the Agreed Budget (as amended, following the Auction, by the Budget Amendment) for such date (which amount shall be deemed reduced, for the avoidance of doubt, by the amount of any Loans repaid prior to such date). For the purpose of this Section 6.10, the projected amount of cash disbursements in respect of any line item set forth in the Agreed Budget for any week shall be deemed increased by an amount equal to the excess, if any, of the amount of cash disbursements projected by the Agreed Budget for such line item for all weeks prior to such week addressed in the Agreed Budget over the amount of actual cash disbursements in respect of such line item made during all weeks prior to such week addressed in the Agreed Budget.

SECTION 6.11. Minimum Cash Balance. From and after the date that the Final DIP Order is entered in each of the Cases, permit, at any time, Liquidity to be less than an amount equal to the amount necessary to satisfy all cash disbursements reasonably projected by the Loan Parties to be required to be made during the full calendar week following such time.

SECTION 6.12. Swap Agreements. Enter into any Swap Agreement.

SECTION 6.13. Super-Priority Claims. Create, incur, assume or permit to exist any administrative expense, unsecured claim, or other super-priority claim or Lien which is senior to or pari passu with the super-priority claims or Liens of the Secured Parties against the Loan Parties hereunder, except for the Carve-Out Expenses or as otherwise provided herein or in the DIP Order, or apply to the Bankruptcy Court for authority to do so.

SECTION 6.14. DIP Order. Make, permit to be made or seek any change, amendment or modification, or any application or motion for any change, amendment or modification, to the DIP Order or any other order of the Bankruptcy Court with respect to the Facility without the prior written consent of the Administrative Agent (who shall give such consent only upon the direction of the Required Lenders acting in their sole discretion).

ARTICLE VIA

HOLDINGS NEGATIVE COVENANTS

Each of Holdings, Retail Holdings and Retail Mezzanine covenants and agrees with each Lender that, so long as this Agreement shall remain in effect and until the Commitments have been terminated and the principal of and interest on each Loan, all Fees and all other expenses or amounts payable under any Loan Document have been paid in full, unless the Required Lenders shall otherwise consent in writing, Holdings, Retail Holdings and Retail Mezzanine will not engage at any time in any business or business activity other than (a) ownership and acquisition of Equity Interests in the Borrower (in the case of Holdings), Retail Mezzanine (in the case of Retail Holdings) or Retail LLC (in the case of Retail Mezzanine), together with activities directly related thereto, (b) the incurrence of and performance of its obligations related to Indebtedness and Guarantees incurred by such Person after the Closing Date, (c) actions required by law to maintain its existence, (d) the payment of taxes, (e) the issuance of Equity Interests and (f) activities incidental to its existence and to the foregoing activities, in each case only to the extent permitted by this Agreement.

Notwithstanding anything to the contrary contained herein, (i) Holdings shall at all times own directly 100% of the Equity Interests of the Borrower, Retail Holdings shall at all times own directly 100% of the Equity Interests of Retail Mezzanine, and Retail Mezzanine shall at all times own directly 100% of the Equity Interests of Retail LLC and (ii) Holdings, Retail Holdings and Retail Mezzanine shall not sell, dispose of, grant, permit or suffer to exist a Lien on or otherwise transfer such Equity Interests in the Borrower, Retail Mezzanine or Retail LLC, as applicable, excepting any Liens on Equity Interests in the Borrower, Retail Mezzanine or Retail LLC created by the Loan Documents.

ARTICLE VII

EVENTS OF DEFAULT

SECTION 7.01. Events of Default. In case of the happening of any of the following events (each, an "Event of Default"):

(a) any representation or warranty made or deemed made by any Loan Party in any Loan Document, or any representation, warranty, statement or information contained in any report, certificate, financial statement or other instrument furnished in connection with or pursuant to any Loan Document, shall prove to have been false or misleading in any material respect when so made, deemed made or furnished by any Loan Party;

(b) default shall be made in the payment of any principal of any Loan when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or by acceleration thereof or otherwise;

(c) default shall be made in the payment of any interest on any Loan or in the payment of any Fee or any other amount (other than an amount referred to in (b) above) due under any Loan Document, when and as the same shall become due and payable, and such default shall continue unremedied for a period of two Business Days (it being understood that the payment of interest or any Fee or other amount by the automatic addition such amount to the principal amount of Loans outstanding hereunder pursuant to the express terms of this Agreement shall not be deemed to be a default under this clause (c));

(d) default shall be made in the due observance or performance by any Loan Party of any covenant, condition or agreement contained in Section 5.01(a) (with respect to Holdings or the Borrower), 5.04(e), 5.05(a), 5.08, 5.14 or in Article VI or Article VIA;

(e) default shall be made in the due observance or performance by any Loan Party of any covenant, condition or agreement contained in any Loan Document (other than those specified in paragraphs (b), (c) and (d) above) and such default shall continue unremedied for a period of ten (10) days after notice thereof from the Administrative Agent or the Required Lenders to the Borrower;

(f) there shall have occurred a Change in Control;

(g) [Reserved];

(h) (i) a Reportable Event or Reportable Events, other than as a result of the filing of the Cases, shall have occurred with respect to any ERISA Plan or a trustee shall be appointed by a United States district court to administer any ERISA Plan, (ii) the PBGC shall institute proceedings (including giving notice of intent thereof) to terminate any ERISA Plan or ERISA Plans, (iii) any Loan Party or any ERISA Affiliate shall have been notified by the sponsor of a Multiemployer Plan that it has incurred or will be assessed Withdrawal Liability to such Multiemployer Plan and such person does not have reasonable grounds for contesting such Withdrawal Liability or is not contesting such Withdrawal Liability in a timely and appropriate manner, (iv) any Loan Party or any ERISA Affiliate shall have been notified by the sponsor of a Multiemployer Plan that such Multiemployer Plan is in reorganization or is being terminated, within the meaning of Title IV of ERISA or (v) any Loan Party shall engage in any "prohibited transaction" (as defined in Section 406 of ERISA or Section 4975 of the Code) involving any ERISA Plan; and in each case in clauses (i) through (v) above, such event or condition, together with all other such events or conditions, if any, could reasonably be expected to have a Material Adverse Effect;

(i) (i) any Loan Document shall for any reason be asserted in writing by any Loan Party not to be a legal, valid and binding obligation of any party thereto, (ii) any Lien, security interest or super-priority claim purported to be created by the Loan Documents and the DIP Order in favor of the Secured Parties shall for any reason cease to be, or shall be asserted in writing by any Loan Party not to be, a legal, valid and perfected security interest (perfected as or having the priority required by this Agreement and the DIP Order and subject to such limitations and restrictions as are set forth herein and therein) in such assets in all respects, (iii) the Obligations of the Borrower or the Guarantees by any Guarantor of the Obligations shall be invalidated or otherwise cease, or shall be asserted in writing by any Loan Party to be invalid or to cease to be legal, valid and binding obligations of the parties thereto, enforceable in accordance with their terms;

(j) an order of the Bankruptcy Court shall be entered in any of the Cases amending, supplementing, staying for a period in excess of 10 days, vacating or otherwise modifying any of the DIP

Orders, or amending any Loan Document, or any Loan Party shall apply for authority to do so, in any case without the consent of the Required Lenders;

(k) any Loan Party shall fail to comply with the terms of the DIP Order in any material respect;

(l) (i) unless the Administrative Agent and the Required Lenders shall otherwise agree, any Case shall be dismissed (or the Bankruptcy Court shall make a ruling requiring the dismissal of any Case) or suspended or any Loan Party shall file any pleading requesting any such relief; (ii) any Case shall be converted to a case under Chapter 7 of the Bankruptcy Code, or any Loan Party shall file any pleading requesting any such relief; (iii) the Bankruptcy Court shall enter an order appointing an interim or permanent trustee in any Case, a responsible officer (other than a professional person employed by the Loan Parties' restructuring advisor, who may be appointed as a responsible officer in the Cases) or examiner (other than the Examiner) with powers beyond the duty to investigate and report, as set forth in Section 1106(a)(3) and (4) of the Bankruptcy Code; or (iv) the venue of any of the Cases shall be transferred to any court other than the Bankruptcy Court for the Southern District of Florida; provided that any event described in this subclauses (ii), (iii) or (iv) of this clause (l) shall not constitute an Event of Default if the motion giving rise to such event was brought by the Existing Credit Facility Lenders and if the order giving effect thereto includes language expressly confirming that the DIP Order, Sale Procedures Order and Sale Order shall remain binding (based upon language satisfactory to the Administrative Agent) upon the applicable United States Bankruptcy Court or trustee, responsible officer or examiner;

(m) the entry of an order by the Bankruptcy Court granting relief from or modifying the automatic stay applicable under Section 362 of the Bankruptcy Code to any holder or holders of any security interest to permit foreclosure or enforcement on any material assets of any Loan Party;

(n) the entry of any order by the Bankruptcy Court granting (i) any other claim having priority senior to or pari passu with the claims of the Secured Parties under the Loan Documents or any other claim having priority over any or all administrative expenses of the kind specified in Section 503(b) or 507(b) of the Bankruptcy Code, other than the Carve-Out Expenses or (ii) any other Lien on the Collateral having a priority senior to or pari passu with the Liens and security interests granted herein and in the DIP Order, except as expressly provided herein and therein;

(o) the making of, or the entry of an order by the Bankruptcy Court approving the making of, any cash adequate protection payments with respect to any prepetition Indebtedness, other than the repayment of the Used Cash Collateral and the payment of the Unused Cash Collateral to the Existing Credit Facility Agent for the benefit of the Prepetition Secured Parties, in each case pursuant to the DIP Order;

(p) the Loan Parties shall make, agree to make or promise to make any payment of any kind or nature to or on behalf of any lender under the Primed Debt other than the repayment of the Used Cash Collateral and the payment of the Unused Cash Collateral to the Existing Credit Facility Agent for the benefit of the Prepetition Secured Parties, in each case pursuant to the DIP Order;

(q) from and after the date of entry thereof, the Interim DIP Order shall cease to be in full force and effect (or shall have been vacated, stayed, reversed, modified or amended), in each case without the consent of the Required Lenders, and the Final DIP Order shall not have been entered prior to such cessation (or vacatur, stay, reversal, modification or amendment);

(r) from and after the date of entry thereof, the Final DIP Order shall cease to be in full force and effect (or shall have been vacated, stayed, reversed, modified or amended), in each case without the consent of the Required Lenders;

(s) the failure to occur of any of the following events:

(i) each of the Loan Parties shall have taken all requisite company or corporate action, as applicable, to have approved the Sale (it being understood that the Loan Parties' consummation of the Sale shall be subject to entry of the Sale Order), such approval shall be in full force and effect, and the Loan Parties shall be diligently pursuing the prosecution of the sale of all or substantially all of the Purchased Assets on the terms described in the Sale Procedures Order as in effect on the date hereof, the bidding procedures attached thereto, as in effect on the date hereof and, when entered, the Sale Order,

(ii) on or prior to the date that is 7 Business Days after the Closing Date, the Retail Entities shall have become debtors under Chapter 11 of the Bankruptcy Code in cases before the Bankruptcy Court, the Bankruptcy Court shall have entered the Interim DIP Order and the Sale Procedures Order in such cases, and the Retail Entities Guarantee Date shall have occurred,

(iii) on or prior to January 29, 2010, the Bankruptcy Court shall have entered the Sale Order, or

(iv) on or prior to February 9, 2010, the Obligors shall have consummated the sale of all or substantially all of the Purchased Assets; or

(t) the consent of the Existing Credit Facility Lenders to the Subject Sale Transactions (as such term is defined in the Interim DIP Order in effect as of the date hereof), the borrowing of Loans hereunder or the granting of liens to the Secured Parties in respect of such borrowings, or the Agent Direction (as such term is defined in the Interim DIP Order as in effect as of the date hereof) as such direction relates to the Subject Sale Transactions, the borrowing of Loans hereunder or the granting of liens to the Secured Parties in respect of such borrowings, shall terminate pursuant to paragraph 32 of the Interim DIP Order, the Final DIP Order or otherwise.

then, and in every such event, and at any time thereafter during the continuance of such event, the Administrative Agent may and, at the request of the Required Lenders shall, upon notice to the Borrower, take any or all of the following actions, at the same or different times: (i) terminate forthwith the Commitments, (ii) declare the Loans then outstanding to be forthwith due and payable in whole or in part, whereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and any unpaid accrued Fees and all other liabilities of the Borrower accrued hereunder and under any other Loan Document, shall become forthwith due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by the Borrower, anything contained herein or in any other Loan Document to the contrary notwithstanding. In addition, subject only to any limitations set forth in the DIP Order, the automatic stay provided in Section 362 of the Bankruptcy Code shall be deemed automatically vacated without further action or order of the Bankruptcy Court, and the Administrative Agent, the Collateral Agent and the Lenders shall be entitled to exercise all of their respective rights and remedies under the Loan Documents, including without limitation, all rights and remedies with respect to the Collateral and the Guarantors, or any other remedies provided by applicable law. In addition to the remedies set forth above, the Administrative Agent and the Collateral Agent may

exercise any other remedies provided for by this Agreement and the Loan Documents in accordance with the terms hereof and thereof or any other remedies provided by applicable law.

The Lenders hereby agree that in the event that (a) the Purchaser is named the Successful Bidder, (b) the Purchaser fails to close the Sale on or before the Stated Maturity Date, (c) an Event of Default occurs on the Stated Maturity Date as a result of the failure by the Borrower to repay all Obligations hereunder (the "Specified Event of Default") and (d) the Sellers allege in good faith in a written notice delivered to the Administrative Agent that the Purchaser's failure to close was in violation of its obligations under the Asset Purchase Agreement, the Lenders shall not accelerate the maturity of the Loans or otherwise enforce payment of the Obligations or exercise any other rights and remedies available to them hereunder or under applicable law (other than the right to terminate the Commitments) on account of the Specified Event of Default until the earliest of (i) the date that is 60 days from the Stated Maturity Date, (ii) the date that the Debtors or any other Person commence a suit against the Purchaser or any of its Affiliates relating to its failure to close the Sale, (iii) the date upon which the any Event of Default (other than the failure to repay all Obligations on the Stated Maturity Date) has occurred and is continuing and (iv) the date upon which the Debtors sell all or substantially all of their assets or any Purchased Assets to another Person or Persons.

The Lenders hereby agree that in the event that (a) (i) the Auction has not yet occurred or (ii) the Auction has occurred and the Purchaser was named the Successful Bidder at the Auction, (b) the Purchaser alleges in good faith in a written notice delivered to the Sellers (the "MAE Notice") that Purchaser is not obligated to close the Sale pursuant to the Asset Purchase Agreement because of a Specified APA Material Adverse Effect, (c) the Sellers acknowledge and agree in a written notice delivered to the Administrative Agent within 5 Business Days of the delivery of the MAE Notice that the Purchaser is not obligated to close the Sale pursuant to the Asset Purchase Agreement because of the occurrence of such a Material Adverse Effect and (d) an Event of Default occurs on the Stated Maturity Date as a result of the failure by the Borrower to repay all Obligations hereunder (the "Agreed Non-Payment Event of Default"), the Lenders shall not accelerate the maturity of the Loans or otherwise enforce payment of the Obligations or exercise any other rights and remedies available to them hereunder or under applicable law (other than the right to terminate the Commitments) on account of the Agreed Non-Payment Event of Default (or, to the extent that the Lenders begin to exercise remedies on account of the Agreed Non-Payment Event of Default prior to receipt of the Sellers' notice described in clause (c) above, shall forbear from exercising further remedies) until the earliest of (i) the later of (a) the Stated Maturity Date and (b) the date that is 60 days from the date that the Purchaser delivers the MAE Notice to the Sellers, (ii) the date upon which any Event of Default (other than the failure to repay all Obligations on the Stated Maturity Date) has occurred and is continuing and (iii) the date upon which the Debtors sell all or substantially all of their assets or any Purchased Assets to another Person or Persons.

Upon the delivery of a Carve-Out Trigger Notice, the right of the Loan Parties to pay professional fees outside the Carve-Out shall terminate (a "Carve-Out Event"), and, upon such occurrence, the Loan Parties shall provide immediate notice by facsimile to all professionals informing them that a Carve-Out Event has occurred and further advising them that the Loan Parties' ability to pay professionals is subject to the Carve-Out.

ARTICLE VIII

THE ADMINISTRATIVE AGENT

SECTION 8.01. Appointment. Each Lender hereby irrevocably designates and appoints the Administrative Agent as the agent of such Lender under this Agreement and the other Loan Documents, and each such Lender irrevocably authorizes the Administrative Agent, in such capacity, to take such action on its behalf under the provisions of this Agreement and the other Loan Documents and to exercise such powers and perform such duties as are expressly delegated to the Administrative Agent by the terms of this Agreement and the other Loan Documents, together with such other powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary elsewhere in this Agreement, the Administrative Agent shall not have any duties or responsibilities, except those expressly set forth herein, or any fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against the Administrative Agent; it being expressly understood and agreed that the use of the word "Administrative Agent" is for convenience only and that the Administrative Agent is merely the representative of the Lenders and only has the contractual duties set forth herein. Except as expressly otherwise provided in this Agreement, the Administrative Agent shall have and may use its sole discretion with respect to exercising or refraining from exercising any discretionary rights or taking or refraining from taking any actions that the Administrative Agent expressly is entitled to take or assert under or pursuant to this Agreement and the other Loan Documents. Without limiting the generality of the foregoing, or of any other provision of the Loan Documents that provides rights or powers to the Administrative Agent, the Lenders agree that the Administrative Agent shall have the right to exercise the following powers as long as this Agreement remains in effect: (a) maintain, in accordance with its customary business practices, ledgers and records reflecting the status of the Obligations, the Collateral, payments and proceeds of Collateral, and related matters, (b) execute or file any and all financing or similar statements or notices, amendments, renewals, supplements, documents, instruments, proofs of claim, notices and other written agreements with respect to the Loan Documents, (c) make Loans, on behalf of the Lenders, as provided in the Loan Documents, (d) exclusively receive, apply, and distribute the payments and proceeds of Collateral of the Loan Parties as provided in the Loan Documents, (e) open and maintain such bank accounts and cash management arrangements as the Administrative Agent deems necessary and appropriate in accordance with the Loan Documents for the foregoing purposes with respect to the Collateral and the payments and proceeds of Collateral, (f) perform, exercise, and enforce any and all other rights and remedies of the Administrative Agent and the Lenders with respect to the Loan Parties, the Obligations, the Collateral, payments and proceeds of Collateral, or otherwise related to any of the same as provided in the Loan Documents, and (g) incur and pay such Lender Group Expenses as Administrative Agent may deem necessary or appropriate for the performance and fulfillment of its functions and powers pursuant to the Loan Documents.

SECTION 8.02. Delegation of Duties. The Administrative Agent may execute any of its duties under this Agreement and the other Loan Documents by or through agents, employees or attorneys-in-fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. The Administrative Agent shall not be responsible for the negligence or misconduct of any agents or attorneys-in-fact selected by it, so long as such selection was made without gross negligence or willful misconduct.

SECTION 8.03. Exculpatory Provisions. Neither the Administrative Agent nor any of its officers, directors, employees, agents, attorneys-in-fact or affiliates (collectively, the "Administrative Agent-Related Persons") shall be (i) liable for any action taken or omitted to be taken by it or such person

under or in connection with this Agreement or any other Loan Document (except to the extent that any of the foregoing are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from its or such person's own gross negligence or willful misconduct) or (ii) responsible in any manner to any of the Lenders for any recitals, statements, representations or warranties made by any Loan Party or any officer thereof contained in this Agreement or any other Loan Document or in any certificate, report, statement or other document referred to or provided for in, or received by the Administrative Agent under or in connection with, this Agreement or any other Loan Document or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document or for any failure of any Loan Party a party thereto to perform its obligations hereunder or thereunder. The Administrative Agent-Related Persons shall not be under any obligation to any Lender to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the properties, books or records of any Loan Party.

SECTION 8.04. Reliance by Administrative Agent. The Administrative Agent shall be entitled to rely, and shall be fully protected in relying, upon any instrument, writing, resolution, notice, consent, certificate, affidavit, letter, telecopy, telex or teletype message, statement, order or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper person or persons and upon advice and statements of legal counsel (including counsel to Holdings or the Borrower or counsel to any Lender), independent accountants and other experts selected by the Administrative Agent. The Administrative Agent may deem and treat the payee of any Note as the owner thereof for all purposes unless a written notice of assignment, negotiation or transfer thereof shall have been filed with the Administrative Agent. The Administrative Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless it shall first receive such advice or concurrence of the Required Lenders (or, if so specified by this Agreement, all Lenders) as it deems appropriate or it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action. The Administrative Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement and the other Loan Documents in accordance with a request of the Required Lenders (or, if so specified by this Agreement, all Lenders), and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders and all future holders of the Loans.

SECTION 8.05. Notice of Default. The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default unless the Administrative Agent has received notice from a Lender, Holdings or the Borrower referring to this Agreement, describing such Default or Event of Default and stating that such notice is a "notice of default." In the event that the Administrative Agent receives such a notice, the Administrative Agent shall give notice thereof to the Lenders. The Administrative Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Required Lenders (or, if so specified by this Agreement, all Lenders); provided that unless and until the Administrative Agent shall have received such directions, the Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable in the best interests of the Lenders.

SECTION 8.06. Non-Reliance on Administrative Agent and Other Lenders. Each Lender expressly acknowledges that neither the Administrative Agent nor any of their respective officers, directors, employees, agents, attorneys-in-fact or affiliates have made any representations or warranties to it and that no act by the Administrative Agent hereafter taken, including any review of the affairs of a Loan Party or any affiliate of a Loan Party, shall be deemed to constitute any representation or warranty

by the Administrative Agent to any Lender. Each Lender represents to the Administrative Agent that it has, independently and without reliance upon the Administrative Agent or any other Lender, and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, operations, property, financial and other condition and creditworthiness of the Loan Parties and their affiliates and made its own decision to make its Loans hereunder and enter into this Agreement. Each Lender also represents that it will, independently and without reliance upon the Administrative Agent or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigation as it deems necessary to inform itself as to the business, operations, property, financial and other condition and creditworthiness of the Loan Parties and their affiliates. Except for notices, reports and other documents expressly required to be furnished to the Lenders by the Administrative Agent hereunder, the Administrative Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, operations, property, condition (financial or otherwise), prospects or creditworthiness of any Loan Party or any affiliate of a Loan Party that may come into the possession of the Administrative Agent or any of its officers, directors, employees, agents, attorneys-in-fact or affiliates.

SECTION 8.07. Indemnification. The Lenders agree to (a) reimburse the Administrative Agent upon demand for all Lender Group Expenses incurred by the Administrative Agent (to the extent not reimbursed by any Loan Party and without limiting the obligation of the Borrower to do so), and (b) indemnify the Administrative Agent-Related Persons (to the extent not reimbursed by any Loan Party and without limiting the obligation of the Borrower to do so), in each case in an amount equal to its pro rata share (based on the respective principal amounts of its applicable outstanding Loan) thereof, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever that may at any time (whether before or after the payment of the Loans) be imposed on, incurred by or asserted against the Administrative Agent in any way relating to or arising out of, the Commitments, this Agreement, any of the other Loan Documents or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by the Administrative Agent under or in connection with any of the foregoing (including without limitation any and all Indemnified Liabilities); provided that no Lender shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements that are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from the Administrative Agent's gross negligence or willful misconduct. The agreements in this Section shall survive the payment of the Loans and all other amounts payable hereunder and the resignation of the Administrative Agent.

SECTION 8.08. Agent in Its Individual Capacity. The Administrative Agent and its affiliates may make loans to, accept deposits from and generally engage in any kind of business with any Loan Party as though the Administrative Agent were not an Administrative Agent. With respect to its Loans made by it, the Administrative Agent shall have the same rights and powers under this Agreement and the other Loan Documents as any Lender and may exercise the same as though it were not an Administrative Agent, and the terms "Lender" and "Lenders" shall include the Administrative Agent in its individual capacity. The Lenders acknowledge that, pursuant to such activities, the Administrative Agent and its affiliates may receive information regarding the Loan Parties and their respective Affiliates or any other Person party to any Loan Document that is subject to confidentiality obligations in favor of such

Loan Party or such other Person and that prohibit the disclosure of such information to the Lenders, and the Lenders acknowledge that, in such circumstances, the Administrative Agent shall not be under any obligation to provide such information to them.

SECTION 8.09. Successor Administrative Agent. The Administrative Agent may resign as Administrative Agent upon 30 days' notice to the Lenders and the Borrower (unless the right to receive such notice is waived by the Lenders and the Borrower); provided, that Nevada Gaming Ventures, Inc., shall not be permitted to resign at any time prior to the Auction, but shall be permitted to resign at any time following the Auction if it is not named the Successful Bidder. If the Administrative Agent shall resign as Administrative Agent under this Agreement and the other Loan Documents, then the Required Lenders shall appoint a successor agent for the Lenders, which successor agent shall (unless an Event of Default under Section 7.01(b) or (c) shall have occurred and be continuing) be subject to approval by the Borrower (which approval shall not be unreasonably withheld or delayed), whereupon such successor agent shall succeed to the rights, powers and duties of the Administrative Agent, and the term "Administrative Agent" shall mean such successor agent effective upon such appointment and approval, and the former Administrative Agent's rights, powers and duties as Administrative Agent shall be terminated, without any other or further act or deed on the part of such former Administrative Agent or any of the parties to this Agreement or any holders of the Loans. If no successor agent has accepted appointment as Administrative Agent by the date that is 30 days following a retiring Administrative Agent's notice of resignation, the retiring Administrative Agent's resignation shall nevertheless thereupon become effective, and the Lenders shall assume and perform all of the duties of the Administrative Agent hereunder until such time, if any, as the Required Lenders appoint a successor agent as provided for above. After any retiring Administrative Agent's resignation as Administrative Agent, the provisions of this Article VIII shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent under this Agreement and the other Loan Documents.

ARTICLE IX

MISCELLANEOUS

SECTION 9.01. Notices.

(a) Notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopy, as follows:

(i) if to any Loan Party, to Fontainebleau Las Vegas Holdings, LLC, 19950 West Country Club Drive, Aventura, Florida 33180, Attention: Howard C. Karawan, Chief Restructuring Officer (Telecopy: (305) 682-4141), with a copy (which shall not constitute notice) to Bilzin Sumberg Baena Price & Axelrod LLP, 200 South Biscayne Boulevard, Suite 2500, Miami, Florida 33131, Attention: Scott L. Baena (Telecopy: (305) 351-2203);

(ii) if to the Administrative Agent, to Nevada Gaming Ventures, Inc. c/o Penn National Gaming, Inc., 825 Berkshire Boulevard, Suite 200, Wyomissing, PA 19610, Attention of Desiree Burke (Telecopy No. (610) 373-4966), Jordan Savitch (Telecopy No. (610) 373-4710) and Bill Clifford (Telecopy No. (610)373-4966), with a copy (which shall not constitute notice) to Wachtell, Lipton, Rosen & Katz, 51 West 52nd Street, New York, New York 10019, Attention of Richard G. Mason (Telecopy No. (212) 403-2252) and Gregory E. Pessin (Telecopy No. (212) 403-2359); and

(iii) if to the Examiner, to Jeffrey R. Truitt, XRoads Solutions Group, LLC, 1821 East Dyer Road, Suite 225, Santa Ana, CA 92705 (Telecopy No. (949) 567-1796), with a copy (which shall not constitute notice) to Stutman, Treister & Glatt P.C., 1901 Avenue of the Stars,

12th Floor, Los Angeles, CA 90067-6013, Attention of Eve H. Karasik (Telecopy No. (310) 228-5788).

(b) Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communications pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices pursuant to Article II unless otherwise agreed by the Administrative Agent and the applicable Lender. Each of the Administrative Agent and the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided, further, that approval of such procedures may be limited to particular notices or communications.

(c) All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt if delivered by hand or overnight courier service, sent by telecopy or (to the extent permitted by paragraph (b) above) electronic means or on the date five Business Days after dispatch by certified or registered mail if mailed, in each case delivered, sent or mailed (properly addressed) to such party as provided in this Section 9.01 or in accordance with the latest unrevoked direction from such party given in accordance with this Section 9.01.

(d) Any party hereto may change its address or telecopy number for notices and other communications hereunder by notice to the other parties hereto.

SECTION 9.02. Survival of Agreement. All covenants, agreements, representations and warranties made by the Loan Parties herein, in the other Loan Documents and in the certificates or other instruments prepared or delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the Lenders and shall survive the making by the Lenders of the Loans and the execution and delivery of the Loan Documents, regardless of any investigation made by such persons or on their behalf, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any Fee or any other amount payable under this Agreement or any other Loan Document is outstanding and unpaid. Without prejudice to the survival of any other agreements contained herein, indemnification and reimbursement obligations contained herein (including pursuant to Section 9.05) shall survive the payment in full of the principal and interest hereunder and the termination of this Agreement.

SECTION 9.03. Binding Effect. This Agreement shall become effective when it shall have been executed by each Loan Party and the Administrative Agent and when the Administrative Agent shall have received copies hereof which, when taken together, bear the signatures of each of the

other parties hereto, and thereafter shall be binding upon and inure to the benefit of each Loan Party, the Administrative Agent and each Lender and their respective permitted successors and assigns.

SECTION 9.04. Successors and Assigns.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that (i) the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by the Borrower without such consent shall be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section 9.04. Nothing in this Agreement, express or implied, shall be construed to confer upon any person (other than the parties hereto, their respective successors and

assigns permitted hereby, Participants (to the extent provided in paragraph (c) of this Section 9.04), and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) (i) Subject to the conditions set forth in paragraph (b)(ii) below, any Lender may assign to one or more assignees (each, an "Assignee") all or a portion of its rights and obligations under this Agreement (including all or a portion of its Loans at the time owing to it and its Commitments then outstanding) with the prior written consent (such consent not to be unreasonably withheld or delayed) of

(A) the Borrower; provided that no consent of the Borrower shall be required for an assignment to a Lender, an affiliate of a Lender, an Approved Fund (as defined below) or, if an Event of Default has occurred and is continuing, any other person;

(B) the Administrative Agent; provided that no consent of the Administrative Agent shall be required for an assignment of all or any portion of a Loan to a Lender, an Affiliate of a Lender or an Approved Fund.

(ii) Assignments shall be subject to the following additional conditions:

(A) except in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund or an assignment of the entire remaining amount of the assigning Lender's Loans and Commitments, the amount of the Loans and Commitments of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to the Administrative Agent) shall not be less than $5,000,000, unless each of the Borrower and the Administrative Agent otherwise consent; provided that (1) no such consent of the Borrower shall be required if an Event of Default under Section 7.01(b) or (c) has occurred and is continuing and (2) such amounts shall be aggregated in respect of each Lender and its Affiliates or Approved Funds, if any;

(B) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Acceptance, together with a processing and recordation fee of $3,500; provided that only one such fee shall be payable for simultaneous assignments to Approved Funds of a Lender;

(C) the Assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire; and

(D) no assignments shall be made to any Designated Entity.

For the purposes of this Section 9.04, "Approved Fund" means any person (other than a natural person) that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course and that is administered, advised or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers, advises or manages a Lender.

(iii) Subject to acceptance and recording thereof pursuant to paragraph (b)(v) below, from and after the effective date specified in each Assignment and Acceptance, the Assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Acceptance, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder

shall, to the extent of the interest assigned by such Assignment and Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.11 and 9.05). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 9.04 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (c) of this Section 9.04.

(iv) The Administrative Agent, acting for this purpose as an agent of the Borrower, shall maintain at one of its offices a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amount of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary; provided, however, in the case of an assignment to an Affiliate of the assigning Lender, such assignment shall be effective between such Lender and its Affiliate immediately without compliance with the conditions for assignment under this Section 9.04, but shall not be effective with respect to any other party hereto, and each other party hereto shall be entitled to deal solely with such assigning Lender under any such assignment, in each case until the conditions for assignment under this Section 9.04 have been satisfied. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(v) Upon its receipt of a duly completed Assignment and Acceptance executed by an assigning Lender and an Assignee, the Assignee's completed Administrative Questionnaire (unless the Assignee shall already be a Lender hereunder), the processing and recordation fee referred to in paragraph (b) of this Section and any written consent to such assignment required by paragraph (b) of this Section, the Administrative Agent shall accept such Assignment and Acceptance and record the information contained therein in the Register. No assignment, whether or not evidenced by a promissory note, shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph (b)(v).

(c) (i) Any Lender may, without the consent of the Borrower or the Administrative Agent, sell participations to one or more banks or other entities, other than Designated Entities, (a "Participant") in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Commitments and the Loans owing to it); provided that (A) such Lender's obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) the Borrower, the Administrative Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and the other Loan Documents and to approve any amendment, modification or waiver of any provision of this Agreement and the other Loan Documents; provided that (x) such agreement may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver that (1) requires the consent of each Lender directly affected thereby pursuant to Section 9.04(a)(i) or clause (i), (ii), (iii), (iv), (v) or (vi) of the first proviso to Section 9.08(b) and (2) directly affects such Participant and (y) no other agreement with respect to such Participant may exist between such Lender and such Participant. Subject to the foregoing provisions of this paragraph (c)(i) and to paragraph (c)(ii) of this Section 9.04, the Borrower agrees that each Participant shall be entitled to the benefits of Section

2.11 (subject to the requirements of those Sections as if it were a Lender) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section 9.04. Subject to the foregoing provisions of this paragraph (c)(i), to the extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.06 as though it were a Lender, provided such Participant shall be subject to Section 2.12(c) as though it were a Lender.

(ii) A Participant shall not be entitled to receive any greater payment under Section 2.10 or 2.11 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent.

(d) Any Lender may at any time, without the consent of or notice to the Administrative Agent or the Borrower, pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank, and this Section 9.04 shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or Assignee for such Lender as a party hereto.

(e) The Borrower, upon receipt of written notice from the relevant Lender, agrees to issue Notes to any Lender requiring Notes to facilitate transactions of the type described in paragraph (d) above.

(f) Notwithstanding the foregoing, any Conduit Lender may assign any or all of the Loans it may have funded hereunder to its designating Lender without the consent of the Borrower or the Administrative Agent. Each of the Loan Parties, each Lender and the Administrative Agent hereby confirms that it will not institute against a Conduit Lender or join any other person in instituting against a Conduit Lender any bankruptcy, reorganization, arrangement, insolvency or liquidation proceeding under any state bankruptcy or similar law, for one year and one day after the payment in full of the latest maturing commercial paper note issued by such Conduit Lender; provided, however, that each Lender designating any Conduit Lender hereby agrees to indemnify, save and hold harmless each other party hereto and each Loan Party for any loss, cost, damage or expense arising out of its inability to institute such a proceeding against such Conduit Lender during such period of forbearance.

SECTION 9.05. Expenses; Indemnity.

(a) The Borrower agrees to pay all reasonable out-of-pocket expenses (including Other Taxes) incurred by the Administrative Agent and the Lenders (and the reasonable fees, charges and disbursements of their counsel and other advisors) in connection with the preparation and negotiation of this Agreement and the other Loan Documents, whether incurred prior to or following the Petition Date, and by the Administrative Agent in connection with the administration of this Agreement (including, without limitation, (i) expenses incurred in connection with due diligence, (ii) the reasonable fees, charges and disbursements of counsel for the Administrative Agent and Lenders and (iii) the reasonable fees, charges and disbursements of one local counsel per jurisdiction where Collateral is located or a Loan Party is incorporated) or in connection with the administration of this Agreement and any amendments, modifications or waivers of the provisions hereof or thereof or incurred by the Administrative Agent or any Lender in connection with the enforcement or protection of their rights in connection with this Agreement and the other Loan Documents or the Loans made hereunder (collectively, the "Lender Group Expenses"). Notwithstanding the foregoing, (a) the payment obligations of the Borrower with respect to

amounts incurred by the Administrative Agent and the Lenders prior to the Closing Date pursuant to this Section 9.05(a) shall be limited to the amounts set forth in the Agreed Budget, which amount shall be paid on the Closing Date, as set forth in Section 2.08(d); (b) no Lender (other than the Purchaser or any Affiliate of the Purchaser) shall be entitled to any reimbursement from the Borrower pursuant to this Section 9.05(a) other than in respect of reasonable out-of-pocket expenses of the type described in this Section 9.05(a) incurred following the occurrence and during the continuation of an Event of Default. All amounts due under this Section 9.05(a) shall be payable on written demand therefor accompanied by reasonable documentation with respect to any reimbursement or other amount requested. Any such amount that becomes due and payable under this Section 9.05(a) prior to the Termination Date shall be paid by increasing the principal amount of the Loans outstanding by such amounts then due, and any such amounts that become due and payable on or after the Termination Date shall be payable in cash on the due date therefor.

(b) The Borrower agrees to indemnify the Administrative Agent, each Lender and each of their respective directors, trustees, officers, employees, advisors and agents (each such person being called an "Indemnitee") against, and to hold each Indemnitee harmless from, any and all losses,

claims, damages, liabilities and related expenses, including reasonable counsel fees, charges and disbursements, incurred by or asserted against any Indemnitee arising out of, in any way connected with, or as a result of (i) subject to the limitations in clause (b) of the second sentence of Section 9.05(a) (which relates solely to reimbursement of out-of-pocket expenses and fees of certain Lenders), the execution or delivery of this Agreement or any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto and thereto of their respective obligations thereunder or the consummation of the transactions contemplated hereby, (ii) the use of the proceeds of the Loans or (iii) any claim, litigation, investigation or proceeding relating to any of the foregoing, whether or not any Indemnitee is a party thereto (collectively, the "Indemnified Liabilities"); provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a final, non-appealable judgment of a court of competent jurisdiction to have resulted solely by reason of the gross negligence or willful misconduct of such Indemnitee. Subject to and without limiting the generality of the foregoing sentence, the Borrower agrees to indemnify each Indemnitee against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses, including reasonable counsel or consultant fees, charges and disbursements (limited to not more than one counsel, plus, if necessary, one local counsel per jurisdiction), incurred by or asserted against any Indemnitee arising out of, in any way connected with, or as a result of (A) any claim related in any way to Environmental Laws and any Loan Party, or (B) any actual or alleged presence, Release or threatened Release of Hazardous Materials at, under, on or from any Property; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee or any of its Related Parties. The Borrower shall not be liable for any settlement of any proceeding referred to in this Section 9.05 effected without their written consent, but if settled with such consent or if there shall be a final judgment for the plaintiff, the Borrower shall indemnify the Indemnitees from and against any loss or liability by reason of such settlement or judgment, subject to the Borrower's right in this Section 9.05 to claim an exemption from such indemnity obligations. The Borrower shall not, without the prior written consent of any Indemnitee, effect any settlement of any pending or threatened proceeding in respect of which such Indemnitee is or could have been a party and indemnity could have been sought hereunder by such Indemnitee unless such settlement (i) includes an unconditional release of such Indemnitee from all liability or claims that are the subject matter of such proceeding and (ii) does not include a statement as to or an admission of fault, culpability or a failure to act by or on behalf of any Indemnitee. None of the Indemnitees (or any of their respective affiliates) shall be responsible

or liable to any Loan Party or any of their respective Affiliates or stockholders or any other person or entity for any consequential damages, which may be alleged as a result of the Facility or the transactions contemplated hereby. The provisions of this Section 9.05 shall remain operative and in full force and effect regardless of the expiration of the term of this Agreement, the consummation of the transactions contemplated hereby, the repayment of any of the Obligations, the invalidity or unenforceability of any term or provision of this Agreement or any other Loan Document, or any investigation made by or on behalf of the Administrative Agent or any Lender. All amounts due under this Section 9.05(b) shall be payable on written demand therefor accompanied by reasonable documentation with respect to any indemnification or other amount requested.

(c) Except as expressly provided in Section 9.05(a) with respect to Other Taxes, which shall not be duplicative with any amounts paid pursuant to Section 2.11, this Section 9.05 shall not apply to Taxes.

SECTION 9.06. Right of Set-off. If an Event of Default shall have occurred and be continuing, each Lender is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by such Lender to or for the credit or the account of any Loan Party against any of and all the obligations of such Loan Party now or hereafter existing under this Agreement or any other Loan Document held by such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement or such other Loan Document and although the obligations may be unmatured. The rights of each Lender under this Section 9.06 are in addition to other rights and remedies (including other rights of set-off) that such Lender may have.

SECTION 9.07. Applicable Law.

(a) THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (OTHER THAN AS EXPRESSLY SET FORTH IN OTHER LOAN DOCUMENTS) SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK AND, AS APPLICABLE, THE BANKRUPTCY CODE.

(b) EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY:

(i) SUBMITS FOR ITSELF AND ITS PROPERTY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS TO WHICH IT IS A PARTY, OR FOR RECOGNITION AND ENFORCEMENT OF ANY JUDGMENT IN RESPECT THEREOF, TO THE NONEXCLUSIVE GENERAL JURISDICTION OF THE BANKRUPTCY COURT AND, IF THE BANKRUPTCY COURT DOES NOT HAVE (OR ABSTAINS FROM) JURISDICTION, TO THE NON-EXCLUSIVE GENERAL JURISDICTION OF ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION SITTING IN NEW YORK COUNTY, NEW YORK;

(ii) WAIVES ANY OBJECTION, INCLUDING ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF *FORUM NON CONVENIENS*, WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY ACTION OR PROCEEDING IN SUCH JURISDICTION IN RESPECT OF ANY LOAN DOCUMENT OR OTHER DOCUMENT RELATED THERETO;

(iii) CONSENTS TO SERVICE OF PROCESS IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO ANY LOAN DOCUMENTS IN THE MANNER PROVIDED FOR NOTICES (OTHER THAN TELECOPIER) IN SECTION 9.01(A); AND

(iv) AGREES THAT NOTHING HEREIN SHALL AFFECT THE RIGHT TO EFFECT SERVICE OF PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR SHALL LIMIT THE RIGHT OF THE ADMINISTRATIVE AGENT OR ANY LENDER TO SUE IN ANY OTHER JURISDICTION.

SECTION 9.08. Waivers; Amendment.

(a) No failure or delay of the Administrative Agent or any Lender in exercising any right or power hereunder or under any Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent and the Lenders hereunder and under the other Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or any other Loan Document or consent to any departure by any Loan Party therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) below, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice or demand on any Loan Party in any case shall entitle such person to any other or further notice or demand in similar or other circumstances.

(b) Neither this Agreement nor any other Loan Document nor any provision hereof or thereof may be waived, amended or modified except (x) in the case of this Agreement, pursuant to an agreement or agreements in writing entered into by each of the Loan Parties and the Required Lenders and (y) in the case of any other Loan Document, pursuant to an agreement or agreements in writing entered into by each party thereto and the Administrative Agent and consented to by the Required Lenders; provided, however, that no such agreement shall

(i) decrease or forgive the principal amount of, extend the final maturity of, decrease the rate of interest on, extend any Interest Payment Date for, reduce the amount of any Fees payable in connection with or extend the date of the payment of any Fee relating to any Loan, without the prior written consent of each Lender directly affected thereby; provided that any amendment to the financial covenant definitions in this Agreement shall not constitute a reduction in the rate of interest for purposes of this clause (i),

(ii) increase or extend the Commitment of any Lender without the prior written consent of such Lender (it being understood that waivers or modifications of conditions precedent, covenants, Defaults or Events of Default shall not constitute an increase in the Commitment of any Lender);

(iii) amend or modify the provisions of Section 2.12(b) or (c) of this Agreement in a manner that would by its terms alter the pro rata sharing of payments required thereby or revise the order of the allocation of prepayments, without the prior written consent of each Lender adversely affected thereby,

(iv) amend or modify the provisions of this Section 9.08 or the definition of the term "Required Lenders" or any other provision hereof specifying the number or percentage of Lenders required to waive, amend or modify any rights hereunder or make any determination or grant any consent hereunder, without the prior written consent of each Lender adversely affected thereby,

(v) release all or substantially all the Collateral or release any of the Loan Parties from their respective Guarantee, without the prior written consent of each Lender,

(vi) effect any waiver, amendment or modification of any Loan Document that would alter the relative priorities of the rights of the Secured Parties as against any other Person without the consent of each Lender; or

(vii) amend or modify the provisions of Section 9.08(d) without the prior written consent of each Lender.

provided, further, that no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent hereunder without the prior written consent of the Administrative Agent acting as such at the effective date of such agreement, as applicable. Each Lender shall be bound by any waiver, amendment or modification authorized by this Section 9.08 and any consent by any Lender pursuant to this Section 9.08 shall bind any assignee of such Lender.

(c) Without the consent of any Lender, the Loan Parties and the Administrative Agent may (in their respective sole discretion, or shall, to the extent required by any Loan Document) enter into any amendment, modification or waiver of any Loan Document, or enter into any new agreement or instrument, to effect the granting, perfection, protection, expansion or enhancement of any security interest in any Collateral or additional property to become Collateral for the benefit of the Secured Parties, or as required by local law to give effect to, or protect any security interest for the benefit of the Secured Parties, in any property or so that the security interests therein comply with applicable law.

(d) No fee shall be payable to any Lender in consideration of the consent to any waiver or amendment unless each Lender shall have the opportunity to so consent and earn such fee.

SECTION 9.09. Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the applicable interest rate, together with all fees and charges that are treated as interest under applicable law (collectively, the "Charges"), as provided for herein or in any other document executed in connection herewith, or otherwise contracted for, charged, received, taken or reserved by any Lender, shall exceed the maximum lawful rate (the "Maximum Rate") that may be contracted for, charged, taken, received or reserved by such Lender in accordance with applicable law, the rate of interest payable hereunder, together with all Charges payable to such Lender, shall be limited to the Maximum Rate; provided that such excess amount shall be paid to such Lender on subsequent payment dates to the extent not exceeding the legal limitation.

SECTION 9.10. Entire Agreement. This Agreement, the other Loan Documents and the agreements regarding certain Fees referred to herein constitute the entire contract between the parties relative to the subject matter hereof. Any previous agreement among or representations from the parties or their Affiliates with respect to the subject matter hereof is superseded by this Agreement and the other Loan Documents. Nothing in this Agreement or in the other Loan Documents, expressed or implied, is

intended to confer upon any party other than the parties hereto and thereto any rights, remedies, obligations or liabilities under or by reason of this Agreement or the other Loan Documents.

SECTION 9.11. WAIVER OF JURY TRIAL. **EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS. EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS, AS APPLICABLE, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 9.11.**

SECTION 9.12. Severability. In the event any one or more of the provisions contained in this Agreement or in any other Loan Document should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby. The parties shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

SECTION 9.13. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall constitute an original but all of which, when taken together, shall constitute but one contract, and shall become effective as provided in Section 9.03. Delivery of an executed counterpart to this Agreement by facsimile transmission shall be as effective as delivery of a manually signed original.

SECTION 9.14. Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and are not to affect the construction of, or to be taken into consideration in interpreting, this Agreement.

SECTION 9.15. Confidentiality. Each of the Lenders and the Administrative Agent agrees that it shall maintain in confidence any information relating to the Loan Parties furnished to it by or on behalf of the Loan Parties (other than information that (a) has become generally available to the public other than as a result of a disclosure by such party, (b) has been independently developed by such Lender or the Administrative Agent, as applicable, without violating this Section 9.15 or (c) was available to such Lender or the Administrative Agent, as applicable, from a third party having, to such person's knowledge, no obligations of confidentiality to any Loan Party) and shall not reveal the same other than to its directors, trustees, officers, employees and advisors with a need to know or to any person that approves or administers the Loans on behalf of such Lender (so long as each such person shall have been instructed to keep the same confidential in accordance with this Section 9.15), except: (A) to the extent necessary to comply with law or any legal process or the requirements of any Governmental Authority, the National Association of Insurance Commissioners or of any securities exchange on which securities of the disclosing party or any Affiliate of the disclosing party are listed or traded, (B) as part of the reporting or review procedures to, or examinations by, Governmental Authorities or self-regulatory authorities, including the National Association of Insurance Commissioners or the National Association of Securities Dealers, Inc., (C) to its parent companies, Affiliates or auditors (so long as each such person shall have

been instructed to keep the same confidential in accordance with this Section 9.15), (D) in order to enforce its rights under any Loan Document in a legal proceeding, and (E) to any pledgee under Section 9.04(d) or any other prospective assignee of, or prospective Participant in, any of its rights under this Agreement (so long as such person shall have been instructed to keep the same confidential in accordance with this Section 9.16).

SECTION 9.16. Direct Website Communications.

(a) Delivery. (i) Each Loan Party hereby agrees that it will provide to the Administrative Agent all information, documents and other materials that it is obligated to furnish to the Administrative Agent pursuant to this Agreement and any other Loan Document, including, without limitation, all notices, requests, financial statements, financial and other reports, certificates and other information materials, but excluding any such communication that (A) relates to the payment of any principal or other amount due under this Agreement prior to the scheduled date therefor, (B) provides notice of any Default or Event of Default under this Agreement or (C) is required to be delivered to satisfy any condition precedent to the effectiveness of this Agreement and/or any borrowing hereunder (all such non-excluded communications collectively, the "Communications"), by transmitting the Communications in an electronic/soft medium in a format acceptable to the Administrative Agent. Information required to be delivered pursuant to this Agreement (to the extent not made available as set forth above) shall be deemed to have been delivered to the Administrative Agent on the date on which the Borrower provides written notice to the Administrative Agent that such information has been posted on the Borrower's website on the Internet at www.fontainebleau.com (to the extent such information has been posted or is available as described in such notice). In addition, each Loan Party agrees to continue to provide the Communications to the Administrative Agent in the manner specified in this Agreement or any other Loan Document but only to the extent requested by the Administrative Agent. Nothing in this Section 9.17 shall prejudice the right of the Administrative Agent or any Lender or any Loan Party to give any notice or other communication pursuant to this Agreement or any other Loan Document in any other manner specified in this Agreement or any other Loan Document.

(ii) The Administrative Agent agrees that receipt of the Communications by the Administrative Agent at each of the following e-mail addresses jordan.savitch@pnggaming.com, bill.clifford@pnggaming.com and desiree.burke@pnggaming.com and such other e-mail addresses specified by the Administration to the Borrower shall constitute effective delivery of the Communications to the Administrative Agent for purposes of the Loan Documents. Each Lender agrees that notice to it (as provided in the next sentence) specifying that the Communications have been posted to the Platform (as defined below) or delivery to it of such Communications at the e-mail specified to the Administrative Agent pursuant to the next sentence shall constitute effective delivery of the Communications to such Lender for purposes of the Loan Documents. Each Lender agrees (A) to notify the Administrative Agent in writing (including by electronic communication) from time to time of such Lender's e-mail address to which the foregoing notice may be sent by electronic transmission and (B) that the foregoing notice may be sent to such e-mail address.

(b) Posting. Each Loan Party further agrees that the Administrative Agent may make the Communications available to the Lenders by sending such information directly to such Lenders or by posting the Communications on Intralinks or a substantially similar electronic transmission system (the "Platform").

(c) Platform. The Platform is provided "as is" and "as available." The Agent Parties (as defined below) do not warrant the accuracy or completeness of the Communications, or the adequacy

of the Platform and expressly disclaim liability for errors or omissions in the Communications. No warranty of any kind, express, implied or statutory, including, without limitation, any warranty of merchantability, fitness for a particular purpose, non-infringement of third party rights or freedom from viruses or other code defects, is made by any Agent Party in connection with the Communications or the Platform. In no event shall the Administrative Agent or any of its affiliates or any of their respective officers, directors, employees, agents, advisors or representatives (collectively, "Agent Parties") have any liability to the Loan Parties, any Lender or any other person or entity for damages of any kind, including, without limitation, direct or indirect, special, incidental or consequential damages, losses or expenses (whether in tort, contract or otherwise) arising out of any Loan Party's or the Administrative Agent's transmission of communications through the internet, except to the extent the liability of any Agent Party is found in a final non-appealable judgment by a court of competent jurisdiction to have resulted primarily from such Agent Party's gross negligence or willful misconduct.

SECTION 9.17. Release of Liens. The Administrative Agent agrees to take such actions as are reasonably requested by the Borrower and at the Borrower's expense to terminate the Liens and security interests created by the Loan Documents promptly after all Commitments are terminated and the Obligations are paid in full.

SECTION 9.18. USA Patriot Act. Each Lender hereby notifies the Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Act"), it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Lender to identify the Borrower in accordance with the Act.

SECTION 9.19. Conflicts. In the event of any conflict between the terms of this Agreement and the DIP Order, the DIP Order shall govern.

ARTICLE X

SECURITY AND GUARANTEE

SECTION 10.01. Security Interest.

(a) Pursuant to the DIP Order and in accordance with the terms thereof (and subject to the terms and conditions set forth therein), as security for the full and timely payment and performance of all of the Obligations, each Loan Party hereby assigns, pledges and grants to the Administrative Agent, for the benefit of itself and the Secured Parties, a security interest in and Lien on all of the Collateral owned by it, with the priority afforded by Sections 364(c)(1), 364(c)(2), 364(c)(3) and 364(d)(1), as set forth in the DIP Order.

(b) The security interests and Liens in favor of the Secured Parties in the Collateral shall not be subject to challenge and shall attach and become valid, legal and perfected immediately upon the entry of the DIP Order, subject to the terms and conditions set forth in the DIP Order.

SECTION 10.02. Guarantee.

(a) In order to induce the Lenders to enter into this Agreement and to provide Loans hereunder and in recognition of the direct benefits to be received by the Guarantors from the proceeds of the Loans, each Guarantor hereby unconditionally and irrevocably, jointly and severally, guarantees as

primary obligor and not merely as surety the due and punctual payment in full of the principal of and interest on the Loans and of all the Obligations to each of the Lenders and the Administrative Agent, when and as due, whether at maturity, by acceleration or otherwise. If any or all of the Obligations of the Borrower to the Lenders or the Administrative Agent becomes due and payable hereunder, each Guarantor unconditionally promises on a joint and several basis to pay such Obligations to the Lenders or the Agent, as the case may be, or order, on demand, together with any and all expenses which may be incurred by the Administrative Agent or the Lenders in collecting any of the Obligations.

(b) Each Guarantor authorizes the Administrative Agent and the Lenders without notice or demand (except as shall be required by applicable statute and which cannot be waived), and without affecting or impairing its liability hereunder, from time to time to (a) renew, compromise, extend, increase, accelerate or otherwise change the time for payment of, or otherwise change the terms of, the Obligations or any part thereof in accordance with this Agreement, including any increase or decrease of the rate of interest thereon, (b) take and hold security from any Guarantor or any other party for the payment of this guarantee or the Obligations and exchange, enforce, waive and release any such security and (c) apply such security and direct the order or manner of sale thereof as the Administrative Agent and the Lenders in their discretion may determine.

(c) The obligations of each Guarantor hereunder are independent of the obligations of any other Guarantor or the Borrower, and a separate action or actions may be brought and prosecuted against each Guarantor whether or not action is brought against any other Guarantor or the Borrower and whether or not any other Guarantor or the Borrower be joined in any such action or actions. Each Guarantor waives, to the fullest extent permitted by law, the benefit of any statute of limitations affecting its liability hereunder or the enforcement thereof. Any payment by the Borrower or other circumstances which operate to toll any statute of limitations as to the Borrower shall operate to toll the statute of limitations as to each Guarantor.

(d) Each Guarantor waives presentation to, demand for payment from and protest to the Borrower or any other Guarantor, and also waives notice of protest for nonpayment. The Obligations of the Guarantors hereunder shall not be affected by (i) the failure of the Administrative Agent or any Lender to assert any claim or demand or to enforce any right or remedy against the Borrower or any other Guarantor under the provisions of this Agreement or any other Loan Document or otherwise, (ii) any extension or renewal of any provision hereof or thereof, (iii) any rescission, waiver, compromise, acceleration, amendment or modification of any of the terms or provisions of any of the Loan Documents, (iv) the release, exchange, waiver or foreclosure of any security held by the Administrative Agent for the Obligations or any of them, (v) the failure of the Administrative Agent or any Lender to exercise any right or remedy against any other Guarantor, or (vi) the release or substitution of the Borrower or any other Guarantor.

(e) Each Guarantor further agrees that this guarantee constitutes a guarantee of payment when due and not just of collection, and waives any right to require that any resort be had by the Administrative Agent or any Lender to any security held for payment of the Obligations, to any other guarantee of the Obligations or to any balance of any deposit, account or credit on the books of the Administrative Agent or any Lender in favor of the Borrower or any other Guarantor, or to any other Person.

(f) Each Guarantor hereby waives any defense that it might have based on a failure to remain informed of the financial condition of the Borrower and of any other Guarantor and any circumstances affecting the ability of the Borrower to perform under this Agreement.

(g) Each Guarantor's guarantee shall not be affected by the genuineness, validity, regularity or enforceability of the Obligations or any other instrument evidencing any Obligations, or by the existence, validity, enforceability, perfection, or extent of any collateral therefor or by any other circumstance relating to the Obligations which might otherwise constitute a defense to this guarantee. Neither the Administrative Agent nor any of the Lenders makes any representation or warranty in respect to any such circumstances or shall have any duty or responsibility whatsoever to any Guarantor in respect of the management and maintenance of the Obligations.

(h) Subject to the provisions of Article VII, upon the Obligations becoming due and payable (by acceleration or otherwise), the Lenders shall be entitled to immediate payment of such Obligations by the Guarantors upon written demand by the Administrative Agent, without further application to or order of the Bankruptcy Court.

(i) The obligations of the Guarantors hereunder shall not be subject to any reduction, limitation, impairment or termination for any reason, including any claim of waiver, release, surrender, alteration or compromise, and shall not be subject to any defense or set-off, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality or unenforceability of the Obligations. Without limiting the generality of the foregoing, the obligations of the Guarantors hereunder shall not be discharged or impaired or otherwise affected by the failure of the Administrative Agent or any Lender to assert any claim or demand or to enforce any remedy under this Agreement or any other agreement, by any waiver or modification of any provision thereof, by any default, failure or delay, willful or otherwise, in the performance of the Obligations, or by any other act or thing or omission or delay to do any other act or thing which may or might in any manner or to any extent vary the risk of the Guarantors or would otherwise operate as a discharge of the Guarantors as a matter of law, unless and until the Obligations are paid in full.

(j) Upon payment by any Guarantor of any sums to the Administrative Agent or any Lender hereunder, all rights of such Guarantor against the Borrower arising as a result thereof by way of right of subrogation or otherwise, shall in all respects be subordinate and junior in right of payment to the prior final and indefeasible payment in full of all the Obligations. If any amount shall be paid to such Guarantor for the account of the Borrower, such amount shall be held in trust for the benefit of the Administrative Agent and the Lenders and shall forthwith be paid to the Administrative Agent and the Lenders to be credited and applied to the Obligations, whether matured or unmatured.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

FONTAINEBLEAU LAS VEGAS HOLDINGS, LLC
debtor and debtor-in-possession, as Guarantor

By: Howard C. Karawan
Name: Howard C. Karawan
Title: Authorized Person

FONTAINEBLEAU LAS VEGAS, LLC,
debtor and debtor-in-possession, as Borrower

By: Howard C. Karawan
Name: Howard C. Karawan
Title: Authorized Person

FONTAINEBLEAU LAS VEGAS CAPITAL CORP.,
debtor and debtor-in-possession, as Guarantor

By: Howard C. Karawan
Name: Howard C. Karawan
Title: Authorized Person

NEVADA GAMING VENTURES, INC.,
as Administrative Agent, Collateral Agent and Lender

By: Robert S. Ippolito
Name: Robert S. Ippolito
Title: Secretary / Treasurer